NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case #2019-CP-40-01813

The State, Respondent,

v.

Courtney S. Thompson Appellant.

NOTICE OF APPEAL

Courtney S. Thompson, appeals the decision of the Court, in the order dated September 10, 2025, received by counsel on September 22, 2025, where Ms. Thompson was denied her request for Post-Conviction Relief. Ms. Thompson was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 9/23/25

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Will not be representing on appeal

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Courtney S. Thompson, #360154, Applicant, v. State of South Carolina, Respondent.	)	CASE No. 2019-CP-40-01813

ORDER OF DISMISSAL WITH PREJUDICE

Presiding Judge:	Hon. Donald B. Hocker
PCR Counsel:	Timothy L. Griffith Esq.
Respondent's Attorney:	Talida Balaj, Esq.
Trial Counsel:	Tracy Pinnock, Esq.
Date of Hearing:	April 10, 2025
Court Reporter:	Katherine A. Spires

This matter comes before this Court by way of Courtney S. Thompson's (Applicant) post-conviction relief application filed on March 29, 2019. Respondent, the State of South Carolina, made its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on August 29, 2019, requesting an evidentiary hearing to resolve the claims as outlined in the application.

On April 10, 2025, an evidentiary hearing was convened before the Honorable Donald B. Hocker at the Richland County Courthouse. Timothy L. Griffith, Esquire, represented Applicant. Assistant Attorney General Talida Balaj represented Respondent. In support of these claims, Applicant testified on ~~his~~ Her own behalf, and Respondent presented testimony from Tracy Pinnock, Esquire (Trial Counsel). Respondent also presented testimony from Joanna A. McDuffie and K. Luck Campbell, Esquires.

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

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the October 2013 term by the Richland County Grand Jury for homicide by child abuse (2013–GS–40–6520) and unlawful conduct toward a child (2013–GS–40–6521). Applicant was represented by Assistant Public Defenders Adam Ruffin, Tracy Pinnock, and Eric Staggs, all of the Fifth Circuit Public Defender's Office. Assistant Solicitors Luck Campbell, Joanna McDuffie, and Meghan Walker, of the Fifth Circuit Solicitor's Office, prosecuted the case.

Applicant's case proceeded to a jury trial May 19–28, 2014, before the Honorable Robert E. Hood. Applicant was tried simultaneously with her co-defendant, Antonio Guinyard (Guinyard). The jury convicted Applicant as indicted on both charges. Judge Hood sentenced Applicant to serve ten years' imprisonment for unlawful conduct toward a child, consecutive to serving life without parole (LWOP) for homicide by child abuse.

Applicant filed a timely Notice of Appeal. Mitzi Campbell Williams, Esquire, and Chief Appellate Defender Robert M. Dudek, represented Applicant on appeal, raising two issues:

I. Did the trial court err in denying Courtney's motion for a directed verdict in that the state failed to present substantial circumstantial evidence?

II. Did the trial court err in denying Courtney's motion to exclude graphic photographs of the child, which were calculated to arouse the sympathies and prejudices of the jury?

After briefing and oral argument, the court of appeals affirmed Applicant's conviction in State v. Thompson, 420 S.C. 192, 802 S.E.2d 623 (Ct. App. 2017). Thereafter, Applicant petitioned the Supreme Court for a writ of certiorari of the Court of Appeals' decision. The South

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Carolina Supreme Court denied Applicant's petition on March 28, 2018, and the case was remitted back to the circuit court on April 4, 2018.

SUMMARY OF FACTS ADDUCED AT TRIAL

Victim was born on April 18, 2009, to Applicant and Guinyard[1]. His premature birth, as well as the very limited prenatal care Applicant obtained, led to health issues[2] that resulted in his stay in the intensive care unit after his birth. When he was stable, he was released. He was eight days old. (ROA p. 110, l. 20 – p. 111, l. 13; p. 129, l. 15 – p. 130, l. 11; p. 456, l. 16 – p. 458, l. 8). While he was in the hospital, he was diagnosed with congenital hydronephrosis, which can sometimes result in obstruction in the urethra. An appointment with a pediatric urologist was made for after he was discharged; the appointment was not kept. Later efforts by the hospital to reach his parents about other test results were unsuccessful. (ROA p. 458, l. 9 – p. 459, l.16). Three days after Victim was discharged from the hospital – when he was 11 days old – he was brought into the emergency room for follow-up on a condition with his hands; at that time, he was spitting up a lot because he was being overfed. (ROA p. 460, l. 19 – p. 461, l. 3). Victim was not seen again until he was brought in for his first well-child check-up in June 2009; such check-ups should

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[1] Describing their relationship, Applicant's sisters, Crystal and Natalie, testified that Guinyard would do whatever Applicant said. (ROA p. 135, ll. 15-20; p. 290, ll. 1-3). Crystal said that, while it was rare, Applicant had kicked Guinyard out of the home a couple of times. (ROA p. 143, ll. 14-21). Crystal also testified that Applicant not only complained that Guinyard did not punish Victim, but she would also get angry about it. Applicant also told Crystal that Guinyard acted like he was afraid of Victim. (ROA p. 145, l. 18 – p. 147, l. 4). Natalie also said that Guinyard saw the things that Applicant did. (ROA p. 290, ll. 4-5).

[2] At trial, the State presented the testimony of Dr. Olga Rosa, the Chief of the Division of Forensic Pediatrics for the U.S.C. School of Medicine and Medical Director of the South Carolina Child Abuse medical Response System. She was qualified as an expert in the field of child abuse pediatrics. (ROA p. 449, ll. 4-23; p. 452, ll. 13-22). Dr. Rosa testified that she had received Victim's medical records from birth through September 2012, as well as photographs taken around the time of his death and the pathology report. She reviewed all of these documents in order to have a complete history of Victim up to that point. (ROA p. 453, l. 8 – p. 455, l. 16). She testified as to Victim's physical, medical, and developmental history.

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be done two weeks after birth. (ROA p. 459, l. 16 – p. 460, l. 2).

On June 18, 2009, Victim was placed in foster care. (ROA p. 461, ll. 6-14; p. 585, ll. 9-19). From that point, Victim had regular pediatric check-ups and, at his 15-month well-child check-up, Victim was where he should have chronologically been in his development. (ROA p. 562, l. 15 – p. 563, l. 6). When he was 18 months old, a brain MRI was done because his foster mother was concerned about his speech and because he had a large head circumference. The MRI showed that the structure and anatomy of his brain were normal. He was "big, chunky, and healthy" – he was above the 97th percentile for everything on all of the growth charts. As a result of recommended speech therapy[3] and a little bit of occupational or physical therapy, by March 26, 2012, Victim was talking in two- or three-word sentences, was socialized, and was toilet-trained. He was on par with his peers and had reached his potential for his age.[4] (ROA p. 174, ll. 16-23; p. 462, l. 6 – 463, ll. 7-11; p. 466, l. 1 – p. 467, l. 15). A genetic consult revealed no metabolic or medical cause that would affect his development. Victim was not autistic. (ROA p. 465, ll. 2-25). Victim was set up to be enrolled in a three-year-old program at Richland I. (ROA p. 468, ll. 11-17).

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[3] Dr. Rosa testified that speech is the first thing that goes in children in foster care. Children in foster care have trouble developing speech. Victim was in different foster care settings initially, but from sometime in late 2010 until he was returned to his parents in 2012, Victim was with a solid foster family and he flourished. (ROA p. 464, ll. 6-24).

Denise Jones, Victim's foster mother from August 2009 through April 6, 2012, testified that, when he came to her at 15 months, he was not doing much crawling or moving around, but once she started working with him, he began to crawl and walk and became more active. She also said that, by the time he left her, his speech was improving well and he was completely toilet trained. (ROA p. 570, l. 13 – p. 573, l. 7). A couple of days after Victim was returned home, Ms. Jones talked to Applicant who reported that Victim was not using the bathroom. Ms. Jones told her she did not understand that and told her to let her know if she needed any help. Ms. Jones never heard from Applicant again. (ROA p. 573, l. 8 – p. 5744, l. 4).

[4] Medical and therapeutic services were provided for Victim at no cost to his parents or foster parents. (ROA p. 467, l. 16 – p. 468, l. 10).

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On April 6, 2012, Victim was returned to his parents, Applicant and Guinyard. (ROA p. 111, l. 9 – p. 112, l. 6; p. 150, ll. 4-7; p. 243, ll. 8-13; p. 468, ll. 22-25; p. 585, ll. 9-19). At that time, he was a happy, healthy little boy who just wanted to play and talk. He looked to be well-nourished. (ROA p. 589, l. 19 – p. 590, l. 6).

After Victim had been returned,[5] one of Applicant's sisters, Crystal Thompson, moved in with her and Guinyard. While living with them, Crystal saw or witnessed Applicant beat Victim with a clothes hanger, a coat hanger, a drop cord, a cable cord,[6] her hand, and her knees. (ROA p. 111, l. 24 – p. 114, l. 9; p. 134, l. 16 – p. 135, l. 1; p. 140, l. 25 – p. 141, l. 3; p. 148, l. 9 – p. 150, l. 3; p. 244, ll. 3-5).

The coat hanger beating occurred sometime before the summer of 2012. Crystal was present when Applicant and Victim visited the home of their other sister, Natalie. Once there, Victim began to cry when he could not go out the door after Natalie's husband. Applicant told him to stop crying. When he would not, she "popped him in the mouth, and jacked him around in the house and went to grab a clothes hanger." (ROA p. 137, ll. 5-7; see also p. 136, l. 9 – p. 137, l. 3).

On September 11, 2012, Victim was taken for his first doctor's visit since he was returned to his parents. Dr. Monica McCutcheon, a board-certified pediatrician, saw Victim for his three-year-old well child visit (Victim was three years and almost five months old at the time). He had

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[5] After victim was returned to Applicant and Guinyard in April 2012, he stayed with them except for a couple of weeks when one of her sisters, Natalie, took care of him. The other children of Applicant lived with them on a less regular basis. (ROA p. 243, l. 11 – p. 245, l. 2; p. 273, l. 19 – p. 274, l. 4).

When Victim stayed with Natalie and her fiancé, he had his own room and was fed regularly. (ROA p. 274, ll. 5-10).

[6] Crystal testified that the cable cord incident was a single incident. Applicant beat Victim with the cord while upstairs and others were downstairs and heard. Victim was crying for his father for help, but no one helped him. Crystal testified that while she did not call the police or DSS, she did tell her other sister to report it to DSS. (ROA p. 138, ll. 21-23; p. 141, l. 4 – p. 144, l. 13).

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not been seen by the practice since he was two months old. (ROA p. 169, ll. 4-8; p. 170, l. 18 – p. 171, l. 13; p. 172, ll. 8-15; p. 469, ll. 3-21).

Dr. McCutcheon found Victim to be a well-nourished child. Although his speech was a little difficult to understand, he was able to answer questions and seemed developmentally appropriate. Dr. McCutcheon did not see that Victim demonstrated any of the signs of autism. (ROA p. 173, l. 15 – p. 174, l. 2; p. 178, l. 25 – p. 179, l. 2; p. 180, ll. 8-17). Applicant expressed concern over Victim's development and mentioned that he had issues with urinating and defecating on himself, as well as with his speech. (ROA p. 174, l. 3 – p. 175, l. 25). Dr. McCutcheon determined that Victim had regressed – *i.e.*, he had lost things that he had accomplished such as his speech, ability to engage in symbolic play, and recall of his name, age, sex or gender[7] – and she referred Victim for a hearing evaluation, speech therapy, and, out of respect for the parents' concerns, to a developmental pediatrician. (ROA p. 176, ll. 1-10; p. 470, l. 2 – p. 471, l. 16). After Victim left her office, Dr. McCutcheon placed a call to the DSS case worker because she was concerned about his parents' lack of knowledge and follow-up on medical care. (ROA p. 176, l. 1 – p. 178, l. 9; p. 472, ll. 4-7). Victim was never seen by any of the referrals and was not seen again by Dr. McCutcheon's practice or any other doctor prior to his death. (ROA p. 176, ll. 11-23; p. 177, ll. 13-18; p. 472, ll. 10-21).

