

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Jasper County

Honorable J. Derham Cole, Circuit Court Judge

JONATHAN NIEVES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000057

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE EXHIBIT #1 (AERIAL MAP); STATE EXHIBITS #2-10, #12-16
(PHOTOS); STATE EXHIBITS #43-45 (STILL SHOTS); AND
STATE EXHIBITS #50, #51, #53, #54 (PHOTOS).**

1 the hand of one is the hand of all, but just
2 remember Tyquasia Lee and which she didn't
3 actually give us testimony on the stand, but she
4 was on the video tape, and she was 14 years old
5 at the time of the videotape, but then she's 20-
6 years-old, okay? So, again, she's not 14-years-
7 old now, she was 14 years old when she gave the
8 statement, okay, but she was not at the scene.
9 She was -- I believe he said it was told to her
10 by Mr. Nieves, but she was not at the scene.
11 Now, why is that -- and also, she is a cousin of
12 Jackpot too, the one that she mentioned on the
13 videotape.

14 So why is that important that she was not
15 at the scene? Okay, you may have answered why
16 are they now going to be limiting the questions
17 for Agent Brown about search warrants? Because
18 guess what? They have already proven that they
19 were so compromised because they didn't follow-
20 up with Mr. Riley.

21 She said there was a bag, there was a gun,
22 and there was a full description. As a matter
23 of fact, Riley had a bloody tee-shirt, okay?
24 And Agent Brown made a discretion, because the
25 case was two weeks out, made a discretion, you

1 know what? I'm just gonna take her word. I'm
2 not gonna confirm what she said, I'm gonna take
3 her word for it, okay? I'm gonna take her word
4 for it, I'm not gonna reinterview Mr. Riley, I'm
5 gonna take her word, but I'm not even gonna try
6 to get a bench warrant to search for this black
7 gun, for this black gun with the brown handle on
8 it, I'm not even gonna search for a bloody tee-
9 shirt, I'm not gonna search for this bag, I'm
10 not gonna do anything. I'm gonna take this 14-
11 year-old's word for it.

12 And that's why that is important, that's
13 why that is important. What do they have to
14 hide by not charging James R. Riley Jackpot?
15 It's perplexing. It is perplexing that all this
16 evidence. I know there's evidence. There's
17 mountains of evidence they have against James R.
18 Riley Jackpot, and still to this day, six years
19 later, no charges.

20 They charged my client; they charged
21 Vanessa Boyles. What is it? Justice has no
22 time limit, I do agree, but justice is justice.
23 You can't read two-thirds of a book and know the
24 ending. You can't play two-thirds of a football
25 game and know who's gonna win. What is it? And

1 that's important because it goes into whether
2 they proved their case beyond a reasonable
3 doubt.

4 It was so easy for Agent Brown, or whoever
5 got the search warrants, to go down to
6 Hardeeville, because their two residences are
7 located very close to each other and look for
8 those items. Because, you know, you would have
9 had confirmation. Oh, we found this. Oh, well
10 maybe -- I don't know, they could -- might not
11 have arrested James Jackpot Riley, I don't know.
12 Oh, found the bookbag. Oh, but then, you know,
13 but we don't know, because the effort was not
14 even traced forward, and that's what you've got
15 to look at too, when you try to find beyond a
16 reasonable doubt.

17 Now, this case is a really tough case, in
18 that we all saw the gruesome pictures, and I
19 know the Specks' family and the Jenkins' family
20 want justice in this case. We all want justice.
21 They want justice in this case, we want justice
22 in our system, but for justice to be correct, it
23 must be right.

24 Again, as I said, it must be fair, it must
25 be just, and it must be impartial. How can we

1 get that in this case that we don't even have
2 all the participants that are vital in this
3 particular case?

4 I'm not saying it all have to be tried at
5 the same time, no, they don't have to be tried
6 at the same time, but right now Mr. Riley is not
7 even on the radar to be tried, but guess what?
8 He was never charged, and he's not charged.

9 And I don't want you to get confused, no
10 one in this courtroom testified to Mr. Nieves
11 being at the scene of the killing, okay?

12 Vanessa Boyles said, "I saw him go down the
13 road, and I saw flames and smoke." She also
14 said, "I saw no one shot anybody." Okay? So
15 don't be confused that someone said that Mr.
16 Nieves was at the scene of a killing.

17 Also too, you probably didn't pay too much
18 attention, well, you did, I'm sorry, but with
19 the phone records, and I asked -- I think it was
20 Mr. Hightower, I asked him, "Did he analyze Mr.
21 Nieves' phone?" He said, "Yes, I did."

22 Anything with a different tower, from the Tower
23 208, Tower 288, Tower 221, and there's been no
24 testimony tracing Mr. Nieves there, he said,
25 "No."

1 MR. THORNTON: Your Honor, I have to object
2 that was absolutely not testified to, that
3 nothing placed him in the area.

4 THE COURT: Okay. Go ahead and make your
5 argument. Go ahead and make your argument.

6 MR. KOGER: Okay. If I am mistaken, then
7 the testimony of Agent Hightower can be
8 replayed, okay? But the phones are from Bruce
9 Specks and Vanessa Boyles, okay?

10 And from testimony Vanessa Boyles sometimes
11 she shared her phone with James Jackpot Riley,
12 okay? Now, that was testified to. Again, you
13 know, testimony can be replayed, you can recall
14 what you heard, but the point is that they must
15 prove their case beyond a reasonable doubt.

16 Okay, they want to say the hand of one is
17 hand of all with Mr. Nieves, but it don't mean
18 they have the other person charged. And you
19 have to wonder, well, you can use it in your
20 consideration to wonder why, because they had
21 the evidence on October 19th, when they did the
22 first statement with Ms. Lee, that they
23 allegedly used to arrest Mr. Nieves, but Agent
24 Brown used their discretion not to pursue Mr.
25 Riley in this particular case.

1 Again, you heard the oath, the truth, the
2 whole truth, and nothing but the truth, so help
3 me God. Justice must be complete, and in this
4 case because the State has not put forth a
5 complete case, then justice is not complete,
6 and, therefore, go back in that jury room, like
7 I said in my opening, you didn't take any
8 special class to be a juror, but you were
9 selected by both the State and the defense for
10 your collective common sense, and your
11 collective life experience.

12 And once you go through all the evidence,
13 and the lack there of, and the lack of any other
14 participant, then I'm confident you will come
15 back for Mr. Nieves not guilty on two counts of
16 murder, and not guilty on possession of weapon
17 during the commission of a violent crime. Thank
18 you.

19 JURY CHARGE

20 THE COURT: Madam Foreperson, ladies and
21 gentlemen of the jury, you have followed very
22 patiently and listened very attentively to the
23 presentation of the evidence in this case, and I thank
24 you for that. It now becomes the duty of the trial
25 judge under the Constitution of this State to charge

1 and instruct you in the law applicable to this case,
2 and it is your duty as jurors to accept and apply the
3 law as the Court will now state it to you.

4 As jurors, it is your exclusive duty to decide
5 all the issues of fact in this case. Both the State
6 and the Defendant have a right to expect that you will
7 carefully consider and evaluate the evidence and apply
8 the law of the case to the evidence. And by doing
9 that, both the State and the Defendant will receive a
10 fair and impartial trial in this case.

11 The State of South Carolina, by the Bills of
12 Indictment in this case, charges the Defendant
13 Jonathan Nieves with two counts of Murder and one
14 count of the Possession of a Weapon During the
15 Commission of a Violent Crime. Now, I remind you that
16 the fact the Defendant was arrested, charged and
17 indicted in this case is not evidence in this case and
18 cannot be considered by you as evidence of guilt in
19 this case, nor does it create any presumption or
20 inference of guilt.

21 An indictment is simply the formal written
22 instrument which contains the charge made against the
23 Defendant. It is the formal document by which this
24 case is brought into this Court.

25 The Defendant has pled not guilty to these

1 indictments, and that plea puts the burden on the
2 State to prove the Defendant guilty beyond a
3 reasonable doubt. A person charged with committing a
4 criminal offense in South Carolina is never required
5 to prove himself innocent. I charge you that it is an
6 important rule of law that a Defendant in a criminal
7 trial, no matter what the seriousness of the charge
8 may be, will always be presumed innocent of the crime
9 for which an indictment was issued unless guilt has
10 been proven by evidence satisfying you, the jury, of
11 that guilt beyond a reasonable doubt. This
12 presumption of innocence does not end when you begin
13 your deliberations, but it accompanies the Defendant
14 throughout the trial until you reach a verdict of
15 guilt based on evidence satisfying you of that guilt
16 beyond a reasonable doubt.

17 Now, the presumption of innocence is like a robe
18 of righteousness placed about the shoulders of the
19 Defendant which remains with the Defendant until it
20 has been stripped away by evidence satisfying you of
21 the Defendant's guilt beyond a reasonable doubt. The
22 presumption of innocence is not mere legal theory. It
23 is not just a legal phrase. It is a substantial right
24 to which every Defendant is entitled unless you, the
25 jury, are satisfied, from the evidence of the

1 Defendant's guilt beyond a reasonable doubt.

2 So, what is a reasonable doubt in the law? A
3 reasonable doubt is the kind of doubt that would cause
4 a reasonable person to hesitate to act in their most
5 important decisions. The State has the burden of
6 proving the Defendant guilty beyond a reasonable
7 doubt. The term reasonable doubt must be given its
8 plain and ordinary meaning. However, to the extent
9 that I may define it for you, again, a reasonable
10 doubt is the kind of doubt that would cause a
11 reasonable person to hesitate to act in the most
12 important of their personal decisions.

13 The Defendant is entitled to every reasonable
14 doubt arising in this case. If, upon any issue of fact
15 essential to a conviction, you have a reasonable doubt
16 as to how that issue should be resolved, you must
17 resolve that reasonable doubt in favor of the
18 Defendant.

19 Some of you may have served as jurors in civil
20 cases, where you were told that it is only necessary
21 to prove that a fact is more likely true than not
22 true, such as by the greater weight or preponderance
23 of the evidence. In criminal cases, the State's proof
24 must be more powerful than that. It must be beyond a
25 reasonable doubt.

1 Suspicion, no matter how strong, is insufficient
2 to convict a person charged with a crime. That the
3 facts and circumstances presented may seem suspicious
4 and the Defendant's guilt may seem probable, this is
5 not sufficient in the law to convict.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the Defendant's guilt.
8 There are very few things in this world that we know
9 with absolute certainty, and in criminal cases the law
10 does not require proof that overcomes every possible
11 doubt. If, based on your consideration of the
12 evidence, you are firmly convinced that the Defendant
13 is guilty of the crime charged, you must find the
14 Defendant guilty. If, on the other hand, you think
15 there is a real possibility that the Defendant is not
16 guilty, you must give the Defendant the benefit of the
17 doubt and find him not guilty.

18 I remind you that, during this trial, you and I
19 have certain duties to perform. As the judge, it is
20 my responsibility to preside over the trial of this
21 case, and I also have the duty to rule on the
22 admissibility of the evidence offered during this
23 trial. You are to consider only the competent
24 evidence before you. You are to consider only the
25 testimony which has been presented from this witness

1 stand and any exhibits which have been made a part of
2 the record in this case.

3 I have the additional duty to charge you the law
4 applicable to this case. I am the sole judge of the
5 law of this case, and it is your duty as jurors to
6 accept and apply the law as I now state it to you. If
7 you have any idea as to what the law is or what the
8 law ought to be and it does not agree with what I now
9 tell you the law is, you must abandon this idea
10 because you are sworn to accept the law and apply the
11 law exactly as I state it to you.

12 In every case tried in this Court before a jury,
13 the jury becomes the sole and exclusive judge of the
14 facts. A trial judge cannot intimate, comment on, or
15 make any statement to a trial jury about the facts in
16 a case. Since you, the jury, are the sole judge of
17 the facts in this case, you are not to infer from what
18 I have said during the progress of this trial in
19 ruling upon the admissibility of evidence, or
20 otherwise, or anything that I say now during the
21 course of this instruction to you that I have any
22 opinion about the facts in this case. The law does
23 not allow me to have an opinion about the facts in
24 this case. This is a matter solely for you, the jury,
25 to determine.

1 There are two types of evidence which are
2 generally presented during a trial: direct evidence
3 and circumstantial evidence. Direct evidence is the
4 testimony of a person who claims to have actual
5 knowledge of a fact, such as an eyewitness. It is
6 evidence which immediately establishes a main fact to
7 be proved. Circumstantial evidence is proof of a
8 chain of facts and circumstances indicating the
9 existence of a fact. It is evidence which immediately
10 establishes collateral facts from which the main fact
11 may be inferred. Circumstantial evidence is based on
12 inference and not on personal knowledge or
13 observation.

14 Crimes may be proven by circumstantial evidence.
15 The law makes no distinction between the weight or
16 value to be given to either direct or circumstantial
17 evidence. However, to the extent the State relies on
18 circumstantial evidence, all of the circumstances must
19 be consistent with each other, and when taken
20 together, point conclusively to the guilt of the
21 accused beyond a reasonable doubt. If these
22 circumstances merely portray the Defendant's behavior
23 as suspicious, the proof has failed.

24 The State has the burden of proving the Defendant
25 guilty beyond a reasonable doubt. This burden rests

1 with the State regardless of whether the State relies
2 on direct evidence, circumstantial evidence, or some
3 combination of the two.

4 Ladies and gentlemen of the jury, it is your duty
5 to determine the credibility of witnesses who have
6 testified in this case. Credibility simply means
7 believability. It becomes your duty as jurors to
8 analyze and to evaluate the evidence and determine
9 which evidence convinces you of its truth.

10 In determining the believability of witnesses who
11 have testified in this case, you may believe one
12 witness over several witnesses or several witnesses
13 over one witness. You may believe a part of the
14 testimony of a witness and reject the remaining part
15 of the testimony of that same witness. You may
16 believe the testimony of a witness in its entirety or
17 reject the testimony of a witness in its entirety.
18 You may consider whether any witness has exhibited to
19 you any interest, bias, prejudice, or other motive in
20 this case. You may also consider the appearance and
21 manner of a witness while on the witness stand.

22 Normally, a person cannot give opinion testimony.
23 Normally, when a person testifies, they must testify
24 as to what they either saw, heard, or sensed by smell,
25 or something of that nature. However, there is an

1 exception when someone is qualified because of
2 education or experience. They are permitted to give
3 their opinion in certain areas if the court qualifies
4 them that way and that evidence is for you to use in
5 any way you see fit and give the weight and
6 credibility you believe is appropriate.

7 I instruct you and emphasize that the fact the
8 Defendant did not testify is not a factor to be
9 considered by you in any way in your deliberation and
10 in your consideration on the question of the guilt or
11 the innocence of the Defendant. It must not be
12 considered by you in any manner whatsoever. A
13 Defendant has the constitutional right to remain
14 silent, and the assertion of this right must not be
15 considered by you in your deliberations. I repeat,
16 under your oath, you are to draw no conclusion
17 whatsoever from the fact that the Defendant in this
18 case did not testify. The fact that this Defendant
19 did not testify should not even be discussed in the
20 jury room. The burden of proof, as I have stated to
21 you, is on the State. The Defendant is not required
22 to prove his innocence. The burden of proof remains
23 on the State to prove guilt beyond a reasonable doubt.

24 If a crime is committed by two or more people who
25 are acting together in committing a crime, the act of

1 one is the act of all. A person who joins with
2 another to commit an unlawful act is criminally
3 responsible for everything done by the other person
4 which happens as a probable or natural consequence of
5 the acts done in carrying out the common plan and
6 purpose. If two or more people are together, acting
7 together, assisting each other in committing the
8 offense, the act of one is the act of all or, as it is
9 sometimes said, "the hand of one is the hand of all".

