

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Kristi F. Curtis, Circuit Court Judge

JACOB D. DROTNING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001438

APPENDIX

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VOLUME II OF II

PAGES 501-664

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Sep 23 2025

S.C. SUPREME COURT

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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) first filing
 (b) _____
 (c) _____

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? yes
 (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. Danny Day, Public Defenders Office. Probable Cause, 1st appearance
 ii. Gordon Senerius, 2nd arraignment, bond hearing. 517 N. Main St. Anderson, SC 29621
 iii. Lee Cole, trial, sentencing - 32 E. Main St. PO Box 315 Williamston, SC
 iv. Katherine Hudgins, direct appeal, PO Box 11589 Columbia, SC 29211
 (b) the proceedings at which each such attorney represented you:
 i. Probable cause hearing, 1st appearance - Danny Day
 ii. 2nd arraignment, bond hearing - Gordon Senerius
 iii. Trial atty., sentencing - Lee Cole
 iv. Direct appeal - Katherine Hudgins

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

Vacate sentence and conviction, Reduced sentence,
Run all charges Concurrent, Retrial

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

no

STATE OF SOUTH CAROLINA)

County of Oconee)

VERIFICATION

2019 CP 37.564

I, Jacob Daniel Dotson, 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.



SWORN to and subscribed before me this 9th
 day of September, 2019.

C. D. Jones (L.S.)
 Notary Public

My Commission Expires: 8/5/2024

2019 SEP 12 PM 12:19

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT

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

I, Jacob Daniel Dotning 209 CP 37.544, 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
9th day of September, 2019.

C. D. Jones
Notary Public

My Commission Expires: 8/5/2024

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2019 SEP 12 PM 12:19

STATE OF SOUTH CAROLINA, IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE CLERK OF COURT FOR THE TENTH JUDICIAL CIRCUIT

Jacob Drotning, #370157, 2020 MAR -6 P 1:13 Case No.: 2019-CP-37-564

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN AND MOTION FOR A
A MORE DEFINITE STATEMENT**

The State (Respondent), making its return to the application for post-conviction relief filed by Jacob Drotning (Applicant) on September 12, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to orders of commitment of the Oconee County Clerk of Court. During its July of 2014 term, the Oconee County Grand Jury indicted Applicant for attempted murder (2014-GS-37-742) and second-degree arson (2014-GS-37-743). During its May of 2015 term, the Grand Jury indicated Applicant for criminal domestic violence of a high and aggravated nature (2015-GS-37-441) and malicious injury to property (2015-GS-37-442). Applicant was represented at trial by Gregory Lee Cole, Jr., Esquire, (trial counsel) and Solicitor David R. Wagner, Jr., and Assistant Solicitor Lindsey Satterfield Simmons prosecuted the case. On October 17, 2016, through October 20, 2016, Applicant proceeded to a jury trial with the Honorable R. Scott Sprouse presiding. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Sprouse sentenced Applicant as follows: for attempted murder, to imprisonment for thirty years; for second-degree arson, to imprisonment for twenty years, to be served consecutively with the first sentence; for criminal domestic violence of a high and aggravated nature, to imprisonment for twenty years, to be served concurrent to the first sentence;



and for malicious injury to property, to imprisonment for five years, to be served concurrently with the first sentence.

Trial counsel filed a timely notice of appeal. On appeal, Applicant was represented by Appellate Defender Katherine H. Hudgins (appellate counsel) of the South Carolina Commission on Indigent Defense. Assistant Attorney General V. Henry Gunter, Jr., represented the State on appeal. Appellate counsel argued the trial court erred in allowing Applicant to be tried for criminal domestic violence of a high and aggravated nature and attempted murder because the prosecution of Applicant for both of those offenses violated the double jeopardy clause. The South Carolina Court of Appeals affirmed in an unpublished opinion. State v. Drotning, Op. No. 2019-UP-217 (S.C. Ct. App. filed June 19, 2019) (per curiam).

II. Current Application

Applicant filed his application for post-conviction relief on September 12, 2019. He alleges therein that he is entitled to post-conviction relief on the grounds that (1) trial counsel was constitutionally ineffective for failing to investigate and be prepared for trial and (2) the State committed prosecutorial misconduct by allowing one of its witnesses to have direct contact with the jury on multiple occasions before trial.

Applicant prays the Court will grant post-conviction relief and (1) vacate his sentences and convictions, (2) reduce his sentences, (3) run all of his sentences concurrently, and (4) grant him a new trial. Attached to this return and incorporated by reference are the records of the Oconee County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, the appellate records from Applicant's direct appeal, and the application for post-conviction relief. Respondent reserves the right to amend this return upon its receipt of any relevant materials.

III. Response to Applicant's Claims

Applicant's claim plea counsel failed to conduct an adequate pre-trial investigation.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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. With respect to guilty plea counsel, Applicant must show that there is

a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in

the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Applicant claims plea counsel was constitutionally ineffective for failing to conduct an adequate pre-trial investigation. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *Id.* at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

In this case, Applicant has failed to provide an example of what further investigation plea counsel should have conducted or what potential exculpatory evidence Applicant alleges plea counsel would have discovered had he done so. At his plea hearing, after having been sworn,

Applicant affirmed to Judge Verdin that he had discussed the case with plea counsel and was happy with counsel's actions on Applicant's behalf. In light of this, Respondent submits Applicant cannot meet his burden in showing plea counsel was constitutionally ineffective; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

Applicant's claim the State engaged in prosecutorial misconduct.

During a criminal trial, the conduct of the jurors should be free from extraneous or improper influences. State v. Bantan, 387 S.C. 412, 422, 692 S.E.2d 201, 206 (S.C. Ct. App. 2010) (quoting State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999)). Such misconduct is not such that would affect the verdict unless the misconduct affects the jury's impartiality. Id. The test for evaluating alleged juror misconduct is whether or not there actually was misconduct and, if so, whether any harm resulted to the defendant. Id. (quoting State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (S.C. Ct. App. 2005)). A defendant who has been convicted of a crime is not entitled to a new trial for every act of misconduct by or affecting the jury because such misconduct in and of itself does not justify the grant of a new trial; rather, in order for the defendant to be granted a new trial, the misconduct must relate to a material matter in dispute and must be such so as to indicate an influence of bias or prejudice in the jurors' minds. Id. (quoting Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, 682 S.E.2d 489 (2009)).

Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). An applicant can allege constitutional

violations in a PCR action unless he could have raised the issue on direct appeal. Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (affirming the PCR court's denial of relief because the applicant could have argued on direct appeal that the trial court erred in admonishing applicant's defense attorney and that the State improperly commented on the applicant's failure to call his wife as a witness at trial); S.C. Code Ann. § 17-27-20(b) (1976)); but see Fortune v. State, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some instances, an applicant may argue a claim for post-conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel; recognizing Fortune was entitled to a new trial because the State made improper statements during its closing arguments at trial). Applicant could have raised the issue he has alleged as to prosecutorial misconduct during his trial, and should be prevented from doing so now.

Respondent submits that Applicant cannot show that prosecutorial misconduct was committed in his case or that he is therefore entitled to relief; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper, at 265, 305 S.E.2d at 248 (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective for failing to conduct an adequate pre-trial investigation, but does not explain how counsel's conduct was inadequate, or what benefit

would have been gained from additional preparation. Applicant alleges that the State engaged in prosecutorial misconduct without providing any supporting facts or explanation as to the nature of the alleged misconduct, explaining what witness interaction with the jury, explaining what affect the alleged interaction had on the jury's verdict, and explaining what the State did to encourage the alleged interaction. Applicant fails to set forth with specificity the facts and circumstances upon the claims are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

V. Denial of All Other Allegations

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

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VII. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on Applicant’s claims and that Applicant be required to file an amended application in order to satisfy the motion for a more definite statement included herein.

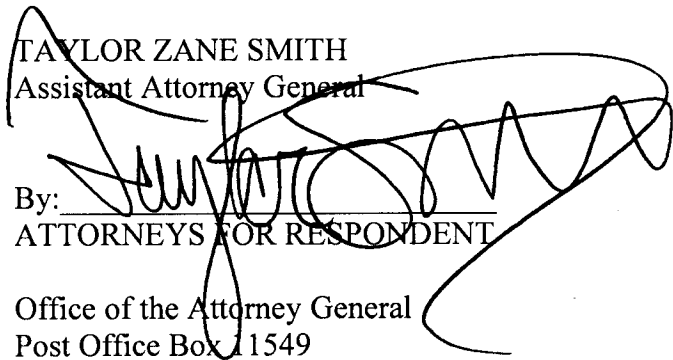
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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March 5, 2020

FILED
MELISSA C. DUNCAN
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

2023 FEB 22 AM 9:00

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

JACOB DROTNING,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

AMENDED APPLICATION

CASE # ²⁰¹⁹~~2020~~-CP-37-564

This matter comes before the Court by way of application of post conviction relief filed September 12, 2019, alleging ineffective assistance of counsel for failing to investigate and be prepared for trial and prosecutorial misconduct for allowing one of the witnesses to have direct contact with the jury on multiple occasions before trial. A Return and Motion for a More Definite Statement was made on March 5, 2020. This application is intended to supplement the Applicant's pro se Application to provide a more definite statement of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of plea counsel for:

1. failing to communicate and review discovery with Applicant;
2. failing to take exception to the jury charge that intent to kill may be inferred; (pp. 431, 441 & 445);
3. failing to object to questions asking third parties who Catherine Cook meant; (p. 130, l. 21 & 150, l. 17)
4. failing to move to strike testimony that Applicant would not waive rights; (p. 171)
5. failure to object to improper opinion testimony outside the scope of the witness' expertise; (pp. 286-7, 326, 348, l. 23, and 365)
6. failure to object to redirect beyond the scope of cross examination to bring out new matters; (pp. 126, 297)
7. failure to object to Sherriff Crenshaw's comments during sentencing regarding unproven bad acts at the jail; (p. 452) and

Copies to:
 Atty _____ (P) _____ (D) _____
 DSS _____ other emailed
 Mailed _____ Boxed _____ handed _____

ENTERED
COMPUTER

8. failure to object to Catherine Cook and her family sitting in close proximity to the jury and speaking to the jury pool prior to selection.

Due Process violations due to the State allowing Catherine Cook and her family to sit in close proximity to the jury and speaking to the jury pool prior to selection.

Respectfully submitted,

s/ Susannah Ross

Susannah Ross #11204

Attorney for the Applicant

330 E. Coffee St,

Greenville, SC 29601

(864) 242-0029

This 21 day of February, 2023

FILED TO COURT 2/22/23
 STATE OF SOUTH CAROLINA, MELISSA C. DUNN, CLERK OF COURT IN THE COURT OF COMMON PLEAS
 COUNTY OF OCONEE TENTH JUDICIAL CIRCUIT

2023 FEB 22 AM 9:00

JACOB DROTNING,
 APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
 RESPONDENT.

) AFFIDAVIT OF SERVICE BY
) ELECTRONIC MAIL
)
)
)

CASE # ²⁰¹⁹~~2020~~-CP-37-564

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by electronic 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 **Notice of Appeal** on the above-captioned matter on the following person by electronic mail:

Taylor Smith@scag.gov

s/ Susannah Ross
 Attorney for Defendant

This 21st day of February, 2023

FILED OCOONEE COUNTY, SC
 MELISSA C. BURTON
 CLERK OF COURT
 STATE OF SOUTH CAROLINA
 COUNTY OF OCOONEE
 IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

2023 AUG 21 P 1:10 Case No.: 2019-CP-37-564

Jacob Drotning, #370157,

Applicant,

v.

State of South Carolina,

Respondent.

AMENDED RETURN

The State (Respondent), making its amended return to the amended application for post-conviction relief filed by Jacob Drotning (Applicant) on February 22, 2023, by appointed counsel Susannah Ross. The Respondent made an initial Return on March 5, 2020 to the original prose application dated September 12, 2029. The Respondent would the Court the following:

I. Procedural History

Applicant is presently incarcerated according to orders of commitment of the Oconee County Clerk of Court. During its July of 2014 term, the Oconee County Grand Jury indicted Applicant for attempted murder (2014-GS-37-742) and second-degree arson (2014-GS-37-743). During its May of 2015 term, the Grand Jury indicated Applicant for criminal domestic violence of a high and aggravated nature (2015-GS-37-441) and malicious injury to property (2015-GS-37-442). Applicant was represented at trial by Gregory Lee Cole, Jr., Esquire, (trial counsel) and Solicitor David R. Wagner, Jr., and Assistant Solicitor Lindsey Satterfield Simmons prosecuted the case. On October 17, 2016, through October 20, 2016, Applicant proceeded to a jury trial with the Honorable R. Scott Sprouse presiding. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Sprouse sentenced Applicant as follows: for attempted murder, to imprisonment for thirty years; for second-degree arson, to imprisonment for twenty years, to be

served consecutively with the first sentence; for criminal domestic violence of a high and aggravated nature, to imprisonment for twenty years, to be served concurrent to the first sentence; and for malicious injury to property, to imprisonment for five years, to be served concurrently with the first sentence.

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80 Trial counsel filed a timely notice of appeal. On appeal, Applicant was represented by Appellate Defender Katherine H. Hudgins (appellate counsel) of the South Carolina Commission on Indigent Defense. Assistant Attorney General V. Henry Gunter, Jr., represented the State on appeal. Appellate counsel argued the trial court erred in allowing Applicant to be tried for criminal domestic violence of a high and aggravated nature and attempted murder because the prosecution of Applicant for both of those offenses violated the double jeopardy clause. The South Carolina Court of Appeals affirmed in an unpublished opinion. State v. Drotning, Op. No. 2019-UP-217 (S.C. Ct. App. filed June 19, 2019) (per curiam).

II. Current Allegations

Applicant filed his initial pro se application for post-conviction relief on September 12, 2019. He alleges therein that he is entitled to post-conviction relief on the grounds:

- (1) trial counsel was constitutionally ineffective for failing to investigate and be prepared for trial
- (2) the State committed prosecutorial misconduct by allowing one of its witnesses to have direct contact with the jury on multiple occasions before trial.

Applicant prays the Court will grant post-conviction relief and (1) vacate his sentences and convictions, (2) reduce his sentences, (3) run all of his sentences concurrently, and (4) grant him a new trial.

In the amended application, through counsel, Drotney makes the following allegations:

I. Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:

1. failing to communicate and review discovery with Applicant;
2. failing to take exception to the jury charge that intent to kill may be inferred; (pp. 431, 441 & 445);
3. failing to object to questions asking third parties who Catherine Cook meant; (p. 130, l. 21 & 150, l. 17)
4. failing to move to strike testimony that Applicant would not waive rights; (p. 171)
5. failure to object to improper opinion testimony outside the scope of the witness' expertise; (pp. 286-7, 326, 348, l. 23, and 365)
6. failure to object to redirect beyond the scope of cross examination to bring out new matters; (pp. 126, 297)
7. failure to object to Sheriff Crenshaw's comments during sentencing regarding unproven bad acts at the jail; (p. 452) and
8. failure to object to Catherine Cook and her family sitting in close proximity to the jury and speaking to the jury pool prior to selection. [NOTE – Motion for Mistrial – Tr.p. 58-61; 448]

II. Due Process violations due to the State allowing Catherine Cook and her family to sit in close proximity to the jury and speaking to the jury pool prior to selection.

ATTACHMENTS

Respondent attached to the original return the following and incorporated by reference before the Court:

Current PCR

- Return and Motion For A More Definite Statement
- Application for PCR
- Amended Application
- Clerk's Records
- SCDC Records
- Order For Production - February 2021

- Order For Production - March 2021
- Order For Continuance
- 2. Direct Appeal Records
 - Notice of Appeal
 - Remittitur
 - Opinion from Court of Appeals - Affirmed
 - Final Brief of Respondent
 - Final Brief of Appellant
 - Record on Appeal
 - Supplemental Record on Appeal

III. Response to Applicant's Claims

Applicant's claim trial counsel failed to conduct an adequate pre-trial investigation.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner 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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at

Applicant claims counsel was constitutionally ineffective for failing to conduct an adequate

pre-trial investigation by failing to communicate and review discovery with the Applicant. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

In this case, Applicant has failed to provide an example of what further investigation trial counsel should have conducted or what potential exculpatory evidence Applicant alleges counsel would have discovered had he done so. In light of this, Respondent submits Applicant cannot meet his burden in showing trial counsel was constitutionally ineffective; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983)

(holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

Failed to Object to Evidence at trial

Counsel is also alleged to have failed to object to a series of questions and admission of evidence throughout the trial. "Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995), *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992)). "Where counsel articulates a strategy, it is measured under an objective standard of reasonableness." *Id.* (citing *Roseboro*, 317 S.C. at 294, 454 S.E.2d at 313).

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.' " *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. 2052 (1984)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Id.* (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).¹³

"[Our supreme court] has held that the failure to object to improper hearsay testimony in a [CSC] case because the testimony is merely cumulative to the victim's testimony is not a reasonable strategy where the evidence is not overwhelming or the improper testimony bolsters the victim's testimony." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing *Dawkins v. State*, 346 S.C. 151, 156-57, 551 S.E.2d 260, 263 (2001)); see *Smith*, 386 S.C. at 568,

689 S.E.2d at 633 (finding the presumption of adequate representation based on a valid trial strategy disappears when trial counsel acknowledges there was no trial strategy in mind when failing to object to the improper hearsay and bolstering testimony). “ ‘[I]t is precisely this cumulative effect which enhances the devastating impact of improper corroboration.’ ” *Dawkins*, 346 S.C. at 157, 551 S.E.2d at 263 (quoting *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994)). In *Dawkins*, our supreme court found trial counsel's explanation that he did not want to confuse or upset the jury did not have merit because counsel “could have sought a determination as to the inadmissibility of the hearsay testimony out of the hearing of the jury as he had previously done.” *Id.* Further, the court found the strategy was inappropriate given the fact “there was not overwhelming evidence that [the defendant] sexually abused [the victim].” *Id.* at 157 n. 7, 551 S.E.2d at 263 n. 7

“However, where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Watson*, 370 S.C. at 72, 634 S.E.2d at 644 (citing *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992)). Distinguishing *Watson* from its decision in *Dawkins*, our supreme court found trial counsel did not fail to object because of the cumulative effect of the corroborative testimony, “but instead decided that objections to the corroborative testimony might lead to the more damaging introduction of the victim's videotape.” *Watson*, 370 S.C. at 73, 634 S.E.2d at 644. Thus, trial counsel articulated a valid reason for employing his strategy. *Id.*

In light of this, Respondent submits Applicant cannot meet his burden in showing trial counsel was constitutionally ineffective; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary

hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

Applicant's claim the State engaged in prosecutorial misconduct or improper juror contact.

Applicant claims that there was improper juror or jury venire contact during preliminary proceedings when the victim was seated in a location with the potential jurors. This was discussed during the trial at Tr. pp. 37-38, 58-61. In particular, the following occurred:

MR. COLE: Thank you, Your Honor. May it please the court. Your Honor, I would move at this time for a mistrial. I did not see this. I didn't recognize the alleged victim during jury qualification. However, my client, who was standing and watching through the window here, says that he saw the alleged victim and whoever she was seated with, he said that they were not seated on the back row at that time, that they were actually seated on one of the pews with the members of the jury panel. And he said he did see one -- he said he saw the alleged victim speak to someone with a tag on that indicated that they were a member of the jury panel.

And, Your Honor, he says that he saw the alleged victim stand up and proceed out of the courtroom when -- during the break between jury qualification and jury selection. So, Your Honor, because if she spoke to someone in here and then she went outside, Your Honor, I think that there is enough there that she could have spoken to someone.

We don't have any way of knowing who that was, and because of that, I think the entire jury panel is tainted so I would have to ask for a mistrial. I certainly and my client wants to get this trial over with, but we feel that -- I just feel that this jury is irreparably tainted at this time.

THE COURT: Mr. Cole, you don't know the identity of this person that your client alleges spoke to the victim?

MR. COLE: No. It was a person.

THE COURT: Was it a male or a female?

THE DEFENDANT: Male.

MR. COLE: It was a male, Your Honor.

THE COURT: Okay. But you don't know the identity of the person?

THE DEFENDANT: I think it was dismissed. He was outside the jury pool, so

--

MR. COLE: He was not one of the ones that was selected for the jury on this case.

THE COURT: Do you have any evidence that he spoke to other jurors regarding the case?

MR. COLE: Your Honor, there's no evidence, but that's what I'm worried about because he was -- all the ones that were selected for this case and all the rest of them were outside. And then also, if the alleged victim and whoever was with her were outside, then I think -- we just don't know, Your Honor. And with that level of not knowing, I think is enough to not have -- to say that the jury is tainted. And because the -- it's one of those things that we may never know, Your Honor, but the sanctity of the jury, as the court knows, is what our system is built on. So I think if there is even a suspicion that it was tainted, and we have that because we saw her speak to someone. My client saw her speak to someone and then she went outside, I think that that's enough for the suspicion to be there.

THE COURT: All right. Ms. Simmons.

MS. SIMMONS: Your Honor, as you know, we have a victim's advocate. She has been with the victim the entire time in the courtroom. I have spoken with the victim's advocate. I spoke with the victim and her family members. They indicate they have not had contact with any potential jurors. They knew that they should not have contact. They have not in any way, shape, or form. The victim was allowed to use the restroom during the break. Certainly there is no other restroom available to her, but it was a single trip to the restroom and back.