One day in the fall of 2012, Victim was supposed to go to the bathroom, but he defecated and began playing with his feces. Applicant asked Crystal to hold his legs so she could "whoop"

[7] Dr. Rosa, testifying as an expert at trial, testified that this regression by Victim was significant "[b]ecause, you know, a child that has acquired mile stones to this point and then suddenly in a period of time is regressing those mile stones, then you have to ask what's going on in the environment or the child that is causing this regressions. When we have already a history --- I mean, a diagnostic work up, that his brain M.R.I. is normal, that his genetic consult was normal, then what else is going on." (ROA p. 471, l. 20 – p. 472, l. 3; see also p. 452, ll. 13-22; p. 471, ll.4-18).

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him. Instead of holding his legs, Crystal left. (ROA p. 138, ll. 7-20). On another occasion that fall, Crystal walked in on Applicant beating Victim. He was on his back on the floor, and she was on her knees straddling him and punching him in the face. (ROA p. 138, l. 24 – p. 139, l. 8).

Sometime after Crystal moved into her own apartment – in the same complex where Guinyard and Applicant were living – in October 2012, Crystal gave Victim some juice to drink when he came over. Applicant came in and slapped the juice out of his mouth, knocking him back a little. (ROA p. 139, l. 9 – 140, l. 12).

By the spring of 2013, Angela Metze, the grandmother of one of Victim's sisters,[8] noticed that Victim had changed. He had lost a significant amount of weight, he was not active, he would not talk when told to do so, and he was withdrawn. (ROA p. 586, l. 16 – p. 587, l. 10; p. 580, ll. 7-25). Sometime in February 2013, Ms. Metze received some photographs of Victim showing bruises, scars, and marks from beatings on his back. She contacted DSS several times. (ROA p. 589, l. 18 – p. 590, l. 5). Ms. Metze offered to help with Victim, but they never let her do so, and, to her knowledge, Victim never went with anyone else. He always stayed with them. (ROA p. 603, ll. 17-25).

Maria Thompson, another sister of Applicant, heard Applicant "spanking, you know, beat[ing]" Victim sometime around Easter in 2013[9] because he had urinated on the floor at Maria's house. She also heard Victim crying. (ROA p. 245, l. 9 – p. 246, l. 9). He was limping that day, and he had bruises on his back. (ROA p. 247, l. 19 – p. 248, l. 13). Maria called DSS several times about Victim's condition. (ROA p. 249, l. 25 – p. 251, l. 21). After Victim was returned to

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[8] Ms. Metze's granddaughter was the daughter of her son and Applicant. She primarily lived with Ms. Metze. (ROA p. 586, l. 12 – p. 587, l. 24).

[9] In 2013, Easter Sunday was observed on Sunday, March 31, 2013. (http://www.timeanddate.com/holidays/us/easter-sunday).

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his parents, Natalie Thompson, another of Applicant's sisters, saw Applicant hit Victim with a belt, a shoe, and a hanger. (ROA p. 258, ll. 12-13; p. 259, l. 1 – p. 261, l. 12; p. 262, ll. 14-16). Natalie also called the police and DSS several times on both Applicant and Guinyard. When DSS told her that she needed proof of his condition, Natalie took photographs[10] of Victim once when Applicant and Guinyard were not present – the photographs were of his face to show who he was and his body to show bruises. (ROA p. 261, l. 16 – p. 263, l. 23; p. 264, ll. 20-22; p. 281, l. 24 – p. 282, l. 5).

Crystal also witnessed Guinyard hit Victim twice, punch him, and make him sit on the toilet for three hours. (ROA p. 115, l. 19 – 116, l. 24; p. 135, l. 21 – p. 136, l. 8). Natalie never saw Guinyard beat Victim; but she did see him get angry with and spank him.[11] She also saw Guinyard present on some of the occasions when Applicant beat Victim. (ROA p. 261, l. 24 – p. 262, l. 18; p. 263, l. 24 – p. 264, l. 12; p. 278, ll. 1-17).

Victim would sometimes eat from trash cans. On occasion, Natalie or her fiancé, Charles Robinson, would sneak or try to sneak something to him; if the Applicant caught them, she would become angry. Natalie never saw Guinyard try to give food or water to Victim when he was hungry or thirsty.[12] (ROA p. 273, ll. 2-18).

Gladys Thompson, Applicant's mother, observed that Victim was not treated as nicely as

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[10] The photographs were admitted into evidence without objection as States Exhibits 215 through 222.

[11] Natalie testified she had "seen [Guinyard] hit [Victim], but in the way of a father should, he smacked in the back of the head, but not to hurt him.... And spanked him." (ROA p. 289, ll. 2-6). She did, however, also testify that she remembered telling law enforcement both that Guinyard would beat Victim and that she actually saw Guinyard knock Victim in the head once. (ROA p. 289, ll. 20-25).

[12] Natalie testified about one occasion when Guinyard and Applicant argued over how many pieces of pizza Victim could eat, with Guinyard finally agreeing with Applicant that Victim would only have one slice while the other children had three. (ROA p. 279, l. 4 – p. 650, l. 5).

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his sisters were treated.[13] (ROA p. 326, l. 16 – p. 327, l. 11). She saw Applicant hit Victim with a cable cord once, and she saw her punch him with her fist once. (ROA p. 329, ll. 2-9). Ms. Thompson felt that, when Applicant beat Victim, she was getting angry with him. (ROA p. 333, ll. 13-15). Ms. Thompson observed that Victim was not fed and given water or something to drink regularly. (ROA p. 332, ll. 13-16). She was told by Applicant once that Victim had drunk out of a toilet. (ROA p. 333, ll. 5-7). When Ms. Thompson tried to stand up for Victim, Applicant kicked her out of the house. (ROA p. 328, l. 25 – p. 329, l. 1; p. 337, ll. 19-21). After her church helped her find a place to stay, Ms. Thompson stood up for Victim. (ROA p. 338, ll. 1-7; p. 337, l. 19 – p. 338, l. 2).

On April 5, 2013, Ms. Metze went to the Five Points Pediatric Group and talked to Dr. Kiersten Lofton, who had seen Victim's sisters but had never seen Victim. Ms. Metze told Dr. Lofton that she was concerned that Victim was being abused, and she showed Dr. Lofton photos on her phone, which showed Victim's back, which had been taken approximately one month earlier. Ms. Metze wanted Dr. Lofton's help in reporting to the police or DSS that Victim was being abused. (ROA p. 307, ll. 14-18; p. 309, l. 19 – p. 312, l. 20; p. 590, ll. 5-10). Dr. Lofton was concerned by the photographs of Victim's lower to mid back area. She observed what appeared to be patterned markings on Victim's back, indicating to her that the markings were caused by Victim having been struck with something. Dr. Lofton reported her observations and opinion to DSS on that same day and asked them to follow up. (ROA p. 313, l. 11 – p. 314, l. 7).

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[13] At trial, Ms. Thompson testified she remembered telling Investigator Wagner that animals should not have been treated the way Victim was treated, and that if Victim spilled anything, he would be slapped hard with an open hand by Applicant. (ROA p. 328, ll. 17-24).

Applicant's sister testified that, while Victim's siblings had parties on their birthdays, Victim "never had a proper birthday party or anything done especially for him." (ROA p. 276, ll. 1-7).

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Later that same day, Dr. Lofton was contacted by the police department and told that Victim had a skin condition. (ROA p. 314, ll. 8-23). Dr. Lofton, who had considered and rejected the possibility that the markings were the result of a skin condition, followed up with DSS. She told them that she had reviewed Victim's records from her clinic and the clinic that had previously seen Victim, and she had found no documentation of a skin condition. She also told DSS that they needed to look into possible medical neglect because her clinic's records indicated that there had been no follow-up on the earlier referrals made for Victim's possible urology and developmental issues. (ROA p. 314, l. 24 – p. 316, l. 15).

Sometime around the end of May or the first of June 2013, Natalie went with Guinyard and Applicant to the grocery store in a van driven by someone else. After shopping at the grocery store, they stopped at a cell phone business so that Applicant could obtain a government assistance telephone. When Guinyard left the van to check on Applicant, Natalie heard a "drinking noise" and, for the first time, realized that Victim was sitting in the cargo area of the minivan. He was drinking a soda that Natalie had bought at the grocery store. He then asked her if she had anything to eat. She only had frozen food and chips, and gave him some of the chips.[14] (ROA p. 270, l. 6 – p. 272, l. 20; p. 276, ll.14-24). Victim was only able to eat about half of the bag before Guinyard and Applicant returned to the van. He threw the bag to Natalie, who wrapped it up and put it under the seat to hide it from Applicant and Guinyard. Applicant found it, however, and became angry with Natalie. (ROA p. 272, l. 20 – p. 273, l. 1; p. 278, l. 18 – p. 279, l. 3).

[14] Natalie testified at trial that, on this day, Victim's mouth was really messed up – "his mouth was real, real dry as if he was dehydrated. His lips were cracked up. They were bloody. The top lip was all pussie [sic]. I had asked about it, but [Applicant] told me that it was something he picked up and ate and it was something wrong. The doctor said it was because of something he ate off the ground or something that she had cream for it." (ROA p. 272, ll. 5-11). Natalie never saw the cream and never saw Applicant apply any cream. (ROA p. 272, ll. 12-15).

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Also, in May or June, Applicant spoke to Ms. Metze over the telephone. She had just moved into the house and was overwhelmed with bills; she said life was not treating her fairly, and she complained about Victim defecating on himself. Ms. Metze suggested that she take Victim to counseling or, if things got worse, to return him to DSS. (ROA p. 590, l. 20 – p. 591, l. 11). Applicant told Ms. Metze that she was going to get Guinyard's mother to take him and that she had already taken Victim to get help, a representation that Ms. Metze determined later to be false. (ROA p. 592, ll. 16-24).

On occasions prior to July 1, 2013, Applicant made statements about killing Victim. When confronted by Crystal, Applicant said that she did not care and did not care "if the retarded bastard died," and that "if DSS did not take him, that she was going to kill him and bury him so DSS would not take her other baby." (ROA p. 126, l. 10 – p 127, l. 6). Applicant also told Natalie – not in Guinyard's presence – that she wanted Victim to go back to DSS and that she wanted him to be beaten, raped and killed once in DSS custody. (ROA p. 274, ll. 11-15; p. 275, ll. 8-14).

Applicant went into labor at approximately 7:00 a.m. on Saturday, June 29, 2013. She called Kimberly Gooden, with whom her one-year-old daughter usually lived, and asked if she would pick up the girl from Applicant's home and take her back home with her. Ms. Gooden did so. She did not see Victim. (ROA p. 555, l. 5 – p. 557, l. 4).

On that same day, Saturday, June 29, from the hospital, Applicant called Ms. Metze and asked her to come get her three-year-old daughter because Guinyard wanted to come see her. Ms. Metze, who already had Applicant's two-year-old daughter, agreed. When she drove up to their home, Guinyard was outside with the three-year-old. Ms. Metze did not see Victim that day and, in fact, had not seen him since around Easter. (ROA p. 593, l. 10 – p. 595, l. 23; p. 609, l. 22 – p. 610, l. 3).