10 Prior knowledge that a crime is going to be
11 committed, without more, is not sufficient to make a
12 person guilty of that crime. Mere knowledge that
13 another person is going to commit a crime, even if the
14 defendant is present when the crime is committed, is
15 not sufficient to convict the defendant as a
16 principal. Guilt as a principal is shown by actual or
17 constructive presence at the scene as a result of
18 prior arrangement. Therefore, a finding of a prior
19 arranged plan or common scheme is necessary for a
20 finding of guilt as a principal. The State must prove
21 beyond a reasonable doubt by competent evidence the
22 theory of the hand of one is the hand of all.

23 A principal in a crime is one who either actually
24 commits the crime or who is present aiding, abetting,
25 or assisting in committing the crime. When a person

1 does an act in the presence of and with the assistance
2 of another, the act is done by both. Where two or
3 more, acting with a common plan or intent, are present
4 at the commission of a crime, it does not matter who
5 actually commits the crime. All are guilty. The hand
6 of one is the hand of all.

7 Present at the commission of a crime means to be
8 sufficiently near to aid and abet and assist in the
9 commission of the crime. Intent is also a necessary
10 element, for there must have been a common design or
11 intent to commit the crime and the crime must have
12 been committed pursuant thereto with the person aiding
13 and abetting by some overt act.

14 Intent means intending the result which actually
15 occurs; not accidentally or involuntary. Intent may
16 be shown by acts and conduct of the defendant and
17 other circumstances from which you may naturally and
18 reasonably infer intent. The State must prove these
19 elements beyond a reasonable doubt.

20 However, mere presence at the scene is not
21 sufficient to prove someone guilty of a crime. A
22 defendant's presence where a crime is being committed
23 or mere association with a person who commits a crime
24 does not make a defendant an accomplice or an aider
25 and abettor of the person committing the crime.

1 The burden is on the state to prove every element of
2 the crime charged. If you find, after reviewing all
3 the evidence, that the state has proved that the
4 defendant was only present at the scene of a crime,
5 and that they have not proved, beyond a reasonable
6 doubt, any other participation in the crime, then you
7 must find the defendant not guilty. The law is that
8 proof of merely being at the scene of the crime is not
9 sufficient to find someone guilty.

10 There are three indictments in this case. Each
11 Indictment charges a separate and distinct offense.
12 You must decide each indictment separately on the
13 evidence and the law applicable to it. The Defendant
14 may be convicted or acquitted on any or all of the
15 offenses charged. You will be asked to write a
16 separate verdict of guilty or not guilty for each
17 indictment.

18 The Defendant is charged with the murders of
19 Shantay Jenkins and Bruce Specks. The State must prove
20 beyond a reasonable doubt that the Defendant killed
21 another person with malice aforethought, either
22 express or implied.

23 Malice is hatred, ill-will, or hostility towards
24 another person. It is the intentional doing of a
25 wrongful act without just cause or excuse and with an

1 intent to inflict an injury.

2 Malice aforethought does not require that malice
3 exists for any particular time before the act is
4 committed, but malice must exist in the mind of a
5 Defendant just before and at the time the act is
6 committed. Therefore, there must be a combination of
7 the previous evil intent and the act.

8 Malice aforethought may be express or inferred.
9 These terms, "express" and "inferred" do not mean
10 different kinds of malice but merely the manner in
11 which malice may be shown to exist. That is either by
12 direct evidence or by inference from the facts and
13 circumstances which are proved. Express malice is
14 shown when a person speaks words which express hatred
15 or ill will for another or when the person prepared
16 beforehand to do the act which was later accomplished.
17 Malice may be inferred from conduct that is so
18 reckless and wanton as to indicate a depravity of mind
19 and general disregard for human life.

20 If facts are proved beyond a reasonable doubt
21 sufficient to raise an inference of malice to your
22 satisfaction, this inference would simply be an
23 evidentiary fact to be taken into consideration by
24 you, along with all other evidence in the case, and
25 you may give it the weight that you decide it should

1 receive.

2 The Defendant is also charged with possession of
3 a weapon during the commission of a violent crime.
4 The State must prove beyond a reasonable doubt that
5 the Defendant was in possession of a firearm or knife,
6 or visibly displayed what appeared to be a firearm or
7 knife, during the commission of a violent crime.

8 A firearm means any machine gun, automatic rifle,
9 revolver, pistol or any weapon which will, is designed
10 to, or may be readily converted to expel a projectile.
11 In order to find the Defendant guilty of possession of
12 a weapon during the commission of a violent crime, you
13 must first find the Defendant guilty of committing a
14 violent crime.

15 I charge you that it is the law of this State
16 that Murder is a violent crime.

17 Madam Foreperson, ladies and gentlemen of the
18 jury, as you retire to begin your deliberation, I wish
19 to express the hope that each of you will be mindful
20 of the importance of your responsibility here today.
21 You are not called upon to serve as jurors very often,
22 and the proper performance of the duty requires each
23 of you to reach the height of freeing your mind of all
24 improper influences.

25 Please do not get the idea that I am trying to

1 intimate to you how I might think you should decide
2 this case. As I have already told you, under the laws
3 of the State of South Carolina, you, the Jury, are the
4 sole judge of all questions of fact. It would be
5 highly improper for me to influence you in the
6 performance of that duty.

7 So, I am not trying to tell you what verdict you
8 should find. But as the presiding officer of this
9 Court, I am vitally concerned that whatever verdict
10 you find will be the result of your going into the
11 jury room and confining your consideration to the
12 evidence and the law that you have heard in this
13 courtroom, weighing it fairly and impartially, as I
14 have every confidence that you will.

15 Remember, your verdict must be unanimous.

16 And to that end, my Law Clerk has prepared
17 a verdict form. It has the caption of the case,
18 which is the State of South Carolina v. Jonathan
19 Nieves, and it has three questions on it. You
20 have to answer all three questions. The first
21 question is, "As to the charge of the murder of
22 Shantay Jenkins, we find the Defendant, Jonathan
23 Nieves," either not guilty or guilty, and you
24 check one.

25 The next question is, "As to the charge of

1 murder of Bruce Specks, we find the Defendant,
2 Jonathan Nieves," again, either not guilty or
3 guilty, and check one. And, lastly, Ladies and
4 Gentlemen, you only answer question three, if
5 you have found the Defendant guilty of either
6 one or two, all right?

7 And that last questions is, "As to the charge of
8 possession of a weapon during the commission of
9 a violent crime, we find the Defendant, Jonathan
10 Nieves," either not guilty or guilty. Ladies
11 and Gentlemen, there is no emphasis in the order
12 of the verdicts. For each trial, we just
13 reverse the guilty and not guilty.

14 After that there is a statement that says,
15 "I certify that this is the unanimous decision
16 of the jury," and then, Madam Foreperson, there
17 is a line for you to sign and date the verdict
18 form.

19 Ladies and Gentlemen, I tell you a couple
20 of things, number one, if you want certain
21 testimony of a witness played back to you, so
22 you can see it, Ladies and Gentlemen, I will
23 tell you that we do not have a typed copy of
24 what has happened in the transcript here. If,
25 for some reason, you would like to hear the

1 testimony of a witness, what I do is, I bring
2 you back into the courtroom, and I will play
3 that witness' testimony.

4 I just want to make sure you understand
5 that whatever witness' testimony you request, I
6 am required to play the entire witness'
7 testimony, which means the direct, the cross,
8 the redirect and any recross. Additionally,
9 Ladies and Gentlemen, you are going to start
10 beginning your deliberations when you receive
11 all the evidence back in the jury room, my
12 verdict form, as well as the charge that I just
13 read to you in this case.

14 I tell you that if you don't have something
15 back there with you, you're not entitled to it,
16 it means it wasn't introduced into evidence.
17 Sometimes there's a few demonstrative exhibits
18 that are used by the attorneys in cases, but,
19 again, the evidence is what has been admitted to
20 you, and that evidence will be in the jury room
21 with you, all right?

22 So, Ladies and Gentlemen, for the very last
23 time I'm going to send you back to your jury
24 room, and I'm going to say don't begin
25 discussing this case. If there's anything

1 further on the law that the lawyer would want me
2 to charge you, I'm going to bring you back out
3 here and charge you further.

4 If not, again, Madam Foreperson, you're
5 gonna get my charge, the verdict form, and the
6 evidence that was introduced in the case, and I
7 think they'll probably give you some gloves and
8 some other things, if you need anything, all
9 right? So with that said, I'm going to excuse
10 you back to your jury room. Madam Foreperson,
11 after you begin your deliberations, when you
12 have reached a unanimous verdict, I need you to
13 knock on the jury room door again, and we will
14 accept you back into the courtroom to take your
15 verdict, all right.

16 I appreciate it you-all, you are welcome to
17 step back, and, again, don't begin deliberations
18 until they bring you the evidence and the charge
19 and the verdict form, okay? That will be your
20 signal to start. Okay? Thank you.

21 (Jury exits courtroom.)

22 THE COURT: Any exceptions or additions
23 from the State?

24 MR. THORNTON: None.

25 THE COURT: Any exceptions or additions

1 from the Defendant?

2 MR. KOGER: None, Your Honor.

3 THE COURT: Thank you. All right,
4 gentlemen, go through the evidence, make sure
5 everything is completed. I'm going to go ahead
6 and give Kymberlee the verdict form and the jury
7 charge, and when you take that into them, will
8 you bring out my two Alternates for me? Okay?

9 BAILIFF: Bring out the two?

10 THE COURT: Bring out the two when you take
11 that in, okay?

12 BAILIFF: Okay.

13 MR. THORNTON: Your Honor, I'm just gonna
14 go ahead and get everything organized.

15 THE COURT: All right.

16 (Alternate jurors excused.)

17 (Court stood in recess during
18 deliberations.)

19 READING OF THE VERDICT

20 THE COURT: Are we ready to bring the Jury
21 in, from the State?

22 MR. THORNTON: The State's ready, Your
23 Honor.

24 THE COURT: From the defense?

25 MR. KOGER: Defense is ready.

1 THE COURT: All right, thank you. Bring
2 them in.

3 (Jury enters courtroom.)

4 THE COURT: Madam Foreperson, I understand
5 the jury's reached a verdict.

6 MADAM FOREPERSON: Yes, ma'am.

7 THE COURT: Will you please hand it to the
8 Clerk? All right, please stand, please, both of
9 you. In the case of the State of South Carolina
10 v. Jonathan Nieves, in case 2016-GS-27-0007
11 through 9 -- as to the charge of murder of
12 Shantay Jenkins, we find the Defendant, Jonathan
13 Nieves, guilty.

14 As to the charge of the murder of Bruce
15 Specks, we find the Defendant, Jonathan Nieves,
16 guilty.

17 As to the charge of the possession of a
18 weapon during the commission of a violent crime,
19 we find the Defendant, Jonathan Nieves, guilty,
20 and it's signed by the jury. You can go ahead
21 and take a seat again, Mr. Koger, with your
22 client.

23 Mr. Koger, would you like the jury panel
24 individually polled, sir?

25 MR. KOGER: Yes, Your Honor.

1 THE COURT: All right.

2 Margaret, do you want me to do it?

3 MADAM CLERK: Yes, you need to do it by
4 number.

5 THE COURT: I will do that. Ladies and
6 Gentlemen of the jury, do you-all remember what
7 your juror number was, hopefully? Okay.

8 Only one of them doesn't, okay, then I
9 might be able to figure that out, all right.
10 Ladies and Gentlemen, I'm going to ask you two
11 questions. I'm going to ask you, "Is this your
12 verdict," and the answer, of course, is yes or
13 or, and "Is it still your verdict," yes or no,
14 all right?

15 So if you don't mind, when I call your
16 number, if you could just wave to me, so I know
17 who I'm speaking with directly, okay? Juror
18 Number 105. Ma'am, is this your verdict?

19 JUROR 105: Yes.

20 THE COURT: Is this still your verdict?

21 JUROR 105: Yes.

22 THE COURT: Juror Number 187, is this your
23 verdict?

24 JUROR 187: Yes.

25 THE COURT: Is it still your verdict?

1 JUROR 187: Yes.

2 THE COURT: Juror Number 63. I'm gonna
3 guess it's you, sir, your initials are DE; is
4 that correct?

5 JUROR 63: Yes, ma'am.

6 THE COURT: Thank you, sir. Sir, is this
7 your verdict?

8 JUROR 63: Yes, ma'am.

9 THE COURT: Is this still your verdict?

10 JUROR 63: Yes, ma'am.

11 THE COURT: Juror Number 241. Sir, is this
12 your verdict?

13 JUROR 241: Yes.

14 THE COURT: Is it still your verdict?

15 JUROR 241: Yes.

16 THE COURT: Juror Number 193. Sir, is this
17 your verdict?

18 JUROR 193: Yes.

19 THE COURT: Is it still your verdict?

20 JUROR 193: Yes.

21 THE COURT: Juror number 106. Ma'am, is
22 this your verdict?

23 JUROR 106: Yes.

24 THE COURT: Is it still your verdict?

25 JUROR 106: Yes.

1 THE COURT: Juror Number 122.

2 JUROR 122: Yes.

3 THE COURT: Ma'am, is this your verdict?

4 JUROR 122: Yes.

5 THE COURT: Is it still your verdict?

6 JUROR 122: Yes.

7 THE COURT: Juror Number 50. Sir, is this
8 your verdict?

9 JUROR 50: Yes.

10 THE COURT: Is it still your verdict?

11 JUROR 50: Yes.

12 THE COURT: Juror Number 71. Sir, is this
13 your verdict?

14 JUROR 71: Yes.

15 THE COURT: Is it still your verdict?

16 JUROR 71: Yes.

17 THE COURT: Juror Number 16. Ma'am, is
18 this your verdict?

19 JUROR 16: Yes.

20 THE COURT: Is it still your verdict?

21 JUROR 16: Yes.

22 THE COURT: Juror Number 179. Juror Number
23 179?

24 JUROR 179: Yes.

25 THE COURT: Is this your verdict?

1 JUROR 179: Yes.

2 THE COURT: Juror Number 21. Is this your
3 verdict?

4 JUROR 21: Yes.

5 THE COURT: Is it still your verdict?

6 JUROR 21: Yes.

7 THE COURT: Thank you. All right, anything
8 further for the jury from the State?

9 MR. THORNTON: Nothing, Your Honor, and
10 it's going to take me a few minutes to fill out
11 the necessary paperwork.

12 THE COURT: I understand that.

13 Anything further from the defense?

14 MR. KOGER: Not for this jury, Your Honor.

15 THE COURT: Thank you. Ladies and
16 Gentlemen of the jury, at this time I'm going to
17 go ahead and excuse you, not only from the trial
18 of this case, but also for the rest of the week.
19 We have a matter to be disposed of, but I am
20 going to release you for the remainder of the
21 week.

22 Ladies and Gentlemen, what I've left to do
23 is sentence the Defendant in this case, but
24 that's going to take a little while before we
25 get to that, so what I'm going to do is just go

1 ahead and excuse you, Ladies and Gentlemen.
2 We'll make sure you get back to your cars
3 safely.