THE COURT: Was the victim's advocate with her when she went outside?

MS. SIMMONS: Her mother is who accompanied her to the restroom.

THE COURT: Well, I would note for the record -- well, Mr. Cole, I asked the jury panel the question: Have any members of the panel or members of the pool had conversations with any of the parties or witnesses to the case, and none answered in the affirmative so

I'm going to deny your motion at this time.

Tr.p. 58-61.

As noted, counsel Cole made a motion to mistrial which the trial court denied. Tr.p. 61.

It was further raised after the verdict as a motion for a new trial that the court denied. Tr.p. 448-

449.

During a criminal trial, the conduct of the jurors should be free from extraneous or improper influences. State v. Bantan, 387 S.C. 412, 422, 692 S.E.2d 201, 206 (S.C. Ct. App. 2010) (quoting State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999)). Such misconduct is not such that would affect the verdict unless the misconduct affects the jury's impartiality. Id. The test for evaluating alleged juror misconduct is whether or not there actually was misconduct and, if so, whether any harm resulted to the defendant. Id. (quoting State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (S.C. Ct. App. 2005)). A defendant who has been convicted of a crime is not entitled to a new trial for every act of misconduct by or affecting the jury because such misconduct in and of itself does not justify the grant of a new trial; rather, in order for the defendant to be granted a new trial, the misconduct must relate to a material matter in dispute and must be such so as to indicate an influence of bias or prejudice in the jurors' minds. Id. (quoting Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, 682 S.E.2d 489 (2009)).

Here, a timely motion for mistrial was made at the outset of the trial and subsequent to the verdict. Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). An applicant can allege constitutional violations in a PCR action unless he could have raised the issue on direct appeal. Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (affirming the PCR court's denial of relief because the applicant could have argued on direct appeal that the trial court erred in admonishing applicant's defense attorney and that the State improperly commented on the applicant's failure to call his wife as a witness at trial); S.C. Code Ann. § 17-27-20(b) (1976)); but see Fortune v. State, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some instances, an applicant may argue a claim for post-

conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel; recognizing Fortune was entitled to a new trial because the State made improper statements during its closing arguments at trial). Applicant could have raised the issue he has alleged as to prosecutorial misconduct during his trial, and should be prevented from doing so now.

Mc Respondent submits that Applicant cannot show that prosecutorial misconduct was committed in his case or that he is therefore entitled to relief; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper, at 265, 305 S.E.2d at 248 (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman, 276 S.C. 278, 277 S.E.2d 707 (1981))

IV. Denial of All Other Allegations

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

V. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on Applicant's claims .

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

By: 
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August 18, 2023

M
#13

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
COUNTY OF OCONEE) THE TENTH JUDICIAL CIRCUIT
FILED OCONEE COUNTY, SC
MELISSA Q BURTON
JACOB DROTNING, #370157) CLERK OF COURT 2019-CP-37-564

Applicant,

2023 AUG 21 P 1:10

CERTIFICATE OF SERVICE BY MAIL

v.

STATE OF SOUTH CAROLINA

Respondent.

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 Amended Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this 18th day of August, 2023



Zilcia Williams, Legal Assistant
For Respondent

ENTERED

COMPUTER

TENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Jacob Drotning,
Applicant,

V

State of South Carolina,
Respondent.

2019-CP-37-00564
TRANSCRIPT OF RECORD

September 16, 2024
Anderson, South Carolina

BEFORE:
The Honorable Kristi F. Curtis, Judge

APPEARANCES:

ATTORNEY FOR APPLICANT:
Susannah C. Ross, Esquire

ATTORNEY FOR RESPONDENT:
Talida Balaj, Assistant Attorney General

Tara T. Scott, CVR
Official Court Reporter

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(NO EXHIBITS INTRODUCED DURING THIS HEARING)

1 MS. BALAJ: May it please the Court? Talida Balaj on
2 behalf of the State of South Carolina. This is the post
3 conviction relief matter of Jacob Daniel Drotning v State,
4 case number 2019-CP-370-0564 out of Oconee County. During
5 its July 2014 term, the Oconee County Grand jury indicted
6 Applicant for attempted murder, indictment number 2014-GS-
7 37-742, and second degree arson, 2014-GS-37-743. During its
8 May of 2015 term, the Grand Jury indicted Applicant for
9 criminal domestic violence of a high and aggravated nature,
10 2015-GS-37-441 and malicious injury to property, 2015-GS-37-
11 442.

12 Applicant was represented at trial by Gregory Lee Cole,
13 Jr., and Solicitor David R. Wagner, Jr. and Assistant
14 Solicitor Lindsey Satterfield Simmons prosecuted the case.
15 On October 17, 2016 through October 20, 2016, Applicant
16 proceeded to a jury trial before the Honorable R. Scott
17 Sprouse. At the conclusion of the trial, the jury found
18 Applicant guilty as indicted. Judge Sprouse sentenced
19 Applicant to 30 years for attempted murder, 20 years for
20 second degree arson, to be served consecutively to the
21 attempted murder sentence, and 20 years for criminal
22 domestic violence of a high and aggravated nature to be
23 served concurrent to the first sentence, and five years for
24 malicious injury to property to be served concurrently with
25 the first sentence.

1 Trial counsel filed a timely notice of appeal. On
2 appeal, Applicant was represented by Appellate Defender,
3 Katherine H. Hudgens of the South Carolina Commission on
4 Indigent Defense. Assistant Attorney General V. Henry
5 Gunter represented the State on appeal. Appellate counsel
6 argued the trial court erred in allowing Applicant to be
7 tried for criminal domestic violence of a high and
8 aggravated nature and attempted murder because the
9 prosecution of Applicant for both of those offenses violated
10 the double jeopardy clause. The South Carolina Court of
11 Appeals affirmed Mr. Drotning's convictions in an
12 unpublished opinion, *State v Drotning*, Opinion number 2019
13 UP 217 filed June 19, 2019.

14 Applicant then timely commenced this PCR action on
15 September 12, 2019, asserting he is being held in custody
16 unlawfully, alleging trial counsel was constitutionally
17 ineffective for failing to investigate and be prepared for
18 trial, and the State committed prosecutorial misconduct by
19 allowing one of its witnesses to have direct contact with
20 the jury on multiple occasions before trial. Respondent
21 made its return and motion for more definite statement on
22 March 6, 2020. On February 22, 2022, Applicant filed an
23 amended application asserting the following additional
24 allegations; failing to communicate and review discovery,
25 failing to take exception to the jury charge that intent to

JACOB DROTNING-DIRECT EXAMINATION

5

1 kill may be inferred, failing to object to questions asking
2 third parties who Katherine Cook meant, failing to move to
3 strike the testimony that Applicant would not waive rights,
4 failing to object to improper opinion testimony outside the
5 scope of the witnesses' expertise, failing to object to
6 redirect beyond the scope of cross-examination to bring out
7 new matters, failing to object to Sheriff Crenshaw's
8 comments during sentencing regarding unproven bad acts at
9 the jail, and failure to object to Katherine Cook and her
10 family sitting in close proximity to the jury and speaking
11 to the jury pool prior to selection. Additionally, he
12 alleged due process violations due to the State allowing Ms.
13 Cooke and her family to sit in close proximity to the jury
14 and speaking to the jury pool.

15 As relief, Applicant requests that his sentence and
16 conviction be reversed and remanded and remand for a new
17 trial. And at this time, we would ask Ms. Ross to indicate
18 what allegations she intends to move forward on.

19 MS. ROSS: Thank you, Your Honor. May it please the
20 Court. I intend to move forward on each of the allegations
21 listed in the amended application, and then as to whatever
22 would come out in Mr. Drotning's testimony, if something new
23 comes out, I would move to conform the pleadings to the
24 evidence pursuant to Love v State. I do understand that
25 this was argued on appeal, the double jeopardy argument. I

JACOB DROTNING-DIRECT EXAMINATION

6

1 also argue that is a due process argument at this time.
2 I've only got one copy, but I would cite State v Green 814,
3 S.E. 2nd 496, which is a 2018 case, came after Mr.
4 Drotning's unpublished opinion. But it does cite language
5 that the rule of one is homicide one punishment. I
6 understand this was not a homicide, but it was an assault
7 and battery with intent to kill. I believe, in light of
8 this newer case law, and that opinion cites Fall v United
9 States, which is 470 U.S. 856, a 1985 case. I have one copy
10 of the opinion that I can hand up for a hard copy, but I
11 know that was argued on appeal. I'm just putting this
12 argument on the record, because this was a large number of
13 charges based on one act. So, at this point, I called Mr.
14 Drotning to the stand.

15 THE COURT: Sir, if I can get you to raise your right
16 hand as best you can.

17 WHEREUPON, Jacob Drotning, having
18 first been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ROSS:

21 Q All right, Mr. Drotning, we've discussed in every PCR
22 what your remedy is, your relief. And that is to start
23 everything over where you could have everything run
24 consecutively and potentially get a larger, longer sentence.
25 Are you willing to take that risk and proceed today?

JACOB DROTNING-DIRECT EXAMINATION

7

1 A Yes.

2 Q All right, let's go over a little bit about why
3 you've alleged that your trial attorney was ineffective.

4 A Okay.

5 Q You can start telling me or I can ask you questions.
6 How would you ---

7 A You go ahead and start.

8 Q Okay, I have that failing to communicate and review
9 discovery with you. Discuss how many times did you meet with
10 your trial attorney prior to trial?

11 A One time.

12 Q All right, and where was that?

13 A At the Oconee County jail.

14 Q And what was the extent of the review of the
15 discovery and evidence against you at that meeting?

16 A He pretty much just introduced himself, told me his
17 name. He said he would be back to actually discuss a lot of
18 the things that were in discovery. He had brought a box
19 with him that had a bunch of stuff in it that he said he had
20 gotten from my previous attorney, Gordon Senerius. And that
21 was about it. It was maybe a 10 or 15 minute interview.

22 Q Do you know if he was retained or appointed?

23 A Appointed.

24 Q And talk to me about Gordon Senerius. Was he
25 retained or appointed?

JACOB DROTNING-DIRECT EXAMINATION

8

1 A He was appointed, too. My original attorney was
2 actually Danny Day, the Court appointed public defender. He
3 withdrew because he was saying there was some sort of
4 conflict of interest. So then they appointed Gordon
5 Senerius. He remained my attorney for the better part of
6 two years while I was in the Oconee County jail. And for
7 some reason, instead of going to trial that week, he
8 withdrew himself as my attorney.

9 Q All right, and discuss what was the context of going
10 to trial that week? What are you referring to?

11 A Well, we were set to go to trial that Monday. So
12 when I showed up thinking we were going to trial, he
13 actually recused himself.

14 Q Okay, and when you say that Monday, maybe, how many
15 months was that before your actual trial, that you were set
16 to go to trial with Mr. Senerius?

17 A Maybe three or four. Maybe as many as six. I don't
18 remember exactly. I think that was in April that I finally
19 went to trial in November, or October. In October.

20 Q And you said your new attorney ended up, your trial
21 attorney met with you one time after that?

22 A That's correct.

23 Q Okay. Now what did he -- did he just plop the box of
24 a discovery in front of you, or what did he do?

25 A No, it was kind of just on the floor at his feet.

JACOB DROTNING-DIRECT EXAMINATION

9

1 And just kind of looked into it. He poked around into it a
2 little bit, like he was going to be digging through it
3 later.

4 Q Had you had an opportunity to fully review that
5 discovery?

6 A Yes, extensively.

7 Q Now, what was the extent of your discussions with
8 your trial attorney about that discovery?

9 A We didn't really talk too much. You're talking about
10 me and Lee Cole?

11 Q Yeah.

12 A We didn't really talk too much about it. I kind of
13 give him an idea of what I thought that the big problems
14 were and the direction that we could take. But he said he
15 had his own agenda, his own ideas. But he was going to go
16 through it further and then come back and discuss it more
17 with me later.

18 Q Did that occur?

19 A No, he never came back.

20 Q Now, what were some of your ideas? You're alleging
21 ineffective assistance of trial counsel, and part of that is
22 saying he did not do some things that you believe he should
23 have.

24 A Right. A big part of it was I wanted to testify. I
25 thought it was really important that I get up and say

1 something on my behalf. Maybe rebut the testimony by Brian
2 Evans and all the stuff that he had said. We actually had a
3 recess.

4 Q Let's talk about who was Brian Evans?

5 A Brian Evans was -- he was a piece of garbage that was
6 staying in the jail. I had really ticked him off, and he
7 said he was going to show me --

8 MS. BALAJ: Objection. Hearsay, Your Honor.

9 MS. ROSS: It goes to state of mind of the Applicant.

10 THE WITNESS: And he is somebody who testified against
11 me.

12 THE COURT: Hang on just a minute. State of mind as to
13 the Applicant?

14 MS. ROSS: To what the Applicant thought he could
15 state to this witness. Let me withdraw it, and I'll try
16 clarify and come back.

17 THE COURT: Yeah, the objection is sustained.

18 Q Now, talk about Brian Evans. Did you know Brian
19 Evans?

20 A Briefly.

21 Q And he testified at your trial, is that correct?

22 A He did.

23 Q And what was the testimony, based on what you heard
24 in your trial, him say about you?

25 A He said that I told him that I did it, and that I

JACOB DROTNING-DIRECT EXAMINATION

11

1 was happy about it.

2 Q Now, did you, in fact, tell him that?

3 A Absolutely not.

4 Q Now, did you have some opinions or ideas of how to
5 cross-examine him by your lawyer?

6 A No. No.

7 Q Did he have any reason to say bad things about you
8 at your trial?

9 A Yes.

10 Q What were those bad things? I mean, what were those
11 reasons?

12 A I don't know if I really want to stay in the open
13 court like this. But right when I had gotten into the jail
14 it's kind of like free for all where you put your bed stuff.
15 I had walked into that room, and he was giving oral sex to
16 his roommate. And that really had freaked me out, so I kind
17 of laughed about it and told everybody. And that's kind of
18 what started the feud between me and him and another guy.

19 Q Okay, so did you think he had a bias when he
20 testified?

21 A Absolutely.

22 Q And did you explain to Mr. Cole that you thought that
23 this witness had a -- that witness Brian Evans had a bias
24 against you?

25 A Yes.

1 Q And did he impeach or question that witness about
2 that bias effectively, in your opinion?

3 A I don't think so.

4 Q Okay. What do you think he should have said or could
5 have said?

6 A Well, one of the things that he said to Brian Evans
7 while he was cross-examining him is, he just walked up to
8 him and said, "Are you a snitch?" And leaving it wide open.
9 And then he gave him a chance to explain as to why he's not
10 being a snitch, and what he's saying is correct and
11 justified. And that, to me just seemed like something -- I
12 mean, leaving it open like that. Letting him just say
13 whatever he wanted to say to try to explain himself.

14 Q So, you didn't feel like that was effective cross-
15 examination?

16 A No.

17 Q Did he look into any records to see when exactly
18 y'all were housed together and whether you all had the
19 opportunity to have the conversation that Brian Evans says
20 that you had?

21 A Not that I'm aware of.

22 Q Is there anything else that you feel like could have
23 been done to impeach or question Brian Evans as a witness
24 against you?

25 A Not to my understanding.

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13

1 Q How long did you know -- did you expect him to
2 testify at your trial?

3 A Brian Evans?

4 Q Uh-huh.

5 A Yes.

6 Q And why is that?

7 A Well, they gave him a pretty good deal, so he had to
8 testify.

9 Q Do you know what that deal was?

10 A Well, he was looking at fifteen to life and he got
11 two years, so I can understand. Probably something to do
12 with that.

13 Q Was there burglary first? What was the charge.

14 A I think it was manufacturing third, some other stuff.
15 I'm not sure. He talked about it a lot. And looking at
16 life, he thought it made him look tough.

17 Q But again, the statement that he said you made, your
18 testimony is you never made them?

19 A Correct.

20 Q And had you testified at trial, what would you have
21 told that jury?

22 A That he was a liar. That I would never, ever impeach
23 myself like that. Especially to someone like him or a
24 complete stranger, which he was. I mean, it would be
25 detrimental to my case, regardless of the fact of whether

1 it's true or not.

2 Q All right, now let's talk about what else would you
3 have testified to that jury, if you had testified in the
4 case in your own defense?

5 A That the only reason anybody came to help Katherine
6 is because I stopped three vehicles on the road, screaming
7 at them to help us, that the house was on fire, that Katie
8 was hurt. Not just the one vehicle. It was three. The
9 third one almost ran me over, knocked me out of the way. I
10 mean, they find attempted murder in there?

11 Q And did the State -- you said not just one, but three.
12 The State presented one witness.

13 A Well, they presented one witness who completely
14 changed his testimony, which Lee Cole didn't know he changed
15 it, because he didn't read statements or didn't care.

16 Q Do you recall the name of that witness, the person
17 driving by that you saw?

18 A Yeah. Matthew Cehula.

19 Q And were you aware, because of your review of
20 discovery, of a prior statement by Mr. Cehula that was
21 inconsistent with his in-trial testimony against you?

22 A Uh-huh. Yeah, his original statement was in the
23 discovery.

24 Q And do you recall, and can you tell the Court what
25 that original statement was and how it was different from

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1 the trial testimony?

2 A Yeah. It said that he saw Katie standing outside at
3 the neighbor's door, and he had seen me run out of the door
4 next to that, which was the one we were renting at the time.

5 Q That was his prior statement?

6 A That was his original statement. At the trial, he
7 said that he saw me, I was acting crazy. He thought I was
8 drunk, so he called 911. He didn't see anybody.

9 Q Did they put in any other records of him calling 911
10 or was any of that testimony presented? Do you recall?

11 A No, not that I remember.

12 Q And you're saying that Mr. Cole was not effective in
13 impeaching Mr. Cehula with his prior statement?

14 A That's correct.

15 Q And you believe that's because he wasn't even aware
16 of it?

17 A I believe so.

18 Q Now, any other areas that you feel Mr. Cole was
19 ineffective in impeaching witnesses against you?

20 A Can I review this for a minute?

21 Q Sure. And I may direct you to testimony of the EMS
22 worker who came to the scene, and the nurses.

23 A It's really hard to get my thoughts in order right
24 now. Where were we?

25 Q Well, any other witnesses that you feel like Mr. Cole

1 should have impeached more effectively, or questioned more
2 effectively?

3 A I don't know. There were the nurses who seemed to
4 disagree with whether she was saying yes or no to their
5 questions. Maybe. I feel like there's kind of being more
6 lead or leading her responses.

7 Q And there was one I just marked, page 150, line 16.
8 There's something about lit on fire, and then who is "he".

9 A Yes. Harley Chapman asked her what happened and he
10 said that -- asked her what happened. He says that she said
11 yes, he lit me on fire, and he says that he is me. But, I
12 mean, he would have no way of knowing who the he is that
13 she's talking about.

14 Q And was there any interpretation of her nodding at
15 any point?

16 A No, I believe I was at the hospital later on.

17 Q Now, is there any other times that you think that he
18 could have been more effective in his cross-examination?

19 Excuse me, I'm reading over my notes at the same time. How
20 about the writing brought in by the nurse?

21 A Barry Owens had said that I said I said I set her on
22 fire, which I didn't. And that isn't anywhere in any
23 testimony, and he did not object to that.

24 Q So, there were no prior statements, nothing in
25 discovery about that? That just came up for the first time?

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17

1 A Yeah, it was just gilding the lily, if you will.

2 Q Do you recall where that was in the transcript?

3 A Page 162, lines one through twenty-three. Most of
4 his testimony, I believe, is 161 through 169. He says he
5 was first on the scene and that Katie was alone on the
6 neighbor's porch, which would kind of go along with the
7 original statement that Matthew Cehula had said. Seeing her
8 on the neighbor's porch and later recanting, saying that he
9 hadn't seen her. Which, I mean, just erodes the credibility
10 of anything he was saying.

11 Q And the jury wasn't -- he didn't quote -- the jury
12 wasn't allowed to hear those inconsistencies?

13 A No, they were not.

14 Q And you believe that's because your attorney was
15 ineffective in bringing out that testimony and impeaching
16 this witness?

17 A Yeah, I don't believe he actually read most of the
18 discovery to know if people are telling the truth or not, or
19 changing their statements, or embellishing, or anything.

20 Q Are there any other specific examples of that that
21 you'd like to put on the record? And that's okay if they're
22 not. We can move on and come back around.

23 A Let's move on.

24 Q Okay. Let's talk about the number of charges that
25 you had against you. How did that come about? Like, you

1 had some charges and then as you proceeded to trial, there
2 were more charges?

3 A Well, like when I was arrested, I was just kind of
4 thrown into a holding tank and I sat there for a couple of
5 months without being charged at all. Then two charges came
6 up around July, I suppose. Somewhere around there. That was
7 the attempted murder and the arson, I believe, sounds right.
8 And then a few months later, more charges just dropped in
9 for reasons I didn't understand. Because they seemed to be
10 almost duplicates of the original. Like, lesser included, I
11 would think.

12 Q And did your lawyer argue against those additional
13 charges?

14 A I don't remember exactly.

15 Q Well, he preserved some for the record for appeal.
16 So, he did make some objections to them.

17 A Right. Yeah, he had made a motion at the beginning
18 of the trial, I believe, for running them together or maybe
19 duplicate charges, or something like that. I don't believe
20 he said double jeopardy.