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Applicant's seventh child was born in the early morning hours of Sunday, June 30. At 1:06 p.m. on July 1, Applicant and her new baby were discharged from the hospital and, using her cellphone, she called Blue Ribbon Taxi at 1:12 p.m. for a taxi to take her home. (ROA p. 780, l. 22 – p. 783, l. 8; p. 784, ll. 11-19; p. 878, l. 20 – p. 879, l. 24; State's Exhibits 2A and 250-A).

Approximately nine minutes after the call to Blue Ribbon Taxi, Applicant received a call from Crystal lasting 40 seconds. An hour later, at 2:17 p.m., Applicant called her voicemail; six minutes later, she missed a call from Nicole. Fifty-three minutes later, at 3:14 p.m., she missed a call from her mother's home. She called Nicole at 3:17 and talked to her for 34 seconds. Upon ending that call, she called her mother's house and spoke to someone. She thereafter missed two calls in a row from Nicole, at 3:24 p.m. and 4:03 p.m. At 5:05 p.m., she received a call from Crystal and talked to her for a little over two minutes. (ROA p. 878, l. 20 – p. 880, l. 15; State's Exhibit 2A).

During their telephone conversation, Applicant told Crystal that Victim had gotten a cracker out of the bag she had brought home from the hospital and was trying to eat it. Crystal heard Applicant tell Guinyard to go see what Victim was doing. (ROA p. 117, l. 1 – p. 119, l.17). Applicant said she was going to take a shower, and they hung up. The phone then "dialed back" or "butt dialed" Crystal. When Crystal answered, she could hear Victim getting beaten and screaming for help. She heard him say, "Lord, help me." She also heard Applicant tell him to "hush," and then heard Guinyard and Applicant talking, with Applicant telling Guinyard to hold his legs and Guinyard later saying that Victim was not moving. The phone then went dead. (ROA p. 119, l. 21 – p. 122, l. 8; p. 125, ll. 23-25; p. 153, ll. 7-10).

At 5:07 p.m., almost as soon as the call with Crystal ended, Applicant called Nicole and spoke for 20 seconds. After that call, Applicant conducted five Google searches on her cellphone

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on what to do if a child has a seizure. The next call after the searches is the first of seven calls in a row, each between 17 and 26 seconds long, to Kimberly Gooden; the first call was made at 6:40 p.m. and the last at 6:48 p.m. (ROA p. 878, l. 20 – p. 883, l. 3; State's Exhibit 2A).

At 6:12 p.m., Applicant called 911 and reported that Victim had fallen and was having problems breathing. (ROA p. 882, ll. 16-20). Esther Curran, an EMT with Richland County EMS, and her partner were dispatched at approximately 6:14 or 6:15 p.m. to the home of Guinyard and Applicant in response to a cardiac arrest call. They arrived at the house in less than five minutes. (ROA p. 40, l. 2 – p. 42, l. 6; p. 51, ll. 14-19). Upon their arrival, they retrieved their equipment and went to the front door. The screen door was locked, and the house was silent. They knocked a few times, and a woman came and opened the door. (ROA p. 42, ll. 7-19; p. 51, ll. 20-22).

When the door opened, EMT Curran saw Victim, a four-year-old boy[15], lying face up on the floor just inside the living room. He was not wearing a shirt or socks – just jeans, which had a stain like children have when they have wet themselves. (ROA p. 42, ll. 20-24; p. 46, l. 22 – p. 47, l. 2). She was not told anyone had performed CPR on the boy, and she saw no one doing so. Without turning him over, EMT Currant saw a small cut to the Victim's lip and "raccoon-like" bruising around both eyes, which indicated to her the injuries had happened at some earlier time. He was still, cold to the touch, and he was not breathing and had no pulse. (ROA p. 42, l. 25 – p. 44, l. 8; p. 47, ll. 3-21). Prior to anyone else arriving at the house, EMT Curran only saw Victim's mother, Applicant, in the house. The EMTs questioned her about the Victim's health history and about what had happened. Applicant, who was very agitated, said that, while she was in the shower, Victim was playing and had jumped off the dresser, hit his head, and had a seizure. She

[15] EMT Curran did not know the name of the child. She just testified to seeing a small male child. Other testimony established the child to be four-year-old Victim, the child of Guinyard and Applicant. (ROA p. 65, ll. 4-5; p. 110, l. 20 – p. 111, l. 13; p. 171, ll. 4-9).

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said he was autistic, and that, when she got out of the shower, she found him unresponsive. Applicant, who did not appear to EMT Curran to be wet, did not indicate when this had happened. (ROA p. 48, l. 1 – p. 49, l. 25; p. 50, ll. 10-24).

In order to determine if there was any activity in Victim's heart, the EMTs hooked their monitor up to him using three leads that they attached to his chest area using stickers. The monitor indicated there was no activity in the heart, and that Victim was dead. (ROA p. 44, l. 9 – p. 45, l. 9). EMT Curran noticed that, in addition to the Victim's body being cold, his hands and soles and his feet were "gray, like a dusky color," indicating that he had been dead for some period of time. (ROA p. 45, l. 18 – p. 46, l. 21).

The EMTs notified law enforcement that a child was dead. (ROA p. 48, ll. 1-12). Apparently, at about that same time – sometime between 6:15 and 6:30 p.m. – Fire Department personnel arrived. Three firefighters entered the home where the EMTs were still located, saw Victim lying on the floor, and were told that he was dead. (ROA p. 48, ll. 1-12; p. 54, l. 14 – p. 55, l. 4; p. 59, ll. 7-10). Firefighter Peter Biviano saw Applicant, who did not appear to be wet; she was visibly upset, screaming, and asking them to save her child. (ROA p. 55, ll. 5-10; p. 58, ll. 21-25; p. 59, ll. 14-19). Because neighbors had indicated to a firefighter who remained outside with the truck that a boyfriend and newborn child were in the house, and they did not see them, the firefighters conducted a "hasty search," quickly going through each room, opening doors, and scanning the rooms. Because they were unable to locate the boyfriend or newborn in the house, Firefighter Biviano called his dispatcher and requested that the Richland County Sheriff's Office upgrade their response, *i.e.*, respond quicker. (ROA p. 55, l. 11 – p. 56, l. 14; p. 57, l. 18 – p. 58, l. 3).

At that point, Firefighter Biviano noticed a change in Applicant's demeanor. (ROA p. 57,

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ll. 1-6). "She immediately just went blank. It was like nothing had happened. She wasn't upset anymore. There was no crying, no screaming. She was out front on the front steps and she got on the phone and was having a conversation with somebody on the phone, just a normal conversation." (ROA p. 56, ll. 18-25). Applicant's telephone records would later establish that she continued making telephone calls on July 1. (State's Exhibit 250A).

Corporal Wilder, Master Deputy Shaw, Deputy Williams, Deputy Diaz, and Deputy Johnson responded to the firefighters' call. (ROA p. 186, ll. 3-14; p. 198, l. 19 – p. 199, l. 4). The only non-emergency personnel they saw were Applicant and Victim[16], whose body was lying face up on the floor of the living room. (ROA p. 187, ll. 1-9). As soon as he walked into the house, Master Deputy Shaw heard Applicant yell out, "SIDS." (ROA p. 229, ll. 17-25). Applicant yelled at both Corporal Wilder and Deputy Shaw, as they came into the house, that the others would not help her son and that he was not dead.[17] (ROA p. 199, ll. 15-17; p. 221, ll. 13-23).

Although they were not aware that a crime had been committed, Victim's death was considered suspicious, and Master Deputy Wilder asked everyone – the firefighters, the EMS crew, some of the deputies, and Applicant –to step outside the front of the house. Applicant, who had not said whether anyone else was in the house, would not leave at first, but eventually went outside and sat on the front step. (ROA p. 187, l. 14 – p. 188, l. 11; p. 200, ll. 4-16; p. 222, l. 13 – p. 223, l. 25).

Sergeant McLendon remained in the driveway area to ensure that the scene was secured. From his position, he could both see and hear Applicant, who was on the front porch. He did not

[16] Deputy Johnson noticed the bruising to Victim's face. (ROA p. 193, ll. 15-25).

[17] Corporal Wilder observed that Applicant was making crying noises, but there were no tears. (ROA p. 199, ll. 13-23). Deputy Shaw said that Applicant was not crying, but she was yelling about getting help for Victim. (ROA p. 221, ll. 13-23).

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notice if she was wet. (ROA p. 240, ll. 8-10). He heard her cry out loudly that no one had helped her child,[18] and was there anything anyone could do. She said she was in the shower when she heard a noise; she came out and found Victim lying on the floor, biting his lip. She said she dialed 911 and tried to follow directions to administer CPR. She was talking loudly to anyone who would listen. (ROA p. 235, l. 18 – p. 237, l. 8; p. 240, ll. 4-7; p. 240, l. 18 – p. 241, l. 2).

When walking onto the driveway after exiting the house as it was being cleared, Master Deputy Shaw noticed the gate to the backyard was open and that, because the tall (18 – 24 inches tall) grass had been flattened, it appeared as if someone had recently gone through the backyard. He brought it to the attention of Sergeant McLendon. While Sergeant McLendon stood in the driveway, Master Deputy Shaw went back inside the house, through the front door, to clear it room by room. (ROA p. 224, l. 1 – p. 225, l. 25; p. 232, l. 18 – p. 233, l. 5; p. 237, ll. 19-22). In the kitchen, he noticed that the door to the outside – described as a non-transparent screen door – appeared to have been opened. He opened it and discovered Guinyard holding a small child on the step in the backyard. (ROA p. 200, l. 19 – p. 201, l. 1; p. 225, l. 23 – p. 226, ll. 19; p. 232, l. 18 – p. 233, l. 5).

Guinyard said nothing to Master Deputy Shaw – he did not ask about Victim, and he did not respond to Master Deputy Shaw's question of what he was doing. He was escorted through the house and out the front door. Deputy Johnson, Sergeant McLendon, and Firefighter Biviano saw Guinyard walk out of the front door of the house holding the baby. Sergeant McLendon asked Guinyard what he was doing, but Guinyard did not respond. He also did not appear upset and did not ask for help. Guinyard walked to the sidewalk in front of the house near the steps on which

[18] Sergeant McLendon said that Applicant was sobbing, but explained later that "it was no tears or nothing. It was like she was trying to, you know, make it look like something that wasn't there." (ROA p. 237, ll. 6-8; p. 236, ll. 8-10).

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Applicant was sitting. (ROA p. 57, l. 7 – p. 58, l. 14; p. 191, ll. 1-8; p. 193, ll. 20-22; p. 200, l. 19 – p. 201, l. 1; p. 226, l. 20 – 227, l. 17; p. 233, ll. 2-16; p. 237, ll. 22 – p. 238, l. 12; p. 241, ll. 3-6).

While he was in front of the house, Master Deputy Shaw heard Applicant say, about four times, that she was in the shower and heard a loud bang. (ROA p. 228, l. 13 – 16).

A crowd gathered outside the home, and people appeared to be upset about what had happened. Although they were not under arrest, Guinyard and Applicant were placed inside separate patrol cars for their safety. (ROA p. 192, ll. 6-22; p. 201, l. 12 – p. 202, l. 5; p. 227, l. 17 – p. 228, l. 9; p. 238, l. 18 – p. 239, l. 3).