4 I will also tell you that you are, at this
5 point, allowed to go home and say what you've
6 been doing here, you're allowed to talk about
7 it. Obviously, if anyone tries to talk to you
8 about it, if you don't wish to, just say no
9 thank you, but, again, we will take care of
10 this, if there's any issue with anyone calling
11 you, I don't want you to worry about it, but at
12 this time we're gonna go ahead and excuse you.
13 If you need a work excuse, we'll get those taken
14 care of when you go downstairs, but I will tell
15 you that you have more than honored your
16 exemption for the next three years, Ladies and
17 Gentlemen, and I appreciate your resolving this
18 matter for us.

19 Your job in these cases are simply to
20 decide whether or not, you know, the facts have
21 proven someone is guilty, my job is the
22 sentencing, so that's my burden, and that's what
23 I taken on.

24 So I don't want you ever concerned about
25 that, you've done what you need to do, and I

1 will take care of the rest, so I'm going to go
2 ahead and excuse you all, okay? So go out the
3 back, all right? Thank you.

4 (Jury exits courtroom).

5 SENTENCING HEARING

6 THE COURT: All right. Sentencing on
7 behalf of the State?

8 MR. THORNTON: Thank you, Your Honor. Your
9 Honor, if it please the Court, can I go ahead
10 and have Ms. Royals (phonetic), who's
11 representing the family? She was the
12 grandmother.

13 THE COURT: Yes.

14 MR. THORNTON: If she can come up and speak
15 first, and then I'll be happy to --

16 THE COURT: Well, actually, if she is
17 uncomfortable, if she'll just speak from the
18 gallery.

19

20 MR. THORNTON: Yes, ma'am.

21 THE COURT: -- that would be great, yeah.

22 MR. THORNTON: Right here.

23 THE COURT: Or wherever she is inclined to,
24 that's fine, either way.

25 Ma'am, can you just give me your name for

1 the record?

2 MS. ROYALS: I'm Beverly Royals.

3 THE COURT: Yes, ma'am.

4 MS. ROYALS: I'm the grandmother of Shantay
5 Jenkins' baby boy. I'm here today to be able to
6 get some closure. This is a sad day because I'm
7 here to get him some closure. Somebody was
8 taken from him that he'll never have again, and
9 being six years old and now being 12, it has
10 been a struggle.

11 THE COURT: Uh-huh.

12 MS. ROYALS: A real struggle, but with the
13 love and care of his family, he's moving on, and
14 this will help him to move on even further,
15 knowing that somebody has been held accountable.

16 And I teach him every day that in life
17 anything that you do, there's a consequence, so
18 you have to make the right decisions in life, in
19 order to not to make bad choices. You're going
20 to stumble and fall, but when you have people
21 that are in your corner that support you, and
22 love you, and show you the right way, you might
23 stumble, but you'll get back up, and that's what
24 we're going to do with him. We're going to keep
25 him up, and let him realize that his mom is

1 gone, but the love is still here, and will
2 always be here, and that somebody has been held
3 accountable. Thank you.

4 THE COURT: Thank you, ma'am.

5 Yes. Yes, Ms. Howard.

6 MS. HOWARD: What I want to say to the
7 Court today is, thank you for the justice.

8 I've been through I feel really sorry for
9 his mom, I want to say that.

10 The thing is to me -- I have been through a
11 whole lot. I feel really sorry for his mom, I
12 will say that. I have lost my son. I lost my
13 mom, and I almost lost me. I feel alone right
14 now all the time.

15 I am left here to raise his kids. I got
16 one of them that lives directly with me. He has
17 three more that need my help. If I wasn't here,
18 he would have done that himself. The whole
19 thing to me is, everybody got to die. But they
20 didn't have to kill them kids the way they did.
21 That was ridiculous. I am a mother like he has
22 got a mother. God bless them.

23 THE COURT: Thank you.

24 MR. THORNTON: That is all from the family,
25 Judge, on behalf of the State.

1 Your Honor, I come before you a lot, and it
2 seems like it's always a case like this. That
3 is generally what I try.

4 Mr. Nieves has no general sessions, prior
5 convictions prior to this incident, however, you
6 know, Judge, you heard the facts in this case.
7 It's not justice, it's a double murder, it's the
8 burning of the bodies, it's the beating of Bruce
9 Specks, because he wasn't dying quick enough,
10 it's all of those things, Judge. I don't feel
11 like there's anything I can't ask for this case,
12 other than a life sentence. So at this time the
13 State would ask for a life sentence as to both
14 murders, Your Honor, and, obviously, the five
15 years of possession of a weapon during the
16 commission of a violent crime.

17 Thank you, Your Honor.

18 THE COURT: All right.

19 Mr. Koger.

20 MR. KOGER: Your Honor, may it please the
21 Court. Mr. Nieves is 26 or 27 years of age, as
22 of this particular time. I was retained in 2016
23 to represent Mr. Nieves on this case, and, of
24 course, that's been quite a while ago.

25 During this time I got to know Mr. Nieves,

1 and I got to know his mother real well. During
2 the time that I've represented Mr. Nieves, he
3 lost his father and went through some other
4 things, and, you know, I became, you know, I got
5 to know the family real well.

6 First of all, I would like to express my
7 condolences to the Specks and Jenkin family.
8 It's always hard for the defense attorney
9 because I represent the person that they see
10 committed crimes, and I try not to address them.
11 Why I didn't address them out of respect for
12 them during the trial is because I know that
13 they know that I represent the Defendant, but I
14 do want to offer condolences to the families of
15 Mr. Specks and Ms. Jenkins.

16 Of course, you heard -- we all heard the
17 trial, and, again, you know, very bad facts, and
18 even though from listening to Mr. Nieves, he
19 still maintains his innocence. We accept the
20 verdict from the jury, the jury has spoken.

21 At the appropriate time, his mother would
22 like to address the Court. With that being
23 said, and the State asking for a life sentence,
24 we heard the part that Mr. Riley played in all
25 of this here.

1 Mr. Nieves was convicted under the hand of
2 one/hand of all, and legally, the second person
3 treated as the principal. I want you to take
4 into consideration if you can the facts that
5 came out in Court this week.

6 Take into account that we can take the
7 State for their word that it will pursue Mr.
8 Riley in this case.

9 That may be something that may play out
10 down the road. Basically, I would ask you to
11 not give Mr. Nieves a life sentence.

12 He does not have a general sessions
13 conviction or prior record prior to this
14 particular offense. This was one hell of a bad
15 judgment. Two person lost their lives. It was
16 just a very very, bad moment for Mr. Specks and
17 Ms. Jenkins and the families.

18 So, Your Honor, I would respectfully ask
19 you not to give Mr. Nieves a life sentence for
20 these particular crimes. Take into account
21 testimony of another party involved.

22 I think it was Mr. Specks' mother who said
23 she got some justice, but she wants further
24 justice. I think she may be referring to Mr.
25 Riley.

1 Thank you.

2 THE COURT: Thank you. Does Mr. Nieves'
3 mother wish to speak?

4 MS. NIEVES: I would also like to offer my
5 condolences to all of you. Jonathan is my only
6 son. He has always been a good boy. I think I
7 have always told my children to be careful of
8 the choice and actions of your friends.

9 On this day I guess he picked someone or
10 whoever picked him was a bad choice. I would
11 ask that you have mercy. He doesn't have a
12 record. He ended up being with the wrong people
13 at the wrong time.

14 THE COURT: Thank you.

15 Mr. Koger, does your client wish to speak?

16 Yes, sir.

17 THE DEFENDANT: I am sorry. I promise you
18 that I did not do this. I offer my condolences.
19 I really do. If I could have the opportunity to
20 come to you during this -- I have been going
21 through hell. I didn't commit this crime.

22 I swear to you -- God knows that I offer my
23 condolences. I pray they catch the real people
24 who committed this crime.

25 THE COURT: Thank you. I want to go ahead

1 and note for the record that Mr. Koger made a
2 motion for a new trial. That is preserved for
3 the record.

4 MR. KOGER: Thank you.

5 THE COURT: Okay?

6 MR. KOGER: All right, thank you.

7 THE COURT: All right.

8 As far as sentencing is concerned,
9 indictment 2016-GS-27-0008 as set before this
10 Court for the charge of murder is a life
11 sentence.

12 On indictment 2016-GS-27-0009, again for
13 murder, again, a life sentence.

14 And, lastly, on 2016-GS-27-0007 -- sorry,
15 I can't read.

16 MR. THORNTON: -- 0007, 8 and 9.

17 THE COURT: Seven, 8 and I presume --

18 MR. THORNTON: And I believe 8 is the
19 possession of a weapon during --

20 THE COURT: Yeah.

21 MR. THORNTON: -- the commission of a
22 violent crime.

23 THE COURT: Right, seven. Actually, the
24 one that's seven, the sentence is five years,
25 these all run concurrent to each other.

1 Good luck to you, sir. Good luck to the
2 families of the victims.

3 MR. THORNTON: Thank you, Your Honor.

4 MR. KOGER: Thank you.

5 MR. KOGER: Your Honor, may it please the
6 Court?

7 At this time I move for the new trial in
8 this case, Your Honor, of Mr. Nieves. The
9 testimony that came out in the last couple of
10 days was inconsistent and does not warrant a
11 guilty verdict for Mr. Nieves.

12 THE COURT: All right.

13 MR. THORNTON: And, Your Honor, I know this
14 has been discussed, I just want to make sure it
15 was on the record before I respond to that.

16 THE COURT: Uh-huh.

17 MR. THORNTON: I know Mr. Koger had also
18 renewed his motion for a directed verdict and
19 all his prior objections.

20 THE COURT: And I appreciate you reminding
21 me of that, because he did say that, obviously,
22 when he didn't put up a case when we broke
23 during lunch.

24

25 It is on the record. We have preserved

1 everything.

2 The final objection. Yeah.

3 Mr. Koger.

4 MR. KOGER: Your Honor, I would just say --
5 I will be brief. I would basically rely on all
6 the arguments we presented during the trial.
7 Everything was put on the record. I do believe
8 there was more than sufficient evidence under
9 the hand of one, hand of all theory as well as
10 some direct actions of Mr. Nieves in this case
11 to satisfy the jury beyond a reasonable doubt as
12 to all the elements of all three charges.

13 Other than that, Judge, we would rely on
14 our previous arguments. Thank you.

15 THE COURT: Respectfully, I sent the case
16 to the jury. Having now heard all the evidence,
17 I do think there was more than adequate evidence
18 for this jury to determine guilt from
19 circumstantial and direct evidence.

20 I am going to deny your motion for a new
21 trial, sir. I will deny your prior objection
22 based on my original rulings. Those are all
23 preserved for the record. All right. Thank
24 you.

25 MR. KOGER: Thank you.

1 THE COURT: Thank you.

2 MR. THORNTON: Well, thank you very much,
3 Your Honor.

4 THE COURT: All right.

5 That concludes this matter.

6 (At 6:08 p.m. the trial was concluded.)

7 END OF VOLUME III

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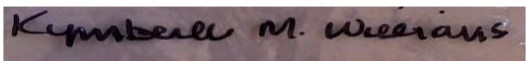
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CERTIFICATE OF REPORTER

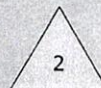
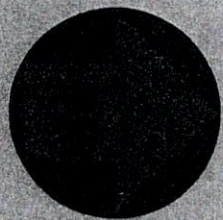
I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Jasper County, South Carolina on the 11th through 13th days of October 2021.

I do further certify that I am not of relation, counsel, nor interest to any party hereto.

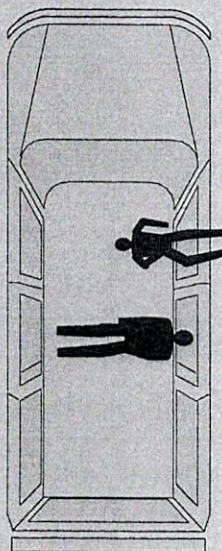
This, the 13th day of October 2023.



Kymberlee M. Williams, CSR/RPR



N 32° 24' 9"
W -81° 7' 8"

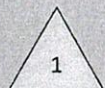


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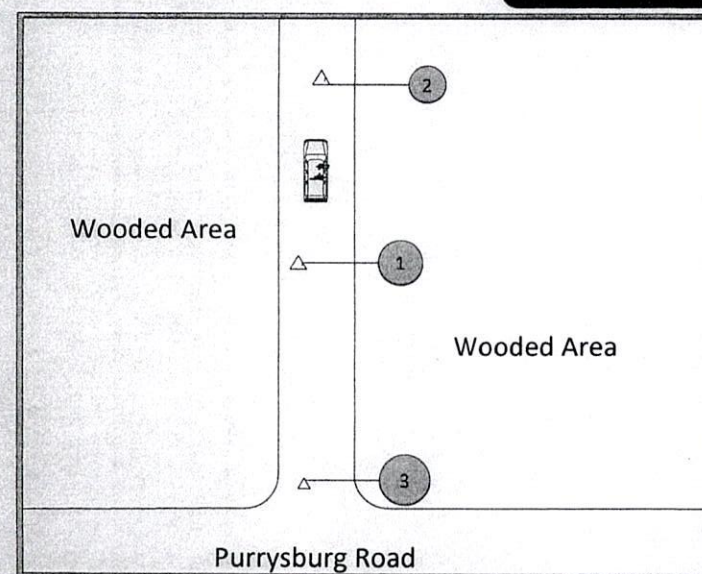
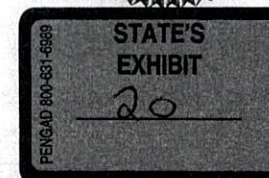
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2. Water Bottle Label
3. Green Disposable Lighter (Inset)

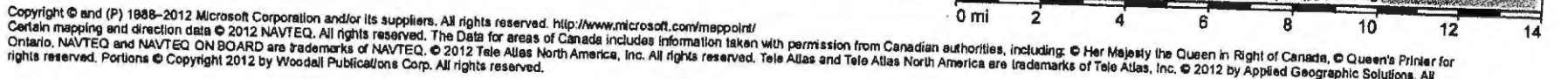
NOT TO SCALE

NOT ALL ITEMS
SHOWN



35-15-0123
Fatal Vehicle Fire Investigation
Grass road across from
13698 Purrysburg Rd.
Hardeeville, SC 29927
Jasper County
October 3, 2015
Sr./A Scott Hardee







MIRANDA RIGHTS

PLACE: JCSO DATE: 01/07/16 TIME: 6:27 pm

BEFORE WE ASK YOU QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

J.N. You have the right to remain silent.

J.N. Anything you say can be used in court as evidence against you.

J.N. You are entitled to talk to a lawyer now and have him present now or at any time during questioning.

J.N. If you cannot afford an attorney, one will be appointed for you without cost.

J.N. If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

J.N. Do you understand these rights?

J.N. Do you wish to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to talk now without a lawyer present. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: Jonathan NunezWitness: [Signature]Witness: [Signature]



VOLUNTARY STATEMENT

CASE # 81-15-0095

LEAD # _____

LAST NAME <u>Nieves</u>	FIRST NAME <u>Jonathan</u>	MIDDLE NAME <u>Antonio</u>	AGE <u>21</u>	DOB <u>[REDACTED]</u>
NICKNAME/AKA <u>Santana</u>	M ☒ F ☐ SSN <u>[REDACTED]</u>	STREET ADDRESS <u>Whitte Hardee Blvd</u>		
CITY <u>Hardeville</u>	STATE <u>SC</u>	ZIP <u>29927</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE <u>[REDACTED]</u>	OCCUPATION <u>Remolding</u>	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW <u>1/7/16 6:27pm</u>		
LOCATION OF INTERVIEW <u>Spicer County Sheriffs Office</u>				
INTERVIEWING AGENT <u>M. Brown</u>	DEPARTMENT <u>SLED</u>	INTERVIEWING AGENT <u>S. Harley</u>	DEPARTMENT <u>SLED</u>	

I, Jonathan Nieves understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 1 year college grade in school.