21 Q You don't believe he used those words?

22 A I don't believe he did, but I think he did argue
23 against all four charges being tried at the same time.

24 Q Let me go back to my notes. I have in my notes page
25 89 and 141. So, he does mention -- I'll just show you page

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1 89. This is where he's making those arguments about double
2 jeopardy. Would you believe that if that was in there?

3 A He did actually say double jeopardy then?

4 Q I believe so. Though, actually looking at it, I'm not
5 sure he used those words. Now, going on, did -- I have on
6 page 130 at line 21, and 150 line 7, he did not object to
7 asking third parties to ID the Applicant. I'm handing up...

8 A Pages 151, you said?

9 Q 130, line 21.

10 A Oh. Asks, who is she referring to? And Isaac Lewis
11 responds, her husband, with no way of knowing that. And no
12 objection came from Lee Cole. Like he answered for her
13 saying, she's talking about her husband.

14 Q Correct. And there was no objection when that
15 occurred during your trial?

16 A Correct.

17 MS. ROSS: Now, just going on. And I'll look for
18 guidance, Judge. On a number of these it's in the
19 transcript. Would you like me to bring it out through the
20 testimony of the Applicant? Just, no objections that were
21 made in the transcript for each one, or can the transcript
22 speak for itself? For instance, Mr. Cole didn't take
23 exception to the attempted murder charge. Bring that out
24 through the Applicant?

1 THE COURT: Sure.

2 Q Okay, let's talk about -- haven't we discussed and
3 talked about the attempted murder charges in your case?

4 A As pertaining to?

5 Q The inference. Let me just...

6 A Oh, intent to kill?

7 Q Uh-huh. Okay. The judge's instruction on page 431
8 line 9, is intent to kill may be inferred when it's
9 demonstrated that the voluntarily committed an act.

10 A Okay.

11 Q Okay? Did your lawyer, to your recollection, object
12 to that instruction about the inference?

13 A I don't believe so.

14 Q And at page 437, line 16, he has no -- there are no
15 exceptions to the jury charges here, correct?

16 A And he says, no, sir.

17 Q Now, there's also been some testimony about -- on
18 page 171. And you've got your notes.

19 A Just from the notes.

20 Q Yeah. I believe, according to my notes, this is
21 testimony about Scott Bradley Arnold. He's talking about
22 your demeanor.

23 A Uh-huh.

24 Q Go ahead.

25 A Well, there were a few people that were mentioning my

JACOB DROTNING-DIRECT EXAMINATION

21

1 demeanor, acting like I was uncaring. They had me in the
2 back of a squad car where, I mean, I was out of my mind,
3 freaking out. And I was trying to get them to admit it as
4 evidence, so the jury could see how my actual demeanor was.
5 And I was trying to bring that to Lee Cole. And he was
6 like, no, they probably don't even have it anymore. It
7 doesn't matter. I said, well, they're questioning how I was
8 at the scene. They were questioning my attitude towards
9 what had happened. And they were saying that I was acting
10 indifferent, apathetic, when it was wildly the opposite.
11 And I think that gave the jury an idea that I really didn't
12 care what was going on.

13 Q And were you asking about whether there was maybe an
14 in-car camera ---

15 A Yeah.

16 Q --- or some video evidence of your demeanor?

17 A Yeah. When Gordon Senerius was my attorney, he had
18 said that there was footage.

19 Q Yet he never -- Mr. Cole never got that footage?

20 A He never presented it.

21 Q Did he ever get it, or at least review it with you,
22 if he had gotten it?

23 A I do not know. I don't know if he received it or
24 not.

25 Q Okay. Now, let's talk a little bit about Catherine

1 Cook's seating position during the trial, in proximity to
2 the jury, and maybe any, kind of, undue influence that might
3 have been due to her proximity to the jury, or actually
4 knowing jurors.

5 A Yeah, she did actually know one of the jurors. She
6 worked with one of them over at Food Lion, and his mother.
7 And when they were doing the jury selection, the kid had
8 come up. And, you know, the prosecution was like, yes,
9 we'll admit him. I've got his name here.

10 Q What's the name?

11 A Brian White. He was Juror number 271. I thought he
12 was a problem. And I said to Lee Cole -- because right when
13 Lee Cole was like, yes, we'll accept the juror. He had a
14 paper in his hand, and he crushed it like -- it was giving
15 off some kind of emotion I couldn't really figure out at the
16 time. And I said to Lee Cole, I was like, that's a problem.
17 And he's like, oh, no, it's fine. It's fine.

18 Q Okay. And he didn't give you any time to explain?

19 A No. And he just, kind of, kept rolling on with jury
20 selection.

21 Q Did you tell Lee Cole that that juror knew your wife?

22 A We didn't know yet. I could definitely see that
23 there was a problem with having him on the jury. And he was
24 adamant about letting him on the jury.

25 Q Did anything -- when did it come out that he had

1 worked with her at Food Lion?

2 A A couple days later. They kicked him off the jury.
3 They had said that he told them he was discussing the case
4 with his mother. It was something along those lines. I
5 couldn't get the full story from it.

6 Q And he had been around in the vicinity of the actual
7 jury or jurors?

8 A Oh yeah, he was a selected juror.

9 Q Now, was there another issue with the jury sitting in
10 close proximity to Ms. Cook?

11 A Well, I just thought that it was strange that
12 Catherine and her parents would be seated directly next to
13 where the foreman of the jury was. You know, and ---

14 Q And at some point that was addressed during your
15 trial?

16 A I don't believe so.

17 Q Okay. At least not fully, not effectively addressed?

18 A Not effectively.

19 Q One thing I just had in here, that the failure to
20 object to Sheriff Crenshaw's comments during sentencing
21 regarding unproven prior bad acts at the jail.

22 A Yeah.

23 Q Page 452.

24 A Well, you know, they take Sheriffs, and everybody
25 liked that, into consideration when doing sentencing. And

1 there had been an incident at the jail while I was there.
2 There was a riot that had broken out, and they brought up
3 that they handed out a bunch of charges, you know, to
4 various people. I was one of those people. Lee Cole was my
5 attorney, actually, for one of those charges. And we hadn't
6 addressed that, and it wasn't included in the trial, but the
7 trial was coming up first. So, Sheriff Crenshaw took it
8 upon himself to tell the Judge that I was already found
9 guilty for that. And Lee Cole didn't seem to care what he
10 said.

11 Q And just going back. I'm jumping around. I
12 apologize. Page 171. This is what I was looking for
13 before. Not only were they not getting the videotapes, but
14 Mr. Arnold, or Deputy Arnold, states that you would refuse
15 to waive your rights. Is that correct?

16 A That's correct.

17 Q Now, Mr. Cole objected to that in line 21, but he
18 never moved to strike the statement from the record.

19 A Scott Arnold was pretty -- I don't know how to put
20 it. He was very determined to get some answers that he
21 wanted. So, while I was in the back of the cop car, I told
22 him, you know, I'm not going to talk to you without an
23 attorney present. And that kind of agitated him, so he
24 slammed the door and he left. And then he'd come back a
25 little bit later. He'd ask me a bunch more questions, and

1 pushed me, and prodded me. I said to him again, I'm not
2 going to talk to you without an attorney.

3 Q And that's your constitutional right, is that
4 correct?

5 A That's correct.

6 Q And a Judge is not supposed to -- I mean, a jury is
7 not supposed to consider that in any way as evidence against
8 you one way or another?

9 A Right. Yeah. Like, oh, he must be guilty if he
10 wants -- doesn't want to talk to this police officer.

11 Q Now, I'm going to talk about some, what I would
12 argue, is improper opinion testimony outside the scope of a
13 witnesses' expertise. And this is, sort of, complicated,
14 but I'm going to point you to page 286 and 287. And what
15 was that? Can you get to where you were going with that?

16 A I don't know. These are more just suppositions.

17 Q Well, there was one right here on page 287, around
18 line 1. They're talking about -- this is, I believe, a
19 nurse. Is that correct?

20 A Uh-huh.

21 Q And she testified, I don't understand how she could
22 light herself on fire in the back. Was she there -- is that
23 part of her expertise, or was that just given as her
24 general...

25 A It seemed like just her own opinion and something

1 that she wouldn't really know anything about.

2 Q And there was no objection to that?

3 A There was not.

4 Q Now, it goes on to statements that she made on page
5 288. And I think that's where you were getting.

6 A Yeah, lines 12 to 18.

7 Q Okay, let's talk about that.

8 A It says, asked about being strangled. But, I mean,
9 it also says that she couldn't talk. So, she actually
10 didn't say anything. They have a bunch of statements from
11 her where it's all head nods, and she's nodding her head,
12 no. She's nodding her head, yes. She's shaking her head,
13 no. She's shaking her head, yes. And she took it upon
14 herself just to decide what all those meant, but I believe
15 that Catherine was on far too much medication to be properly
16 cross-examined at that time.

17 Q And the way she interpreted all those things to mean
18 were pointing to you?

19 A It better fit her narrative than what was actually
20 going on.

21 Q And then I'd move to page 326, line 14. This states
22 this question, "In your medical opinion, if someone is
23 doused in gas and lit on fire, does the actor intend to
24 kill?" And that was the question. And was there any
25 objection to that question?

JACOB DROTNING-DIRECT EXAMINATION

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1 A No. There was quite a bit of banter back and forth
2 where Lee Cole was, it seemed like, just checked out.

3 Q And Ms. Cook testified at trial, is that correct?

4 A She did.

5 Q Do you recall her saying that you doused her in fire?

6 A No, she did not. She said she didn't remember
7 anything. That's pretty much all she said. They asked her,
8 well, do you remember Mr. Drotning being in the house? She
9 said yes. What was he doing? Standing there holding a
10 gasoline can. Was he attempting to harm you, or hurt you,
11 or touch you in any way? She said no.

12 Q And you were being tried for assault and battery with
13 intent to kill, so that was the ultimate issue was your
14 intent, with the jury. And yet this doctor testified to
15 that without objection.

16 A Without objection.

17 Q All right. Now, 348, line 23. This is where they
18 move to -- the Solicitor asks to declare Agent Vaughn an
19 expert in origin in firewalls. He's the firefighter and
20 chief.

21 A Uh-huh.

22 Q And they asked him to be an expert. At 365, line 6.
23 It says, did you review the victim's injuries? Yes, I did.
24 And based on your training and experience as a
25 firefighter...

1 A Correct. Like, he doesn't have a medical experience.

2 Q So, they come from a incident. Okay, so he says he's
3 not a doctor. He can't say what the injuries came from.

4 A I mean, it seemed to me like there was a lot of that.
5 I mean, Mr. Wagner, as the prosecutor, was free to say
6 whatever he liked without objection. There were a few, I
7 think, that were so blatantly outstanding that Mr. Cole did
8 object, but most of the time he just said whatever he wanted
9 and the witnesses respond in kind. Like, at one point, Mr.
10 Wagner actually said that Brian was already serving his time
11 when he notified them, which is absolutely not true. He was
12 held in custody in the county jail, but was not given any
13 time to be served. He was held without bail, which is not
14 the same as him being serving his time.

15 Q Okay, and go back again. Mr. Brian was the Brian
16 Evans who testified in the case?

17 A That's right.

18 Q Okay, and so just clarify what you're saying there.

19 A He just wanted the jury to see that he had no
20 motivation to testify falsely against me, which is actually
21 absolutely not true. He had every motivation. Reduced time,
22 revenge.

23 Q All right. Do you recall which page that was on?

24 A Yeah, that's on page 394, lines 17, 18 and 19.

25 Q Now, there were a couple of incidents of redirect

1 examination. I'm reading this into the record, but that is
2 when direct has happened, cross has happened, and redirect
3 is designed to address any new issues that came up in cross.
4 It's not to redo the direct testimony. On page 126 at line.

5 A It says, "Katie, when you guys did fight or argue in
6 the home, where did you usually go?"

7 Q And he could have asked that initially ---

8 A Uh-huh.

9 Q --- rather than having that as the last question.

10 COURT REPORTER: I need you to say yes or no, please.

11 WITNESS: Okay.

12 Q And what was that? You said, uh huh. What did you
13 mean by that?

14 A Yes.

15 Q Page 297. This is the question on redirect. And
16 what is that?

17 A It says the burns Mr. Cole just asked you about on her
18 back. Did you have an opinion as to what type of burns they
19 are?

20 Q And then she says?

21 A From gasoline.

22 Q All right. And again, is that something that could
23 have been asked on direct rather than redirect as the final?

24 A Yes.

25 Q I know I've jumped around a lot. I believe I've

1 covered most of the items I have in my list. Is there
2 anything else you would add as to ineffective assistance of
3 trial counsel in your case? One thing I have in my notes.
4 Would you have wanted to change the venue or did you feel
5 like it was appropriate in your case?

6 A I know that they usually don't grant that, but that's
7 something that I had actually really tried to push for him
8 to ask, or to petition for. It's a small community and
9 there were so many EMTs, and police, and firefighters, and
10 everybody involved that everybody in the jury pool knew
11 everybody that was testifying. It seemed like a tough way
12 for me to get a fair trial. But he didn't bother to even
13 petition for a change of venue, whether it would be turned
14 down or not. He said, oh, no, they always get shut down.
15 You're not going to get it. I said, well, I know I won't
16 get it if you don't ask.

17 Q That's all the questions I have. But it is your PCR.
18 Do you have any other additions that you'd like to make?

19 A I'm just looking through my notes here. I've got
20 page 176, lines 1 through 4. It states that there were no
21 witnesses, and a bystander made the 911 call, when clearly
22 Matthew Cehula had said he made the 911 call. And I know
23 that there's another statement from somebody else saying
24 that they called 911.

25 Q And did you call 911?

JACOB DROTNING-CROSS-EXAMINATION

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1 A I couldn't. I had no idea where the phone was.

2 Q What did you do instead?

3 A I flagged all three vehicles, and then got the EMTs
4 there. And the EMTs were the first to arrive, not the
5 police. And when they arrived, they followed me next to
6 Catherine.

7 Q Anything further?

8 A I think that's -- I think that's it.

9 MS. ROSS: Please answer any questions from the
10 Assistant Attorney General.

11 CROSS-EXAMINATION

12 BY MS. BALAJ:

13 Q Mr. Drotning, I'm gonna try to go in order here, but
14 we did jump around a lot. Just to start off with, failing to
15 communicate and review discovery. You said you met with
16 your attorney one time. Which attorney?

17 A Lee Cole.

18 Q But you did meet with Mr. Senerius, correct?

19 A Yes.

20 Q How many times did you meet with him?

21 A Several.

22 Q Did you discuss discovery?

23 A Yes, we discussed discovery.

24 Q Did you talk about your case? Did you give him your
25 side of the story?

1 A Senerius?

2 Q Yes.

3 A Yes.

4 Q And you testified that you wanted to testify at
5 trial. Were you advised of your right to testify?

6 A I was.

7 Q And did you elect not to?

8 A I elected not to, because Lee Cole told me I can't.
9 He said, if you go out there and testify, I can't help you.
10 He said, she will use your words against you and twist them
11 around.

12 Q But ultimately, it was your choice not to testify.

13 A Well, if the only person on my side tells me they
14 can't help me if I go up there on the stand, then I really
15 have no option.

16 Q And you have alleged that Mr. Cole did not object
17 during this trial, that there's very few objections.

18 A There's much fewer than there should have been.

19 Q Do you recall that he made a pre-trial motion to
20 exclude all five of the statements wherein third parties
21 testified to what your ex-wife said, identifying you as the
22 one that burned her.

23 A I do believe that he tried to exclude hearsay.

24 Q And what was the ultimate result of that?

25 A Denial.

JACOB DROTNING-CROSS-EXAMINATION

33

1 Q And do you recall that whenever those statements were
2 brought in he objected to every single one of those
3 statements when the state attempted to bring them in?

4 A It was consistent with his original attempt at trying
5 to keep hearsay out of the trial.

6 Q And regarding your -- the testimony about waiving
7 your rights, do you recall that your attorney objected to
8 that?

9 A I don't recall.

10 Q And do you recall that the State withdrew that
11 question?

12 A I don't recall.

13 MS. BALAJ: Beg the Court's indulgence.

14 Q Regarding the allegation of the juror, who was the
15 juror that you were alleging the victim spoke with? Do you
16 know the name of the juror?

17 A She spoke to several people that were in the jury
18 pool. I was locked behind the doors still at that time.

19 Q Do you recall that your attorney did bring a motion
20 before the Court for a mistrial based on an allegation of a
21 juror that wasn't identified?

22 A I'm the one who brought it to him to do it, because
23 when I saw that she was with the jury pool talking to them,
24 and she's been in a jury before and knows that that's not
25 allowed, I prodded him and said, "Katie is in the jury pool

1 talking to them." And he says, "What? She's here?" And I
2 said, "Yes." And he said, "Okay, well, we'll figure this
3 out." And they were on break at this time. Then when they
4 came back from break, she was no longer seated with the
5 jurors. She was now seated at the back of the courtroom
6 where she was supposed to be.

7 Q But are any of those alleged jurors that you spoke
8 with here today to testify?

9 A No.

10 Q And do you know who they are?

11 A Personally, no.

12 Q And concerning the juror that alleged -- well, the
13 juror that knew the victim based on his mother. Do you
14 recall that he was excused and that an alternate was put in
15 his place?

16 A I am very aware, yes.

17 Q And do you recall that your attorney brought that to
18 the Court's attention?

19 A I don't know how it was figured out, that Brian White
20 and his mother knew Catherine. I was just told after the
21 fact.

22 Q Mr. Drotning, you don't deny that you were there
23 whenever your wife was hurt, right?

24 A I was at a scene when she was hurt, yes.

25 Q And do you recall that there were various experts

GREGORY LEE COLE-DIRECT EXAMINATION

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1 that testified that this was not an accident, it was not
2 self inflicted, it was intentional?

3 A There were a lot of experts testifying a lot of
4 stuff. Some outside their scope, some not.

5 MS. BALAJ: Beg the Court's indulgence. No further
6 questions, Your Honor.

7 THE COURT: Any redirect?

8 MS. ROSS: No, Your Honor.

9 THE COURT: You can step down.

10 MS. ROSS: We have no other witnesses, Your Honor.

11 MS. BALAJ: The State would call Gregory Lee Cole.

12 WHEREUPON, Gregory Lee Cole, Jr.,
13 having first been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BALAJ:

16 Q Mr. Cole, Good afternoon.

17 A Good afternoon.

18 Q I'm just going to begin with some general questions.
19 How long have you practiced law?

20 A Since 2012.

21 Q And how much of that has been criminal law?

22 A Approximately fifty percent.

23 Q And besides this case, have you done other murder
24 trials?

25 A Yes.

1 Q How many, approximately?

2 A Well, as far as pleas -- now, are you asking for
3 attempted murder or just murder?

4 Q Both.

5 A As far as pleas, I've done many for both attempted
6 murder and murder. I have tried to a jury trial, I know one
7 other murder trial at least, and then one other attempted
8 murder trial to a jury trial.

9 Q And in this case, could you give an overview of the
10 State's evidence in this case?

11 A In this case, the State's evidence, I'd say that there
12 was strong evidence that the State had, except for the
13 inconsistent statements of the victim. But otherwise, the
14 evidence of everybody else involved in the circumstantial
15 evidence and the evidence of the experts was, in my opinion,
16 overwhelming.

17 Q And Mr. Drotning testified indirect that he met with
18 you one time. How many times did you meet with Mr. Drotning
19 prior to trial?

20 A I looked back on my schedule, or on my notes on this,
21 and I don't have -- I wish I had the exact number written
22 down, but I know it was several times that I met with him.
23 I know it was more than one time. And we also had
24 communication by letter. I was appointed in late May of
25 2016. This case went to trial in October 2016. So there

1 was, you know, with everything else I had going on too,
2 obviously a rush to get this case ready for trial. And so
3 most of that was spent preparation on my part. And Mr.
4 Drotning was, in my opinion, very little assistance in his
5 own defense because he maintained that he didn't remember
6 anything about the entire incident. So, that was difficult
7 in a case where he -- a case where a client is more helpful,
8 I would have spoken to him more.

9 Q And you said that you were appointed a couple months
10 before the trial. How did that come about?

11 A I had a contract at the time with the Commission on
12 Indigent Defense for conflict cases in Oconee County. Cases
13 that, for whatever reason, the Public Defender had a
14 conflict on.

15 Q And Mr. Senerius represented him prior to
16 representation. Did you meet with Mr. Senerius?

17 A Yes, I did. And I spoke thoroughly with Mr. Senerius
18 about this case.

19 Q And did you also meet with Danny Day?

20 A Yes, he was the original attorney for Mr. Drotning.
21 He had less information, but I did discuss this case with
22 him as well.

23 Q And so, I know you kind of testified to this, but
24 could you go into what your strategy was for this trial?
25 What was the defense that you were intending to put forward

1 for Mr. Drotning?

2 A I felt like the best defense that we had was the fact
3 that the victim had made inconsistent statements, and that
4 that was the really the only avenue we had to get reasonable
5 doubt in the minds of the jury.

6 Q And moving on to his other allegations, failure to
7 object to questions, asking third parties who Catherine Cook
8 meant. You did make a pre-trial motion in limine to exclude
9 these statements. Could you go through that?