Investigator Holdorf responded to the scene and assumed the role of the designated lead investigator. (ROA p. 97, ll. 7-13; p. 239, ll. 3-12). He asked Sergeant Lindler to obtain a search warrant before officers made further entrance into the home. (ROA p. 98, l. 8 – p. 99, l. 15). Once the search warrant was received, the scene was turned over to responding members of the crime scene unit. (ROA p. 99, ll. 12-15).

Upon their separate arrivals, Sergeant Richards and Investigator Oates, crime scene investigators, saw Victim lying on his back on the floor in the living room. (ROA p. 60, ll. 13-24; p. 61, ll.3-9; p.64, l. 9 – p. 65, l.12; p. 66, ll. 5-10; p. 347, ll. 3-8; p. 350, ll. 6-24; p. 352, l. 25 – p. 353, l. 8; p. 354, l. 21 – p. 355, l. 2). After the coroner arrived, he and Sergeant Richards looked at Victim, including his back (by rolling him over), while Investigator Robert Oates took photographs. (ROA p. 66, l. 11 – 67, l. 12). The visible injuries on Victim's body were photographed at the scene. (ROA p. 354, l. 21 – p. 355, l. 16; see also State's Exhibits 13, 75 through 81, 83 through 85, 130, 131 through 147). Other than blood coming from a cut in Victim's mouth, Sergeant Richards did not notice any fresh blood coming from any wound on Victim's

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body. (ROA p. 93, l. 13 – p. 94, l. 3). After the setting of and injuries to Victim were photographed, Victim was taken from the home for an autopsy, and Sergeant Richards and Investigator Oates processed the house. (ROA p. 67, ll. 13-23; p. 360, ll. 4-11).

The investigators walked from the living room down a hall to the far bedroom (identified as bedroom two on the diagram), where they had been told a large stain had been found.[19] While walking through the hallway, Sergeant Richards noticed some reddish-brown stains on the wall and informed Investigator Oates. (ROA p. 67, l. 23 – p. 68, l.12; p. 360, ll. 12-19; p. 361, ll. 19-21). In the far bedroom, they saw two pieces of furniture, a bed and a dresser. They found the stain on the carpet and other items of potential value, including a washcloth with reddish-brown stains, which they believed to be blood. They photographed the room, including the rug, the dresser, and items on the dresser. They also performed two tests that could be conducted on the carpet in the house to see if it had any blood in it. One of those tests revealed the presence of blood in the carpet and the presence of a cleaning fluid. Moving some bags in the room, a portion of the carpet was cut and collected for further processing. (ROA p. 69, l. 6 – p. 70, l. 21; p. 360, l. 15 – p. 365, l. 15; p. 366, l. 18 – p. 367, l. 17; State's Exhibits 46 through 59, and 224).

Investigator Oates also photographed a green shirt in the hall by the bedroom door and a broom in the hall, both of which were collected on a later day. (ROA p. 358, l. 4 – p. 369, l. 15; State's Exhibits 17 through 19). They proceeded to another bedroom, in which they saw a bed, a bassinet, and a television on a table (the television was on). (ROA p. 369, l. 16 – p. 370, l. 21; State's Exhibits 36 through 40). In the last bedroom, they saw a bed, a crib, and a television that was off. (ROA p. 31, ll. 1-21; State's Exhibits 41 through 44).

[19] State's Exhibit 211, a not-to-scale drawing of the residence, provides a general layout of the home. (ROA p. 87, l. 14 – p. 91, l. 21).

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The investigators also examined and photographed the kitchen, including the stove top, the counters, inside the cabinets, and inside the refrigerator and freezer. The photographs showed the kitchen as it was at approximately 7:00 p.m. on July 1, 2013 – there was some food on the stove and counter near the stove. Also found in the kitchen, in a plastic bag hanging from the door handle, investigators documented and collected a damp burgundy-colored washcloth. (ROA p. 373, l. 2 – p. 376, l. 11; State's Exhibits 20 through 35, 62, 63, and 74).

The investigators also marked, photographed, and swabbed reddish brown stains observed throughout the house:

- on a wall in bedroom two (where the stained carpet was located): subsequent testing established that the DNA matched that of Victim;
- on the hallway wall: subsequent testing established that there was a mixture of at least two persons, one of whom was Victim (Guinyard was excluded as the second person, but Applicant could not be excluded);
- on the hallway carpet: subsequent testing established that the DNA matched that of Victim
- on and around the light switch and light switch cover in bedroom one: subsequent testing established that it was blood, but the DNA did not match either Victim, Guinyard, or Applicant; and
- on the living room wall: subsequent testing established that the DNA matched that of Victim.

(ROA p. 70, l. 22 – p. 72, l. 7; p. 74, l. 4 – p. 77, l. 15; p. 76, l. 15 – p. 78, l. 1; p. 376, ll. 12-23; p. 649, l. 8 – p. 651, l. 19; p. 651, l. 20 – p. 656, l. 17; p. 659, l. 1 – p. 660, l. 13; p. 661, l. 10 – p. 663, l. 6; State's Exhibits 18, 19, 64, 65, 67, 68, 69, 71, and 72). The stains on the hallway wall and living room wall formed a linear pattern, indicating that they were cast off from an object that was swung, while the others were round or elliptical, indicating spatter. (ROA p. 71, l. 15 – p. 73, l. 6; p. 75, ll. 3-15; p. 76, l. 24 – p. 77, l. 1). The age of or how long the blood had been present could not able to be determined. (ROA p. 92, l. 21 – p. 93, l. 12).

When the investigators left the home on the night of July 1, the house was secured and

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locked, and a deputy was posted outside. On later days, other crime scene investigators returned to the house and processed it further. (ROA p. 377, l. 19 – p. 378, l. 15).

Later that night, on July 1, Crystal spoke with Applicant and asked her what had happened. Applicant said that Victim was jumping off the dresser or jumped from the dresser to the bed, fell, hit his head, and had a seizure. (ROA p. 122, l. 13 – p. 123, l. 22). When she asked her a second time what had happened, Applicant told her that she had been in the shower, heard a big boom, and when she went into the bedroom, she found Victim in the corner having a seizure. She picked him up, and he passed out in her arms. (ROA p. 124, ll. 2-11). The third time Crystal asked her what had happened, Applicant said she was about to get in the shower when she heard the boom, and that Victim had jumped off the dresser and onto his bed, and she found him on the floor, foaming at the mouth. (ROA p. 124, l. 12 – p. 125, l. 14). Crystal told Applicant she could talk to her. Applicant was too upset and kept repeating that she did not kill him. She and Guinyard then walked out. (ROA p. 126, ll. 1-9).

On the night of July 1, Applicant's sister and other family members gathered and talked about doing something for Victim. Applicant responded by saying that he was in a room and would be walking out any minute. She kept saying he was in the room as if she did not believe he was dead. (ROA p. 127, ll. 7-24). At one point, Applicant started laughing and said that another of her children had bitten Victim on his back, leaving a bite mark. (ROA p. 128, ll. 1-8).

Both Guinyard and Applicant were taken to the Sheriff's Department. They were not under arrest, but investigators wanted to see what they could tell them about Victim's death. (ROA p. 540, l. 18 – p. 543, l. 17). Guinyard, after being advised of and waiving his rights, told Investigator Laurita that, leaving Victim asleep in the house, he went to the store that day and pulled some money off the card, bought some beer and cigarettes, and walked back to the house where he drank

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a 24-ounce beer at approximately 8:00 or 9:00 a.m. He then fell asleep. Applicant called to let him know that she was on the way home from the hospital, and his mother called to check. At some point, Victim woke up and watched television, and played with Guinyard for a while. At some point, Victim apparently went to the back bedroom, where he stayed by himself. When Applicant arrived in a taxi, Guinyard gave her the money and went out to the taxi and got her bags. (ROA p. 541, ll. 13-24; p. 543, ll. 18-21; p. 544, l. 22 – p. 545, l. 12; p. 548, l. 18 – p. 549, l. 8). Applicant told Guinyard she was in pain and talked to him about having the baby. She then walked around, straightening up the area. She became angry at Victim for urinating on the floor in the back bedroom and went back to clean it. She then went into the bathroom to take a shower. Guinyard stayed with and loved the new baby until he began cooking dinner by cutting up onions and cooking steaks. The water was running, and he had music on his telephone when he heard a boom. (ROA p. 545, ll. 13-17; p. 547, ll. 10-24; p. 549, l. 9 – p. 550, l. 12). Because he was not sure what he had heard and he had to turn things off, it took him four or five minutes to go see what the noise was; as he did so, Applicant came down the hall with four-year-old Victim and went into the front room. Applicant was saying, "Look, baby, look baby." Victim's eyes were open and he was breathing, but he "was in and out." (ROA p. 546, ll. 4-11; p. 547, ll. 20-25). Applicant called the ambulance, and they told her to breathe into his mouth and press on his stomach. (ROA p. 546, ll. 11-13). Before the police and the ambulance arrived, Guinyard grabbed the baby and hid in the closet so that they would not take him away, as he said they usually do when "accidents like this" happen. (ROA p. 548, ll. 1-17; p. 549, ll. 19-25).

After their interviews were finished, they wanted to see each other. Officers let them sit together in the break room. In the presence of the officers, Guinyard handed Applicant some of the money from his pocket and told her "To take the charges so he could go home and take care of

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the kids." (ROA p. 104, ll. 20-21; see also p. 102, l. 17 – p. 105, l. 17). When they left the Sheriff's Office, Guinyard and Applicant went to Applicant's mother's home. At about 3:00 a.m., she called Ms. Metze and asked her to come pick them up. She told Ms. Metze that she could not "deal with" all of the crying and everybody being so upset. (ROA p. 598, ll. 6-16). Ms. Metze picked them up from Applicant's sister's house at approximately 8:00 a.m. and took them to get something to eat. When the investigator called, she drove Applicant to her house, where the deputies were waiting for her. Applicant told Guinyard to go to the store down the street, and Ms. Metze drove him there. Ms. Metze then drove back to their house to wait for Applicant. A short time later, Applicant got into one of the investigators' cars and called Ms. Metze. She told her she was going with them to discuss the autopsy results and asked Ms. Metze to pick her up in a couple of hours. Ms. Metze agreed. (ROA p. 598, l. 17 – p. 601, l. 19). Ms. Metze then went and picked up Guinyard from the store; Applicant called and said that Guinyard needed to go to the Sheriff's Department to sign some papers, so Ms. Metze took him there. (ROA p. 602, ll. 9-24).

On July 2, Investigators Holdorf and Wagner and Investigator Lee went to the house to meet Applicant and Deputy Coroners Powell and Burns. Once the officers arrived, they released the deputy who had been securing the scene. Once Applicant arrived, complete custody and control of the house was released to her. Then, Deputy Coroner Powell explained to Applicant[20] that she wanted her to use a doll to show them exactly where Victim was when she discovered him and what she did. (ROA p. 380, ll. 19-20; p. 381, l. 9 – p. 382, l. 2; p. 382, l. 23 – p. 383, l. 6; p. 397, l. 1 – p. 398, l. 2; p. 413, ll. 9-13; p. 503, l. 14 – p. 504, l. 18).

[20] During this meeting at the house, Applicant told Deputy Coroner Powell that Victim had been diagnosed with Autism. She also said that Victim's siblings did not interact with him very much because he was different, but that when they rough-housed sometimes, the younger children would climb all over Victim. Applicant also told Deputy Coroner Powell that Victim would bite at himself and poke at his eyes. (ROA p. 383, l. 16 – p. 384, l. 7).