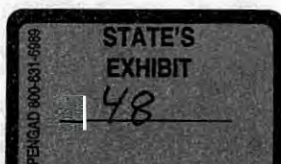
J.N. On Oct 2, 2015, I picked Jackpot and his girlfriend up to go and get clothing. We arrived at Jackpot's then we decided to go to the store to get beer. After we got beer we walked back to Jackpot's place to drink a beer. After the beer, we left I dropped him off home and I went my own direction, J.N.

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

Date: 1/7/16 Time: 9:37pm Jonathan Nieves
Signature of person giving voluntary statement

WITNESS: [Signature] WITNESS: [Signature]

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



WITNESSES

Lt. Matt Brown--SLED

DOCKET NO. 2016GS2700007

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

April Term 2016

THE STATE

vs.

Jonathan Antonio Nieves

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

TRUE BILL

NO BILL

FOREMAN

DATE

M Black

4/29/16

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: Oct. 13th, 2021

INDICT

547

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

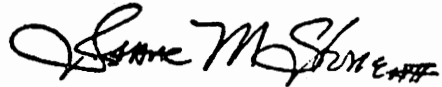
INDICTMENT
2016GS2700007

At a Court of General Sessions, convened on April 28, 2016, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about October 2, 2015, the Defendant, Jonathan Antonio Nieves, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder and Jonathan Antonio Nieves was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, to wit: Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

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



Solicitor

COUNTY OF

Jasper

STATE

VS.

Jonathan Nieves

AKA:

Race:

B

Sex:

M

Age:

DOB:

SS#:

Address:

DL#

SID#

) INDICTMENT/CASE#:

2016-65-27-0009

) A/W#:

2016A2710200003

) Date of Offense:

10/2/15

) S.C. Code §:

16-23-490

) CDR Code #:

0549

) SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Possession of Weapon During Violent Crime

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS☒ MOST SERIOUS☐ MANDATORY GPS ☐ §17-25-45
(CSC w/minor 1" or CSC w/minor 3")The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def's initials)

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

ATTEST:

(Solicitor)

(SC Bar #)

(Defendant)

(Attorney for Defendant)

(SC Bar #)

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

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/each

\$

\$

\$

\$

\$

\$

\$

\$

\$

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\$

☐ Obtain GED☐ Attend Voc. Rehab. Or Job Corp.☐ May serve W/E beginning☐ Substance Abuse Counseling☐ Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

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

Presiding Judge:

Judge Code:

Sentence Date:

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

MP-SCCA/217 (04/2018)

\$ 128.75

2142
10-13-21

550

WITNESSES

Lt. Matt Brown--SLED

DOCKET NO. 2016GS2700008

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

April Term 2016

THE STATE

vs.

Jonathan Antonio Nieves

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

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

Defendant

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

ARREST WARRANT NUMBER

2016A2710200004

TRUE BILL ☒

NO BILL

FOREMAN M Black

DATE 4/28/16

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: Oct. 13th, 2021

INDICT

Defendant

Witness:

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

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF JASPER

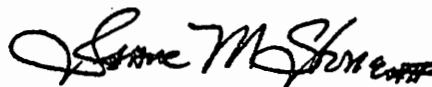
2016GS2700008

At a Court of General Sessions, convened on April 28, 2016, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about October 2, 2015, the Defendant, Jonathan Antonio Nieves, did, with malice aforethought, kill Shontay Jenkins and Shontay Jenkins did die as a proximate result of Jonathan Antonio Nieves's actions, to wit: The Defendant, along with others, did rob Shontay Jenkins at gunpoint, and Ms. Jenkins was shot and killed during the commission of this armed robbery., all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Jasper

STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ MANDATORY GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST:

(Solicitor) (SC Bar #) (Defendant) (Attorney for Defendant) (SC Bar #)

WHEREFORE, the Defendant is committed to the State Department of Corrections ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$ plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	<u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 61.6 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/each	\$	
3% to County (if paid in installments)		\$	<u>37.75</u>

TOTAL

Clerk of Court/Deputy Clerk
Court Reporter:

MP-SCCA/217 (04/2018)

) IN THE COURT OF GENERAL SESSIONS

) INDICTMENT/CASE#: 2016-65-27-0008

) A/W#:

) Date of Offense:

) S.C. Code §:

) CDR Code #:

) SENTENCE SHEET

☐ Obtain GED

☐ Attend Voc. Rehab. Or Job Corp.

☐ May serve W/E beginning

☐ Substance Abuse Counseling

☐ Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

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

Presiding Judge:

Judge Code: 2142

Sentence Date: 10-13-21

WITNESSES

Lt. Matt Brown--SLED

DOCKET NO. 2016GS2700009

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

April Term 2016

THE STATE

vs.

Jonathan Antonio Nieves

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

553
After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

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

ARREST WARRANT NUMBER

2016A2710200005

TRUE BILL ✓

NO BILL

FOREMAN M. Black

DATE 4/28/16

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: Oct. 13th, 2021

INDICT

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT
2016GS2700009

At a Court of General Sessions, convened on April 28, 2016, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about October 2, 2015, the Defendant, Jonathan Antonio Nieves, did, with malice aforethought, kill Bruce Specks and Bruce Specks did die as a proximate result of Jonathan Antonio Nieves's actions, to wit: The Defendant, along with others, did rob Bruce Specks at gunpoint, and Mr. Specks was shot and killed during the commission of this armed robbery., all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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



Solicitor

COUNTY OF Jasper

STATE

VS.

) INDICTMENT/CASE#:

2016-65-27-0009

) A/W#:

2016 A1027 10200005

) Date of Offense:

10/2/15

) S.C. Code §:

16-3-10

) CDR Code #:

0116

) SENTENCE SHEET

AKA:

Race:

DOB:

Address:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MurderIn violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ MANDATORY GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

(Solicitor) (SC Bar #) (Defendant) (Attorney for Defendant) (SC Bar #)

WHEREFORE, the Defendant is committed to the State Department of Corrections ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient:

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

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

MP-SCCA/217 (04/2018)

☐ Obtain GED☐ Attend Voc. Rehab. Or Job Corp. _____☐ May serve W/E beginning _____☐ Substance Abuse Counseling☐ Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

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

Presiding Judge:

Judge Code:

Sentence Date:

219210-13-21

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of General Sessions

Carmen Mullen, Circuit Court Judge

Case No. 2016-GS-27-00007,00008,00009

The State,

Respondent,

v.

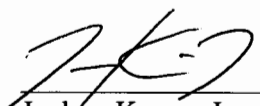
Jonathan Antonio Nieves,

Appellant.

NOTICE OF APPEAL

Jonathan Antonio Nieves appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Carmen Mullen on October 14, 2021. Judge Mullen verbally denied Motion for New Trial on October 14, 2021.

October 22, 2021


Joshua Koger, Jr.
Post Office Box 393
Barnwell, SC 29812
(803) 450-5056
Attorney for Appellant

Other Counsel of Record:
Sean Thornton
Deputy Solicitor
102 Ribaut Road
Beaufort, South Carolina 29902
Attorney for Respondent

RECEIVED

OCT 22 2021

SC Court of Appeals

RECEIVED

OCT 22 2021

SC Court of AppealsTHE STATE OF SOUTH CAROLINA
In The Court of AppealsAPPEAL FROM JASPER COUNTY
Court of General Sessions

Carmen Mullen, Circuit Court Judge

Case No. 2016-GS-27-00007,00008,00009

The State,

Respondent,

v.

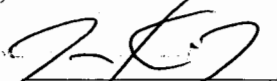
Jonathan Antonio Nieves,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Sean Thorton by depositing a copy of it in the United States Mail, postage prepaid, on October 22, 2021, addressed to the attorney of record, Sean Thornton, 102 Ribaut Road, Beaufort, South Carolina 29902.

October 22, 2020



Joshua Koger, Jr.

Post Office Box 393

Barnwell, South Carolina 29812-0000

Attorney for Appellant

The South Carolina Court of Appeals

The State, Respondent,

v.

Jonathan Antonio Nieves, Appellant.

Appellate Case No. 2021-001216

The Honorable Carmen T. Mullen

Jasper County

Trial Court Case No. 2016GS2700007, 2016GS2700008,
2016GS2700009

ORDER

Counsel for the Appellant has failed to comply to this Court's letter dated October 26, 2021 to cure proof of filing deficiency, and to order transcript as required by Rule 207 (a)(1) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

cc:

Joshua Koger, Jr., Esquire

Robert Michael Dudek, Esquire

Sean Paul Thornton, Esquire

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

Jonathan A. Nieves, 00386247

FILED
Dec 14 2021

FORM 5

STATE OF SOUTH CAROLINA)

County of Jasper)Jonathan A. Nieves, #386247)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-2700-249

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Dept. of Corr., Lieber Corr.
Inst. P.O. Box 205 Ridgville, SC 29472
2. Name and location of Court which imposed sentence Jasper Co. Court of
General Sessions Ridgeland, SC 29936
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-27-00007; Murder
 - (b) 2016-GS-27-00008; Murder

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 10-8-2022

- (c) 2016-GJ-27-00009; poss of deadly weapon during commission of a violent crime
 5. The date upon which sentence was imposed and the terms of the sentence:
 (a) October 13, 2021; LWOP
 (b) October 13, 2021; LWOP
 (c) October 13, 2021; five years
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty N/A
 (b) after a plea of not guilty ✓
 (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes but trial and/or appellate counsel failed to
8. If you answered "yes" to (7), list: perfect the appeal
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. dismissed for counsel (trial and/or appellate)
 ii. failure to comply with South Carolina Appellate
 iii. Court Rules - failure to order transcript
 (c) the date of each such result:
 i. December 14, 2021
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Appellate Case No. 2021-001216
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) N/A
 (b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Trial and/or(b) Appellate Counsel

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attached Pages 3A-3B

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

10.(a) Applicant was denied the effective assistance of trial counsel and/or appellate counsel and loss of direct appeal, in violation of the Sixth Amendment to the United States Constitution as well as due process in violation of the Fourteenth Amendment to the U.S. Const., Article I, §§ 3 and 14 of the South Carolina Constitution, and South Carolina, as a result of either trial counsel or appellate counsel or both counsel's failure to perfect direct appeal on Applicant's behalf. Strickland v. Washington, 466 U.S. 668 (1984); U.S. v. Cronk, 466 U.S. 648 (1984).

11.(a) Supporting Facts:

Mr. Joshua Koger, Jr. was retained to represent Applicant, Mr. Jonathan Nieves on two counts of murder and one count of possession of a deadly weapon during the commission of a violent crime in the Jasper County Court of General Sessions.

Mr. Nieves was convicted by a jury on all counts, on October 13, 2021.

Mr. Nieves was transported to the South Carolina Department of Corrections before speaking with Mr. Koger. Several days later Mr. Koger came to the Kirkland Correctional Institution's Reception and Evaluation Unit.

Mr. Nieves signed an Affidavit of Indigency.

By order of the South Carolina Court of Appeals dated/filed December 14, 2021, the Court held that "Counsel for the Appellant has failed to comply to this Court's letter dated October 26, 2021, to cure proof of filing deficiency, and to order transcript as required by Rule 207(a)(1) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR." See Attached Exhibit "A".

Mr. Nieves then wrote letters to the Court attempting to preserve his appellant right to a direct appeal.

Mr. Nieves was then advised that "Because he was represented by counsel, his filings were being returned because of 'hybrid representation.' Letter dated January 14, 2022 from Court. See Exhibit "B".

Trial counsel's or appellate counsel's or both, actions or inactions amounted to a deprivation of duty as to deprive Mr. Nieves of both the effective assistance of trial counsel, appellate or both, at a critical stage of the proceedings and his right to a direct appeal. Applicant is entitled to a belated pursuant to *White v. Davis*, 208 S.E.2d 35 (1974)

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) this is the first opportunity to present
 (b) that grounds - and Applicant never rec-
 (c) eived trial transcript due to trial and/or appellate
counsel failure to order transcript

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of

sentence? never had direct appeal due to trial and/or
appellate counsel's failure to order transcript

(e) preparation, presentation or consideration of any petitions, motions or

applications with respect to this conviction, which you filed?

no

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

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

i. Joshua Kuger, Jr.

ii. _____

iii. _____

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

i. arraignment - plea
trial

ii. trial

iii. sentencing

19. State clearly the relief you seek in filing this application: Belated appeal pursuant to White v. Davis, 208 S.E.2d 35 (1974) and provided a trial transcript so that I can present my PCR issues and one hundred and twenty (120) days to prepare my PCR issues

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

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Jonathan A. Nieves #386247, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jonathan Nieves

SWORN to and subscribed before me this 17th
day of May, 2022.

Lucian Bryant (L.S.)
Notary Public

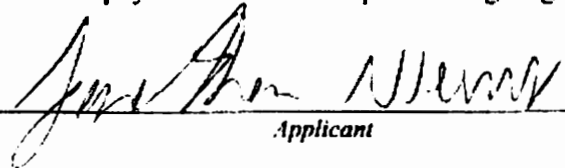
My Commission Expires: March 31, 2031

FILED
JASPER COUNTY
CLERK OF COURT
2022 JUN - 8 PM 1:18

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

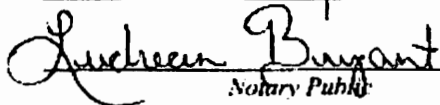
I, Jonathan A. Nieves #386247, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

17th day of May, 2022.


Notary Public

My Commission Expires: March 31, 2031

FILED
JASPER COUNTY
CLERK OF COURT
2022 JUN -8 P 1:18

EXHIBIT

"A"

The South Carolina Court of Appeals

The State, Respondent,

v.

Jonathan Antonio Nieves, Appellant.

Appellate Case No. 2021-001216

The Honorable Carmen T. Mullen

Jasper County

Trial Court Case No. 2016GS2700007, 2016GS2700008,
2016GS2700009

ORDER

Counsel for the Appellant has failed to comply to this Court's letter dated October 26, 2021 to cure proof of filing deficiency, and to order transcript as required by Rule 207 (a)(1) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen
CLERK

Columbia, South Carolina

cc:

Joshua Koger, Jr., Esquire
Robert Michael Dudek, Esquire
Sean Paul Thornton, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Jonathan A. Nieves, 00386247

FILED
Dec 14 2021

Exhibit "A"

EXHIBIT

"B"



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 14, 2022

Jonathan A. Nieves, 00386247
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: The State v. Jonathan A. Nieves
Appellate Case No. 2021-001216

Dear Mr. Nieves:

The Court has received your correspondence dated December 20 & 22, 2021. Because you are represented by counsel, we are returning your filings to you. See *Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel.").

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny A. Kitchings".
CLERK

Exhibit "B"

cc: Joshua Koger, Jr., Esquire
Robert Michael Dudek, Esquire
Sean Paul Thornton, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire

FILED
JASPER COUNTY
CLERK OF COURT

2022 JUN -8 P 1:18

Jonathan A. Nieves

SCDC # 386247

Lieber Corr. Inst. Stone B-39

P.O. Box 205

Ridgeville, SC 29472

Date: 5/22/22, 2022

The Hon. Margaret Bostick
Clerk of Court for Jasper Co.
P.O. Box 248
Ridgeland, SC 29936-0248

Dear Clerk,

Enclosed, please find the original and one copy of my Application for Post-Conviction Relief. Please file the original with your Office and date-stamp the copy and return to me in the enclosed prepaid postage envelope.