10 A Yes, I made a pre-trial motion in limine to exclude
11 any -- because there were so many statements from third
12 parties that intended to be -- that I knew the State
13 intended to enter. It was to exclude any hearsay testimony,
14 and that motion was denied. And I, going through those,
15 when those things came up, I did my absolute best to renew
16 my objection each time one of those matters came up.

17 Q And do you believe there is anything else you could
18 have done to get these statements excluded?

19 A I don't think so.

20 Q And moving on to his objection of failing to strike
21 the testimony that he did not waive his rights, you objected
22 to this, correct?

23 A Yes.

24 Q And do you believe that having the testimony
25 stricken would have done -- would have changed the outcome

GREGORY LEE COLE-DIRECT EXAMINATION

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1 of the trial in any way?

2 A No.

3 Q Could you speak about failure to object to the
4 improper testimony outside of the witnesses' expertise,
5 namely Allison Lamb, the nurse. Was there -- do you believe
6 that any of their testimony that was raised today through
7 Mr. Drotning's testimony, that -- about the self-inflicted
8 nature of the wounds or the fact that gasoline was used, was
9 there an objectionable basis to that?

10 A I don't believe so. Because those -- the doctor and
11 the nurse. I believe the nurse was -- I believe she was
12 qualified as an expert for trauma nursing, something to that
13 effect. And as part of her testimony went through her
14 experience, as well as the doctor. I believe, again, it was
15 trauma. He went through experience with burn victims. And
16 so based on the area that they were qualified in, and the
17 experience they testified to, I did not believe that that
18 was a basis to object to those couple of opinions that they
19 had that are at issue.

20 Q And just to go back a little bit. Did you hire an
21 expert in preparation for this trial?

22 A Yes, I did. I hired a forensic -- I'm sorry, an
23 arson investigator expert. And independent arson
24 investigator. And my intention was, and I put the State on
25 notice, that we would -- that I'd likely be calling him as

1 an expert witness. However, after he reviewed the evidence
2 in full in the case, he advised me orally that his opinion
3 was that his review of the evidence completely supported the
4 State's case and did not add to our case, and that if he
5 testified, his testimony would not help us at all. So, he
6 did not even do a written report for that reason. And
7 obviously, I did not call him as a witness.

8 Q And going back to the improper testimony outside of
9 expertise. Darren Vaughn also testified, who was an expert
10 in origin and fire determination. Did you believe that his
11 testimony of how the fire started, or the injuries that the
12 victim had, was that outside of the scope of his expertise?

13 A No, I believe it was within the scope of his
14 expertise.

15 Q And concerning his allegation, failure to object to
16 redirect beyond the scope of cross-examination. Looking at
17 Ms. Cook's testimony, do you recall asking her on cross that
18 -- you asked her whether or not she locked out the Defendant
19 when they fought?

20 A Yes. From my review of the transcript prior to this
21 hearing today, I do recall that.

22 Q And you recall, on redirect, the Solicitor asked
23 where the victim went when she fought with the Defendant?

24 A Yes.

25 Q Do you believe that this was outside the scope?

GREGORY LEE COLE-DIRECT EXAMINATION

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1 A No, I do not.

2 Q And do you recall Allison Lamb's testimony that you
3 asked her on cross about the various burns that the victim
4 had on her body?

5 A Yes. Yes.

6 Q And that she had burns on her back?

7 A Yes.

8 Q And do you recall that the Solicitor asked the
9 nurse, Ms. Lamb, what she believed the burns on the back
10 were from, and she answered, gasoline.

11 A Yes, I recall that.

12 Q And do you believe this was outside of the scope of
13 the cross-examination?

14 A No, I do not.

15 Q Going to the allegation, failure to object to
16 Sheriff Crenshaw's comments during sentencing. Do you
17 believe there was an objectionable basis to Sheriff
18 Crenshaw's statement about Mr. Drotning's disciplinary
19 issues at the jail?

20 A No, I don't believe there was an objectionable basis.
21 And based on the Court's explanation for its sentence, I
22 don't believe the Court took that into consideration anyway.

23 Q And what was the Court's focus in sentencing, if you
24 recall?

25 A The Court, from the review of the transcript and from

1 my memory, the Court's concern was the facts of this case
2 and the devastating nature of the injuries to the victim.

3 Q And moving on to the allegation about Ms. Cook and
4 her family sitting in close proximity to the jury and
5 speaking to the jury pool. How did -- you made a motion for
6 mistrial based on this. How did that come about?

7 A My client, Mr. Drotning, advised that she had been
8 sitting close to the jury pool. And I believe it was after
9 jury selection that he advised me of that. And he also
10 advised at that time that she spoke to one of the
11 prospective jurors, one of the members of the pool. And
12 that she left the courtroom when all of the jurors -- they
13 had a break, like a bathroom break. And that she, and
14 whoever was with her, left the courtroom with the jurors.
15 And so, when he brought that to my attention, I then moved
16 for a mistrial on those basis.

17 Q And at any point, did he point out the juror? Did
18 you actually see the juror that he was referencing?

19 A I did not see the juror that he was referencing.
20 Again, from my memory and from review of the transcript, it
21 appears that he advised me while we were sitting there that
22 the juror he was referencing, that he said that she spoke
23 to, was not a juror that was picked for this jury. However,
24 I moved for a mistrial anyway.

25 Q Moving on to some of the allegations that were raised

1 today. Allegations were raised for a failure to impeach
2 Brian Evans. Can you speak a bit to that?

3 A I have no recollection of communication with my
4 client regarding this Brian Evans. With a review of the
5 transcript and my memory, his testimony. I guess the thrust
6 of his testimony was that he saw my client out basically
7 hollering that his house was on fire. That's the best of my
8 memory. And so, I'm not really sure what the inconsistency.
9 There was a detail or something that was inconsistent, but
10 it did not seem material to me at the time.

11 Q So, I think you're referencing Matthew Cehula. But
12 concerning Brian Evans, who was his -- I guess his -- the
13 inmate who was with him in the jail cell. Did you have any
14 conversations with Mr. Drotning about him?

15 A I'm sorry, I got the names confused. That was right.
16 I was referencing Mr. Cehula in my last answer to your last
17 question. But as far as Mr. Edwards, yes. I guess the
18 snitch or the inmate in this situation. He was -- yeah. I
19 felt like we did everything we could to try to lessen his
20 credibility with a jury as much as possible. I questioned
21 him regarding his pending criminal cases. I questioned him
22 regarding him being -- him having. He had swastika tattoos
23 on him. He was obviously a neo Nazi or some type of person.
24 I made sure to point that out to the jury. I asked him
25 about him being in the same cell block as my client, and

1 that nobody else heard this supposed conversation. So, I
2 felt like I tried to do everything I could to discredit him,
3 for the jury to see him for what I still believe he truly
4 was. Just the person that, like so many of these jailhouse
5 stitches, a person trying to protect themselves.

6 Q Mr. Drotning also spoke about his right to testify.
7 Did you speak with him about his right to testify?

8 A Yes.

9 Q And what did you advise him?

10 A I advised him, as I do any client, that the decision
11 whether to testify or not is absolutely theirs. And I told
12 him that in this situation, that it is absolutely his
13 decision. Now, we did go over the pros and cons of
14 testifying. And that he would be subject to cross-
15 examination, which was the biggest one, to the best of my
16 memory in this case. That was the biggest drawback to him
17 testifying, was that the cross-examination would be rough.
18 And that it was my opinion, based on all of that, that it
19 would be best if he did not testify. However, I certainly
20 did not tell him not to testify. And I did not tell him
21 there's nothing I can do to help you if you testify, or
22 anything like that.

23 Q And moving on to his allegation of failing to take
24 exception to the jury charge, that intent to kill may be
25 inferred. Do you believe there was an objection or basis to

1 this charge?

2 A No. And that issue had -- at the time, my
3 understanding of the state of the law -- which it is
4 confusing. It's still confusing to me now, because the
5 Appellate Court opinion seemed to -- they talk about
6 inferred or implied malice. And this was inferred or
7 implied specific intent. There was a -- I think it was
8 either the King or the Taylor case that came out right after
9 this case that clarified that somewhat. However, even in
10 the most recent cases that I've seen, I still have not seen
11 anything that says that a jury could not infer what a person
12 -- could not infer intent from the actions of a person in a
13 specific intent case. In this case, to the best of my
14 memory and looking at the transcript, Judge Sprouse said --
15 just had one sentence about this. You can infer intent from
16 if the action that the person takes would necessarily result
17 in the death of the person, or something to that effect. So
18 I look at that as, you know, if you shoot a gun, if I shot a
19 gun in somebody's direction, and the person then was killed.
20 If I come back and said, oh, I didn't intend to kill that
21 person. Or I can say, I don't mean to kill you, while I'm
22 shooting a gun at you, then the jury will be able to infer
23 from my actions that I did have a specific intent to kill.

24 Q And to an allegation that was raised today. Mr.
25 Drotning testified that you should have objected to

1 testimony about his demeanor from officers and first
2 responders, and he alleged that there was a video of him in
3 the back of the cop car. Do you have any knowledge of this
4 video?

5 A Again, this just -- this was not part of the written
6 application. So it is something I'm trying to look at in my
7 memory today. I believe that there was a video. However,
8 from my looking at that video, my client's behavior was
9 extremely erratic. He was extremely distraught and making
10 statements and things. And then overall, I thought it was
11 my opinion that the video would do more harm than good. And
12 as far as his demeanor, the main thing I wanted to get to
13 the jury was that he was trying to -- he was making
14 statements and things like that, trying to help the victim.
15 Or please help the victim. And I believe I was able to get
16 that out through cross-examination testimony where the video
17 was not, or wouldn't have done any better.

18 MS. BALAJ: Beg the Court's indulgence.

19 Q Just a couple of brief questions about the change of
20 venue allegations. Was that ever brought to your attention?

21 A No, I have no recollection of discussing that. And
22 in this case, though, both of these parties were not from
23 Ocone County, and to the best of my memory had not lived
24 there that long. So, I don't -- you know, I don't know

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1 where a potential prejudice would have been. But
2 regardless, I have no recollection of any discussion with
3 Mr. Drotning about that.

4 MS. BALAJ: Your Honor, I have no further questions.

5 THE COURT: Ms. Ross?

6 CROSS-EXAMINATION

7 BY MS. ROSS:

8 Q Just on that point. But the testifying witnesses
9 would likely know some of the jurors because they work for .
10 EMS. Local Oconee people were testifying in front of a local
11 Oconee jury, as to the change of venue argument.

12 A I would agree. In a small county like Oconee, then
13 that would be evident in every case.

14 Q Correct. Okay. Now, and you'd agree, just let the
15 record speak for itself as far as what was in the transcript
16 and reviewed earlier through the testimony of Mr. Drotning?

17 A I'm sorry. Can you... I don't understand.

18 Q Well, I don't want to go back through the record, but
19 would you just let the record speak for itself as to -- does
20 the record accurately reflect your objections and what was
21 said during trial?

22 A Yes, I have no reason to believe the record, the
23 transcript, is not accurate.

24 Q All right. And I don't want to go back through
25 everything, but just one issue as to the -- what I would

1 argue was expert testimony as to the ultimate issue on page
2 326, line 14. I'm going to let you take a look at that.
3 This is from the -- I believe it was from the doctor. The
4 question was, in your medical opinion, if someone is doused
5 in gas and was lit on fire, does the actor intend to kill
6 them. And the doctor responds, yes. That would lead to
7 death. Correct?

8 A Yes. That's a paraphrase, I believe. Yes.

9 Q And you didn't object to that?

10 A No, I didn't.

11 Q And that was the ultimate issue in the case was
12 assault and battery with intent to kill.

13 A Well, I would agree that was the issue as to
14 attempted murder, and specific intent to kill was an issue.

15 Q All right. And then -- and just at one other place,
16 at page 287, there's a question of the nurse stating in her
17 opinion that she didn't understand how someone could light
18 themselves on fire and just have injury on the back. Did
19 you object to that at all?

20 A No.

21 MS. ROSS: All right. I have no further questions.

22 THE COURT: Any redirect?

23 MS. BALAJ: Beg the Court's indulgence. Your honor, I
24 have no further questions.

25 THE COURT: Thank you, sir. You may step down.

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1 Anything further from either party?

2 MS. BALAJ: Your Honor, the State would call David
3 Wagner.

4 WHEREUPON, David Wagner, having first
5 been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BALAJ:

8 Q Good afternoon, Mr. Wagner. I just have a couple of
9 questions for you, starting with some general ones. How
10 long have you been practicing law?

11 A This is about the 34th years.

12 Q And how much of that has been in criminal law?

13 A All of it.

14 Q And regarding this case, can you give an overview of
15 the State's evidence against Mr. Drotning?

16 A Yeah, I think this was one of the worst cases I've
17 seen in a long time. The victim, who is here today, and the
18 Defendant, they were married. Apparently they eloped to
19 Vegas, from what I remember, or something. They hadn't been
20 married that long. She was younger than he was. They ended
21 up in Oconee County. I believe he had some sort of a job he
22 was recruited for on monster.com or something like that.
23 They had, kind of, had a volatile history, or it appeared to
24 be going that way. There were some previous incidents, I
25 believe, where he had assaulted her or there was apparently

1 a lot of drinking going on at times. The night in question,
2 I think the evidence showed, he apparently came up behind
3 her and we believe choked her out. She had very little
4 recollection from the immediate time right after that. She
5 remembers waking up and feeling -- looking at her arms and
6 feeling like she was glowing, she said. That was the word
7 she used, glowing. What the evidence showed was that gas
8 had been poured all over her back. She was burned extremely
9 seriously, second and third degree burns. And it was all --
10 the burns were pretty much all over her back. All the front
11 of her was protected. So, she was laying on the floor in
12 the house and there in the bedroom when it happened. And
13 there was -- the gas can was, I believe, found out in the
14 hallway. It was, like, a red gas can. The arson
15 investigator, when he came, was Darren Vaughn from SLED.
16 There were four separate points of origin for fires in the
17 house. There were four separate fires that were started.
18 He said they were all started with gasoline, and they were
19 all an intentional fire. It wasn't an accident. The smoke
20 detectors were all knocked off, knocked down, pulled loose,
21 whatever. They were all gone. She ran out of the house and
22 ran to the neighbors. I can't -- I don't think anybody was
23 home. Somehow, I forget, 911 ended up getting called. The
24 paramedic came out there. I can't remember if he was still
25 a paramedic. He was a paramedic who later became deputy.

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1 So, I know him more from the Sheriff's Office than as a
2 paramedic, but he kind of wore two hats in this case on
3 that. But she was Medivaced, I believe, by helicopter to, I
4 assume, the burn unit. Her burns were so severe. She spent
5 about six months down there going through debridement
6 procedures that they have to do, which is extremely painful
7 and very serious, because they have to scrape all of the
8 dead skin off repeatedly. And so, they kept her there. She
9 was on death's door numerous times. They called her family
10 in. The family lived out of state, from what I remember, up
11 north or somewhere. They had to come in several times
12 because they said she wasn't gonna make it. But she pulled
13 through, and then she pulled through again. She ended up
14 recovering. She has horrible scars on her from the gasoline
15 and the fire, but they're all -- she made statements to the
16 nurses and the doctors when she got in there, when she was
17 flown in. I think they took her basically immediately down
18 there to Augusta. And I can't remember if she said her
19 husband did it, or when they asked she indicated that her
20 husband did it. She was nodding her head. She was having a
21 hard time, I believe, speaking. But she did remember some
22 things later on. She remembered waking up and glowing. She
23 remembered he was just standing there looking at her,
24 indifferent, so to speak, and did nothing to help her. When
25 the police got there, they questioned him. He blamed it on

1 a grill accident. The grill was outside. The fire all
2 happened, the burning all happened on the inside. There were
3 only two of them at home, the Defendant and the victim.
4 Nobody else lived in the house. He claimed that it was, I
5 guess, the gasoline got poured on the grill, trying to start
6 the grill to cook dinner. And I don't know if somebody
7 splashed it on her or somehow she got burned from that. Our
8 officers tested. They touched, you know -- this had just
9 happened. They touched the grill. The grill was cold to
10 the touch. Matter of fact, had dew on it. So, he wasn't
11 telling the truth about the grill accident. And she, you
12 know, she knew. Told them she knew he did it. And that came
13 kind of from that. There was also this Aryan Nation guy who
14 was in the jail cell with him that did testify that he
15 admitted doing -- setting her on fire. And he, I don't
16 remember much about him. He was just -- I think he pretty
17 much said, look, there are some things even Aryan Nation
18 guys don't like, and we don't like somebody who would do
19 this to his wife. And so, that was basically it in a
20 nutshell, that's what we had. I felt like if was a very
21 strong case. A little circumstantial in some ways, but
22 there was enough there. And it was such a horrible,
23 horrible thing to do to somebody that I don't believe we
24 made him any offers on it. It was just one of those things
25 we knew was probably going to be a trial, and we were going

1 to try to seek the max sentence if we could.

2 Q And concerning Brian Evans, the one who testified
3 that Mr. Drotning told him he did this. Was there -- Mr.
4 Drotning alleged on direct that there was some kind of deal
5 he was given in exchange for his testimony. Was there a
6 deal?

7 A I don't think there were any deals at all. I don't
8 remember what he got. If there were any deals, those would
9 have been disclosed. Obviously, we would have had to
10 disclose those. And I can't remember if it's in the
11 transcript or not, because it's been a while since I was
12 able to read that part of it. But I don't believe that
13 there are any deals with him. I think he just felt like he
14 didn't want to see somebody get away with that. I guess it
15 was just a matter of trying to do the right thing in this
16 case.

17 Q And concerning the allegation of the victim and her
18 family speaking with the jury, do you recall how this came
19 about, and can you speak to that?

20 A Yeah. I'll say this, it didn't happen. I'm
21 convinced it didn't happen. In Ocone, the courtroom is a
22 little bit -- the big courtroom. It's not like the big one
23 upstairs here. It's more confined, and it's kind of long
24 and not indifferent than what we've got in here. But they
25 bring the jury panels in, and so the victims, if you're

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1 going to let the victims be present at the trial, they've
2 got to sit in there with the jury. I mean, they all do. Our
3 victim advocate at the time was Marion King. She's since
4 retired, but she was very, very conscientious about not
5 letting the victim -- she sat with them the whole time, and
6 was very conscientious for many, many years about not --
7 they knew not to have any contact with anybody in the jury
8 pool. And in this case, I don't think they did. The Judge,
9 he questioned. Mr. Cole, I think, objected and I believe
10 moved for a mistrial. The Judge questioned them in depth.
11 Everybody on the panel said that they had not had any
12 contact with them. And there was just absolutely no evidence
13 that that transpired.

14 Q And the juror that was excused, how did that come up
15 later, whenever he brought up -- did he bring up to you all
16 that he, his mother knew the victim in some manner?

17 A It seems to me like he did. And I'm not positive
18 about that. I can't quite remember how that happened. But
19 he ended up, he was not on the jury. But apparently he did,
20 at some point in time he disclosed that. Probably would've
21 went up to talk to the Judge individually. I imagine he
22 disclosed it then, but I'm not positive.

23 MS. BALAJ: Beg the Court's indulgence. No further
24 questions, Your Honor.

25

CROSS-EXAMINATION

1 BY MS. ROSS:

2 Q Hey there. As to the facts that you just recounted
3 on the case, based on your recollection, you'd just let this
4 transcript stand on its own as well as to what the evidence
5 was in the case?

6 A Yeah, I don't have any reason to think the transcript
7 is not accurate.

8 Q Okay. And as far as revealing the deal, you can't
9 say whether there may be a deal made ahead of time for that
10 testimony. You can't say whether that witness, Mr. Evans,
11 ended up getting a deal in the end, can you?

12 A Well, I would say he didn't get any deal that we
13 offered him. Whatever he got was what the Judge gave him
14 when he pled guilty. There was no deal from what I was
15 asking, no deal for him testifying. And if that hadn't been
16 the case, it would have been disclosed.

17 Q Ahead of time. But you can't say whether -- I guess
18 I can go back and look this up myself, but if we looked up
19 in the public index and the person was charged with a charge
20 that carried fifteen to life. You can't say whether he
21 might have gotten well less than that or not at this time.

22 A I don't remember.

23 MS. ROSS: I have no further questions.

24 THE COURT: Anything else?

25 MS. BALAJ: No further witnesses, Your Honor.

1 THE COURT: You can step down, sir. Anything else
2 before we close on this one, or anything in the nature of
3 closing statement?

4 MS. BALAJ: I have nothing further, Your Honor. I
5 just stand on the record and the testimony that was
6 presented today from Mr. Cole and Solicitor Wagner.

7 THE COURT: Ms. Ross?

8 MS. ROSS: I would as well. I'd only put on, with
9 the testimony with the Solicitor I don't believe I ever
10 alleged prosecutorial misconduct or anything of that sort in
11 this case. I don't have any reason. I can ask the record
12 to be left open, but I don't have any reason to believe that
13 the testifying inmate snitch, Mr. Evans, got a better deal
14 than the potential he was looking at at the time he
15 testified, and would still argue that that could have been
16 fleshed out more effectively in the trial itself. Other
17 than that, we'd stand on the transcript and testimony that
18 was presented. I do believe there was some opinion
19 testimony certainly outside of the scope of expertise,
20 especially to the ultimate issue. When you read the
21 transcript, Ms. Cook had very little recollection. And you
22 can see the cross of the incident itself. As far as seeing
23 Mr. Drotning actually do this. As far as him -- the
24 allegation of him putting fire on her, she had no
25 recollection of that. The jury heard no testimony of that.