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Applicant told Deputy Coroner Powell that she arrived home at approximately 2:00 p.m. from the hospital, having delivered her fourth child on June 29. While she was in the hospital, Guinyard took care of Victim; she had talked to Victim on the telephone from the hospital, and he told her that they had played ball. After unpacking the new baby's things – and putting some papers and prefilled bottles on the dresser in the bedroom at the right end of the hall – Applicant started to cook some food. Then, wanting to take a shower, she told Victim to play in his bedroom, and she went and got into the shower. (ROA p. 384, ll. 15-20; p. 387, l. 22 – p. 388, l. 3; p. 391, l. 14 – p. 392, l. 3). She got out of the shower when she heard a loud boom. She immediately went to the kitchen because she had been cooking, and she thought maybe something had come off the stove. When she realized things in the kitchen were fine, she went to look in the bedroom at the right end of the hallway, and that is when she saw Victim on the floor. She also saw some things from the dresser on the floor, including some of the bottles and papers she had just put there. (ROA p. 385, ll. 9-18; p. 388, ll. 3-7).

Because the doll was not the right size and was not flexible, Applicant demonstrated the position she found Victim in[21] – he was on his stomach, with his knees tucked up under him and his butt up in the air, and his head was turned to the side. Applicant said he was making a funny noise and shaking. She tried to get him up and called his name; she put her finger in his mouth because he had his lip in his mouth, and she wanted to get it out, but she could not. (ROA p. 385, l. 19 – p. 386, l. 21; p. 398, ll. 1-5). She then picked him up and ran into the den, where he went limp and she laid him on the floor. She then ran back to find a phone to call 911. (ROA p. 386, ll. 21-24; p. 391, ll. 2-4). Applicant told Deputy Coroner Powell that she told the 911 operator she

[21] Applicant did not want to get in the exact spot on the floor where Victim had been because she said she did not want to lie on the urine that was on the floor. So, Deputy Coroner Powell told her just to get next to it. (ROA p. 386, ll. 9-14).

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did not know if Victim was breathing, and she administered CPR as directed after wiping out Victim's mouth with a rag she found on the floor. She stopped when EMS arrived. (ROA p. 387, l. 25 – p. 388, l. 19). During the reenactment, Applicant was calm; she was not upset. She kept telling Deputy Coroner Powell that she was tired because she had just had a baby, and Deputy Powell told her she could take her time, but that that was a very important part of the investigation into how Victim died. (ROA p. 388, l. 25 – p. 389, l. 7; 1148, l. 2 – p. 1149, l. 17; State's Exhibit 258).

After the reenactment, Investigator Lee photographed certain items, including the doll on the floor where Applicant had placed it to show where Victim had been, and collected some measurements. (ROA p. 399, ll. 6-25; State's Exhibits 106, 110, and 111.[22]). Investigator Lee determined that the distance from the dresser to where Applicant placed the doll (to the top of the doll's head) was 44 inches. The dresser was measured and determined to be 30 inches tall. (ROA p. 400, ll. 1-23).

After the reenactment concluded, Applicant was asked to meet the officers back at the Sheriff's Office so that the Coroner could review the Coroner's report with her and discuss arrangements for Victim. Applicant arrived shortly after the officers did, and Investigator Holdorf advised her of her rights. Applicant acknowledged receipt and waiver of her rights. (ROA p. 505, l. 2 – p. 506, l. 9; Thompson AOR). After Deputy Coroner Powell explained to Applicant that Victim's death was consistent with abuse, Applicant said she did not understand and that she did not and could not have killed Victim. (ROA p. 506, l. 13 – p. 507, l. 1). At about that time,

[22] Neither party objected to the admission of the photographs admitted as State's Exhibits 110 and 111, but Applicant objected to the admission of State's Exhibit 106 (a photograph of the bedroom at the right end of the hall, showing where Applicant had placed the doll on the floor to indicate where she found Victim). (ROA p. 399, ll. 1-10).

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Guinyard showed up at the station, and Investigator Holdorf left the room to go talk to him. (ROA p. 507, ll. 2-10).

After Investigator Holdorf left the room, Applicant said that she had been in the shower when she heard a thud. She ran, got the child from the back room, carried him to the front room, and called 911. (ROA p. 507, ll. 16-18). When told that the injuries to Victim were so extensive they could not have been caused by a single event or fall, she kept saying that she did not do "this" to her child, she could not have done it, and she was in the shower when she heard a thud. (ROA p. 508, ll. 3-6). She said that she would discipline Victim by putting him in a time-out and making him sit with his hands up, or by giving him a little spank on the bottom. She said she never hit Victim hard. (ROA p. 508, ll. 9-18). At some point, Captain Melton came into the room and joined them. (ROA p. 339, l. 17 – p. 341, l. 23). She introduced herself to Applicant and explained again how the autopsy established that the injuries to Victim were not a singular event. Applicant asked if it was possible that Victim could already have been dying prior to her getting home from the hospital. When Captain Melton responded that she did not know, and why she asked that, Applicant said that Victim was not acting right. (ROA p. 340, l. 19 – p. 341, l. 6; p. 508, l. 22 – p. 509, l. 2; p. 509, l. 17 – p. 510, l. 22). Applicant then asked to speak to Guinyard and told them she would tell them what happened if she could speak to him. (ROA p. 341, ll. 6-8; p. 509, ll. 3-5).

Investigator Wagner left to speak with Investigator Holdorf, who was talking to Guinyard. (ROA p. 509, ll. 8-13). They decided to allow Guinyard and Applicant to meet by themselves for about 15 minutes in a conference room. (ROA p. 341, ll. 8-21; p. 511, ll. 5-10).

After Guinyard and Applicant talked, Investigator Wagner talked to Guinyard. He said that the day before Applicant came home, he and Victim had stayed up until 4:00 a.m. watching

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television. When he got up around 10:00 a.m., he realized that she was coming home that day, and he walked to the store to get some money. He did not take Victim with him, but left him asleep in his room, lying in his urine. Guinyard did not clean up the urine before Applicant got home. He said that he had been in the kitchen cooking and did not know anything about what happened to Victim. When confronted by the fact that Applicant said that she had gone into the kitchen after she heard a thud and had not seen anyone in there, he maintained that he had been in the kitchen, he was not going to change his story, and he did not have anything else to say. (ROA p. 512, l. 16 – p. 514, l. 18; p. 529, ll. 17-21).

While Guinyard was talking to Investigator Wagner, Applicant was giving an oral statement, which was reduced to written form by Investigator Holdorf, who typed it on his computer. Applicant was then allowed to review the statement and signed it, indicating that it was her version of what had happened. Captain Melton witnessed the taking of the statement and the signing of it by Applicant. (ROA p. 341, l. 22 – p. 343, l. 4; p. 344, ll. 12-14; Thompson Statement at pp. 1285-1287 and 1292-1295).

Afterward, Guinyard and Applicant sat in the break room waiting for the transport van; several investigators were present. Investigator Wagner walked in and saw money on the table. Investigator Lindler heard Guinyard, who did not appear upset, tell Applicant to take the charges so he could go home and take care of the kids. As they stood up to leave, Investigator Wagner saw them hug each other and heard Guinyard repeating to Applicant, "Free me, free me." (ROA p. 103, l. 5 – p. 105, l. 17; 514, l. 19 – p. 515, l. 10).

On July 4, Investigators Holdorf and Wagner obtained and executed a search warrant for the house; they were looking for a Time Warner Cable system that may have recorded from security cameras, poles, rods, and brooms. Investigator Polis assisted them. (ROA p. 413, l. 2 –

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p. 415, l. 11; p. 515, ll. 16 – p. 517, l. 1; p. 521, l. 13 – p. 522, l. 8). Investigator Polis photographed the bathroom, some pictures on the outside of the door to the bedroom at the right end of the hall, a broken white wooden rod found in the hallway closet, a broom in the hallway, a hole in the closet door and some reddish brown stains, and a white metal pole or dowel with red stains on it found on the floor between the bed and the floor in the bedroom at the right end of the hall. She also collected the physical evidence that was discovered, including the rods or dowels, a hospital gown, and a green shirt. (ROA p. 415, l. 19 – p. 420, l. 4; p. 420, l. 23 – p.423, l. 16; p. 522, l. 12 – p. 524, l. 1; State's Exhibits 172 through 198 and 200). No fingerprints were recovered from either the broom, the wooden rod, or the dowel; however, swabs were taken from them for DNA testing. (ROA p. 424, ll. 2-11; p. 426, ll. 17-21). The white metal rod appeared to have some ridge detail on it, and Investigator Polis secured it for her supervisor, Sergeant Richards, to process further. (ROA p. 424, l. 12 – p. 426, l. 16; p. 427, l. 24 – p. 428, l. 9).

On July 5, Investigators Holdorf and Wagner accompanied Guinyard's mother to the house at her request so that she could retrieve some of Guinyard's and the newborn's clothes. (ROA p. 524, ll. 2-12). She entered the home and allowed the investigators to enter. Mrs. Guinyard went to the back bedroom and, as she pulled things out of the closet, was overcome with emotion. She turned around and handed Investigator Holdorf a small, gray and white, or blue and white striped child's shirt with reddish-brown stains all over it, which she had found while going through the pile of clothes in the closet. She began to cry and left the room for a minute. After a few minutes, she regained her composure and finished getting the clothes she needed, and they left. (ROA p. 524, l. 16 – p. 525, l. 25; p. 526, ll. 17 – p. 527, l. 4). Investigator Holdorf delivered the shirt and a pair of red shoes from the house to Investigator Lee. That evidence, which had to be placed in a drying cabinet because it was wet, consisted of two red shoes and a gray, striped shirt, both of

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which had reddish-brown stains on them. Investigator Lee photographed them. Subsequent testing on the shoes and shirt established that the stains were blood and that the DNA matched that of Victim. (ROA p. 401, l. 10 – p. 407, l. 4; p. 527, ll. 5-10; p. 661, l. 10 – 663, l. 19; State's Exhibits 112 through 129).

On July 9, 2013, Sergeant Richards took possession of a white pipe collected from Guinyard's by Investigator Polis. (ROA p. 77, l. 25 – p. 78, l. 19). The next day, Sergeant Richards and Investigator Oates examined the pipe. Sergeant Richards used markers to indicate four different areas of brown reddish stains on the pipe. Investigator Oates then photographed the pipe and the stains, and Sergeant Richards swabbed the stains in order to submit them for DNA testing. While two of the stains appeared to have ridge detail of the type seen in fingerprints and palmprints, there was insufficient ridge detail to match. (ROA p. 79, ll. 3-24; p. 80, l. 15 – p. 82, l. 14; State's Exhibits 86, 87, 88, 93, 94, 95, 98, and 100). On July 28, 2013, Sergeant Richards took more swabs from the stains on the pipe to submit for DNA testing. (ROA p. 83, l. 15 – p. 84, l. 16). Later, Sergeant Richards used leuco-crystal violet (LCV) to determine if more blood was present on the pipe; no additional blood was revealed, and the use of LCV prevented any other type of testing of the pipe. (ROA p. 85, l. 7 – p. 87, l. 10). Sergeant Richards testified at trial that he was unable to determine when the blood was transferred to the pole because blood in droplets of the size noted can dry fairly quickly. (ROA p. 92, l. 21 – p. 93, l. 12).

Testing on the swab from the white dowel rod revealed that there was blood on it, and the blood was a mixture of two persons. The major contributor was Victim; the minor contributor could not be determined. (ROA p. 664, ll. 6-17). Testing on the broom handle swab revealed it was a mixture of the blood of at least two individuals. Neither Victim, Guinyard, nor Applicant could be excluded as contributors. (ROA p. 664, l. 25 – p. 665, l. 15). Testing on the three swabs

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of the white pipe revealed that it was blood belonging to Guinyard, Victim, and one that was a mixture of at least two persons, Guinyard and either Victim or Applicant. (ROA p. 666, l. 3 – p. 6).