Thank you for your assistance in this matter.

Respectfully Submitted,

x *Jonathan Nieves*
Jonathan A. Nieves

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

FILED
JASPER COUNTY
CLERK OF COURT
2022 JUN 20 PM 4:10

IN THE COURT OF COMMON PLEAS FOR
THE FOURTEENTH JUDICIAL CIRCUIT

Jonathan A. Nieves, #386247

Case No.: 2022-CP-27-00249

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Counsel already appointed)

In response to the application for post-conviction relief filed by Jonathan A. Nieves (Applicant) on June 8, 2022, Respondent would respectfully show this Court:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In April 2016, the Jasper County Grand Jury indicted Applicant for two counts of murder (2016-GS-27-00008, -00009) and one count of possession of a weapon during a violent crime (2016-GS-27-00007). On October 11, 2021, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Joshua Koger, Esquire, represented Applicant, and Deputy Solicitor Sean Thornton prosecuted the case. The jury convicted Applicant as indicted, and Judge Mullen sentenced him concurrently to life for each murder charge and five years for the weapon charge. Applicant filed a direct appeal, which was dismissed based on his failure to order the

¹ Respondent's return was due to be filed within ninety days of service. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within . . . 90 days if it arises out of a trial."). Thereafter, Respondent moved for an extension to file the return on the basis it had not yet received the transcript. On September 19, 2023, the Honorable Bentley Price granted Respondent an additional thirty days from receipt of all necessary transcripts to file the return. Respondent received the trial transcript on October 16, 2023. Now, having completed the return in this matter, and in light of no demonstrable prejudice to Applicant as a consequence to any delay, Respondent asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the court may fix the time in which the State must respond); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2D 392 (1973) (holding the time limit prescribed by statute is discretionary, not mandatory, and the circuit court may extend the time for filing a return).

transcript as required by Rule 207(a)(1), SCACR. The remittitur was sent January 18, 2022.

CURRENT APPLICATION

Applicant timely commenced this PCR action on June 8, 2022, asserting he is being held in custody unlawfully due to ineffective assistance of counsel. Specifically, he avers he was

denied the effective assistance of trial counsel and/or appellate counsel and loss of direct appeal . . . as a result of either trial counsel or appellate counsel or both counsel's failure to perfect [his] direct appeal

As relief, he seeks a belated appeal and an opportunity to amend his application to raise additional allegations of ineffective assistance of trial counsel once he receives the trial transcript.

Attached to this return and incorporated by reference are the Jasper County of Clerk Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; the trial transcript; and Applicant's appellate records. Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

WHITE V. STATE CLAIM

Applicant claims counsel was ineffective for not perfecting his direct appeal. "Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967)." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted).

Even if the PCR court finds the applicant had never voluntarily and intelligently abandoned his appeal, the PCR court has no jurisdiction to grant a belated appeal. White v. State, 263 S.C.

110, 119, 108 S.E.2d 35, 39 (1974). However, where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. Id. at 119, 108 S.E.2d at 39-40.

Respondent submits there is not sufficient information at this time to discern whether Applicant can meet his burden showing he is entitled to a belated appeal pursuant to White. Thus, Respondent requests an evidentiary hearing on this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has reserved the right to amend his application to raise additional claims of ineffective assistance of counsel once he receives the trial transcript. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel’s deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “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). To establish prejudice, the applicant must prove “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. Here, the record likely does not refute or disprove any allegations

of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to resolve any issues Applicant may raise once he has filed an amended application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Respondent requests Applicant specify any claims he intends to raise at the PCR evidentiary hearing in advance of the hearing. Respondent reserves the right to either request a continuance or request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State in advance of the evidentiary hearing. Respondent further requests Applicant provide the names of any witnesses he intends to call at the evidentiary hearing and provide any evidence he intends to introduce at the hearing in advance of the hearing. Respondent reserves the right to request a continuance and/or oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature page follows]

CONCLUSION

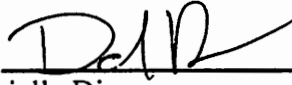
WHEREFORE, Respondent requests an evidentiary hearing on Applicant's claim related to a belated appeal. Should Applicant timely amend his application to raise any additional claims related to ineffective assistance of counsel, Respondent requests an evidentiary hearing on those claims as well.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: 
Danielle Dixon
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

December 15, 2023

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Jonathan A. Nieves, #386247

Applicant,

v.

State of South Carolina

Respondent,

) IN THE COURT OF COMMON PLEAS
) FOR THE FOUREENTH JUDICIAL
) CIRCUIT

) Case No.: 2022-CP-27-00249

) Certificate of Service by Mail

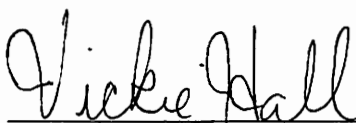
1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Chelsey Faith Marto, Esquire
The Law Office of Chelsey F. Marto
Post Office Box 8795
Columbia, SC 29201

DATED this 15th day of December, 2023.



Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Jonathan Nieves, #386247.	)	Case No.: 2022-CP-27-00249
Applicant.	)	
v.	)	APPLICANT'S AMENDED APPLICATION
State of South Carolina.	)	
Respondent.	)	
_____	)	

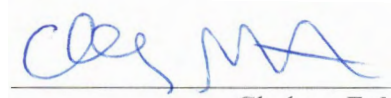
NOW COMES Applicant, Jonathan Nieves, amending his application filed June 8, 2022.

In addition to the allegations raised in his initial application, Mr. Nieves, through PCR Counsel, submits the following:

1. Ineffective assistance of counsel for failure to file a timely notice of appeal.
2. Ineffective assistance of counsel for failure to object to hearsay. (R. 232).
3. Ineffective assistance of counsel for failure to move to suppress, request a full findings of fact from the Court, and to contemporaneously object to Applicant's police statement.
4. Ineffective assistance of counsel for failure to convey to Applicant the importance of testifying and erroneously telling him not to testify.
5. Ineffective assistance of counsel for failure to object to the Court charging the jury on the hand of one hand of all.
6. Ineffective assistance of counsel for failure to effectively cross-examine Charles Brown on his comments regarding Jackpot's lack of involvement in the double homicide.
7. Ineffective assistance of counsel for failure to investigate Applicant's alibi defense.
8. Ineffective assistance of counsel for failure to effectively cross-examine Tyquisha Lee after the video impeaching her credibility was shown.
9. Ineffective assistance of counsel for failure to raise a proper defense at trial. Specifically, Counsel was ineffective for failure to argue that Applicant was not in the vicinity of the shooting.
10. Ineffective assistance of counsel for failure to properly mitigate the sentence.

Conclusion

Based upon the above, Mr. Nieves requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Jonathan Nieves

April 30, 2024

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEETH JUDICIAL CIRCUIT
)
)

Jonathan Nieves, #386247,
Applicant.

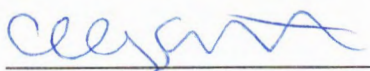
) Case No.: 2022-CP-27-00249
)

v.
State of South Carolina,
Respondent.

) Affidavit of Service by Mail
)
)
)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Danielle Dixon, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



Attorney for Applicant

April 30, 2024

I N D E X

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Joshua Koger, Jr.	
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I N D E X O F E X H I B I T S

No exhibits were introduced in this proceeding.

P R O C E E D I N G S

* * * * *

MS. DIXON: May it please the Court?

Assistant Attorney General Danielle Dixon on behalf of the State. This is the case of Jonathan Nieves v. State, Docket Number 2022-CP-27-249. Mr. Nieves is currently serving a life sentence. In April of 2016 he was indicted by the Jasper County Grand Jury for two counts of murder, those are Indictment Numbers 2016-GS-8 and 9, and also possession of a weapon during a violent crime, which is Indictment Number 2016-GS-27-7. These charges arose from the shooting of Shantay Jenkins and Bruce Specks that occurred around October 2nd, 2015. Their bodies were discovered in a burned car. There was evidence of gasoline, and the Defendant was captured on a nearby surveillance camera at a gas station with two other individuals purchasing gasoline. And there was other evidence that implicated him in this crime.

He did proceed through a jury trial on October 11th, 2021, before the Honorable Carmen T. Mullen. He was represented by Joshua Koger, and this case was prosecuted by Deputy Solicitor Sean Thornton. Mr. Nieves was convicted as indicted, and

1 received concurrent life sentences for murder, and
2 five years for the weapon. He did file a Notice of
3 Appeal, it was dismissed by the -- by the Court for
4 failure to cure a proof of a filing deficiency and
5 ordered the transcript. So he did file the notice,
6 but the attorney did not get it to take whatever
7 steps to get it perfected. The remittitur was sent
8 January 18th, 2022. This application was timely
9 filed. Thereafter, he initially raised an issue
10 regarding failure to perfect an appeal. He has now
11 filed an application with an -- an amended
12 application raising ten allegations, and it's my
13 understanding that's what they're going forward on
14 today.

15 MS. MARTO: Good afternoon, Judge, we'd
16 call Mr. Nieves to the stand.

17 * * * * *

18 JONATHAN NIEVES,
19 having been duly sworn,
20 testifies as follows:

21 * * * * *

22 DIRECT EXAMINATION

23 BY MS. MARTO:

24 Q. Good afternoon, sir.

25 A. Good afternoon.

1 Q. So you were represented by Josh Koger,
2 correct?

3 A. Correct.

4 Q. And what were the charges you were
5 represented on?

6 A. I was accused of having committed two
7 murders and a weapon charge.

8 Q. And you went to trial on those charges?

9 A. I did.

10 Q. And you got a life sentence afterwards?

11 A. I did. I actually have two life
12 sentences.

13 Q. Now, you're alleging that counsel did
14 not perfect the appeal, correct?

15 A. This is correct.

16 Q. Okay. And the basis of that is what Ms.
17 Dixon already put on the record, correct? That
18 there was some issue with getting the transcript?

19 A. That's correct.

20 Q. Okay. So do you feel like you're
21 entitled to a belated appeal pursuant to White vs.
22 State because of that?

23 A. I do. I really had no say-so in the
24 matter. I remember speaking to Mr. Koger, and he
25 did say that he was going to file, and I'm not sure

1 what happened at the time. I think he told my
2 mother that he, I think, didn't submit an email, or
3 something like that, so I'm not sure really what
4 happened, but it really wasn't -- I had no say-so in
5 the matter.

6 Q. Beyond the appeal how do you feel like
7 counsel did representing you at trial?

8 A. I feel like he could have done a little
9 bit better, as I now look into the law and see the
10 things that I'm here to object of.

11 Q. Now, we talked about filing this
12 amendment, correct?

13 A. That's correct.

14 Q. So I'm just gonna kind of run through
15 these issues. We talked about how counsel should
16 have objected to Mr. Toomer, page 232 of the
17 transcript, starting with line 14. He's talking
18 about what his daughter said, and she says, "Daddy,
19 I'm going because," excuse my language, "because
20 dumbass is shooting, and that's when I called the
21 police." Do you think he should have objected to
22 that?

23 A. I do. Also in addition, Michael Toomer
24 and Vanessa Boyles, which were the two witnesses,
25 they also claimed -- or they also said and admitted

1 in my transcript, "Michael Toomer stated he smoked
2 about four or five blunts," and that's on page 242,
3 lines 18 through 23. Also, Vanessa Boyles also
4 stated, yes, she did smoke some marijuana with her
5 dad, and that's on transcript 307, line 17 through
6 23.

7 Q. Do you think counsel should have cross-
8 examined him better on that issue?

9 A. Yes. I think that they should have been
10 impeached. Also, too, Vanessa Boyles also admitted
11 that she lied multiple times on the statements, and
12 that's on -- that's on the transcript, too, as well,
13 page 317, lines 20 to 22. And also, again, on
14 transcript page 318, lines two through eight, she
15 admitted to law enforcement that she lied initially
16 in her first statement, she also lied in her second
17 statement. And then it seems to me back in 2022
18 when I believe the Solicitor came to her and offered
19 her a deal, or something like that, offered her a
20 deal, and that's in the transcript as well. And
21 this is when she decided that she was just gonna
22 ultimately tell the truth.

23 Q. And you also wanted counsel to cross-
24 examine Tyquisha Lee better, correct?

25 A. That is correct.

1 Q. What was her contribution to the trial?
2 What did she testify to?

3 A. Well, Tyquisha Lee was supposedly the
4 star witness. If you can just give me a second,
5 I'll look at my notes. So initially at trial, they
6 -- they called Tyquisha Lee to the stand, and she
7 said that she had no recollection of anything that
8 happened, or any other statements that she wrote.
9 So the Solicitor handed her the transcript of what
10 she wrote, and at that point she looked at it, and
11 he began asking her questions. And one of the most
12 things that stood out to me is ---

13 Q. So she took the stand and denied hearing
14 you, Jackpot and Jackpot's girl wanting to rob
15 someone, right?

16 A. Right.

17 Q. And then the video was entered where she
18 basically, you know, said that. So at trial she
19 denied saying that, and they showed the video
20 through Charles Brown ---

21 A. That's correct.

22 Q. -- of her saying that, correct? Did you
23 want her to then be recalled to the stand?

24 A. Yes, I do, 'cause at that point, just a
25 simple question could have alleviated her by just

1 asking her, "Hey, were the things that you said,
2 were they true?" And I know she would have said,
3 no, and at that point, that would have been the end
4 of it. You know, and also elaborating on what I was
5 saying before, I have it here, when -- when Tyquisha
6 Lee was called, the Solicitor asked her, "Do you
7 recall that you told Matt Brown," which lead
8 detective, and this is paraphrasing, Jackpot,
9 Vanessa, and the others were talking about robbing
10 someone, so they can get money for their kids,
11 because they didn't have a job. She replied, "No,
12 that wasn't it." And then he asked her again, "So
13 that's not true?" And she said, "No." And that's
14 again on transcript 434, lines one through nine.

15 Q. Were you involved in this double
16 homicide?

17 A. Not at all.

18 Q. Okay. And what were you doing at the
19 time that this allegedly happened?

20 A. Well, to be honest, there's not even a
21 time of death established, so I couldn't tell you
22 what I was doing. I know I wasn't there at the
23 crime scene. I know that I was seen -- and which I
24 did also told this to Mr. Koger, that I was seen in
25 Hardeeville about 10:00 or 11 o'clock. I had still

1 photos of this, and I was actually helping my
2 girlfriend at the time, I was helping her take out
3 trash, and this is between 10:00 and 11 o'clock, the
4 night of the crime.

5 Q. Did counsel do anything to investigate
6 this alibi defense?

7 A. No, I don't think so. I -- I did tell
8 him about it, and when I actually got the
9 opportunity later on before the trial, I asked -- I
10 asked the supervisor there at Dunkin' Donuts, "Was
11 there any opportunity for me to get that?" Well,
12 unfortunately, it had been five years from when they
13 allegedly said that I was charged with this crime,
14 the -- the video was gone at that point.

15 Q. And did you talk to counsel about the
16 decision to testify or not testify?

17 A. Yeah, I did, and I -- I say we because
18 we both established that that wouldn't have been a
19 good idea, but now I see now that I should have --
20 should have testified because I'm the only -- I was
21 my only defense. I didn't have anybody there in my
22 defense.

23 Q. And why did y'all decide that it wasn't
24 in your best interest to testify?

25 A. I'm not quite sure. I think maybe

1 because I was a little nervous, I'm not really good
2 with speaking.