1 It was all circumstantial evidence. And my point of that
2 being that this other -- these other small issues that I
3 went through in the transcript, as far as inferring what Ms.
4 Cook meant by EMS witnesses who testified and all, kind of,
5 turning it against Mr. Drotning. That built up and became
6 very, very prejudicial in what began as a circumstantial
7 case. So that would be our argument. Thank you.

8 THE COURT: Thank you. I'm going to take a close look
9 at it before I give you my ruling, and I will notify you by
10 email of my ruling.

11 ***END OF REQUESTED TRANSCRIPT OF RECORD)***

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 16th day of August, 2024.

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

A handwritten signature in black ink, reading "Tara T. Scott", is written over a horizontal line.

Tara T. Scott, CVR

Official Court Reporter

November 8, 2024

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Jacob D. Drotning, #370157,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-37-00564

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:	Hon. Kristi Fisher Curtis
Applicant's Attorney:	Susannah Conyers Ross, Esq.
Respondent's Attorney:	Talida Balaj, Esq.
Trial Counsel:	Gregory Lee Cole, Jr., Esq.
Solicitor:	David Rhys Wagner, Jr., Esq.
Date of Hearing:	September 16, 2024
Court Reporter:	Tara T. Scott

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
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This matter comes before the Court by way of Jacob D. Drotning's (Applicant) application for post-conviction relief (PCR) filed on September 12, 2019. Respondent, the State of South Carolina, filed its Return and Motion for a More Definite Statement on March 6, 2020, requesting an evidentiary hearing to resolve the claims as set forth in the application once Applicant provided an amended application. On February 22, 2023, Applicant filed amendments to his PCR application. On August 21, 2023, Respondent filed its Amended Return.

On September 16, 2024, an evidentiary hearing was held at the Anderson County Courthouse before the Honorable Kristi Fisher Curtis. Applicant was present and represented by Susannah Conyers Ross, Esquire. Assistant Attorney General Talida Balaj represented Respondent. Applicant proceeded forward on the claims set forth in his amended application and on new claims introduced at the evidentiary hearing. In support of these claims, Applicant

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testified on his own behalf, and Respondent presented testimony from Gregory Lee Cole, Jr. (Trial Counsel) and David Rhys Wagner, Jr. (Solicitor Wagner).

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the July 2014 term of the Oconee County Grand Jury, Applicant was indicted for attempted murder (2014-GS-37-00742) and arson in the second degree (2014-GS-37-00743). During the May 2015 term of the Oconee County Grand Jury, Applicant was indicted for criminal domestic violence of a high and aggravated nature (2015-GS-37-00441) and malicious injury to property (2015-GS-37-00442). Trial Counsel represented Applicant. Solicitor Wagner and Assistant Solicitor Lindsey Satterfield Simmons (Assistant Solicitor Simmons) of the Tenth Circuit Solicitor's Office prosecuted the case.

On October 17-20, 2016, Applicant proceeded to a jury trial before the Honorable Robert Scott Sprouse. The jury found Applicant guilty as indicted. Judge Sprouse sentenced Applicant to thirty (30) years imprisonment for attempted murder, twenty (20) years imprisonment for arson in the second degree to be served consecutively, twenty (20) years imprisonment for criminal domestic violence of a high and aggravated nature to be served concurrently, and five (5) years imprisonment for malicious injury to property to be served concurrently.

Applicant filed a timely Notice of Appeal. Appellate Defender Kathrine Haggard Hudgins perfected Applicant's appeal by raising the following issue:

Did the trial judge err in allowing the State to prosecute Appellant for both attempted murder and criminal domestic violence of a high and aggravated nature when prosecution for both violates double jeopardy?

The Court of Appeals affirmed Applicant's convictions and sentences by unpublished opinion. State v. Drotning, Op. No. 2019-UP-217 (Ct. App. filed June 19, 2019). The Remittitur was returned to the lower court on July 8, 2019.

FACTS GIVING RISE TO THE CONVICTION

Catherine Cook (Cook) and Applicant were married in April 2009 and moved to South Carolina in May 2013. (ROA p. 71). Cook testified that by May of 2014, she and Applicant's relationship had significantly deteriorated. (ROA p. 73). Cook testified, "We were like strangers in the house. He had just lost his job. I just lost my job. Neither one of us was working, so we couldn't pay bills or rent. There was a lot of resentment." (ROA p. 73). Cook stated that, as a result of an incident with Applicant on May 16, 2014, she suffered burns to sixty percent of her body. (ROA p. 76). Cook recalled the incident:

I was in the hallway, and I looked down at my arms and they were glowing. And I was terrified. And when I looked up, I saw him standing there. And he didn't look concerned, and he didn't look worried. And he didn't even look panicked. He didn't look anything. And that's when I knew that if I was going to get help. I had to get it myself.

(ROA p. 76). Cook identified Applicant as the individual who watched her burning on the ground.

(ROA p. 77). Cook subsequently ran to a neighbor's home and passed out on their porch. (ROA p. 76).

When she arrived at the burn unit at the Joseph M. Still Burn Center in Augusta, Georgia, Cook had third-degree burns on sixty percent of her body. (ROA p. 80). Cook suffered burns so severe that her organs went into shock and began to shut down. (ROA p. 80). Cook noted her wounds "should have been fatal." (ROA p. 80). Cook was in a medically induced coma for four

months. (ROA p. 80). Cook subsequently needed forty-seven surgeries for her wounds and incurred medical expenses in excess of ten million dollars. (ROA p. 81).

On the evening of May 16, 2014, Isaac Lewis (Lewis) of the Seneca Fire Department responded to the scene of a fire. (ROA pp. 88-89). At the time of Lewis's arrival, he was told to take over responsibility for treating Cook. (ROA p. 89). Lewis observed that Cook had extensive second-degree and third-degree burns covering an area from the bottom of her head to the bottoms of her feet. (ROA p. 90). Lewis stated that Cook and Applicant were the only people at the home when he arrived. (ROA p. 90). Lewis asked Cook if she remembered what happened, and, after hesitating, she replied, "Yes, I do. He set me on fire. Why would he do this to me? I'm a nice person. Why would he do this to me?" (ROA p. 91). Lewis clarified that by "he," Cook was referring to Applicant, who was her husband. (ROA p. 91). While Lewis was treating Cook, Applicant kept repeating "I'm sorry. I'm sorry." (ROA p. 92). Applicant stated Cook's injuries were caused by the grill outside flaming up while he was trying to light it. (ROA p. 92).¹

Brandy Towe (Towe), a volunteer EMT, also responded to the scene of the fire on May 16, 2014. (ROA pp. 98-99). Towe observed severe second-degree and third-degree burns covering sixty percent of Cook's body. (ROA p. 99). Towe testified Cook was "absolutely" at risk of imminent death. (ROA p. 100). Cook told Towe, "He done this to me. He blew me up." (ROA pp. 100-01). Applicant told Towe the fire started because he was pouring accelerant on the grill from a gas can. (ROA p. 101). Towe testified that her observations at the scene did not support Applicant's assertion that the grill was the cause of Cook's injuries. (ROA p. 101).

¹ Applicant later told Bryan Evans (Evans), an individual who was housed with Applicant at the Oconee County Detention Center, that he poured gasoline on Cook and "torched the bitch." (ROA pp. 194-95).

Chief Jan Oliver (Chief Oliver) of the Seneca Fire Department was the ranking firefighter at the scene. (ROA p. 115). Chief Oliver testified he observed:

Inside the house, once you enter the front door, just a few feet inside the door, there were burn marks on the floor. You go back a little further into the room, there is a couch turned over. And just behind and beside it, there's burn marks on the floor there. There was a rug in the kitchen that had been burnt. You go back down the hall towards the back bedroom, there is another burn mark close to one of the hall. And then at the far end where the room was, when you enter the room, to the right is a closet. The bottom half of the door had been burnt and some of the tiles in the floor.

(ROA pp. 115-16). Chief Oliver also noticed a gas can sitting outside the room where the fire originated. (ROA p. 116). The smoke detectors located nearby were lying on the floor with the batteries removed. (ROA pp. 117, 119). Chief Oliver located a grill on a patio outside the home with a layer of dew on top of it. (ROA p. 117). Chief Oliver testified there was no evidence that the grill was used inside the home and, in turn, started the fire. (ROA p. 118). Similarly, Sergeant Scott Arnold (Sergeant Arnold) of the Oconee Sheriff's Office noted the grill was cool and there was no evidence whatsoever it had been used that night. (ROA p. 136). Sergeant Arnold also noted:

Once I entered in later, found out their bedroom, the bedroom all the way down to the end to the left, I noticed that the closet door had a lot of burns at the bottom area, and the floor had burned, had a small area burned also. And also noticed that -- we found a broken lighter in the floor.

(ROA p. 138).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed on September 12, 2019, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "ineffective assistance of [counsel]"
 - a) "failure to investigate case. was unprepared for trial"
2. "Prosecutorial misconduct due to jury tampering"

- b) "prosecutions witness had direct contact with all jurors prior to trial on multiple [occasions]"

Applicant requests relief in the form of "reverse, remand, and vacate sentence and conviction." On February 22, 2023, Applicant filed an amended application supplementing his original application with the following claims alleging ineffective assistance of trial counsel:

1. Failure to communicate and review discovery with Applicant.
2. Failure to take exception to the jury charge that intent to kill may be inferred. (pp. 431, 441 & 445).
3. Failure to object to questions asking third parties who Catherine Cook meant. (p. 130, 1. 21 & 150, 1. 17).
4. Failure to move to strike testimony that Applicant would not waive rights. (p. 171).
5. Failure to object to improper opinion testimony outside the scope of the witness' expertise. (pp. 286-7, 326, 348, 1. 23, and 365).
6. Failure to object to redirect beyond the scope of cross examination to bring out new matters. (pp. 126, 297).
7. Failure to object to Sherriff Crenshaw's comments during sentencing regarding unproven bad acts at the jail. (p. 452).
8. Failure to object to Catherine Cook and her family sitting in close proximity to the jury and speaking to the jury pool prior to selection.

At the evidentiary hearing, Applicant advised this Court he intended to move forward on each of the allegation in the amended application, and whatever would come out through his testimony. Applicant pled additional claims of ineffective assistance of counsel during the evidentiary hearing, as follows:

9. Failure to impeach witnesses, including Bryan Evans and Matthew Cehula.
10. Failure to advise Applicant of his right to testify at trial.
11. Failure to object against the additional charge of criminal domestic violence of a high and aggravated nature on the basis of double jeopardy.
12. Failure to object against the additional charge of malicious injury to property on the basis of double jeopardy.
13. Failure to object to witness testimony concerning Applicant's demeanor and failure to present the alleged video containing footage of his demeanor.
14. Failure to request a change of venue.
15. Failure to object to Dr. Shaver testifying to ultimate issue of Applicant's intent.

Before this Court are the Oconee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, and the records of this PCR action, including the PCR evidentiary hearing transcript.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

² S.C. Code Ann. §§ 17-27-10 to -160 *et seq.*

question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process, that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384

(1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

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

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent that there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be

substantial, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such a strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making

a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

As an initial matter, this Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 1: Failure to Communicate and Review Discovery with Applicant

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to communicate and review discovery with Applicant. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012).

Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel was appointed. (PCR Tr. p. 7). Applicant testified he only met with Trial Counsel one time prior to trial at the Oconee County jail. (PCR Tr. p. 7). Applicant testified that the meeting lasted ten to fifteen minutes, and Trial

Counsel introduced himself and showed him the box of "stuff" Trial Counsel had received from his previous attorney, Gordon Senerius (Senerius). (PCR Tr. p. 7). Applicant testified that his first attorney, Danny Day, was appointed but withdrew due to a conflict of interest, and Senerius was later appointed and remained his attorney for about two years. (PCR Tr. p. 8). Applicant testified that Senerius withdrew himself as Applicant's attorney the week of his trial. (PCR Tr. p. 8). Applicant testified that he had met with Senerius about six times prior to his being relieved. (PCR Tr. p. 8).

Applicant testified he had had an opportunity to extensively review the discovery. (PCR Tr. p. 9). Applicant testified that Trial Counsel did not discuss discovery with him very much, and Applicant told Trial Counsel what he saw as significant issues and what he believed the strategy should be. (PCR Tr. p. 9). Applicant testified that Trial Counsel advised him he had his own strategy, and that he would review discovery further and discuss it later. (PCR Tr. p. 9). Applicant testified that Trial Counsel never came back. (PCR Tr. p. 9).

On cross-examination, Applicant testified that he met with Trial Counsel one time. (PCR Tr. p. 31). Applicant testified he met with Senerius several times, discussed discovery and his case, and gave Senerius his side of the story. (PCR Tr. pp. 31–32).

On direct examination, Trial Counsel testified that he could not recall the exact number of times he met with Applicant, but he knew he had met with him several times prior to trial. (PCR Tr. p. 36). Trial Counsel testified that he and Applicant also communicated by letter. (PCR Tr. p. 36). Trial Counsel testified he was appointed in May of 2016, and the case went to trial in October of 2016. (PCR Tr. p. 36). Trial Counsel testified that most of his time during those months was spent in preparation, and Applicant was not helpful in preparing, as he maintained he did not remember anything. (PCR Tr. p. 37). Trial Counsel testified he would have spoken to Applicant

more if he had been more helpful. (PCR Tr. p. 37). Trial Counsel testified that after he was appointed, he met with Senerius and spoke thoroughly with Senerius about Applicant's case. (PCR Tr. p. 37). Trial Counsel testified he also met and discussed Applicant's case with Danny Day, but Day had less information. (PCR Tr. p. 37).

Findings

This Court, after a thorough evaluation, finds that Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel **credibly** testified that he met Applicant several times in preparation for the trial, including communicating by letter. Trial Counsel **credibly** testified that he met with and discussed Applicant's case extensively with both of Applicant's prior attorneys. Further, Trial Counsel **credibly** testified that had Applicant been more helpful in preparation, he would have met with him more. Notably, Applicant testified he had reviewed discovery extensively with his previous attorneys, and he had discussed his case—namely what he believed were big issues and strategy—with Trial Counsel. Therefore, Trial Counsel is not deficient for failing to adequately meet with Applicant or review discovery.

Additionally, Applicant failed to show what could have been discovered or what additional defenses would have been available to him had Trial Counsel spent more time in consultation with him, and how it would have changed the outcome of his trial. See Harris, *supra*. Applicant merely testified that Trial Counsel only met with him once and did not review the discovery with him.

Applicant failed to provide any evidence or defenses that could have been discovered had Trial Counsel spent more time in consultation with him, and thereby, how it would have resulted in a different outcome at trial. Therefore, Applicant failed to establish any resulting prejudice.

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

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

Allegations of Failure to Object

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

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

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

Allegation 2: Failure to Take Exception to the Jury Charge that Intent to Kill May Be Inferred

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to take exception to the jury charge that intent to kill may be inferred. This Court finds this allegation to be without merit.

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty

to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996).

In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from the trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

Attempted murder is when "[a] person who, *with intent to kill*, attempts to kill another person with malice aforethought, either expressed or implied." S.C. Code Ann. § 16-3-29 (1976) (emphasis added). A specific intent to kill "is an element of attempted murder[.]" State v. King, 422 S.C. 47, 56, 810 S.E.2d 18, 22 (2017). "[N]othing in Keys,³ King, or any other case, prevents a jury from being charged that it can look at a defendant's actions and imply or infer from those actions that the defendant 'in fact' had the specific intent to kill." State v. Taylor, 434 S.C. 365, 370, 862 S.E.2d 924, 927 (Ct. App. 2021).

Trial

The trial court gave the following specific intent instruction:

A specific intent to kill is an element of attempted murder. Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. Evidence of the character of the act, the character of instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered in determining the intent with which the act was committed. *Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act*, the natural tendency of which is to destroy another's life.

(Trial Tr. pp. 430–31, 441) (emphasis added).

³ Keys v. State, 104 Nev. 736, 766 P.2d 270 (Nev. 1988) (holding that specific intent to kill is essential element of attempted murder).

PCR Evidentiary Hearing

On direct examination, Applicant testified he did not believe Trial Counsel objected to the jury charge on inferring intent. (PCR Tr. p. 20).

On direct examination, Trial Counsel testified he did not believe there was a basis to object to the jury charge that intent to kill may be inferred. (PCR Tr. pp. 44–45). Trial Counsel testified that this issue concerned inferred or implied specific intent. (PCR Tr. p. 45). Trial Counsel testified that in the most recent cases he had seen, he did not see anything that prohibited a jury from inferring intent from the actions of a person in a specific intent case. (PCR Tr. p. 45). Trial Counsel testified, to the best of his memory and based on the transcript, the judge had one sentence about inferring intent from the person's action if that action would necessarily result in a person's death. (PCR Tr. p. 45). Trial Counsel testified that the way he viewed it was that if a person shot a gun in someone's direction and killed them but denied they intended to kill, then a jury would be able to infer from that person's actions that they did have a specific intent to kill. (PCR Tr. p. 45).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. The trial court correctly instructed the jury on the crime of attempted murder in its jury charge: "[a] specific intent to kill is an element of attempted murder . . . Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent." The trial court's jury charge is consistent with the opinions of the Court of Appeals of South Carolina and the Supreme Court of South Carolina, namely Taylor and King, respectively. Trial Counsel **credibly** testified he did not believe an objectionable basis existed to the jury charge. Given that the jury charge was proper, Trial Counsel was not ineffective for failing to object to it.

See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Furthermore, Applicant merely stated that Trial Counsel did not object to the jury charge, but did not show how the jury charge was incorrect or how it affected the outcome of his trial in any way.

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

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

Allegation 3: Failing to Object to Questions Asking Third Parties Who Catherine Cook Meant

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to questions asking third parties who Catherine Cook meant. This Court finds this allegation to be without merit.

Trial

Trial Counsel motioned *in limine* to suppress five of Cook's out-of-court statements. (Trial Tr. pp. 70). Regarding the first four statements made at the scene, Trial Counsel argued that they should be excluded as they did not constitute excited utterances, citing State v. Washington. (Trial

Tr. p. 71). Specifically, Trial Counsel argued that the statements were not spontaneous, but in response to the first responder's questions. (Trial Tr. pp. 71–72). Additionally, Trial Counsel argued that Cook did not remember her out-of-court statement, and her inability to recall her statements could present a confrontation clause issue when Cook testified. (Trial Tr. p. 73). Further, Trial Counsel argued that Cook's statement did not qualify as an exception to hearsay under the statement regarding medical treatment exception, citing State v. Brown, and argued the dying declaration exception did not apply. (Trial Tr. p. 73). Ultimately, the trial court denied Trial Counsel's motion regarding these four statements. (Trial Tr. pp. 79–80).

Regarding the fifth out-of-court statement, Trial Counsel argued that Cook was not under the stress of excitement when she made this statement to Nurse Allison Dukes, as a significant amount of time had passed from the incident to the time of the statement. (Trial Tr. p. 81). Trial Counsel additionally argued that the statement did not qualify under the medical treatment exception, as the statement did not contain anything useful in treating or diagnosing Cook. (Trial Tr. p. 81). Further, Trial Counsel argued that the trial court needed to assess the totality of the circumstances and that the statement did not amount to a dying declaration. (Trial Tr. p. 84). After further argument, the trial court denied Trial Counsel's motion regarding the fifth statement. (Trial Tr. pp. 85–88).

Trial Counsel objected to the admission of four of the statements upon their admission. (Trial Tr. pp. 130, 150, 164, 288–91).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Lewis said that Cook was referring to her husband when she talked about who set her on fire. (PCR Tr. p. 19). Applicant testified Lewis had no way of knowing that Cook was referring to her husband. (PCR Tr. p. 19). Applicant

testified that Lewis's testimony that it was her husband was similar to answering for her. (PCR Tr. p. 19). Applicant testified that Trial Counsel did not object to Lewis' statement. (PCR Tr. p. 19).

On cross-examination, Applicant testified that Trial Counsel made fewer objections than he should have. (PCR Tr. p. 32). Applicant testified that Trial Counsel's objections to these statements during trial were consistent with his original attempt at keeping hearsay out of the trial. (PCR Tr. p. 33).

On direct examination, Trial Counsel testified he motioned *in limine* to exclude any hearsay testimony. (PCR Tr. p. 38). Trial Counsel testified that the motion was denied. (PCR Tr. p. 38). Trial Counsel testified he did his "absolute best to renew [his] objection each time one of those matters came up." (PCR Tr. p. 38). Trial Counsel testified he did not think there was anything else he could have done to get the statements excluded. (PCR Tr. p. 38).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified he made a pre-trial motion *in limine* to exclude any hearsay testimony from trial and that the motion was denied. Additionally, Trial Counsel **credibly** testified he renewed his objections to the testimonies when each testimony was introduced at trial, which is consistent with the record. Trial Counsel **credibly** testified he did not think he could have done anything else to get the statements excluded from the record. The record establishes that Trial Counsel moved to have these statements suppressed, objected to them upon their admission, and

the trial court denied Trial Counsel's motion and admitted the statements. Notably, Applicant testified that Trial Counsel did make objections during trial that were consistent with his pre-trial motion to exclude the testimonies. Therefore, Trial Counsel was not constitutionally ineffective for failing to object to the admission of Cook's out-of-court statements.