Sometime after Victim died and the police identified Guinyard's blood on the curtain rod found in their home, Applicant spoke to her cousin, Latoya Anderson, and told her that Victim had been possessed, that they had been tired of him, and that she had starved him for eight days by not giving him either food or water. Applicant told her they were relieved when Victim died. (ROA p. 673, l. 7 – p. 674, l. 25).

Applicant, who changed her statement to the police twice, was also recorded on a call from jail in which she gave a third version of events leading up to Victim's death. (State's Exhibits 2A, 6A, and 254). She and Guinyard were also overheard talking in the courthouse one day. Guinyard told her to do what he said, and everything would be okay. She said that other women at the jail had killed their children and their attorneys had gotten them off. (ROA p. 691, l. 9 – p. 693, l. 13).

Dr. Amy Durso, a forensic pathologist, performed the autopsy of Victim. (ROA p. 704, ll.17-21; p. 709, ll. 10-18). She first x-rayed his body. The X-rays indicated possible rib fractures, as well as a potential fracture to the upper right arm. (ROA p. 725, ll. 5-25). Dr. Durso then conducted an external examination of Victim, during which she observed the following:

- on his head: a scar on his nose, a scar on his forehead, both eyes had orbital contusions (black eyes), a small abrasion under his left eye, lacerations to his lips, and quite a few injuries to the inside of his lip;
- to his torso: a small crusted abrasion (state of healing), scarring over the right hip, and dark discoloration over his right hip;
- on his arms: five scars, two small superficial abrasions around his elbow, a small abrasion on the back of his shoulder that appeared to be healing, a deep puncture wound, and a sharp force injury (which was starting to heal even though it did not appear to have had any medical intervention);
- on his back and buttocks: a lot of discoloration, superficial abrasions along the buttocks, scars, a healing bite mark (the measurements of which match up with a teenager or adult),

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abrasion on the right hip, discoloration of the right hip and lower buttock; and

- on his legs: few little abrasions on back of upper legs, and one knee was "really, really" swollen.

(ROA p. 712, l. 22 – p. 725, l. 2; State's Exhibits 31, 130, 144, 225, 227-231, 255, and 256).

During Dr. Durso's internal examination of Victim, she discovered the following injuries:

- his thyroid was really pale indicating significant blood loss;
- two fractured ribs: the left lateral ninth rib fracture was dated between 10 days and six weeks and was healing but would have been "pretty painful" when coughing, sneezing or taking a deep breath, and the right posterior tenth rib fracture was dated to have been suffered within 24 hours of death;
    - injuries of this type are the result of blunt force injury – either the body striking a hard flat surface or a hard flat surface striking the body – that do not generally break or puncture the skin;
- a fracture to his left humerus, the left upper arm bone, which was actually a healing fracture under an acute hemorrhage indicating a site of repeated injury;
    - the healing fracture was dated to be one to two weeks old, the acute hemorrhage overlying the fracture was dated to have occurred within 24 hours of death;
    - this injury could have been caused by any hard impact to the bone or by someone yanking the arm;
    - this injury would have been extremely painful and Victim would not have been able to use the arm in any meaningful way;
- injuries to his head and brain, including
    - four areas of impact of bruising to the head, which were not consistent with just one impact or a fall from any height and were indicative of abuse;
    - subdural hemorrhage over the left side of the brain, which was dated to be between five and seven days prior to death;
        - not consistent with a fall from any height or any natural cause, but is caused by blunt force trauma;
        - this injury would have resulted in obvious symptoms, including lethargy, vomiting, and maybe loss of consciousness after the blow; and
        - injuries to the back of his body, including
    - extensive bleeding and hemorrhage of different ages;
        - the majority of blood loss was in the lower back and buttocks, with hemorrhage two and half inches deep in the left buttocks that could not have been caused by spanking, but by a hard object hitting the child;
        - hemorrhage to the back of the legs and arms;

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- some of the bruising was dark and bright red indicating they were probably less than 18-24 hours old, but there was just as much bruising that was older;
- Dr. Durso testified that she had never seen a child with this many areas of bruising this severe; and
- the blood loss from all of the bruising – old and new – contributed to the blood loss so that he was no longer able to circulate enough blood to provide oxygen to his brain to maintain his body's vital functions.

(ROA p. 726, ll. 1-17; p. 728, l. 1 – p. 744, l. 1; State's Exhibits 240-242). Dr. Durso concluded that Victim was repeatedly and consistently beaten, and those beatings caused him to lose so much blood from his circulatory system into his soft tissue that his body ceased being able to function. (ROA p. 744, ll. 2-21). She stated that Victim would have been in excruciating pain from the time he woke up until he went to sleep; even just trying to sit down would have been painful. His pain would have been noticeable. (ROA p. 744, l. 22 – p. 745, l. 13).

Dr. Durso concluded the injuries suffered by Victim were not the result of spanking or falling, but were all intentionally inflicted injuries. Victim did not die from disease or any natural cause. (ROA p. 727, ll. 18-25; p. 745, ll. 14-23). In her opinion, the last incident alone would not have killed him, but it was the cumulative effect of all the injuries he sustained. (ROA p. 745, l. 23 – p. 746, l.19). Had Victim received medical treatment, he would have survived. He might have needed a transfusion, but he would have survived. (ROA p. 746, ll. 20-25). She determined the cause of his death to be extensive soft tissue hemorrhage and bleeding due to multiple acute and healing blunt force injuries due to non-accidental trauma, *i.e.*, persistent and repeated abuse. (ROA p. 747, ll. 1-8).

Dr. Rosa, a child abuse pediatrician, reviewed the pathology report and photographs of Victim taken after his death. (ROA p. 448, l. 16 – p. 449, l. 14; p. 453, l. 8 – p. 455, l. 16). She found injuries in his different organ systems. Starting with his skin, Victim had injuries to his face, trunk (the neck, chest, back, and buttocks), upper legs, and arms. The injuries were bruises,

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abrasions, scrapes, scars, an open wound, and a healing bite mark on his back. (ROA p. 472, l. 22 – p. 474, l. 4; p. 487, l. 10 – p. 489, ll. 16). She also found Victim had suffered injuries to his brain – there were multiple contusions to the front and back of the scalp that were not visible on the outside, blood had accumulated underneath the dura covering all of the left side and on the back of the brain, and blood had accumulated underneath the arachnoid. (ROA p. 474, l. 5 – p. 475, l. 12). The injuries to the brain were found by Dr. Rosa to be inconsistent with a fall from a dresser. Instead, she found them to be consistent with multiple blunt impact trauma inflicted by either hitting Victim with an object multiple times or by hitting Victim up against something multiple times. Dr. Rosa testified that, in her opinion, the injuries to Victim's brain had been inflicted 72 hours to a week before his death. (ROA p. 490, l. 21 – p. 492, l. 14). While Victim would have been exhibiting signs of brain injury, including lethargy, nausea, drowsiness, pain, seizures, and abnormal movements of a limb, he would have still been able to move if motivated enough by hunger or something else. (ROA p. 492, l. 15 – p. 493, l. 3; p. 496, ll. 14-20).

Dr. Rosa also testified Victim also had two refractures, one to the ninth rib on the left side, which was the older of the two (10 days to six weeks) and showed evidence of healing, and one to the tenth rib on the right on the back posterior, which was very acute (within 24 hours of death). The rib fractures were consistent with blunt trauma to two different places, and were caused by something hitting Victim, rather than a fall. These injuries would have caused pain when Victim coughed, sneezed, or took a deep breath. He also had a fracture on the left humerus that had evidence of healing (dating the original injury seven to 14 days before death) and acute trauma, meaning that the bone was rebroken around the time of death. The injuries to the humerus were caused by trauma of some sort, blunt trauma, or someone forcibly grabbing Victim's arm. Before it was rebroken at the time of death, the older fracture would have been painful and would have

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prevented Victim from appropriately using his arm. (ROA p. 475, ll. 13 – p. 481, l. 23; p. 493, ll. 4 – p. 494, l. 11).

Dr. Rosa also testified that there was significant discoloration of the skin in the area of the right hip, lower back, buttocks, extending to the upper thigh, and the area around the back of both elbows, indicating moderate to severe injuries. During the autopsy, Dr. Durso made cuts across those areas to expose the soft tissue and revealed a "substantial, substantial" amount of blood had collected in those areas. Some areas were worse than others, with "almost a cavity of blood, like a balloon of blood, in between the layers of muscles of the right buttocks." The bright and dark red color of the blood indicated that it was newly released from the blood vessels. (ROA p. 481, l. 24 – p. 484, l. 19; p. 488, l. 9 – p. 489, l. 16). The amount of blood that had collected under the bruised skin of Victim's buttocks would have made the area hard and painful, especially when sitting. Victim would have been in excruciating pain. (ROA p. 488, l. 18 – p. 489, l. 22; p. 494, ll. 12-18). Victim also had lacerations to his lower and right upper lips, which could have been caused either by falling and hitting his lips, impact to the face, or the Victim biting his face because he was in pain while being beaten or because he had a seizure. (ROA p. 484, ll. 20-25; p. 496, l. 21 – p. 497, l. 11).

Dr. Rosa testified that Victim did not appear to be in the same physical condition at the time of his death as when he left his foster home – he had no soft tissue on his chest and his rib cage was clearly visible; his arms were also thin. His condition could have been consistent with a lack of proper nutrition. (ROA p. 495, l. 2 – p. 496, l. 13). She opined that the injuries sustained by Victim were the result of child abuse. (ROA p. 485, ll. 3-8; p. 497, ll. 22-24). She also gave her opinion that Victim died from massive blood loss caused by blunt impact trauma resulting from having been beaten with an object multiple times, which was compounded by the fact that he

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was already compromised by the previous injuries he had sustained from numerous instances of abuse over the two-month period prior to his death. (ROA p. 485, l. 9 – p. 487, l. 9; p. 494, ll. 19-21; p. 497, l. 22 – p. 498, l. 5). Dr. Rosa testified that, even without seeing all of the bruising, scars, and injuries, it would have been evident in the days leading up to Victim's death that something was wrong and he needed treatment. (ROA p. 498, l. 13 – p. 499, l. 6). Had Victim been taken to a doctor in the several days before his death, he could have been saved. (ROA p. 501, ll. 5-10).

CURRENT ACTION BEFORE THIS COURT

In her PCR application, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Trial Court Error
   a. Trial court erred in denying their respective motion for directed verdict.
   b. The admission of photographs violated Rule 402, SCRE, due to their probative value being substantially outweighed by the danger of prejudice.
   c. State failed to present substantial circumstantial evidence of guilt.

Applicant proceeded on the following allegations at the evidentiary hearing:

1. Trial Counsel coerced Applicant into proceedings to trial and did not give her opportunity to accept plea offer, even though Applicant informed Trial Counsel she did not want to proceed to trial.
2. Failure to move to sever Applicant's trial from her Guinyard.
3. Failure to investigate.
4. Failure to meet a sufficient number of times with Applicant prior to trial.
5. Trial Counsel changed defense strategy two or three times due to disagreements with co-counsels.
6. Failure to object to admission of Applicant's statements to law enforcement based on fact Applicant had just given birth and was not cognizant when she gave her statement, as she was on medication and had a difficult labor.
7. Failure to request psychological evaluation.

Applicant did not proceed with the allegations in her original application. As requested relief, Applicant is seeking for her homicide by child abuse charge to be dismissed and a new trial.