3 Q. And you wanted counsel to object to a
4 jury charge on hand of one, hand of all; is that
5 correct?

6 A. That's correct.

7 Q. And why did you want counsel to object
8 to that charge?

9 A. Well, mainly, because the State never
10 could have provided a -- a shooter. They never
11 stated anyone who was the shooter. There also was
12 no evidence to even issue the hands of one, hands of
13 all. If you give me a quick second, let me get my
14 notes together on that.

15 Q. Because they allege that I think there
16 were three of you together, but you were the only
17 one that was ever charged, right?

18 A. That is correct.

19 Q. And the State -- I guess their theory
20 wasn't even that you were the shooter, correct?

21 A. That's correct.

22 Q. That you were more or less just there
23 with Jackpot, correct?

24 A. Right. And being there does not admit
25 guilt at all, saying that I'm guilty of anything, or

1 even -- even constitute hands of one, hands of all.
2 Because in order to say hands of one, hands of all,
3 I would have had to have been participating, or
4 abetting, or helping the alleged person who they
5 said was the shooter, who didn't even get at all
6 convicted or even charged of this crime.

7 Q. Now, what were your discussions with
8 counsel about the defense you wanted to use at
9 trial; do you recall?

10 A. I'm sorry, oh, the defense?

11 Q. Yeah.

12 A. Well, I don't -- I don't believe we
13 really discussed the defense. I had no idea that --
14 I don't think he even had an idea that they was
15 gonna say hands of one, hands of all, so we really
16 didn't have a defense. I didn't have any witnesses
17 on my side. I didn't really have anything. The
18 only thing that I could have used was Mr. Hightower,
19 where he said he checked my cell phone records, and
20 my cell phone records stated that I didn't even call
21 the deceased, and also the cell phone tower didn't
22 even place me in the area.

23 Q. Now you gave a police statement,
24 correct?

25 A. That's correct.

1 Q. And did counsel move to suppress that
2 police statement?

3 A. I don't think so.

4 Q. Was there ever any full -- like findings
5 of fact made by the Court on that issue?

6 A. No, I don't believe so.

7 Q. And did counsel object to it coming in
8 right before it came in?

9 A. No.

10 Q. What did that police statement roughly
11 consist of?

12 A. Well, it was the truth, I told them that
13 that day I went to take them to -- again, their
14 people's house, their family house to get clothes
15 for them, and after that we went to the gas station.
16 Now, I was seen on -- at Handy Dan's, but I was
17 never pumping the gas, neither was I seen paying for
18 the gas, and Vita Smalls attested to that. She said
19 that James Jackpot Riley was the one who paid for
20 the gas, and in the still photo Vanessa Boyles was
21 seen pumping the gas, but never was I seen dealing
22 with any type of gas at all.

23 Q. And the gas is important in this case
24 because after both people were shot, then the
25 alleged suspect burned the car, correct?

1 A. That's correct.

2 Q. Burned the car that they were in when
3 they were shot, correct?

4 A. Yes, from my knowledge from what the
5 transcript says.

6 Q. Now, you told me that it took about six
7 years to go to trial on this case; is that correct?

8 A. It did. I was charged in 2016, I got
9 out nine months later. I was actually out for five
10 years. I remember Judge Carmen Mullen, she got so
11 tired of seeing me because I had my ankle monitor,
12 and at the time they had already set the pending
13 charges on me, so it was hard for me to get a job,
14 but I was blessed to get a job at Tommy Hilfiger,
15 and I was working the entire time. I didn't get
16 into any trouble, I don't have any prior records, or
17 anything like that.

18 Q. You also have a family at home, correct?

19 A. I do. I have a wife and I have two
20 daughters.

21 Q. And did any of that come out when
22 counsel mitigate -- during sentencing?

23 A. No, it didn't.

24 Q. Do you wish it had?

25 A. I do, because it -- it would have at

1 least established somewhat of a character. That's
2 another thing I didn't have, a character-based
3 witness, which I didn't know at the time I -- I
4 could have utilized that, but I didn't have anything
5 in my defense to really assist me and help me during
6 this trial.

7 Q. Now, and I think the last issue we
8 talked about was counsel didn't effectively cross-
9 examine Charles Brown concerning his comments, and
10 Jackpot's lack of involvement, I think that's an
11 issue you discussed with me. Can you expound?

12 A. Yeah, excuse me. Yeah, well, I think in
13 this case it was kind of clear to see that Jackpot
14 was the primary suspect. I can't say whether he
15 committed the crime or not, 'cause I wasn't there,
16 but if you're gonna take the statement of the star
17 witness, which the star witness said I allegedly
18 said that these things transpired where Jackpot shot
19 and killed the people, and Jackpot did this and that
20 and that, and Jackpot did this, then why didn't he
21 get charged? Which falls again into the -- the
22 accomplice liability charge. You couldn't even
23 establish him as the shooter, so how can you -- if
24 you can't establish the shooter, then how can you
25 establish an accomplice?

1 MS. MARTO: No further questions, Your
2 Honor.

3 MS. DIXON: I just have a couple of
4 questions for clarification.

5 **CROSS-EXAMINATION**

6 BY MS. DIXON:

7 Q. You had some pages that you were calling
8 out about where you think your lawyer should have
9 objected to hearsay; is that correct?

10 A. That's correct.

11 Q. And I wrote down 232, 242, 307 and 317,
12 and I believe I missed one. Can you let me know
13 what that one is?

14 A. I think those were actually referring
15 more to impeachment.

16 Q. Okay, so you ---

17 A. I was saying that they should have
18 impeached them because their credibil- -- excuse me,
19 their credibility that night was they were high.

20 Q. Okay.

21 A. They both admitted to smoking four or
22 five blunts.

23 Q. Gotcha, okay. So your -- your
24 contention is that there should have been a hearsay
25 objection on page 232, but the remaining three

1 should have been used for impeachment? I just want
2 to make sure I'm clear on what you're alleging.

3 A. No, 232 was -- yes, I'm sorry, yes, I
4 was.

5 Q. Okay, all right. Okay, okay, I was just
6 waiting to see if you were done. Now, you said that
7 there was videos or still-shots, or something,
8 showing you in Hardeeville around 10:00 or 11:00 on
9 the night of the crime?

10 A. That is correct, at Dunkin' Donuts.

11 Q. At Dunkin' Donuts, okay. Did you tell
12 your lawyer about those?

13 A. I did.

14 Q. Okay. And can you tell me how far away
15 -- do you know where the crime scene was
16 approximately?

17 A. I'm not sure where the crime scene was,
18 but ---

19 Q. Well, you ---

20 A. -- I know ---

21 Q. Let me ask this, because you do admit
22 that you were on that video at that surveillance
23 station, correct?

24 A. That is correct.

25 Q. So that was you. Do you know where that

1 gas station was located?

2 A. Yes, that's in Tillman.

3 Q. Tillman? Okay, is that -- what county?

4 A. That is Jasper County.

5 Q. Jasper County?

6 A. Which Hardeeville is Jasper County as
7 well.

8 Q. Gotcha, okay, and do you know about how
9 far apart Tillman is from Hardeeville?

10 A. Give or take, like if I'm guessing,
11 maybe 15, 20 minutes.

12 Q. They're about 15 to 20 minutes apart?
13 Okay, all right. All right. And then you said
14 something about there was a video that was gone by
15 the time you were tried, you were out on bond for
16 about five years, and you were saying that by the
17 time your case came to trial there was a video that
18 was no longer available. What -- I'm just getting
19 clarification as to what video that was?

20 A. The video was, again, when I was saying
21 I was at Dunkin' Donuts.

22 Q. Gotcha, okay.

23 A. Yeah.

24 Q. That makes sense, okay. So you're
25 saying that there was a video at a Dunkin' Donuts,

1 approximately 15 to 20 minutes away from the crime
2 scene that captured you on the night of the murder
3 between 10:00 and 11:00 p.m.?

4 A. Right, which would have actually
5 established my alibi.

6 Q. Okay, all right, thank you.

7 A. Thank you.

8 MS. MARTO: No redirect.

9 THE COURT: Step down.

10 MS. MARTO: We call Joshua Koger.

11 * * * * *

12 JOSHUA KOGER, JR.

13 having been duly sworn,

14 testifies as follows:

15 * * * * *

16 DIRECT EXAMINATION

17 BY MS. MARTO:

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. So you represented Mr. Nieves at the
21 trial court level, correct?

22 A. That's correct.

23 Q. Okay. How long did you have his case
24 for?

25 A. It was a 2016 case, I was retained a

1 couple months, I think, after he was arrested.

2 Q. And you took this case to trial,
3 correct?

4 A. That's correct.

5 Q. And what was the general defense you
6 decided to go with at trial?

7 A. Well, this was a very difficult set of
8 facts right here. As you know, throughout the
9 transcript, Jackpot, which was the trigger person in
10 this particular case, he was -- he was never
11 charged. And as you see from the transcript we --
12 we placed it on him throughout on the transcript.
13 Mr. Nieves -- Nieves told me that he wasn't at the
14 scene, so we could not -- we could not explore some
15 other defenses, so he was not at the scene. So,
16 basically, we was going -- we was, of course, going
17 out for, you know, a straight acquittal, but also
18 had as an alternate strategy by mentioning Jackpot,
19 because they did not at the pond charging Jackpot,
20 or really didn't thoroughly investigate Jackpot.

21 Maybe we could get a hung jury, and maybe we could
22 get the solicitors to then come after some type of
23 offer or deal. Being that they -- according to my
24 conversation with them, they could not prosecute
25 Jackpot without Mr. Nieves assisting.

1 Q. And did you discuss with Mr. Nieves his
2 decision to testify or not testify?

3 A. Most definitely, we -- we discussed that
4 decision. And as Mr. Nieves stated himself, he --
5 he was nervous, but we -- but we discussed it, and
6 he decided that he'd better not -- that he will --
7 he'd prefer not to take the stand.

8 Q. Did you try to talk him in one way or
9 another?

10 A. No. No, I didn't.

11 Q. Now, the State's theory of the case was,
12 essentially, hand of one, hand of all, right?

13 A. That's correct.

14 Q. Even though there was only the Defendant
15 that was ever charged, correct?

16 A. That's correct.

17 Q. Did you ever think of objecting to the
18 hand of one, hand of all jury charge?

19 A. Well, here's what we had in this
20 particular case, and we're gonna get to Ms. Tyquisha
21 Lee. Throughout my representation it was Mr.
22 Nieves' belief that she was not going to show up for
23 trial; however, we -- we are always prepared, as if
24 that, you know, you prepare the worse case scenario
25 that she is going to show up for trial. When she

1 showed up for trial, of course, she -- she denied
2 everything, but they had the video that was -- the
3 videotape that was taken during the time of the
4 alleged -- of the alleged incident. There were
5 things within that videotape that did place Mr.
6 Nieves at the scene. Also there was testimony of
7 another young lady, and, again, I don't have my
8 file, but I think it was Ms. Balls, that stated that
9 he was -- that she -- he was either dropped off, or
10 they were -- they were followed to the scene, so ---

11 Q. Did you discuss Mr. Nieves' potential
12 alibi defense with him?

13 A. We -- he made mention of it throughout
14 the representation. At that particular time he
15 called the young lady, his wife, I don't know
16 whether it was -- they were actually married, but
17 they was living together at that particular time.
18 She gave a statement that she would not have been a
19 helpful witness for Mr. Nieves.

20 Q. And so that's why you didn't call her to
21 testify on the stand?

22 A. Right, she -- she -- she -- she made a
23 comment, and I cannot recall within that statement,
24 that would not have been helpful for Mr. Nieves in
25 relation to this -- excuse me, in relation to this

1 case.

2 Q. Now, you mentioned Ms. Lee, is there a
3 reason why you didn't recall her to the stand after
4 the video was shown?

5 A. Well, you know, you don't ask questions
6 that you don't know the answer. She had already
7 stated that she didn't know anything about it, or
8 what have you. I thought it was sufficient. I
9 didn't want to take a chance after the video to ask
10 the wrong question, and maybe open the door for
11 something -- something else. She had already stated
12 that she didn't know anything about it and
13 everything, and I thought it was sufficient.

14 Q. Did you ever think to talk to her
15 beforehand to see what her testimony would have
16 been?

17 A. She -- no one -- Mr. Nieves didn't know
18 where -- where she was located, and actually I think
19 the Solicitors embarked upon a search, and she was
20 brought in I think a day or two -- maybe the day
21 before Court.

22 Q. Now, do you recall Mr. Toomer testifying
23 that his daughter said, "You know, dumbass is
24 shooting?" Do you recall him testifying to that?

25 A. I recall Mr. Toomer testifying, and I

1 recall Mr. Toomer, if -- if I'm not mistaken now,
2 not really being -- not being a really material
3 witness, but, you know, I don't have my notes in
4 front of me.

5 Q. Is there a reason why you wouldn't have
6 objected to hearsay?

7 A. There's no reason, but Mr. Toomer really
8 was not a material witness. I think maybe Mr.
9 Toomer -- there was some type of gun that was found,
10 but it was -- it was inoperable, and had a lot of --
11 it had been passed around, so he really was not a
12 material witness in this case.

13 Q. Okay. And he and his daughter both
14 admitted to smoking blunts earlier that day,
15 correct?

16 A. If it's -- if it's in the transcript,
17 that's -- that's correct, but everyone was smoking.

18 Q. Is there any reason why you wouldn't
19 have thoroughly cross-examined both of them about
20 their memory because of the fact that they were
21 smoking blunts?

22 A. Well, again, they were -- from my --
23 from my understanding, from -- from my -- from my
24 memory, they was not really -- we were focused on
25 Tyquisha Lee, and we were focused on the cross-

1 examination of -- of I guess the SLED agent, or what
2 have you.

3 Q. Now, Mr. Nieves gave a police statement,
4 right?

5 A. That's correct.

6 Q. And that statement at least put -- put
7 him around the same people around the same time as
8 the incident was committed, correct?

9 A. I have not looked at the statement for a
10 while, I can't recall. I don't know whether he -- I
11 can't recall whether it was one -- one or two of
12 them, but, basically, those statements, I think one
13 of them said he went back to New Jersey or
14 something, so it really didn't, you know, there was,
15 you know, there was nothing that was hurtful to him.

16 Q. Is that why you didn't move to suppress
17 it?

18 A. The way he -- he said -- like on the
19 stand he say that he told -- what he perceived as
20 the truth, he was then, you know, went back to New
21 Jersey, and things of that nature, and, again, I
22 don't have the statement in front of me. I'm not --
23 I'm just testifying off of memory.

24 Q. Okay. And then what did you attempt to
25 raise in mitigation of the sentence?

1 A. I had, you know, I -- I had his
2 background. I think his mother was -- his mother
3 was there, but I don't know whether she left before
4 sentencing or not. I -- throughout this whole --
5 throughout this whole representation, I've been in
6 contact with Ms. -- with Ms. Boyles, and I think she
7 might have stayed in the courtroom, or not, but,
8 basically, I can't recall if she was given an
9 opportunity to speak or not.

10 Q. And did you raise any -- any arguments
11 yourself on behalf of Mr. Nieves concerning his
12 full-time job, the fact that he was out for five
13 plus years without incident, the fact that he's a
14 family man, anything like that?

15 A. I had the background sheet. I -- I mean
16 the Judge was aware of the many times that we have
17 gone back and forth on our bond issues, his -- his
18 work history, and things of that nature -- things of
19 that nature. You know, murder carries 30 years to
20 life, and it was -- it was, you know, it was -- he
21 was convicted of committing two murders, so that was
22 -- that was a tough road to hoe. I cannot, you
23 know, all I can say that I have his -- I had the
24 mitigation facts, and I think his mother was there,
25 and I cannot recall whether she spoke at the hearing

1 or not. I think she did, but I cannot recall.