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

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

Allegation 4: Failure to Move to Strike Testimony that Applicant Would Not Waive Rights. (p. 171)

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to strike testimony that Applicant would not waive rights. This Court finds this allegation to be without merit.

Trial

The following testimony was presented by Deputy Scott Bradley Arnold (Deputy Arnold) and successfully objected to by Trial Counsel:

- Q When you got there, what did you find when you arrived?
 A When I arrived, I spoke with Sergeant Owens about this incident. He advised that —

MR. COLE: Objection as to --

THE COURT: Sustained.

BY MR. WAGNER:

Q Let me ask you this: Was the victim there?

A No. The victim had left prior to my arrival.

Q So she had been medevaced out, I guess?

A Yes.

Q Was the defendant still there?

A Yes, he was.

Q What was his demeanor?

A He was handcuffed, placed in investigative detention in the back of a patrol car. I was going to talk to him, going to read him his rights. He wouldn't waive his rights.

MR. COLE: Objection.

BY MR. WAGNER:

Q What was his demeanor?

THE COURT: Hold on.

MR. COLE: Objection, Your Honor, as to the last question regarding rights of the defendant.

THE COURT: Okay. Are you moving on to another question, Mr. Wagner?

MR. WAGNER: Yes, sir.

THE COURT: That question is withdrawn

(Trial Tr. pp. 171–72).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Deputy Arnold testified that he refused to waive his rights at trial, and though Trial Counsel objected to the testimony, he did not move to strike it. (PCR Tr. p. 24). Applicant testified that upon his arrest, he told Deputy Arnold he would not speak without an attorney present, which agitated Deputy Arnold. (PCR Tr. p. 24). Applicant testified he told Deputy Arnold a second time that he would not speak without an attorney. (PCR Tr. p. 25).

On direct examination, Trial Counsel testified he successfully objected to Deputy Arnold's testimony, and having the testimony stricken would not have changed the outcome of Applicant's trial. (PCR Tr. pp. 38–39).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Trial Counsel's testimony **credible** that had he moved to have Deputy Arnold's testimony stricken, it would not have changed the outcome of Applicant's trial. Trial Counsel promptly objected to the testimony before Deputy Arnold could go into detail concerning Applicant's refusal to waive his rights, and Solicitor Wagner withdrew the question. Having the testimony stricken would not have affected the outcome.

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

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

Allegation 5: Failure to Object to Improper Opinion Testimony Outside the Scope of the Witness's Expertise

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to improper opinion testimony outside the scope of the witness's expertise. This Court finds this allegation to be without merit.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. An expert witness is not relegated to testifying to matters within his firsthand knowledge but may base his opinion on information made available to him prior to a hearing, so long as it is of the type of information that is reasonably relied upon in the field. Rule 703, SCRE. "An expert's opinion testimony may be based upon a hypothetical question." Gazes v. Dillard's Dep't Store, Inc., 341 S.C. 507, 534 S.E.2d 306 (Ct. App. 2000). "Even though the hypothetical question must be based on facts supported by the evidence, counsel may pose the hypothetical on any theory which can reasonably be deduced from the evidence and select as a predicate for it such facts as the evidence proves or reasonably tends to prove." Gazes, 341 S.C. at 514-515, 534 S.E.2d at 310, citing Gathers By & Through Hutchinson v. S.C. Elec. & Gas Co., 311 S.C. 82-83, 427 S.E.2d 687 (Ct. App. 1993) (internal quotations omitted).

Trial

Trial court qualified Allison Dukes Lamb (Nurse Lamb) as an expert in trauma nursing. (Trial Tr. p. 285). On direct, Nurse Lamb testified that Cook was burned on her back, buttocks, and legs, and they were deep burns. (Trial Tr. p. 286). Nurse Lamb testified that Cook's burns did not appear to be self-inflicted, as they were all on her back, and she did not see how Cook could have self-inflicted her burns only on her back. (Trial Tr. pp. 286-87).

The trial court admitted Joseph Robert Shaver, M.D. (Dr. Shaver) as an expert in critical care and internal medicine. (Trial Tr. p. 304). Dr. Shaver testified that, in his medical opinion, he believed lighting someone on fire could lead to their death. (Trial Tr. p. 326).

The trial court admitted Daren Kyle Vaughn (Vaughn) as an expert in the origin of fire and causation. (Trial Tr. p. 349). On direct, Vaughn testified he reviewed Cook's injuries. (Trial Tr. p. 365). Vaughn testified that based on his training and experience, Cook's injuries did not result from a grilling accident. (Trial Tr. p. 365). Vaughn testified that in his experience, he has never had anyone set themselves on fire to kill themselves, as it is very painful. (Trial Tr. p. 365). Vaughn testified that he has seen persons attempt to commit suicide by setting a structure on fire with themselves inside, and then shooting themselves to avoid the pain of dying by fire. (Trial Tr. pp. 365-66).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Nurse Lamb's testimony about the burns on Cook's back seemed to be her opinion and not within her professional expertise. (PCR Tr. pp. 25-26). Applicant testified that Trial Counsel did not object to Nurse Lamb's testimony. (PCR Tr. p. 26). Applicant testified that Trial Counsel did not object to Dr. Shaver's testimony that an actor who doused someone in gasoline intended to kill that person, as Trial Counsel had "checked out" at that point. (PCR Tr. pp. 26-27). Applicant testified that his intent was an issue at trial, and Dr. Shaver testified to his intent without objection. (PCR Tr. p. 28). Applicant testified that Vaughn's testimony concerning Cook's injuries was outside his experience, as he did not have medical expertise and could not say what Cook's injuries resulted from. (PCR Tr. p. 28).

On cross-examination, Applicant testified that many experts testified to several things, some of which were outside the scope of their expertise and some of which were not. (PCR Tr. pp. 34–35).

On direct examination, Trial Counsel testified he did not believe an objectionable basis existed as to the improper testimony outside of the witnesses' expertise, for instance, the nature of the wounds and the use of gasoline. (PCR Tr. p. 39). Trial Counsel testified he believed that Nurse Lamb was qualified as an expert in trauma nursing, and "as part of her testimony, went through her experience." (PCR Tr. p. 39). Trial Counsel testified that Dr. Shaver testified to his experience with burn victims, and he does not believe there was an objectionable basis to his testimony. (PCR Tr. p. 39). Trial Counsel testified that based on the area in which the witnesses were qualified, he did not believe there was a basis to object to their expert opinions. (PCR Tr. p. 39). Trial Counsel testified he believed the testimony of Vaughn, who was an expert in origin and fire determination, about how the fire first started and about Cook's injuries, was within the scope of his expertise. (PCR Tr. p. 40).

On cross-examination, Trial Counsel testified he did not object to Dr. Shaver's testimony where he agreed that if an actor doused someone in gasoline and lit them on fire, then the actor intended to kill them and that such an act would lead to death. (PCR Tr. p. 48). Trial Counsel testified that specific intent to kill was the issue as to attempted murder in Applicant's case. (PCR Tr. p. 48). Trial Counsel testified he did not object to Nurse Lamb's testimony that she could not understand how someone could light themselves on fire and only have an injury on their back. (PCR Tr. p. 48).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified he did not believe a basis to object existed as to the alleged improper testimony because the matters were within the witnesses' expertise. Trial Counsel **credibly** testified that Nurse Lamb was admitted as an expert in trauma nursing. Nurse Lamb testified about her experience as a nurse. Additionally, Trial Counsel **credibly** testified that Dr. Shaver and Vaughn appropriately testified based on their experience, and there was no objectionable basis to their testimony.

Nurse Lambs testified to her opinion that the injuries could not have been self-inflicted after assessing and treating Cook's injuries, as the injuries were all on her back. Dr. Shaver testified to his opinion that a person who doused someone in gasoline and lit them on fire would likely lead to that individual's death; based on his experience with treating burn victims—notably, it was presented at trial that Cook nearly succumbed to her injuries, and Applicant was tried for attempted murder. Dr. Shaver also testified that based on his experience with hundreds of patients, he has never seen a case where a person attempted suicide by burning themselves to death. Lastly, Vaughn testified that based on his experience in fire origin, Cook's injuries did not result from a grill, as Applicant claimed they had. These expert witnesses' opinions were based on experience, knowledge, and training in their field, and based on facts supported by the evidence presented at Applicant's trial, and thus, were not outside the scope of their expertise. Therefore, there was no

meritorious basis for Trial Counsel to object to the witness's testimony, and Applicant cannot establish he was constitutionally ineffective for failing to object on this basis. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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

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

Allegation 6: Failure to Object to Redirect Beyond the Scope of Cross-Examination to Bring Out New Matters

Applicant alleged Trial Counsel was constitutionally ineffective by failing to object to redirect beyond the scope of cross-examination to bring out new matters. This Court finds this allegation to be without merit.

Trial

On cross-examination of Cook, Trial Counsel questioned Cook as follows: "When you and Mr. Drotning had arguments sometimes, was it a common practice of yours, when y'all were arguing to lock him in the garage of the home or lock him out of the home by using the door that

goes to the garage?" (Trial Tr. p. 123, ll. 20-24). Cook answered, "No." (Trial Tr. p. 123, l. 25).

On redirect examination, Assistant Solicitor Simmons asked Cook: "Katie, when you guys did fight or argue in the home, where did you usually go?" (Trial Tr. p. 126). Cook answered that she would lock herself in the bathroom or bedroom when they fought. (Trial Tr. p. 126).

On cross-examination of Nurse Lamb, Trial Counsel questioned Nurse Lamb as follows:

Q Ms. Lamb, there were, as we saw from the photographs, there were some burns on the front of Ms. Cook's body as well; is that correct?

A Correct.

Q Including the palm of the hands and, I believe, on the chest and looked like the front of the legs?

A Correct.

Q However, the majority of the burns were to her back; is that correct?

A Correct.

Q And that would be consistent with the fire starting at her back; is that correct?

A I believe so.

(Trial Tr. p. 296, ll. 12-24). On redirect examination, Assistant Solicitor Simmons questioned Nurse Lamb as follows:

Q The burns Mr. Cole just asked you about on her back, do you have an opinion as to what type of burns they are?

A From gasoline

(Trial Tr. p. 297, ll. 3-6).

PCR Evidentiary Hearing

On direct examination, Applicant testified Assistant Solicitor Simmons could have asked the question to Cook "initially" instead of asking it at the end on redirect. (PCR Tr. p. 29). Applicant testified that Assistant Solicitor Simmons could have asked Nurse Lamb the question on direct examination rather than on redirect concerning the origin of the burns. (PCR Tr. p. 29).

On direct examination, Trial Counsel testified that, from his review of the transcript prior to the hearing, he recalled asking Cook on cross-examination whether she locked out Applicant

when they fought. (PCR Tr. p. 40). Trial Counsel testified that he recalled Assistant Solicitor Simmons asking Cook on redirect where she went when she fought with Applicant. (PCR Tr. p. 40). Trial Counsel testified he did not believe this questioning was outside the scope of the cross-examination. (PCR Tr. pp. 40–41). Trial Counsel testified he recalled asking Nurse Lamb about the various burns Cook had on her body, including her back. (PCR Tr. p. 41). Trial Counsel testified he recalled that Assistant Solicitor Simmons questioned Nurse Lamb about what she believed the burns on Cook's backs were from, to which Nurse Lamb answered "gasoline." (PCR Tr. p. 41). Trial Counsel testified he did not believe this testimony was outside the scope of the cross-examination. (PCR Tr. p. 41).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds from Trial Counsel's **credible** testimony that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. The record and Trial Counsel's **credible** testimony establish that the questions posed by the State were appropriately posed based on Trial Counsel's cross-examination of Cook and Nurse Lamb. Therefore, it would not have been meritorious for Trial Counsel to object on the basis that the State's questioning on redirect was beyond the scope of Trial Counsel's cross-examination. *See Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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

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

Allegation 7: Failure to Object to Sheriff Crenshaw's Comments During Sentencing Regarding Unproven Bad Acts at the Jail

Applicant alleged Trial Counsel was constitutionally ineffective by failing to object to Sheriff Crenshaw's comments during sentencing regarding unproven bad acts at the jail. This Court finds this allegation to be without merit.

Trial

During sentencing, Sheriff Crenshaw commented on Applicant's prior acts while in jail after his arrest:

This defendant – in my law enforcement history, one of the best indicators of future behavior is past behavior. Since this defendant's arrest two years ago, I have a list here of numerous disciplinary issues that he's caused my staff in the jail. Most recently showing, again, no mercy to a victim of another prisoner that was laying defenseless on the ground, kicking him in the head.

(Trial Tr. p. 452).

In sentencing, the trial court gave the following explanation for the sentence it imposed on Applicant:

I will say that in 25 years of practicing law and now on the bench, I have never had a factual situation like this. This is simply a terrible, terrible factual situation. The injuries inflicted on this lady are horrific. And, Mr. Cole, I appreciate what you're saying, that your client may have been intoxicated at the time, but this incident is not typical. This incident, this goes way beyond what you normally see in these type of cases. I can only imagine the suffering that this lady has been through. Hearing the doctor describe the process of treatment for someone who's been injured in this manner made everyone in the courtroom, I'm sure, uncomfortable. It was just an awful sounding process. And, ma'am, I can just -- my heart goes out to you for what you've suffered. I wish you the best. I'm thankful that the medical staff was able to keep this lady alive.

(Trial Tr. pp. 455–56).

PCR Evidentiary Hearing

On direct examination, Applicant testified that a riot had occurred while he was at the jail. (PCR Tr. pp. 23–24). Applicant testified that the staff at the jail handed out numerous charges to various people, including him. (PCR Tr. p. 24). Applicant testified that Trial Counsel was his attorney for one of those charges. (PCR Tr. p. 24). Applicant testified, "We hadn't addressed that, and it wasn't included in the trial, but the trial was coming up first." (PCR Tr. p. 24). Applicant testified Sheriff Crenshaw "took it upon himself to tell the Judge that [he] was already found guilty for that," and Trial Counsel "didn't seem to care what he said." (PCR Tr. p. 24).

On cross-examination, Applicant testified that Trial Counsel made fewer objections than he should have. (PCR Tr. p. 32).

On direct examination, Trial Counsel testified he did not believe an objectionable basis existed to Sheriff Crenshaw's statement about Applicant's disciplinary issues at the jail. (PCR Tr. p. 41). Trial Counsel testified that based on the trial court's explanation for its sentence, he did not believe the trial court considered Sheriff Crenshaw's statement. (PCR Tr. p. 41). Trial Counsel testified that, from his review of the transcript and his memory, the trial court's concern in

sentencing was the facts of the case and the "devastating nature" of the victim's injuries. (PCR Tr. pp. 41–42).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds from Trial Counsel's credible testimony that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*.

Trial Counsel credibly testified he did not believe an objectionable basis to Sheriff Crenshaw's statements existed and that the statements did not appear affect his sentencing. *See State v. Gullledge*, 326 S.C. 220, 228, 487 S.E.2d 590, 594 (1997) ("In a sentencing proceeding, evidentiary rules are inapplicable."); *United States v. Silverman*, 976 F.2d 1502, 1511 (6th Cir. 1992) ("The long-established principle in all of these cases, both before and after adoption of the Guidelines, is that the constitutional protections afforded defendants at a criminal trial, including confrontation rights, are not available at sentencing proceedings to limit the court's consideration of the background, character and conduct of the defendant."); *see also State v. Whipple*, 324 S.C. 43, 476 S.E.2d 683 (1996) (Disciplinary records from capital defendant's incarceration were admissible at sentencing under the Uniform Business Records as Evidence Act and were relevant to defendant's future adaptability in prison, which was a matter clearly proper for the sentencing jury.) *See* S.C. Code Ann. § 19-5-510. Consequently, Trial Counsel had no valid objection that he could make to Sheriff Crenshaw's comments in closing regarding Applicant's disciplinary record. *See Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner

challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Notably, Applicant failed to show how Sheriff Crenshaw's statements affected his sentencing in any way. The trial court did not make any reference to Applicant's disciplinary record in sentencing, but emphasized the brutal and severe nature of the crime and Cook's resulting injuries.

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

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

Allegation 8: Failure to Object to Catherine Cook and Her Family Sitting in Close Proximity to the Jury and Speaking to the Jury Pool Prior to Selection

Applicant alleged that Trial Counsel was constitutionally ineffective when he failed to object to Cook and her family sitting in close proximity to the jury and speaking to the jury pool prior to selection. This Court finds this allegation to be without merit.

Trial

At trial, after jury selection, Trial Counsel moved for a mistrial based on Cook allegedly sitting near the jury pool, conversing with them, and leaving the courtroom with them during a

break:

Thank you, Your Honor. May it please the court. Your Honor, I would move at this time for a mistrial. I did not see this. I didn't recognize the alleged victim during jury qualification. However, my client, who was standing and watching through the window here, says that he saw the alleged victim and whoever she was seated with, he said that they were not seated on the back row at that time, that they were actually seated on one of the pews with the members of the jury panel. And he said he did see one – he said he saw the alleged victim speak to someone with a tag on that indicated that they were a member of the jury panel.

And, Your Honor, he says that he saw the alleged victim stand up and proceed out of the courtroom when – during the break between jury qualification and jury selection. So, Your Honor, because if she spoke to someone in here and then she went outside, Your Honor, I think that there is enough there that she could have spoken to someone.

We don't have any way of knowing who that was, and because of that, I think the entire jury panel is tainted so I would have to ask for a mistrial.

I certainly and my client wants to get this trial over with, but we feel that – I just feel that this jury is irreparably tainted at this time.

(Trial Tr. pp. 58–59).

The trial court asked Trial Counsel, "Mr. Cole, you don't know the identity of this person that your client alleges spoke to the victim?" (Trial Tr. p. 59). Applicant responded that he did not know which juror, but that the juror was male and believed the juror had been dismissed. (Trial Tr. p. 60). Trial Counsel advised the trial court that they did not have any evidence that the dismissed juror spoke to any of the jurors but argued that the possibility of the jury being tainted was enough. (Trial Tr. p. 60). The trial court denied Trial Counsel's motion, reasoning that he had questioned all the jurors about whether they communicated with the witnesses in the case, and none answered in the affirmative. (Trial Tr. p. 61).

Later in the trial, juror Brian White (White) disclosed the following to the trial court:

THE COURT: Mr. White, I have received a note from the foreman that says your mother told you that she used to work with the victim; is that correct?

JUROR WHITE: Yes. That's what she told me yesterday.
 THE COURT: How did that come about? Who initiated the discussion?
 JUROR WHITE: She did. She said she heard on the radio, just asked the lady's
 last name happened to be Cook because she remembered. I
 didn't say anything. I know I'm not supposed to.
 THE COURT: You did not discuss the case with her?
 JUROR WHITE: Huh-uh. She just said the last name, and I was like, "I'm not
 supposed to say anything." I just figured it would be better
 for y'all to hear from me if somebody else happened to hear
 it.
 THE COURT: The knowledge -- did you know the victim?
 JUROR WHITE: No. I have no clue who she was. That's why I was --
 THE COURT: And the fact that your mother may have worked with her at
 some time in the past, would that affect your ability to be fair
 and impartial?
 JUROR WHITE: No, it would not.

(Trial Tr. pp. 298–99). Based on this, Trial Counsel moved to have White removed and put in an alternate, and the trial court granted Trial Counsel's request. (Trial Tr. p. 300). Trial Counsel then moved for a mistrial on this basis, and the trial court denied his motion. (Trial Tr. p. 301).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Cook knew one of the jurors because she "worked with one of them over at Food Lion, and his mother." (PCR Tr. p. 22). Applicant testified that the juror was juror number 271, Brian White (White). (PCR Tr. p. 22). Applicant testified that during jury selection, the State admitted White. (PCR Tr. p. 22). Applicant testified that he thought White was a problem during jury selection. (PCR Tr. p. 22). Applicant testified that when Trial Counsel accepted White as a juror, he noticed Trial Counsel crush a piece of paper in his hand, which gave off "some kind of an emotion [Applicant] couldn't really figure out at the time." (PCR Tr. p. 22). Applicant testified he told Trial Counsel that White being seated as a juror was a problem, but Trial Counsel told Applicant that it was fine. (PCR Tr. p. 22).

Applicant testified that Trial Counsel did not give Applicant any time to explain and kept on with jury selection. (PCR Tr. p. 22). Applicant testified he did not tell Trial Counsel that White

knew Cook because Applicant and Trial Counsel did not know at that time that they knew each other. (PCR Tr. p. 22). Applicant testified he "could definitely see that there was a problem with having [White] on the jury." (PCR Tr. 22). Applicant testified that Trial Counsel was adamant about letting White be on the jury. (PCR Tr. p. 22). Applicant testified a couple of days later; it came out that White worked with Cook at Food Lion, and the trial court removed him from the jury. (PCR Tr. pp. 22–23). Applicant testified he could not get the "full story," but it was something along the lines of White having disclosed that he was discussing the case with his mother. (PCR Tr. p. 23). Applicant testified that White had been near the actual jury because he was a selected juror. (PCR Tr. p. 23).

Applicant testified he thought Cook and her parents, seated next to where the jury foreman was seated, was strange. (PCR Tr. p. 23). Applicant testified he did not believe that Cook's close proximity to the jury was effectively addressed during the trial. (PCR Tr. p. 23).