STANDARD OF REVIEW

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The Uniform Post–Conviction Procedure Act[23] (the Act) provides that any person who has been convicted of a crime may seek post–conviction relief based upon 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 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), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

[23] S.C. Code Ann. §§ 17–27–10 to –160.

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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

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"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 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, 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 strategy, such conduct is not

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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.

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), SCRCP (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

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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 a matter of general impression, 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 her 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).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1: **Trial Counsel coerced Applicant into proceedings to trial and did not give her an opportunity to accept the plea offer, even though Applicant informed Trial Counsel she did not wish to proceed to trial.**

Applicant alleges that Trial Counsel was constitutionally ineffective for coercing her into proceeding to trial after Applicant advised Trial Counsel she wished to plead. This Court finds this allegation to be without merit.

PCR Hearing

On direct examination, Applicant testified that Trial Counsel informed her that her co-defendant Guinyard, requested a speedy trial, and that meant Applicant had to go to trial, as well. (PCR Tr. pp. 9-10, 11). Applicant testified that she advised Trial Counsel that she did not want to

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proceed to trial, and she asked Trial Counsel to get her a plea offer. (PCR Tr. p. 10). Applicant testified that Trial Counsel stated that she could not get her a plea because Guinyard and the Solicitors were forcing her to go to trial. (PCR Tr. p. 10). Applicant testified that Trial Counsel never communicated a plea offer to her. (PCR Tr. p. 10).

On cross-examination, Applicant testified that a plea offer was not communicated to her by Trial Counsel. (PCR Tr. p. 16). Applicant testified that she was not aware that the State, not Trial Counsel, had control of offering a plea. (PCR Tr. p. 16).

On direct examination, Trial Counsel testified that she did not recall receiving any plea offers from the State in Applicant's case. (PCR Tr. p. 29). Trial Counsel testified that she had a conversation with the solicitors about a plea offer, but she had no documentation that an offer was made. (PCR Tr. p. 29). Trial Counsel testified that she agreed with Applicant that they were forced to go to trial, as Guinyard had requested bond, and his bond hearing turned into a date being set for his trial. (PCR Tr. p. 29). Trial Counsel testified that a date was set for trial based on a speedy trial motion made in her absence. (PCR Tr. pp. 29-30).

On cross-examination, Trial Counsel testified that she did not request a speedy trial, and Applicant's case went to trial quickly, within ten months, whereas most cases typically take a year to eighteen months. (PR Tr. p. 32). Trial Counsel testified she did not recall an offer being made by the solicitors. (PCR Tr. p. 34). Trial Counsel testified that she does not have an expectation to receive a plea offer, especially in Applicant's case with such serious allegations and the facts and circumstances. (PCR Tr. p. 34).

On direct examination, former Assistant Solicitor Luck Campbell (A.S. Campbell) testified that she prosecuted Applicant's case alongside Assistant Solicitors Joanna McDuffie and Meghan

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Walker. (PCR Tr. p. 39). A.S. Campbell testified that no plea offers were made in Applicant's case. (PCR Tr. p. 42).

On direct examination, A.S. McDuffie testified that Guinyard's attorneys had made a motion for a speedy trial, which was granted. (PCR Tr. p. 47). A.S. McDuffie testified she does not recall either side making any continuance motions. (PCR Tr. p. 48).

Findings

This Court finds the combination of the record and Trial Counsel's testimony 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 [her] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome her 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 and A.S. Campbell's testimony **credible** that no plea offers were made in this case. Further, this Court finds Trial Counsel's testimony **credible** that she attempted to obtain an offer for Applicant, but was unable to do so due to the State's unwillingness to offer a plea based on the facts and circumstances of Applicant's case. Therefore, Trial Counsel is not deficient for failing to obtain a plea offer or communicate a plea offer to Applicant where Trial Counsel took steps to obtain one, but ultimately, the State was unwilling to extend an offer. See Missouri v. Frye, 566 U.S. 134, 148 (2012) ("This further showing is of particular importance because a defendant has no right to be offered a plea"); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (Explaining that "the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands," including whether to offer a plea).

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Additionally, as no offers were made by the State, Applicant cannot demonstrate that she suffered prejudice. See Frye, 566 U.S. at 147-49 (laying out the standard to establish prejudice where applicant complains counsels' deficient performance caused the plea offer to lapse or caused defendant to reject offer, requiring applicant to show result of criminal proceeding would have been favorable by reason of plea to lesser charge or sentence).

Furthermore, this Court finds Applicant's testimony **not credible** regarding the State's alleged coercion to go to trial. Trial Counsel **credibly** testified that she was ready for trial, and had Applicant desired to plead guilty and forgo a trial, she was free to do so at any moment; the lack of a desirable plea offer did not preclude Applicant from pleading guilty.

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 she 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, these allegations must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 2: Failure to move to sever Applicant's trial from Guinyard.

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to move to sever her trial from Guinyard. This Court finds this allegation to be without merit.

Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997). For purposes

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of consolidating charges for trial, offenses are considered to be of the "same general nature" where they are interconnected and closely related in time, place, and character. State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002). "A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt." State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005); See, e.g., Bruton v. United States, 391 U.S. 123, 135–37 (1968) (finding a specific trial right was prejudiced and that prejudice could not be remedied with a curative instruction when one codefendant expressly implicated the other codefendant in his oral confession but refused to take the witness stand).

"A defendant who alleges he was improperly tried jointly must show prejudice before an appellate court will reverse his conviction." State v. Halcomb, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (Ct. App. 2009). "Further, [t]he general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a codefendant will present mutually antagonistic defenses, *i.e.*, accuse one another of committing the crime." State v. Smith, 359 S.C. 481, 489, 597 S.E.2d 888, 893 (Ct. App. 2004) (internal quotations omitted).

Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. However, evidence of prior bad acts may "be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Id. "If not the subject of a conviction, proof of prior bad acts must be clear and convincing." State v. Weaverling, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999).

"In a prosecution for homicide by child abuse, extreme indifference is in the nature of a culpable mental state ... and therefore is akin to intent." State v. Martucci, 380 S.C. 232, 669

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S.E.2d 598 (Ct. App. 2008), citing State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d, 362, 366 (internal quotations omitted); see State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (1999) (defendant's prior criminal domestic violence conviction admissible to establish his intent to kill and the absence of mistake or accident). In Martucci, the Court found that the evidence of prior abuse or neglect was admissible against the defendant as proof of intent and absence of mistake, as relevant to establish his identity as the person who fatally abused the child, to establish a pattern of abuse or neglect necessary to prove homicide by child abuse that supported the existence of a common scheme or plan, and were admissible under the *res gestae* theory. 380 S.C. at 252-58, 669 S.E.2d at 609-12.

Additionally, the Martucci court cited former Chief Justice Toal's dissent in Fletcher to support its holding that prior evidence of abuse is admissible to show intent and absence of mistake or accident, as follows:

> Child abuse differs from other types of crimes in several respects. Specifically, the crime of child abuse often occurs in secret, typically in the privacy of one's home. The abusive conduct is not usually confined to a single instance, but rather is a systematic pattern of violence progressively escalating and worsening over time. Child victims are often completely dependent upon the abuser, unable to defend themselves, and often too young to alert anyone to their horrendous plight or ask for help. It is also not uncommon for child abuse victims to be so young that they are incapable of offering testimony against the abuser. For these reasons, proving the crime of child abuse is extremely difficult.

Id., citing State v. Fletcher, 379 S.C. 17, 27, 664 S.E.2d 480, 485 (2008).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel told her that she did not like that Applicant was being tried with Guinyard, but that it was out of Trial Counsel's hands because the State was forcing them to have a joint trial. (PCR Tr. p. 11).

On cross-examination, Applicant testified that she wanted to be tried separately from Guinyard. (PCR Tr. p. 17). Applicant testified that Trial Counsel never discussed severing her

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trial from Guinyard with her, but that Trial Counsel advised her she would move to sever her trial from Guinyard, but that she was not successful, and the State made her proceed to trial alongside Guinyard. (PCR Tr. p. 17).

On direct examination, Trial Counsel testified she did not recall making a motion to sever Applicant's trial. (PCR Tr. p. 30).

On cross-examination, Trial Counsel testified that she did not recall moving to bifurcate Applicant's trial, and it would have been advantageous for Applicant to have a separate trial. (PCR Tr. p. 33). Trial Counsel testified that she should have made a request to sever the trial, but she did not. (PCR Tr. p. 33).

On re-direct examination, Trial Counsel testified they requested to sever the charges, not to sever Applicant's trial from Guinyard. (PCR Tr. p. 36). Trial Counsel testified that she does not know if a motion to sever the trial would have been successful. (PCR Tr. p. 36). Trial Counsel testified there were issues that came up with prior bad act allegations of abuse that would not necessarily be admissible against Applicant if she had a separate trial, and Applicant's and Guinyard's competing rights caused an issue. (PCR Tr. p. 37).

On direct examination, A.S. Campbell testified that there was no legal basis to sever the trials, and had there been, defense counsel would have made it. (PCR Tr. p. 43). A.S. Campbell testified that a joint trial was totally proper in Applicant's case. (PCR Tr. p. 43).

On cross-examination, A.S. Campbell testified that it is her opinion that there was no basis for severance. (PCR Tr. p. 43). A.S. Campbell testified that she has worked with Trial Counsel and the other attorneys on the case before, and they are capable attorneys.

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On direct examination, A.S. McDuffie testified that she recalled Applicant's attorneys wanting a joint trial to point the finger at Guinyard, as Applicant had not been in direct contact with the victim in the days leading to his death. (PCR Tr. p. 47).

Findings

This Court finds the combination of the record and Trial Counsel's testimony 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 [her] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome her burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that Trial Counsel was not constitutionally ineffective for failing to move to sever Applicant's trial from Guinyard, as there was no legally supportable basis to sever Applicant's trial. Applicant is not entitled as a matter of right to a severance merely because her and Guinyard's defenses were mutually antagonistic, and where the actions were properly joined. Smith, 359 S.C. at 489, 597 S.E.2d at 893. Applicant's and Guinyard's charges arose from the same event, committed in each other's presence, in the same location, at the same time, to the same victim. These actions were clearly of the "same general nature" as they were closely related in kind, place and character. Simmons, 352 S.C. at 350, 573 S.E.2d at 860.

Further, Applicant failed to show that her joint trial compromised a specific trial right or prevented the jury from making a reliable judgment. Trial Counsel mentioned that it might have been beneficial to move to sever trials based on evidence of prior bad acts that might have not been admissible against Applicant had she been tried separately. However, it is extremely likely evidence of Applicant's prior bad acts—specifically, of the witnessed abuse she perpetuated on her

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son throughout his entire life—would have been admissible to show intent, absence of mistake or accident, as relevant to establish identity as to the person who fatally abused the child, to establish a pattern of abuse or neglect necessary to prove homicide by child abuse that supported the existence of a common scheme or plan, and admissible under the *res gestae* theory. Martucci, 380 S.C. at 252-58, 669 S.E.2d at 609-12. Otherwise, Applicant merely provided that a severance would have benefitted her, without more. Therefore, Trial Counsel is not deficient for failing to move to sever the trials, as there was no legally supportable basis to do so, and therefore, Applicant cannot show resulting prejudice. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); 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).

Moreover, this Court disagrees that a separate trial would have been more beneficial to Applicant than a joint trial. A.S. McDuffie **credibly** testified that she recalled that Applicant's attorneys wanted a joint trial to point the finger at Guinyard, as Applicant had not been in direct contact with the Victim in the days leading up to his death. If Applicant had a legally supportable basis to move to sever the trials, and had been successful in doing so, she would not have had the benefit of Guinyard's constant presence before the jury as a possible scapegoat.