2 Q. And you would agree that the transcript
3 is the best resource concerning what happened at the
4 trial?

5 A. Yes, uh-huh.

6 Q. Okay. All right. Now, what was your
7 cross-examination approach when it came to Charles
8 Brown?

9 A. Okay, well, I cross-examined him again.
10 From -- from memory, I really cross-examined him
11 about why this case was not pursued against Jackpot,
12 okay? Because -- and you can look -- I'm sure you
13 read through the transcript, that was the main
14 theme. Again, you know, it was a tough case, I was
15 -- of course, you always go for, you know, an all
16 out acquittal, but maybe, you know, we could bring
17 up the lack of prosecution against Jackpot to maybe
18 hang, you know, to maybe hang the jury up, and come
19 back to fight another day; but, basically, I think
20 my major -- my major points was to ascertain why
21 Jackpot was not charged. As far as any relation to
22 Tyquisha Lee, the video spoke for itself. I did not
23 want to cross-examine him again to reiterate what
24 she said on the video because that would not have
25 been helpful for Mr. Nieves?

1 Q. And, finally, so you filed a Notice of
2 Appeal, but there was some issue with you obtaining
3 the transcript in a timely manner?

4 A. I -- I think as a part of your file, and
5 I can -- I sent a letter to the Court of Appeals
6 that outlined the situation specifically, if I'm
7 allowed to -- to, Your Honor, I can -- I can -- I can
8 read it to you. Because it really outlined the
9 procedural -- not procedural history, but what
10 actually happened. It was definitely not
11 intentional.

12 MS. DIXON: Can I approach, Your Honor, I
13 have what might refresh his memory.

14 MS. MARTO: Yeah, I think the order just
15 says that, you know, appellant has failed to comply
16 with the requirement to cure the proof of filing
17 deficiency and order the transcript?

18 BY WITNESS:

19 A. But I have a letter outlining everything
20 that was -- as a part of my PCR file.

21 Q. Do you want to see ---

22 A. Yes, you can see a copy of it. May I be
23 allowed to read it?

24 Q. Yes, sir.

25 A. Okay. I had filed a motion to recall

1 the -- the remittitur. It was filed on January 27,
2 2022. The undersigned filed a motion to reinstate
3 on January 4th, 2022, as a response to an order of
4 dismissal signed and filed on December 14th, 2021.
5 The motion to reinstate included a letter to the
6 Honorable Clerk of Court Margaret Bostick which was
7 a request for a deficiency item from an October 26,
8 2021 letter. I argue within the motion to reinstate
9 that I have timely returned the affidavit -- the
10 affidavit of indigency from the appellate on
11 November 15, 2021, and, therefore, was absolved from
12 ordering the trial transcript. Erroneously I
13 thought that I had untimely filed the motion,
14 however, I failed to calculate the addition of five
15 days mailing time period to the -- to the electronic
16 notice to order of dismissal of December 14, 2021.
17 The undersigned received the letter on January 18th,
18 2022, that a remittitur remains in place from the
19 order of dismissal of December 14, 2021. Seemingly,
20 this decision was made without a ruling on the
21 motion to reinstate of January 4th, 2022. This
22 belief was further confirmed by motion not being
23 listed on the South Carolina Appellate Case
24 Management System on January 18th, 2022. However,
25 after a subsequent conversation with a staff member

1 from the Court, she pointed out the motion and the
2 attachments were sent to ctappfillings@sccourts.org,
3 instead of ctapp, and the correct spelling of
4 filings @SouthCarolinaCourts.org. Further, I
5 inquired as to whether the Court had the
6 technological capabilities to return or not a
7 separate filing, where the documents was sent to a
8 similar, but nevertheless wrong address. The
9 response was I do not believe so. Thus, without the
10 existence of such system, I was under the assumption
11 that the following was accepted. Therefore, I
12 believe I made a strong showing that a lack of such
13 system that would have alerted the non-filing status
14 of my motion amounted to an unintentional advertence
15 on behalf of the Court." So it was something that I
16 did not intentionally mean to do.

17 Q. Right, but it still denied Mr. Nieves
18 the ability to receive a full briefing, and appeal,
19 correct?

20 A. That's correct.

21 Q. And it was from no fault of his own,
22 correct?

23 A. That's correct. I would have no
24 objection -- objection to a belated appeal being
25 granted, but it's not within my purview.

1 Q. Understood.

2 MS. MARTO: One moment, Your Honor.

3 Nothing further, Your Honor.

4 MS. DIXON: Just briefly.

5 **CROSS-EXAMINATION**

6 BY MS. DIXON:

7 Q. Mr. Koger, how are you today?

8 A. I'm doing well.

9 Q. Good. Can you just give us kind of a
10 brief overview of the State's evidence in this case?

11 A. Well, again, the -- the major piece of
12 evidence was Tyquisha Lee and the videotaped
13 statement, and what she -- with her written
14 statements. Also, too, and I was actually surprised
15 that the prosecution didn't really pursue this here,
16 but there were extensive phone records that I went
17 through, that around the time that this happened,
18 there was -- there was many phone calls between Mr.
19 Nieves and Ms. Lee. And I actually went through all
20 of them, I color-coded them and everything, 'cause I
21 was -- I was being prepared for them. I actually
22 rode to -- I rode to the scene of the alleged
23 incident from the dirt road near -- in Tillman. I
24 actually went to near the scene. I think the road
25 was Purrysburg Road or something. It's a dirt road,

1 there was a church to the left, and then there was
2 the -- there -- there was the road of the scene to
3 the right. That was maybe, if I can recall, maybe
4 ten minutes away. I even went to the Dunkin' Donuts
5 -- the Dunkin' Donuts in Hardeeville, and road to
6 that scene, and it was like maybe about ten -- ten
7 or 12 minutes, so, you know, I did a thorough -- a
8 thorough investigation of it. The thing was that
9 there was things that Ms. Lee testified to that was
10 told to her, that she would only -- she would only
11 have known if she would have been at the scene.

12 Q. I gotcha, okay. And then in terms of
13 Ms. Lee's statement to police, do you recall kind of
14 the basic crux of it?

15 A. That she was told that the -- the -- I
16 can't recall whether it was -- it was one or both of
17 them that the deceased was hit with a hammer, okay?
18 That they was burned. I think she testified to the
19 bag that was retrieved from the scene being thrown
20 in some type of pond or retaining pool, again, I'm
21 testifying from memory, and that it was actually
22 found there. It was just, you know, unless Ms. Lee
23 was a suspect herself, there was -- there was some
24 things that she -- she -- she would not have known.
25 According to the autopsy, you know, the bodies being

1 burned, then one of them suffered from a -- suffered
2 a blunt force trauma.

3 Q. Gotcha, and just to clarify for the
4 Court, these are -- this is a conversation she
5 overheard Mr. Nieves, is that -- or he told her these
6 things, is that ---

7 A. Well, she -- that she -- he told her
8 these things.

9 Q. He told her these things.

10 A. And then, you know, again, I was
11 surprised that the State -- I was prepared for it,
12 but there were numerous phone calls around that time
13 between the two of them.

14 Q. And then you said that you did drive the
15 distance between the crime scene and the Dunkin
16 Donuts, and ---

17 A. I -- I drove from the Dunkin -- the
18 Dunkin' -- Dunkin' Donuts to the crime scene, and
19 from the Exxon in Tillman to the crime scene.

20 Q. Okay. And was there ever a time of
21 death established, a clear time of death
22 established?

23 A. I think it was a -- a range.

24 Q. A range?

25 A. A range, right.

1 Q. Okay. And do you recall when they got
2 the bodies they were pretty badly burned?

3 A. Yes, uh-huh.

4 Q. So they couldn't really make a guess on
5 the autopsy?

6 A. They were badly burned, yeah ---

7 Q. Okay.

8 A. -- they were badly burned, right.

9 Q. And then in terms of that, did you think
10 that if there had been a picture of him at Dunkin'
11 Donuts that would have established an alibi?

12 A. Well, the thing -- the thing about it --
13 and we -- and we discussed this, there was a
14 statement, again, with his wife at the time, that
15 said that he -- and, again, and you can look in the
16 file, that kind of implicated him, something that
17 she said to him; so, therefore, we didn't want to --
18 we didn't want to put her on the stand to even --
19 you know what I'm saying, he said that she could,
20 you know, establish the alibi, but also there was
21 something in that statement that was not
22 advantageous to Mr. Nieves.

23 Q. Okay. Were there any other witnesses
24 that he suggested could have established an alibi?

25 A. No.

1 Q. No? Okay. Let's see, and then they've
2 alleged that you didn't move to suppress the police
3 statement. Do you recall a Denno hearing, and I
4 think if you look at page 82 ---

5 A. Uh-huh.

6 Q. -- of the transcript, there was a
7 pretrial Jackson v. Denno hearing?

8 A. Well, I didn't move to suppress it,
9 'cause it was -- from what I can recall, it was --
10 it was nothing that was -- that was hurtful, you
11 know, basically, and, you know, and he testified
12 himself, if, you know, that was the truth, if it --
13 if it gets in, then it got in without him -- without
14 him -- without him having to testify.

15 Q. Okay. And then number four, they talked
16 about your advice about telling him not to testify
17 is what they're alleging. Do you recall the Judge
18 advising him of this right as well?

19 A. Yes.

20 Q. And that's page 477 of the transcript.
21 And then, let's see, the issue with Charles Brown
22 you did say that you cross-examined him extensively
23 about Jackpot's lack of involve- -- or Jackpot not
24 being indicted or charged for this murder?

25 A. That's correct.

1 Q. And I think if you look at page 387,
2 390, 398 to 99, 403 to five, 412 to 15, fleshes some
3 of that out.

4 A. Yeah.

5 MS. DIXON: I have nothing further, thank
6 you.

7 THE WITNESS: Thank you.

8 MS. MARTO: No redirect.

9 THE COURT: Thank you, you may step down.

10 WITNESS: Thank you.

11 MS. DIXON: Nothing further from the State.

12 THE COURT: Any argument?

13 MS. MARTO: Just briefly, Judge. I think
14 it's been pretty well established that Mr. Nieves
15 was proud of his right to a belated appeal, so we
16 would request this Court grant relief pursuant to
17 White vs. State. And then we're certainly not
18 abandoning all these issues, but just to identify a
19 couple. Counsel really didn't cross-examine Ms.
20 Tyquisha Lee at all, and she was basically the

21 central focus point of this case. The evidence in
22 this case was very scant, I'm sure you'll see that
23 in the trial transcript, but really what, you know,
24 wound up impacting Mr. Nieves was, first, her
25 testimony, the counsel's unwillingness to cross-

1 examine her. But then also the fact that no defense
2 was presented and it is extremely difficult to
3 lead the jury to believe you weren't at the scene of
4 the crime if you're not given a chance to present
5 any type of a defense. And that, I think,
6 incapsulates both our arguments to investigate the
7 alibi defense, and also to, you know, not encourage
8 Mr. Nieves to testify in his own defense when he is
9 claiming that he wasn't there. So for these reasons
10 and the other ones that we've alleged today, we'd
11 just request that you grant relief in this case.
12 Thank you.

13 MS. DIXON: And just quickly the State
14 would concede that it does appear he did not
15 voluntarily waive his right to a direct appeal, so
16 we would concede that he's entitled to a belated
17 appeal pursuant to White v. State. As far as the
18 remaining allegations, we would submit he has not
19 met his burden. They've raised the issue about him
20 not cross-examining the witness Lee, and I believe
21 he articulated a valid reason on the stand in that
22 when she took the stand for the State, she basically
23 denied making the statement, or remembering it, and
24 the State ended up using her prior statement to
25 impeach her, so at that point, there was no valid

1 strategy in putting her back on the stand if it
2 could open the door to her changing her prior trial
3 testimony. So I think he articulated a valid reason
4 for that. And then in terms of a defense, they
5 haven't put forth anything more today that could
6 have created a defense for this trial.

7 MS. MARTO: May I reply, Your Honor?

8 THE COURT: I will review it and issue an
9 order.

10 MS. MARTO: Thank you.

11 THE COURT: All right. The Court is out of
12 session until 9:30 in the morning.

13 MS. DIXON: Thank you, Judge.

14 (Whereupon, the hearing was concluded.)

15 - - -END OF TRANSCRIPT- - -

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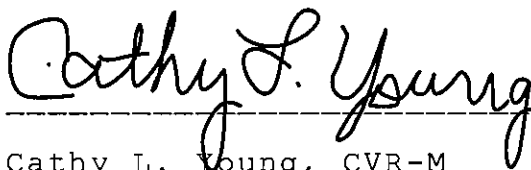
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Colleton County, South Carolina, on the 7th day of
May, 2024.

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

A handwritten signature in cursive script that reads "Cathy L. Young". The signature is written in black ink and is positioned above a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

) IN THE COURT OF COMMON PLEAS FOR THE
) FOURTEENTH JUDICIAL CIRCUIT

Jonathan A. Nieves, #386247

Applicant.

 γ

State of South Carolina,

Respondent.

**ORDER GRANTING LATE APPEAL
AND DISMISSING ALL OTHER CLAIMS
WITH PREJUDICE**

Civil Action No.: 2022-CP-27-00249

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jonathan A. Nieves (Applicant) on June 8, 2022. On May 7, 2024, an evidentiary hearing was held with Applicant present and represented by Chelsey Marto, Esquire. Assistant Attorney General Danielle Dixon represented the respondent. Applicant testified and called as a witness trial counsel Joshua Koger, Jr., Esquire. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant is entitled to a late appeal pursuant to White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). This Court further finds Applicant did not prove the remaining claims and therefore further relief is denied and the remainder of the application dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In April 2016, the Jasper County Grand Jury indicted Applicant on two counts of Murder (2016-GS-27-00008 and 00009) and one count of Possession of a Weapon During the Commission of a Violent Crime (2016-GS-27-00007). On October 11, 2021, Applicant proceeded to trial before Circuit Judge Carmen T. Mullen and a jury. Joshua Koger, Esquire represented Applicant. Deputy Solicitor Sean Thornton prosecuted the case. The Applicant was convicted as indicted and sentenced by the Court to concurrent sentences of life for each Murder conviction and five years for the weapon charge. Applicant filed a direct appeal, which was dismissed based upon his failure to order the transcript as required by Rule 207(a)(1), SCACR. The remittitur was sent January 18, 2022.

CURRENT APPLICATION

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Applicant timely commenced this PCR action on June 8, 2022, asserting he is being held in custody unlawfully due to ineffective assistance of counsel. Specifically, he avers he was

denied the effective assistance of trial counsel and/or appellate counsel and loss of direct appeal . . . as a result of either trial counsel or appellate counsel or both counsel's failure to perfect [his] direct appeal . . .

As relief, Applicant sought a belated appeal and an opportunity to amend his application to raise additional allegations of ineffective assistance of trial counsel once he receives the trial transcript.

Prior to the hearing, Applicant filed an amended application alleging counsel was ineffective for:

1. Failing to timely file a notice of appeal;
2. Failing to object to hearsay;
3. Failing to move to suppress, request a full findings of fact from the Court, and contemporaneously object to Applicant's police statement;
4. Failing to convey to Applicant the importance of testifying and erroneously telling him not to testify;
5. Failing to object to the court charging the jury on the hand of one hand of all;
6. Failing to effectively cross-examine Charles Brown on his comments regarding Jackpot's lack of involvement in the double homicide;
7. Failing to investigate Applicant's alibi defense;
8. Failing to effectively cross-examine Tyquisha Lee after the video impeaching her credibility was shown;
9. Failing to raise a proper defense at trial. Specifically, counsel was ineffective for not arguing Applicant was not in the vicinity of the shooting;
10. Failing to properly mitigate the sentence.