On cross-examination, Applicant testified that Cook spoke with several people who were in the jury pool while he "was locked behind the doors still at that time." (PCR Tr. p. 33). Applicant testified that he brought this to the attention of Trial Counsel so he could move for a mistrial. (PCR Tr. p. 33). Applicant testified that he saw Cook talking to the jury pool and that she had been on a jury before and knew doing so was not allowed. (PCR Tr. p. 33). Applicant testified that he prodded Trial Counsel and informed him about the issue, to which Trial Counsel responded that they would figure that out. (PCR Tr. pp. 33–34). Applicant testified that when the jurors returned from the break, Cook was no longer seated with them but was instead sitting at the back of the courtroom. (PCR Tr. p. 34). Applicant testified that none of the jurors were present at the evidentiary hearing to testify, and he did not personally know who they were. (PCR Tr. p. 34). Applicant testified that he knew the juror who knew Cook because his mother was excused

and replaced by another juror. (PCR Tr. p. 34). Applicant testified that he did not know how it was determined that the juror and his mother knew Cook, but he was informed after the juror was replaced. (PCR Tr. p. 34).

On direct examination, Trial Counsel testified that Applicant advised him after jury selection that Cook had been sitting close to the jury pool and had spoken to one of the prospective jurors. (PCR Tr. p. 42). Trial Counsel testified that Applicant informed him that Cook and those accompanying her left the courtroom with the jurors during a break. (PCR Tr. p. 42). Trial Counsel testified he did not see the juror to whom Applicant was referring, but that the juror was not one selected for the jury. (PCR Tr. p. 42). Trial Counsel testified he moved for a mistrial when Applicant brought this to his attention. (PCR Tr. p. 42).

On direct examination, Solicitor Wagner testified that he was certain that Cook and her family had not spoken with the jury. (PCR Tr. p. 53). Solicitor Wagner testified that the courtroom layout at the Oconee courthouse is more confined, and a victim will naturally be in the same room as the jury if they are present at trial. (PCR Tr. pp. 53–54). Solicitor Wagner testified that the victim advocate at the time of the trial was Marion King (King), and she would sit with Cook the entire time and was conscientious about preventing Cook from having contact with anyone in the jury pool. (PCR Tr. p. 54). Solicitor Wagner testified he did not think Cook and those with her had any contact with anyone in the jury pool. (PCR Tr. p. 54). Solicitor Wagner testified that Trial Counsel objected and moved for a mistrial on this basis. (PCR Tr. p. 54). Solicitor Wagner testified that the trial judge questioned the jury in depth, and everyone on the panel responded that they had no contact with Cook and those with her. (PCR Tr. p. 54). Solicitor Wagner testified that no evidence existed that this transpired. (PCR Tr. p. 54).

Solicitor Wagner testified he did not clearly recall how White disclosed his mother's relationship with Cook, but that White was ultimately removed and did not serve on the jury. (PCR Tr. p. 54).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds that Applicant has failed to overcome his burden of proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*.

As an initial matter, this Court finds Applicant's testimony **not credible** that Cook and her family improperly communicated with the jury during Applicant's trial. Solicitor Wagner **credibly** testified that the victim advocate was always with Cook and her family, and the victim advocate was extremely conscientious in preventing any communication with the jury. Importantly, Trial Counsel moved for a mistrial on this issue, and Applicant represented to the trial court that he did not know the juror, only that they were male and had been dismissed. Ultimately, the trial court denied Trial Counsel's motion based on the lack of evidence and the representation from the jury pool that they had not communicated with any of the witnesses. Notably, Applicant failed to present any documentary evidence or testimony from any of the jurors Cook allegedly spoke with. *See Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness's testimony does not satisfy PCR applicant's burden).

Addressing Applicant's testimony concerning White specifically, this Court finds Applicant's testimony **not credible**. At no point in his representation to the trial court did

Applicant indicate he believed White was the alleged juror who had communicated with Cook or indicate that he believed White had done something improper. Further, Applicant testified inconsistently, stating he told Trial Counsel that White was a problem, but then saying he had no idea there was an issue with White until it came up later at trial. Notably, White was removed from the jury upon Trial Counsel's request after his disclosure.

Turning to the main issue, Applicant failed to provide a basis upon which Trial Counsel could have objected to Cook sitting in the courtroom near the jury. Solicitor Wagner credibly testified that the courtroom layout did not allow Cook and her family to be present and for there to be significant separation from the jury, simultaneously. Under the South Carolina Victim Bill of Rights, victims are entitled to "be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present." See S.C. Const. Art. I, § 24. Applicant merely speculates that Cook improperly communicated with the jury, which was addressed diligently at trial by Trial Counsel and the trial court. Without more, there was no meritorious basis for Trial Counsel to object to Cook's right to be present at Applicant's trial. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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

Allegation 11: Failure to Object Against the Additional Charge of Criminal Domestic Violence of a High and Aggravated Nature on the Basis of Double Jeopardy

Applicant alleged that Trial Counsel was constitutionally ineffective by failing to object to the additional charge of criminal domestic violence of a high and aggravated nature (CDVHAN) based on double jeopardy. This Court finds this allegation to be without merit.

Trial

At trial, Trial Counsel moved to dismiss the charge of CDVHAN because, under the totality of the circumstances, it merged with the charge of attempted murder. (Trial Tr. p. 88). Trial Counsel argued that assault and battery of a high and aggravated nature by statute is a lesser included offense of attempted murder, and the only additional element to CDVHAN is that it would be a person of the protected class, specifically a family member, on whom the assault was committed. (Trial Tr. p. 88). Additionally, Trial Counsel argued that attempted murder is a specific intent crime; the State would have to prove that Applicant specifically intended to kill Cook, who is a person that is being alleged as part of the protected class under CDVHAN. (Trial Tr. pp. 88–89). Trial Counsel argued that the extra element of CDVHAN, that the victim is a member of a protected class, is effectively not an additional element, since Cook is the victim of both crimes. (Trial Tr. pp. 89–90). Ultimately, the trial court denied Trial Counsel's motion, reasoning that CDVHAN had an additional element from attempted murder, and could not be merged as it was not a lesser included offense based on the test. (Trial Tr. p. 91).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he was arrested and placed in a holding tank for a couple of months without being charged. (PCR Tr. p. 18). Applicant testified he was charged sometime around July with two crimes, which were attempted murder and arson. (PCR Tr. p. 18). Applicant testified that a few months later, he was charged with additional crimes for reasons he did not understand because the additional charges seemed to be duplicates or lesser-included

offenses of the original. (PCR Tr. p. 18). Applicant testified he did not remember exactly whether Trial Counsel argued against those additional charges. (PCR Tr. p. 18). After Trial Counsel's objections to the additional charges were brought to Applicant's attention, Applicant testified that Trial Counsel made a motion at the beginning of the trial "for running them together or maybe duplicate charges, or something like that." (PCR Tr. p. 18). Applicant testified he did not believe Trial Counsel said, "double jeopardy," but he did think Trial Counsel argued against the four charges being tried together. (PCR Tr. p. 18).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Applicant alleges that Trial Counsel was ineffective where he failed to argue that being prosecuted for CDVHAN and attempted murder simultaneously constituted double jeopardy. However, Trial Counsel argued before the trial court that the CDVHAN constituted a lesser included offense of attempted murder, and thus, the charges merged and CDVHAN should be dismissed. On appeal, Applicant argued that the trial court erred in allowing the State to prosecute Applicant on both offenses, as it violated double jeopardy. Though Trial Counsel did not specifically argue double jeopardy at trial, the Court of Appeals found the issue preserved and addressed it on its merits. Therefore, Trial Counsel is not deficient where he argued that CDVHAN was a lesser included offense of attempted murder, preserved the issue of whether it violated double jeopardy, and the Court of Appeals considered this issue on the merits.

Moreover, the Court of Appeals, after considering this issue, affirmed Applicant's conviction and sentence. Therefore, Applicant cannot show any resulting prejudice from the alleged deficiency. See State v. Drotning, Op. No. 2019-UP-217 (Ct. App. filed June 19, 2019).

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

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

Allegation 12: Failure to Object to the Additional Charge of Malicious Injury to Property on the Basis of Double Jeopardy

Applicant alleged that Trial Counsel was constitutionally ineffective by failing to object to the additional charge of malicious injury to real property (MIP) on the basis of double jeopardy. This Court finds this allegation to be without merit.

"No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself." S.C. Const. Art. I § 12. "The Double Jeopardy clause protects against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense." State v. Nelson, 336 S.C. 186, 195, 519 S.E.2d 786, 790 (1999). Blockburger is the only remaining test for determining a double jeopardy violation in both multiple punishment and successive prosecution cases. State v. Easler, 327 S.C.

121, 132, 489 S.E.2d 617, (1997) (overruled by on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018)); Blockburger v. U.S., 284 U.S. 299 (1932).

"In Blockburger v. United States, the United States Supreme Court held where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to determine whether these are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999), citing Blockburger, 284 U.S. at 304 (internal quotations omitted). "In addition to application of the Blockburger test, a court must also consider whether one offense is a lesser included offense of the other. If the lesser offense requires no proof beyond that required for the greater offense, the two are the same offense for purposes of the Double Jeopardy Clause." Stevenson, 335 S.C. at 198, 516 S.E.2d at 437.

A person is guilty of MIP if they "...wilfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another." S.C. Code Ann. § 16-11-510(A). "A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, church or place of worship, public or private school facility, manufacturing plant or warehouse, building where business is conducted, institutional facility, or any structure designed for human occupancy including local and municipal buildings, whether the property of the person or another, is guilty of the felony of arson in the second degree..." S.C. Code Ann. § 16-11-110(B).

Trial

At trial, Trial Counsel moved to dismiss the charge of MIP. (Trial Tr. p. 92). Trial Counsel argued that for the jury to convict Applicant of arson in the second degree, the jury would have to convict Applicant of MIP because the former charge contains all the elements of the latter charge. (Trial Tr. p. 92).

Assistant Solicitor Simmons argued each charge had separate victims, with the victim for the arson charge in the second degree being Cook and the victim for the charge of MIP being Golden Corner Realty. (Trial Tr. pp. 92–93). Assistant Solicitor Simmons additionally argued she believed the elements were different because the charge of MIP requires a specific dollar amount. (Trial Tr. p. 93).

The trial court denied Trial Counsel's motion on the same grounds as Trial Counsel's previous motion to dismiss the additional charge of CDVHAN based on double jeopardy. (Trial Tr. p. 93).

PCR Evidentiary Hearing

On direct examination, Applicant testified he was arrested and placed in a holding tank for a couple of months without being charged. (PCR Tr. p. 18). Applicant testified he was charged sometime around July with two crimes, which were attempted murder and arson. (PCR Tr. p. 18). Applicant testified that a few months later, he was charged with additional crimes for reasons he did not understand, as the extra charges seemed to be duplicates or lesser-included offenses of the original. (PCR Tr. p. 18). Applicant testified he did not remember exactly whether Trial Counsel argued against those additional charges. (PCR Tr. p. 18). After Trial Counsel's objections to the additional charges were brought to Applicant's attention, Applicant testified that Trial Counsel made a motion at the beginning of the trial for "running them together or maybe duplicate charges, or something like that." (PCR Tr. p. 18). Applicant testified he did not believe Trial Counsel said,

"double jeopardy," but he did think Trial Counsel argued against the four charges being tried together.

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Applicant did not show how Trial Counsel's failure to object to the additional charge of MIP based on double jeopardy affected the outcome of his trial. Trial Counsel argued that MIP should be dismissed as it was a lesser included offense of arson, effectively making the same underlying argument that he had argued constituted a double jeopardy violation. See Blockburger, *supra* ("same elements test"); See Stevenson, 335 S.C. at 198, 516 S.E.2d at 437 ("If the lesser offense requires no proof beyond that required for the greater offense, the two are the same offense for purposes of the Double Jeopardy Clause.").

Further, it is clear that the trial court would not have granted Trial Counsel's motion had he framed it under double jeopardy, and therefore, Applicant cannot show he was prejudiced by Trial Counsel's failure to argue a violation of double jeopardy. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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

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

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

Allegation 13: Failure to Object to Witness Testimony Concerning Applicant's Demeanor and Failure to Present the Alleged Video Containing Footage of Applicant's Demeanor

Applicant alleged that Trial Counsel was constitutionally ineffective by failing to object to witness testimony concerning Applicant's demeanor and failing to present the alleged video containing footage of Applicant's demeanor. This Court finds this allegation to be without merit.

Trial

At trial, Solicitor Wagner asked Deputy Arnold what Applicant's demeanor was at the crime scene. (Trial Tr. p. 171). Deputy Arnold responded, "He was loud, using a lot of profanity when [he] was talking to him." (Tr. p. 172).

PCR Evidentiary Hearing

On direct examination, Applicant testified that a few people mentioned his demeanor and acted as if he were uncaring. (PCR Tr. pp. 20–21). Applicant testified that law enforcement had him in the back of a police car where he was "out of his mind" and "freaking out." (PCR Tr. p. 21). Applicant testified he tried to get the trial court to admit the video of his demeanor as evidence so the jury could see what his actual demeanor was. (PCR Tr. p. 21). Applicant testified he tried to bring the footage to Trial Counsel's attention, but Trial Counsel refused and said they probably did not have the footage anymore and that it did not matter. (PCR Tr. p. 21). Applicant testified that he informed Trial Counsel that the State was questioning how Applicant was at the scene and

questioning his attitude toward what happened. (PCR Tr. p. 21). Applicant testified that the witnesses were saying he was acting indifferent and apathetic when his demeanor was "wildly the opposite." (PCR Tr. p. 21). Applicant testified that he thought Deputy Arnold's testimony gave the jury the idea that Applicant did not care what was happening. (PCR Tr. p. 21).

Applicant testified that Senerius advised him that the footage existed. (PCR Tr. p. 21). Applicant testified that Trial Counsel never presented the video. (PCR Tr. p. 21). Applicant testified he did not know whether Trial Counsel received the video. (PCR Tr. p. 21).

On direct examination, Trial Counsel testified he believed a video showing Applicant's demeanor existed. (PCR Tr. p. 46). Trial Counsel testified that, from his viewing of the video, Applicant's behavior was "extremely erratic." (PCR Tr. p. 46). Trial Counsel testified that the video also showed that Applicant was "extremely distraught and making statements and things" (PCR Tr. p. 46). Trial Counsel testified that overall, he believed the video would do more harm than good. (PCR Tr. 46). Trial Counsel testified that he attempted to convey to the jury that Applicant had made statements and done things to help Cook at the time, and he believed he was successful in doing that through Cook's cross-examination. (PCR Tr. p. 46). Trial Counsel testified that the footage would not have done a better job conveying Applicant's attempt to help Cook. (PCR Tr. p. 46).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler,

supra. Trial Counsel **credibly** testified he had reviewed the video showing Applicant's "extremely erratic" and "extremely distraught" demeanor and decided not to present it because he believed it would harm Applicant more than it would benefit him. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

Additionally, Applicant cannot show resulting prejudice from Trial Counsel's failure to present the video. Trial Counsel **credibly** testified he attempted to convey to the jury that Applicant was trying to help Cook at the time, and he successfully conveyed that through Cook's cross-examination. Nevertheless, Applicant failed to show how the witness testimony of his demeanor affected the outcome of his case, and failed to show how Trial Counsel's presentation of the video would have affected the outcome of his case. Notably, Applicant failed to provide the video in question, which he alleges would have helped him. See Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness's testimony does not satisfy PCR applicant's burden).

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

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

Allegation 15: Failure to Object to Dr. Shaver's Testimony to Ultimate Issue of Applicant's Intent to Kill

Applicant alleged that Trial Counsel was constitutionally ineffective by failing to object to Dr. Shaver's testimony on the ultimate issue of Applicant's intent to kill. This Court finds this allegation to be without merit.

"Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE. "Such testimony is admissible, so long as the expert does not opine on the criminal defendant's state of mind or guilt or testify on matters of law in such a way that the jury is not permitted to reach its own conclusion concerning the criminal defendant's guilt or innocence." State v. Prather, 429 S.C. 583, 840 S.E.2d 551 (2020) (citing State v. Commander, 396 S.C. 254, 269, 721 S.E.2d 413, 421 (2011)).

In Westmoreland, the Court of Appeals found that the coroner's expert medical testimony that the victim's death was a homicide, defining the death as an intentional act, was an opinion on the appellant's state of mind, and therefore, a comment on his guilt. State v. Westmoreland, 421 S.C. 410, 807 S.E.2d 701 (Ct. App. 2017). The Westmoreland Court contrasted its holding with the Supreme Court's holding in Commander, noting, "The [Supreme C]ourt explained, under the circumstances of that case, homicide meant only that the victim died by the act, procurement, or omission of another and did not comment on the criminality of the death." Westmoreland, 421 S.C. at 420–21, 807 S.E.2d at 707.

Trial

The trial court admitted Joseph Robert Shaver, M.D. (Dr. Shaver) as an expert in critical care and internal medicine. (Trial Tr. p. 304). Dr. Shaver testified that, in his medical opinion, he

believed the act of lighting someone on fire would lead to their death. (Trial Tr. p. 326).

PCR Evidentiary Hearing

On direct examination, Applicant testified Trial Counsel did not object to Dr. Shaver's testimony that an actor who doused someone in gasoline intended to kill that person, as Trial Counsel had checked out at that point. (PCR Tr. pp. 26–27). Applicant testified that his intent was an issue at trial, and Dr. Shaver testified to his intent without objection. (PCR Tr. p. 28).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, *supra*. This Court finds that Dr. Shaver's testimony was not a comment on the criminality or guilt of the person who committed this act against the victim, but merely a comment based on his experience that a death would result from being lit on fire, in line with the facts in Commander rather than Westmoreland. In Westmoreland, the coroner specifically testified that it was his responsibility to determine the cause of death, defining homicide as an "intentional act," and testified that in the appellant's case, he determined it was a homicide—insinuating he determined it was intentional. *See Westmoreland*, 421 S.C. at 415–16, 807 S.E.2d at 704. Dr. Shaver testified, "I would think that the act would lead to death." (Trial Tr. p. 326). This did not give any indication of Dr. Shaver's opinion as to the state of mind of the person who committed the act, but merely his opinion based on his medical experience. Therefore, there was no meritorious basis for Trial Counsel to object to this testimony, and therefore, Applicant cannot show deficiency or prejudice.

See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

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

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

Allegation 9: Failure to Impeach Witnesses, Including Bryan Evans and Matthew Cehula

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to impeach Bryan Evans. This Court finds this allegation to be without merit.

Trial

On direct examination, Bryan Evans (Evans) testified that while he and Applicant were at the Oconee County jail Applicant told him he lit Cook on fire, stating he had "torched the bitch." (Trial Tr. p. 234). Evans testified he had no motive to lie about his testimony and had no personal relationship with either Applicant or Cook. (Trial Tr. p. 234). Evans testified he had pending charges in 2014 but did not receive any help from the Solicitor's office on those charges. (Trial Tr. p. 235). Evans testified that he had gone to prison and had just recently been released. (Trial Tr. p. 235). Evans testified he had not discussed Applicant's case at all prior to his release from

the South Carolina Department of Corrections. (Trial Tr. p. 235).

On cross-examination, Trial Counsel questioned Evans whether any of the other inmates in Evans' and Applicant's cell block overheard their conversation, to which Evans answered that a few other inmates had heard their conversation. (Trial Tr. pp. 235–36). Trial Counsel also questioned Evans whether Evans had contacted an investigator while he was in jail, telling them he had information about Applicant's case, which Evans confirmed. (Trial Tr. p. 236). Trial Counsel further questioned Evans, "And you contacted them because you [were] trying to get a better deal on the charges you had, didn't you?" (Trial Tr. p. 236). Evans answered, "At the time, yes, sir." (Trial Tr. p. 236). Trial Counsel attempted to show that Evans had his burglary in the first-degree charge dismissed as a result of Evans speaking with the investigator, but Evans denied Trial Counsel's accusation. (Trial Tr. pp. 236–38). Evans testified he had already been offered a plea deal of forty months before he notified the investigator via a letter about Applicant's statements. (Trial Tr. p. 238). Evans testified he accepted the plea after sending the investigator the letter. (Trial Tr. p. 238). Additionally in cross-examination, Trial Counsel brought up Evans's swastika tattoos and got Evans to testify he was a white supremacist, "to an extent." (Trial Tr. pp. 238–39). On recross examination, Trial Counsel questioned Evans about being a snitch. (Trial Tr. p. 240).

On direct examination, Assistant Solicitor Simmons asked Matthew Cehula (Cehula) what happened the evening of the incident, and Cehula responded that while out driving he saw "a gentleman that came running down the driveway several houses ahead. I could see him. As he was running down the driveway, he then started running towards us." (Trial Tr. pp. 145–46). Cehula testified that he approached Applicant; Applicant started hitting his windshield, screaming his house was on fire, but Cehula didn't see a house on fire. (Trial Tr. p. 146). Cehula testified he

told 911, "there was an intoxicated person running down the road saying his house was on fire." (Trial Tr. p. 147). Cehula testified Applicant only mentioned that his house was on fire and did not mention that his wife was hurt. (Trial Tr. p. 146). Cehula testified he never saw a woman anywhere. (Trial Tr. p. 147).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Evans was housed at the Oconee County jail with him, (PCR Tr. p. 10). and that he had "ticked off" Evans. (PCR Tr. p. 10). Applicant recalled that Evans testified that Applicant told him that he burned Cook and that he was happy about it. (PCR Tr. pp. 10–11). Applicant denied telling Evans this. (PCR Tr. p. 11). Applicant testified he had no opinions or ideas on how Trial Counsel could have cross-examined Evans. (PCR Tr. p. 11). Applicant testified that Evans had reasons to testify negatively at his trial, because Applicant had seen Evans performing oral sex on his roommate and had told other people about it. (PCR Tr. p. 11). Applicant testified that this incident is what started the feud between him and Evans. (PCR Tr. p. 11). Applicant testified that he explained to Trial Counsel that Evans was biased. (PCR Tr. p. 11).