At the PCR hearing, Applicant proceeded on the allegations of his amended application. Additionally, Applicant alleged counsel was ineffective for not properly impeaching Micael Toomer and Vanessa Boyles.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County of Clerk Court records of the underlying convictions; Applicant's records from the South Carolina Department

of Corrections; the trial transcript; Applicant's appellate records; and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Belated Appeal

Applicant claims counsel was ineffective for not filing a timely notice of appeal. "Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967)." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974).

Here, while counsel for Applicant timely filed a notice of appeal, the appeal was dismissed for counsel's failure to timely request the transcript. Based on the foregoing, this Court finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. This Court further finds Applicant is entitled to seek a late appeal pursuant to White.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the

adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Object to Hearsay Testimony

In his amended application, Applicant averred counsel should have objected to the following during State witness Michael Toomer’s testimony, “As she was walking to the back of the car, she came back, before she even got to the dirt road, and said, ‘Daddy, I’m going because’ excuse my language, ‘because dumbass is shooting,’ and that’s when I called the police.” (Tr. 232).

Based on this Court’s review of the transcript, counsel’s failure to object to this testimony was reasonable under prevailing professional norms and not deficient. Although technically hearsay, the testimony must be viewed in context. At trial, Toomer testified his daughter Vanessa Boyles stopped by his house at Whistle Stop Road with her boyfriend James Riley and another person that Toomer did not recognize. Toomer further testified Riley showed him a pistol and asked if he wanted to shoot it, but Toomer declined. Toomer stated Riley and the other man left while he and Boyle went inside. As Toomer and Boyle were talking, Toomer heard gunshots. (Tr. 225-32). He stated Boyles then stated, “Daddy, I’m going because . . . dumbass is shooting.” (Tr. 232). Critically, Toomer consistently stated he did not recognize or know the

other person. Further, the inference here is that Boyles was referencing Riley—not the man Toomer could not identify—when she relayed “dumbass is shooting.” Finally, Toomer had just testified to hearing gunshots, making Toomer’s testimony about Boyles’s statement largely cumulative. Because the information relayed here, in context, was cumulative to other proper testimony and not material to Applicant’s guilt or innocence, counsel’s failure to object was reasonable under prevailing professional norms and not deficient. For the same reason, there is no reasonable probability the outcome would have been different had counsel objected to this testimony.

Further, counsel articulated a valid reason for not objecting here. At the PCR hearing, counsel testified Toomer was not a material witness, and he focused his strategy on attacking the credibility of State witness Tyquisha Lee and the SLED investigation. Counsel’s stated strategy was reasonable under prevailing professional norms and not deficient. Critically, Lee told law enforcement that about a week before two bodies were discovered in a burned vehicle, she overheard Applicant, James “Jackpot” Riley, and Vanessa Boyles discuss a robbery. (Tr. 437). Lee further told law enforcement that after the incident, Applicant told Lee that he, Riley, and Boyles contacted the victims and arranged to meet them at Whistle Stop Road to purchase weed. Once there, Riley shot both victims multiple times, and Riley and Applicant beat the male victim over the head with a pistol until the pistol broke. Riley then drove the victims’ vehicle to the area it was later discovered, and Applicant and Lee followed in Applicant’s vehicle. Once at that location, Riley poured gasoline on the vehicle and lit it on fire. (Tr. 438-47). Lee’s statement to law enforcement was far more damaging to Applicant’s case than Toomer’s testimony. Based on the foregoing, counsel’s failure to object to Toomer’s hearsay testimony was not deficient, nor has Applicant demonstrated any resulting prejudice.

At the PCR hearing, Applicant asserted counsel should have raised additional hearsay objections to the following: During Toomer’s cross-examination, counsel asked, “[H]e asked you whether you wanted to shoot it.” (Tr. 242). In context, this questioning referenced Riley—not Applicant. The statement that Riley asked Toomer whether he wanted to shoot a gun was not material to Applicant’s guilt or innocence. Thus, counsel’s questioning here was reasonable under prevailing professional norms and not deficient.

Likewise, there is no reasonable probability the outcome would have been different had counsel not cross-examined Toomer about this.

Applicant likewise asserted counsel should have objected during Boyles' direct examination when she testified, "I went in the house to speak to my dad for a minute, and then I told him we was going to the store." (Tr. 307). Although technically hearsay, this statement was cumulative to Boyles's properly-admitted testimony that she, Riley, and Applicant went to the Handy Man convenience store. (Tr. 307). This testimony was further corroborated by surveillance footage from the Handy Man convenience store showing the trio at the Handy Man the evening of the murder. (Tr. 285-94, 375-76). Because Boyles's hearsay statement (that she told her father "we was going to the store") was cumulative to other properly-admitted evidence, counsel's failure to object was reasonable under prevailing professional norms and not deficient. Likewise, there is no reasonable probability the outcome would be different had counsel objected.

Finally, Applicant asserted counsel should have objected when Boyles testified that Applicant told her "James started shooting first, and he felt like he had to go along with it," and "he had to shoot them." (Tr. 316-17). These statements, however, were Applicant's statements to Boyles and are not hearsay. See Rule 801(d)(2) (providing a statement by a party-opponent is not hearsay). Applicant has failed to prove deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Seek Suppression of Nieves' statement

Applicant contends counsel was ineffective for not moving to suppress his statement to police; for not requiring full findings of fact from the Court; and for not contemporaneously objecting when Applicant's statement was entered at trial. This allegation lacks merit.

Prior to trial, the Court held a Jackson v. Denno hearing to determine the admissibility of Applicant's statement to police. During the hearing, the State entered two Miranda wavier forms signed by Applicant and a video of his second statement. (Tr. 84, 94). Additionally, Lieutenant Charles Brown testified Applicant indicated he understood his Miranda rights. (Tr. 89). Although counsel did not object to or argue against the admissibility of the statement, Applicant has not set forth any viable argument counsel should have raised to the admissibility of the statement. Thus, Applicant did not prove deficiency. Likewise, based

on evidence presented by the State, it is not reasonably likely the statement would have been suppressed had counsel objected to it. In the absence of a compelling argument for suppressing this statement, Applicant has not met his burden of proving deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Advise Applicant to Testify at Trial

Applicant next contends counsel was ineffective for failing to convey to Applicant the importance of testifying and erroneously telling him not to testify. This contention lacks merit. This Court finds credible counsel's PCR testimony that he discussed with Applicant whether he should testify. Further, at trial, Applicant waived on the record his right to testify after having an opportunity to consult with counsel. (Tr. 476-77). Ultimately it was Applicant's decision to not testify, and Applicant has not pointed to any advice from counsel that was deficient in this regard. Finally, and critically, this Court finds Applicant did not provide any credible, compelling testimony at the PCR hearing that would have a reasonable probability of changing the outcome of trial. Applicant thus failed to prove deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Object Accomplice Liability Instruction

Applicant next contends counsel was ineffective for not objecting to the accomplice liability instruction. This allegation patently lacks merit here where evidence supported the charge. Critically, the State introduced evidence that Lee told police she overheard Applicant, Riley, and Boyles discuss a robbery, and Applicant later told her that Riley shot the victims before he and Riley beat the male victim over the head with a gun. The accomplice liability charge fit the evidence adduced at trial, and Applicant has not set forth a viable objection to the charge. Applicant has thus failed to prove deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Effectively Cross-Examine Charles Brown

Applicant asserts counsel was ineffective for failing to effectively cross-examine lead investigator Charles Brown on his comments regarding Riley's lack of involvement in the double homicide. This claim lacks merit.

Initially, this Court has had the opportunity to review counsel's cross-examination of Investigator

Brown and finds it is reasonable under prevailing professional norms and not deficient. In support of his contention that counsel did not effectively cross-examine Investigator Brown, Applicant testified Riley was the primary suspect and questioned why Riley did not get charged with any crime. However, counsel credibly testified he *did* cross-examine Investigator Brown about why law enforcement did not pursue a case against Riley, and counsel's testimony here is corroborated by the trial transcript. (Tr. 403-15). Applicant has not pointed out any other specific thing counsel should have cross-examined Investigator Brown about and has thus failed to meet his burden of proving deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Investigate and Raise a Defense¹

Applicant contends counsel was ineffective for failing to investigate Applicant's alibi defense. He likewise contends counsel was ineffective for failing to raise a proper defense at trial. Specifically, he avers counsel should have argued Applicant was not in the vicinity of the shooting. Applicant did not prove this claim.

At trial, counsel's defense strategy focused on attacking Lee's credibility based on her young age at the time she gave the recorded statement; pointing the finger at Riley and questioning the investigation of Riley and lack of charges against him; and arguing the State lacked evidence against Applicant. (Tr. 497-506). Based on the State's evidence, this was a reasonable defense strategy. Applicant has not set forth a better defense strategy counsel should have employed and thus did not prove deficiency or prejudice.

At the PCR hearing, Applicant averred counsel should have argued he was not at the crime scene. Specifically, Applicant stated he was in Hardeeville between 10:00 and 11:00 pm the night of the crime. He further averred he was at Duncan Donuts, but the video from Duncan Donuts was missing by the time of trial. Applicant testified Tillman and Jaspers are about fifteen minutes apart. He further testified the State never established a time of death for the victims.

To the extent Applicant sought to establish an alibi defense at the PCR hearing, this Court finds

¹ Due to the similarity of the allegations, this section combines allegations seven and nine.

Applicant failed to present credible evidence of an alibi. This Court finds not credible Applicant's testimony that he was not in the area of the crime. At trial, the State introduced a video from Handy Dan convenience store showing Applicant with Riley and Boyles in the vicinity of the crime at 8:00 pm the evening of the murder. Notably, the trio purchased a canister of gas, and according to Lee's statement, Riley later poured gasoline on the victims' vehicle before igniting it. On balance, assuming Applicant was in Hardeeville between 10:00 and 11:00 pm that night, that does not establish an alibi or otherwise show Applicant could not have been involved in the murder—especially here where the State, by Applicant's own admission, was unable to establish a time of death.² Finally, because the State introduced the surveillance video showing Applicant with Riley and Boyles around 8:00 pm the evening of the murder, and because the State could not establish the time of death, this Court finds counsel did not have a valid basis to argue Applicant was not in the vicinity of the crime. Applicant has failed to prove deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Effectively Cross-Examine Tyquisha Lee

Applicant contends counsel was ineffective for failing to effectively cross-examine Tyquisha Lee after the video impeaching her credibility was shown. This Court finds Applicant did not prove this ground. At the PCR hearing, Applicant averred counsel should have recalled Lee after the State introduced her recorded statement at trial and asked her if those statements were true. He testified, "I know she would have said no." Applicant, however, did not call Lee at the PCR hearing.

Initially, without having Lee testify at the PCR hearing, it is speculative as to what she would have testified to, and Applicant did not meet his burden in this regard. Further, this Court finds counsel articulated a valid reason for not recalling Lee to cross-examine her in that the video spoke for itself, and he did not want to take the chance after the statement was played on opening the door to additional damaging testimony. Counsel did, however, use Lee's young age to attack the credibility of her statement in closing

² Trial testimony indicated the vehicle was found approximately six or seven miles from Tillman. (Tr. 120). According to Google, the driving time between Tillman, South Carolina, and Hardeeville, South Carolina is approximately 18 minutes. Applicant was captured on the surveillance video at approximately 8:00 pm that evening.

argument. (Tr. 501-02). Overall, this Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. Finally, because this Court did not hear additional testimony from Lee and can only speculate as to what she would have said on further cross-examination, Applicant did not meet his burden of proving prejudice. This claim is without merit and relief is denied.

Failure to Properly Mitigate the Sentence

Applicant contends counsel was ineffective for failing to properly mitigate the sentence. Applicant did not prove this ground.

At the PCR hearing, Applicant asserted counsel should have mentioned his wife and daughter at sentencing and called character witnesses on his behalf. Applicant, however, did not offer any character witnesses at the PCR hearing.

Based upon this Court's review, counsel's mitigation—which included a statement from Applicant's mother—was reasonable under prevailing professional norms and not deficient. (Tr. 534-37). Further, and critically, Applicant did not offer any additional mitigation or witnesses that likely would have changed the sentence imposed. Applicant thus did not prove deficiency or prejudice. This claim is without merit and relief is denied.

Failure to Effectively Impeach Toomer and Boyles

At the PCR hearing, Applicant orally added as an additional claim that counsel was ineffective for not properly impeaching Toomer and Boyles. Specifically, Applicant averred counsel should have impeached the witnesses with evidence of their drug use, and referenced pages 242, 307, and 317 of the trial transcript. Applicant did not prove this ground. Initially, this Court finds counsel's cross-examination of these witnesses was reasonable under prevailing professional norms and not deficient. (Tr. 240-57, 319-37 339). At the PCR hearing, when questioned about this issue, Applicant referenced counsel's cross-examination of Toomer—where he did in fact cross-examine Toomer about whether he used marijuana when Boyles stopped by the evening of the murder. (Tr. 242). Applicant also referenced to Boyle's direct

examination, where Boyles admitted she smoked marijuana with Toomer that evening. (Tr. 307).³ Notably, counsel *did* cross-examine Boyles about whether she purchased weed in the past (to which she admitted). (Tr. 329). Applicant has not set forth a viable line of cross-examination that counsel did not already employ; thus, Applicant failed to prove deficiency or prejudice. This claim is without merit and relief is denied.

CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to seek a belated appeal pursuant to White v. State. This Court further concludes Applicant has not established any other constitutional violations that would entitle him to relief. The remaining allegations are without merit and dismissed with prejudice.

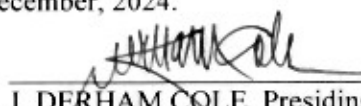
Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. Applicant is entitled to seek a belated appeal pursuant to White v. State;
2. The remaining allegations are without merit and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 23rd day of December, 2024.

 South Carolina


J. DERHAM COLE, Presiding Judge
The Fourteenth Judicial Circuit Court

³ Applicant also referenced page 317, but that page does not contain any reference to drug use. However, during that testimony (which is part of Boyles's direct examination), Boyles admitted she did not tell police the truth when she first spoke to them. (Tr. 317). Notably, counsel *did* cross-examine Boyles about whether she lied to police. (Tr. 319-20, 327, 335).



STATE OF SOUTH CAROLINA
THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

J. DERHAM COLE
 JUDGE

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December 23, 2024

The Hon. Margaret Bostick
 Jasper County Clerk of Court
 PO Box 248
 Ridgeland, SC 29936-0248

Re: 2022-CP-27-00249
 Jonathan A. Nieves, SCDC #386247 v. The State of South Carolina

FILED
 2025 JUL -2 A 9:23
 CLERK OF COURT
 JASPER COUNTY, SC

Dear Clerk;

Enclosed please find for filing an order(s) with reference to the above-captioned case(s). Upon entry of the order(s), please serve notice upon the affected parties in accordance with *Rule 77(d) of the South Carolina Rules of Civil Procedure*. Thank you in advance for your usual and capable assistance in this matter.

With kindest personal regards, I remain,

Sincerely yours,

J. Derham Cole
 Resident Judge
 The Seventh Judicial Circuit