Applicant testified that he does not think Trial Counsel effectively cross-examined Evans. (PCR Tr. p. 12). Applicant testified that Trial Counsel questioned Evans whether he was a snitch, but then Trial Counsel allowed Evans to explain why he was not a snitch. (PCR Tr. p. 12). Applicant testified he was not aware of Trial Counsel looking into any records to see when Applicant and Evans were housed together at the jail and whether they had the opportunity to have the conversation to which Evans testified. (PCR Tr. p. 12). Applicant testified he expected Evans to testify at his trial because Evans was given a good deal. (PCR Tr. p. 13). Applicant testified

Evans was "looking at fifteen to life and he got two years, so I can understand. Probably something to do with that." (PCR Tr. p. 13).

Applicant testified that the State presented one witness, Cehula, who "completely changed his testimony." (PCR Tr. p. 14). Applicant testified that Trial Counsel did not know Cehula had changed his testimony because either Trial Counsel did not read the statements or did not care. (PCR Tr. p. 14). Applicant testified that Cehula made inconsistent statements in his testimony at trial, based on his review of the discovery. (PCR Tr. p. 14). Applicant testified that Cehula's original statement was that he saw Cook standing outside their neighbor's door and Applicant running out of the door next to it, which was the house they were renting. (PCR Tr. pp. 14–15). Applicant recalled that Cehula testified at trial that he did not see anybody except Applicant, who was acting crazy and whom he thought was drunk, so he called 911. (PCR Tr. p. 15). Applicant testified he did not recall any other records of Cehula calling 911 being admitted. (PCR Tr. p. 15). Applicant testified that Trial Counsel was not effective in impeaching Cehula with his prior statement because Trial Counsel was not aware of it. (PCR Tr. p. 15).

On direct examination, Trial Counsel testified he felt as though he did everything possible to lessen Evans' credibility with the jury. (PCR Tr. p. 43). Trial Counsel testified he questioned Evans regarding his pending criminal charges. (PCR Tr. p. 43). Trial Counsel testified he questioned Evans about his swastika tattoos. (PCR Tr. p. 43). Trial Counsel testified Evans was a Nazi and made sure to point that out to the jury. (PCR Tr. p. 43). Trial Counsel testified he questioned Evans about being in the same cell block as Applicant and that no one else heard their alleged conversation. (PCR Tr. pp. 43–44). Trial Counsel testified he felt as though he had tried everything he could to discredit Evans and to get the jury to see Evans for what Trial Counsel believed he was, a snitch looking out for himself. (PCR Tr. p. 44).

Concerning Cehula, Trial Counsel testified he had no recollection of Applicant communicating Cehula's alleged inconsistent statement to him, and he was unaware of any material inconsistency. (PCR Tr. p. 43). Trial Counsel testified that there might have been a detail that was inconsistent, but it did not seem material to him. (PCR Tr. p. 43).

On direct examination, Solicitor Wagner testified he did not think any deals were made at all and that he did not remember what sentence Evans received. (PCR Tr. p. 53). Solicitor Wagner testified that if any deals were made, they would have had to disclose them. (PCR Tr. p. 53). Solicitor Wagner testified he believed Evans did not want to see somebody get away with that crime and wanted to do the right thing. (PCR Tr. p. 53).

On cross-examination, Solicitor Wagner testified that whatever deal Evans received was what the judge gave him when he pled guilty. (PCR Tr. p. 55). Solicitor Wagner reiterated no deal existed for Evans testifying for the State in Applicant's case, (PCR Tr. p. 55). and that if they had made a deal with Evans for testifying, they would have disclosed it. (PCR Tr. p. 55).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified he did everything he could to try to weaken Evans' credibility in the eyes of the jury. Trial Counsel **credibly** testified he questioned Evans about his swastika tattoos, his membership with the Aryan Brotherhood, and the fact that no one else overheard their conversation in the cell block, all of which is consistent with the record.

Applicant's assertion that Trial Counsel was ineffective for allowing Evans to explain himself disregards the fact that Trial Counsel cannot control what Evans testified to; it is enough that Trial Counsel raised the implication of Evans' bias and lack of credibility. Further, Solicitor Wagner **credibly** testified there was no deal between the State and Evans in exchange for his testimony. Therefore, this Court finds that Trial Counsel effectively cross-examined Evans and was not deficient in this regard.

Concerning Cehula, Trial Counsel **credibly** testified that he did not recall any material inconsistency in Cehula's prior statement versus what he testified to at trial. Additionally, Trial Counsel **credibly** testified that he did not have a conversation with Applicant about Cehula's alleged inconsistency in his testimony during the trial. At trial, Cehula merely testified that Applicant came running out screaming that his house was on fire and asking for help, but he did not see anything else. This testimony served to corroborate Applicant's assertion he ran to get help for Cook, and this testimony was therefore not detrimental to Applicant's case. Therefore, Trial Counsel was not deficient for failing to cross-examine Cehula.

Additionally, Applicant failed to show how the outcome of his case would have changed had Trial Counsel more effectively cross-examined Evans or Cehula. As noted *supra*, Cehula's testimony was helpful to Applicant's case. Further, as found *supra*, Trial Counsel effectively insinuated to the jury that Evans was not credible—eliciting testimony that Evans had met with an investigator prior to his testimony, that he was a white supremacist, and had received a deal for his pending charges at some point. The jury was able to consider all these things and found Applicant guilty. Notably, though Evans' testimony may have been determinantal, Trial Counsel **credibly** testified the state's expert witness testimony in Applicant's case was overwhelming. (PCR Tr. p. 36).

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

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

Allegation 10: Failure to Advise Applicant of His Right to Testify at Trial

Applicant alleged Trial Counsel was constitutionally ineffective by failing to advise Applicant of his right to testify at trial. This Court finds this allegation to be without merit.

"The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. [However], if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." Id. "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." Id.

Trial

Prior to advising Applicant of his right to testify, the trial court informed Applicant that if he did not understand anything to let the trial court know, and that if he answered the trial court's

question, then the trial court would assume that Applicant understood the question. (Trial Tr. p. 377). Applicant indicated he understood. (Trial Tr. p. 377). The trial court then advised Applicant of his right to testify, as follows:

We have reached the stage in the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment of the Constitution of the United States. This amendment states in part no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case.

On the other hand, you have the right to testify on your own behalf should you choose to do so. However, no one can make you testify. This is a personal right, and no one can strike this right except you.

If you decide to testify, you will be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor would be able to introduce your record to attack your credibility.

If you decide to testify, this decision on your part must be freely, voluntarily, and intelligently made with the knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify.

It is left entirely up to you whether or not to testify. You may talk to your attorney, your family, friends, or anyone else, but the final decision will be left entirely up to you.

(Trial Tr. pp. 377–79). The trial court then asked Applicant if he understood what was explained to him, and Applicant responded, "Yes, your Honor." (Trial Tr. p. 379). The trial court then asked Applicant if he had any questions for Trial Counsel, and Applicant responded, "No, your Honor." (Trial Tr. p. 379).

After reading Applicant's rights, the trial court took a recess to allow Trial Counsel to discuss with Applicant whether he would testify or not. (Trial Tr. p. 379). The recess lasted from 10:19 A.M. to 10:32 A.M. on October 20, 2016. (Trial Tr. p. 379). Applicant informed the trial court that he had been able to discuss whether to testify with Trial Counsel and that he did not need to talk with Trial Counsel anymore about testifying. (Trial Tr. p. 379). Applicant informed the trial court that he did not wish to testify. (Trial Tr. p. 379).

PCR Evidentiary Hearing

On direct examination, Applicant testified that a big part of his issue with Trial Counsel's representation concerned Applicant's desire to testify. (PCR Tr. p. 9). Applicant testified he believed it was vital for him to speak on his behalf and rebut Evans's testimony. (PCR Tr. p. 10). Applicant testified that if he had testified at trial, he would have said that Evans was a liar and that Applicant "would never, ever impeach [himself] like that. Especially to someone like him or a complete stranger, which he was." (PCR Tr. p. 13). Applicant testified that Evans' testimony would be detrimental, whether the testimony was true or not. (PCR Tr. p. 13). Additionally, Applicant testified that he would have testified that the only reason anyone went to help Cook was because Applicant had stopped three vehicles on the road and screamed for help. (PCR Tr. p. 14). Applicant testified that one of the vehicles almost ran him over. (PCR Tr. p. 14). Applicant testified he would have countered the State's attempted murder charge based on this account of the incident. (PCR Tr. p. 14).

On cross-examination, Applicant testified he was advised of his right to testify. (PCR Tr. p. 32). Applicant testified he elected not to testify because Trial Counsel told him he could not. (PCR Tr. p. 32). Applicant testified that Trial Counsel advised him that if he testified, then he could not help him. (PCR Tr. p. 32). Applicant testified that Trial Counsel told him the solicitor

would use his words against him. (PCR Tr. p. 32). Applicant testified that if the "only person on [his] side tells him they can't help [him] if [he] goes up there on the stand, then [he] really [has] no option." (PCR Tr. p. 32).

On direct examination, Trial Counsel testified he spoke with Applicant about his right to testify. (PCR Tr. p. 44). Trial Counsel testified that he advised Applicant it was his decision alone whether he wanted to testify. (PCR Tr. p. 44). Trial Counsel testified that he and Applicant reviewed the pros and cons of testifying. (PCR Tr. p. 44). Trial Counsel testified he told Applicant he would be subject to cross-examination. (PCR Tr. p. 44). Trial Counsel testified that the "biggest drawback" to Applicant testifying was that cross-examination would have been "rough." (PCR Tr. p. 44). Trial Counsel testified that based on these considerations, it would be best for Applicant not to testify. (PCR Tr. p. 44). Trial Counsel testified he "certainly did not tell [Applicant] not to testify," and he did not tell Applicant that he could do nothing to help him if he testified. (PCR Tr. p. 44).

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds that Applicant has failed to overcome his burden of proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified he informed Applicant of his right to testify and that the decision was entirely Applicant's. Trial Counsel **credibly** testified that he discussed the pros and cons of Applicant testifying with Applicant. Trial Counsel **credibly** testified he believed that it was in Applicant's best interests not to testify. Trial Counsel **credibly** testified he did not tell

Applicant not to testify or that he could not help him if he testified. Further, the record establishes that the trial court advised Applicant of his right to testify, that Applicant took time to discuss his rights with Trial Counsel, and that Applicant advised the trial court it was his decision not to testify. Applicant's testimony that Trial Counsel coerced him into not testifying is **not credible**, and Trial Counsel is therefore not deficient.

Additionally, Applicant failed to show that the outcome of his trial would have changed had he testified. Applicant testified he would have countered Evans' testimony by testifying Evans was a liar, ignoring the fact that Trial Counsel impeached Evans as to the truthfulness of his testimony. (Trial Tr. pp. 235–39). Applicant also testified that he would have testified that he ran out in the street to seek help for Cook, but this was presented to the jury through Matthew Cehula's testimony. (Trial Tr. pp. 145–46). Furthermore, the danger to Applicant's case inherent in a thorough cross-examination is readily apparent.

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

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

Allegation 14: Failure to Request a Change of Venue

Applicant alleged that Trial Counsel's representation was constitutionally ineffective by failing to request a change of venue. This Court finds this allegation to be without merit.

"Motions for change of venue are addressed to the sound discretion of the trial judge, and his decision will not be reversed absent an abuse of discretion." State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979). "When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial. State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1999)." State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008); See State v. Patterson, 324 S.C. 5, 13, 482 S.E.2d 760, 764 (1997) (citing State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)). ("When the trial judge bases his ruling upon an adequate *voir dire* examination of the jurors, his conclusion that the objectivity of the jury panel has not been polluted by outside influence will not be disturbed absent extraordinary circumstances.")); See also State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997) ("The moving party bears the burden of showing actual juror prejudice as a result of such publicity.")

PCR Evidentiary Hearing

On direct examination, Applicant testified that he had pushed Trial Counsel to move for a change of venue. (PCR Tr. p. 30). Applicant testified "[i]t's a small community and there were so many EMTs, and police, and firefighters, and everybody involved that everybody in the jury pool knew everybody that was testifying." (PCR Tr. p. 30). Applicant testified that Trial Counsel did not petition for a change of venue, and he told Applicant the motion would be denied if he made it. (PCR Tr. p. 30). Applicant testified he told Trial Counsel he would not get a change of venue if he did not ask for it. (PCR Tr. p. 30).

On direct examination, Trial Counsel testified he had no recollection of any discussion with Applicant about a change of venue. (PCR Tr. p. 46). Trial Counsel testified that Applicant and Cook were not from Oconee and had not lived there long, so he does not know how he would argue Applicant was prejudiced by being tried in Oconee. (PCR Tr. pp. 46–47). Trial

On cross-examination, Trial Counsel testified that the testifying witnesses in this case, who were locals of Oconee County, would likely know some of the jurors, who were also locals of Oconee County. (PCR Tr. p. 47). Trial Counsel testified that in a small county such as Oconee County, this likelihood would be evident in every case. (PCR Tr. p. 47).

Findings

This Court, after a thorough evaluation, finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel **credibly** testified he had no recollection of discussing a petition for a change of venue with Applicant. Additionally, Trial Counsel **credibly** testified he did not know where a potential prejudice would exist that would warrant a change of venue. Trial Counsel **credibly** testified that Applicant and Cook were not from Oconee, and they had not been in Oconee very long. Applicant's testimony that he requested Trial Counsel move to change venue and Trial Counsel refused is **not credible**. Therefore, Trial Counsel is not deficient in not moving for a change of venue where Applicant did not request it, and where Trial Counsel articulated a valid reason for not moving for a change of venue. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010)

([W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

Additionally, Applicant failed to provide credible documentary evidence or present testimony that had Trial Counsel moved for a change of venue, the motion would have been successful. Applicant merely offered that it was a small community, and the jurors and witnesses all knew each other. See Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness's testimony does not satisfy PCR applicant's burden). Further, Trial Counsel **credibly** testified that in a small community like Oconee, it is always possible that the witnesses and jurors know each other, and he did not see what prejudice Applicant would be able to show. Notably, the trial court conducted *voir dire* of the jurors, and the jurors who indicated that they knew a witness stated they could be fair and impartial or were excused for cause. (Trial Tr. pp. 36–44).

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

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

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25th day of June, 2025.

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Tenth Judicial Circuit

Sunter, South Carolina

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
JUL -3 P 4:05

CERTIFIED TRUE COPY

JUL 03 2025

CLERK OF COURT
OCONEE COUNTY, SC

WITNESSES

Oconee Co Sheriff's Dept.
Scott Arnold

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

true bill

Mappelen
Foreperson of Grand Jury
Date:

MAY 04 2015

VERDICT

Guilt

Jeff C. Winchester
Foreperson of Grand Jury
Date: *Oct. 20, 2016*

DOCKET NO. 2015-GS-37-00441

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

MAY 04 2015, TERM

THE STATE

VS.

JACOB DANIEL DROTNING

INDICTMENT FOR

CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE

SC Code: § 16-25-0065
CDR Code: 2988

LSS

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAY 14 AM 8 55

ENTERED
JB
COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

MAY 04 2015

At a Court of General Sessions, convened on _____, the Grand
Jurors of Oconee County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE

That defendant, Jacob Daniel Drotning did in Oconee County, South Carolina on or about May 16, 2014, cause, offer, or attempt to cause physical harm or injury to Catherine Cook, a household member of the Defendant, with the present ability under the circumstances reasonably creating fear or imminent peril and Jacob Daniel Drotning intentionally committed an assault and battery which involved the use of a deadly weapon, or resulted in serious bodily injury, and/or an assault, with or without an accompanying battery, which would reasonably cause fear of imminent serious bodily injury or death, to wit: defendant did light the victim on fire using gasoline causing burns over 60% of her body. All in violation of 16-25-0065, Code of Laws of South Carolina, (1976), as amended.

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


LINDSEY SATTERFIELD SIMMONS
ASSISTANT SOLICITOR

WITNESSES

Oconee Co Sheriff's Dept.
Scott Arnold

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

True bill

McAppell
Foreperson of Grand Jury
Date:

MAY 04 2015

VERDICT

Guilty

J. C. Winchester
Foreperson of Grand Jury
Date: Oct 20, 2016

DOCKET NO. 2015-GS-37- 00442

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

MAY 04 2015, TERM

THE STATE

VS.

JACOB DANIEL DROTNING

INDICTMENT FOR

MALICIOUS INJURY TO PROPERTY

SC Code: § 16-11-0520(A)
CDR Code: 3429

LSS

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAY 14 AM 8 55

ENTERED
JB
COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on MAY 04 2015, the Grand Jurors of Oconee County present upon their oath:

MALICIOUS INJURY TO PROPERTY

The defendant, Jacob Daniel Drotning, did on or about May 16, 2014 in Oconee County, willfully, unlawfully and maliciously do damage to real property located at 8044 Utica St, Seneca, SC, the damage being more than Two Thousand Dollars (\$2,000.00) but less than Ten Thousand Dollars (\$10,000.00), to wit: defendant did deface rental property managed by Golden Corner Realty by setting a fire inside the property. All in violation of 16-11-0520(A), Code of Laws of South Carolina, (1976), as amended.

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


LINDSEY SATTERFIELD SIMMONS
ASSISTANT SOLICITOR

WITNESSES

N. Mckee, Oconee Co Sheriff's Dept.

169

Will Free State

Agold

ARREST WARRANT NUMBER

2014A3710400482

ACTION OF GRAND JURY

TRUE BILL

Melissa A. Burdette

Foreperson of Grand Jury

Date:

JUL 14 2014

VERDICT

Guilty

James C. Winkler

Foreperson of Petit Jury

Date:

OCT 20, 2016

DOCKET NO. 2014GS37

00742

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUL 14 2014

Term

THE STATE

vs.

JACOB DANIEL DROTNING

LSS

Indictment for

MURDER/ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 JUL 16 AM 11 46

ENTERED
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COMPUTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF Oconee)

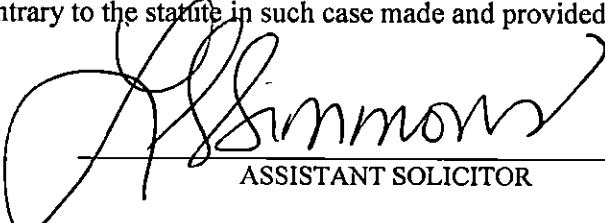
INDICTMENT

At a Court of General Sessions, convened on JUL 14 2014, the Grand Jurors of Oconee County present upon their oath:

MURDER/ATTEMPTED MURDER

That **Jacob Daniel Drotning** did in Oconee County, South Carolina, on or about **May 16, 2014**, did unlawfully with malice aforethought and with the intent to kill, attempted to kill Catherine Cook, to wit: defendant did light the victim on fire using gasoline causing burns over 60% of her body. This is in violation of 16-3-29 of the South Carolina Code of Laws (1976) as amended

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


ASSISTANT SOLICITOR

DOCKET NO. 2014GS3700743

WITNESSES

Scott Arnold, Oconee Co Sheriff's Dept.

663

Will Freestate

[Signature]

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUL 14 2014

Term

THE STATE

vs.

JACOB DANIEL DROTNING

LSS

Indictment for

ARSON / ARSON - SECOND DEGREE

SC Code: 16-11-0110(B)
CDR Code: 2551

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 JUL 16 AM 11 46

ENTERED
JB
COMPUTER

ARREST WARRANT NUMBER

2014A3710400565

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Melissa A. Burdette

Foreperson of Grand Jury

JUL 14 2014

Date:

VERDICT

Guilty

[Signature]

Foreperson of Petit Jury

Date: Oct. 20, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

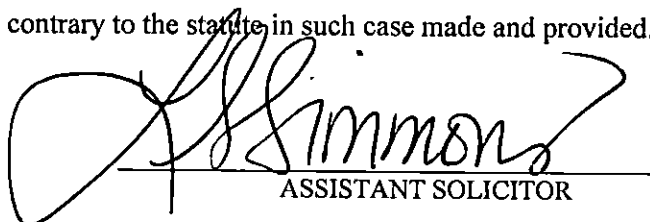
INDICTMENT

At a Court of General Sessions, convened on JUL 14 2014, the Grand Jurors of Oconee County present upon their oath:

ARSON / ARSON - SECOND DEGREE

That **Jacob Daniel Drotning** did in Oconee County, South Carolina, on or about **May 16, 2014**, willfully and maliciously set fire to &/or burn &/or cause to be burned a dwelling house, building, structure or any property, that resulted in serious bodily injury to the body of Catherine Cook resulting in burns over 60% of her body. This is in violation of 16-11-110(B) of the South Carolina Code of Laws (1976) as amended.

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


 ASSISTANT SOLICITOR