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

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omissions to prove the second prong of Strickland—that she 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, these allegations must be **DENIED** and **DISMISSED with PREJUDICE.**

Allegation 3: **Failure to investigate.**
Allegation 4: **Failure to meet a sufficient number of times, failure to prepare for trial, failure to prepare a defense, and failure to investigate.**

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to investigate, to prepare for trial and prepare her defense, and failure to meet a sufficient number of times. This Court finds this allegation to be without merit.

"A criminal defense attorney has a 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). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other

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defenses applicant could have requested counsel develop and present had counsel been more prepared. 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 v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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Additionally, "[B]revity 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).

PCR Evidentiary Hearing

On direct examination, Applicant testified that she saw her attorney about three or four times prior to trial, and the meetings lasted about one hour each time. (PCR Tr. p. 11). Applicant testified that the meetings with Trial Counsel were insufficient to provide Trial Counsel with her full story. (PCR Tr. p. 12). Applicant testified that she was unsure whether Trial Counsel had hired a private investigator, but she had never spoken with one. (PCR Tr. p. 12). Applicant testified that she was unaware that Trial Counsel was supposed to investigate her case, as it was never mentioned to her, and there was insufficient time to investigate since they proceeded to trial ten months after her arrest. (PCR Tr. p. 13).

On cross-examination, Applicant testified that Trial Counsel failed to investigate "the whole situation," and that there was a lot that did not come up, which meant her case was not properly investigated. (PCR Tr. p. 17). Applicant testified that Trial Counsel should have investigated the cameras from the hospital to show her phone was not in her back pocket, and she

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could not have butt dialed her sister, and her phone records should have been subpoenaed to show she called her sister, the State just went off the phone tower to show she called her sister around that time. (PCR Tr. pp. 18-19). Applicant testified that she did not have the allegedly helpful phone records to show that she had not called her sister. (PCR Tr. pp. 19-20).

On direct examination, Trial Counsel testified that she began representing Applicant on July 9, 2013, and represented her for approximately ten months. (PCR Tr. p. 26). Trial Counsel testified that the State's evidence shows Applicant's four-year-old son suffered many internal injuries that led to his death on the day that Applicant had given birth to her baby, and there was testimony presented from various family members of a year's worth of abuse that the victim suffered, leading to his death. (PCR Tr. p.p. 26-27). Trial Counsel testified that she met with Applicant at least fourteen times prior to trial, during which they discussed trial strategy, answered any questions, reviewed discovery, discussed the DSS case against Applicant, and prepared for trial. (PCR Tr. pp. 27-28). Trial Counsel testified that generally, her trial strategy was to distance Applicant from the homicide charge and take on the unlawful conduct charge. (PCR Tr. p. 28). Trial Counsel testified that she hired a private investigator in Applicant's case, and the investigator conducted several witness interviews, served subpoenas, and focused on interviewing potential witnesses, mostly from Applicant's family. (PCR Tr. p. 31).

On direct examination, A.S. Campbell testified that the most compelling evidence presented against Applicant was the pathologist's testimony of the evidence of repeated physical abuse the victim endured over the years. (PCR Tr. p. 41). Additionally, A.S. Campbell testified that the State had the phone dump from Applicant's phone that Applicant referred to in her testimony, showing that there was a phone call. (PCR Tr. p. 41). A.S. Campbell testified there

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was eyewitness testimony presented, and the pathologist's testimony was the most compelling. (PCR Tr. p. 41).

Findings

This Court finds the combination of the record and Trial Counsel's testimony 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 [her] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome her burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel **credibly** testified to her knowledge of Applicant's case, and that she hired a private investigator to interview relevant witnesses and serve subpoenas. Trial Counsel **credibly** testified that she met with Applicant at least fourteen times, and discussed Applicant's case, looked into Applicant's DSS cases, reviewed discovery, and prepared for trial. Therefore, Trial Counsel is not deficient for failing to investigate Applicant's case or meet with Applicant where Trial Counsel retained a private investigator, interviewed relevant witnesses, and subjected the State's case to vigorous adversarial testing, as indicated by the voluminous record, motions, and arguments Trial Counsel made at trial.

Additionally, Applicant failed to provide how further investigation or meetings would have resulted in additional defenses or changed the outcome of her trial. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared). Applicant merely provided speculation as to the existence of a video that she alleged contradicted the State's position that she "butt dialed' her sister during the beating of her

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son, failing to provide the alleged video for this Court's review. Glover, 318 S.C. at 498, 458 S.E.2d at 540 (Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). Further, a review of the record and A.S. Campbell's **credible** testimony establishes that the State presented the "phone dump" from Applicant's phone, which established there was a phone call between Applicant and her sister around the time of the incident. (ROA pp. 1296). This further weakens the likelihood that had Trial Counsel investigated the alleged video or Applicant's phone records, the outcome of her trial would have been different, as credible evidence was presented at trial establishing the facts Applicant now challenges.

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 she 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, these allegations must be **DENIED** and **DISMISSED with PREJUDICE.**

Allegation 5: Trial Counsel changed defense strategy two or three times due to a disagreement with co-counsel.

Applicant alleges that Trial Counsel was constitutionally ineffective for changing the defense strategy multiple times based on a disagreement she had with co-counsel. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that she was not certain what Trial Counsel's

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strategy was or what she changed her trial strategy to, but that she changed her trial strategy after her other two attorneys left one of their meetings due to a disagreement with Trial Counsel. (PCR Tr. p. 13). Specifically, Applicant testified that she and her three attorneys were meeting in a multi-purpose room at the Alvin S. Glenn Detention Center when the two other attorneys said "no" and got up and left. (PCR Tr. p. 13). Applicant testified that she does not know what the disagreement stemmed from. (PCR Tr. pp. 13, 14). Applicant testified that she believes Trial Counsel changed her trial strategy after that disagreement. (PCR Tr. p. 13).

On direct examination, Trial Counsel testified that she had a note in her file indicating that she had dismissed her co-counsel from the meeting, but she did not recall exactly why. (PCR Tr. p. 28). Trial Counsel testified that generally, her trial strategy was to distance Applicant from the homicide charge and take on the unlawful conduct charge. (PCR Tr. p. 28).

Findings

This Court finds the combination of the record and Trial Counsel's testimony 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 [her] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome her burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant has failed to provide credible evidence that a disagreement occurred between Trial Counsel and co-counsel that affected the outcome of her trial. Trial Counsel **credibly** testified that her notes reflected that she dismissed her co-counsel during a meeting with Applicant and then continued her meeting with Applicant. Trial Counsel **credibly** testified she did not recall what precipitated the dismissal, and her lack of recollection suggests that the occurrence was not significant nor affected her trial preparation. Additionally,

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Trial Counsel **credibly** testified that her trial strategy was to distance Applicant from the homicide charge and made no reference to changing trial strategies throughout her representation of Applicant.

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 she 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, these allegations must be **DENIED** and **DISMISSED with PREJUDICE.**

Allegation 6: **Failure to object to admission of Applicant's statements to law enforcement based on the fact Applicant had just given birth and was not cognizant when she gave her statement, as she was on medication and had a difficult labor.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to move to suppress her statements to law enforcement based on the fact that she had just given birth and had taken pain medication, which made her statement involuntary. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that on the day of the incident, she gave birth to another baby and had just arrived home from the hospital. (PCR Tr. p. 14). Applicant testified that she had taken OxyContin and Oxycodone right before leaving the hospital and going home.

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(PCR Tr. p. 14). Applicant testified that she was still in a lot of pain before she came home, and she was out of it. (PCR Tr. p. 14). Applicant testified that, due to this, she did not remember giving a statement to law enforcement, as she had fallen asleep during her statement, and one of the law enforcement officers had to wake her up. (PCR Tr. p. 15).

On cross-examination, Applicant testified that she did not recall that there was a pre-trial hearing to determine the admissibility of her statement. (PCR Tr. p. 21). Applicant testified that she did not remember the investigator testifying at her Jackson v. Denno[24] hearing that she was not impaired when she gave her statement. (PCR Tr. p. 21). Applicant testified that had Trial Counsel presented her medical records at her Jackson v. Denno hearing, it would have been presented that the nurse had given her pain medication right before she left the hospital. (PCR Tr. p. 21). Applicant testified she did not recall giving her statement. (PCR Tr. p. 22). Applicant testified that she recalled testifying at trial that she had a conversation over the phone with Guinyard before she left the hospital, informing him that she was coming home in a cab. (PCR Tr. pp. 22-23). Applicant testified she did not recall testifying at trial against Guinyard to multiple specific statements he had made to her the day of the incident, when she claims she was heavily medicated. (PCR Tr. p. 23). Applicant testified that she did call her husband, and the medication did not stop her from doing that, and she only received the medication from a nurse in a white cup right when she was at the door. (PCR Tr. p. 23). Applicant testified that she could remember her conversations with her husband because the medication was not entirely in her system yet, but it was when she was speaking to the investigator. (PCR Tr. p. 24).

On re-direct examination, Applicant testified that she received the medication after she had called her husband. (PCR Tr. p. 25)

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[24] Jackson v. Denno, 378 U.S. 368 (1964).

On direct examination, Trial Counsel testified that it was raised multiple times at trial and was an undisputed fact that Applicant had just given birth the day she gave her statement. (PCR Tr. p. 30

Findings

This Court finds the combination of the record and Trial Counsel's testimony 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 [her] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome her burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony that she did not recall giving her statement to law enforcement and that she had fallen asleep while giving her statement due to being heavily medicated, **not credible**. First, Applicant's lack of memory seems to be localized to her giving her statement to law enforcement, as she testified specifically to the events that took place after she left the hospital and at her residence during her trial.[25] Further, Applicant testified that her medical records would have shown that she had taken strong pain medication prior to leaving the hospital, but failed to provide the alleged medical records that would have shown this.

[25] Specifically, Applicant testified she recalled arriving home sometimes in the afternoon, and when the cab pulled up to her residence, the driver honked the horn three times, but no one came to the door. (ROA p. 1100). Then, the driver knocked on her door, no one came to the door, and then the driver honked the horn again and then Guinyard came outside and took the newborn baby. (ROA p. 1101). Applicant testified that the first thing she did when she got into the residence was ask where Victim was, and Guinyard told her he was sleeping. (ROA p. 1101). Applicant testified that she found Victim in the back room of the residence. (ROA p. 1101). Applicant testified that the first thing she noticed when she entered the backroom was the smell from the back room, that it smelled bad, and she saw Victim on the floor, naked, in a puddle of urine. (ROA p. 1102). Applicant testified she called Victim's name, and he eventually woke up, but when he tried to get up, Victim fell back to the ground. (ROA p. 1102-1103). Applicant testified that she witnessed Guinyard beat the Victim with a white pole, that she told him to stop, and further testified about the specific events leading to Victim's death. (ROA p. 1104-1107).

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Notably, Applicant testified she took a shower when she got home because she was in a lot of pain from the epidural, never making any reference to having taken pain medication, and clearly recounting her observations, perceptions, and sensations. (ROA p. 1107).

Applicants' testimony is contradictory to what she testified to at trial and merely offers unsubstantiated claims that she was heavily medicated. Therefore, Trial Counsel is not ineffective for failing to move to suppress her statements on a meritless basis. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); see also 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 she 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, these allegations must be **DENIED** and **DISMISSED with PREJUDICE**.

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Allegation 7: **Failure to have Applicant psychologically evaluated prior to trial.**

Applicant alleges Trial Counsel was ineffective for failing to have her psychologically evaluated. This Court finds allegations are without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel had mentioned having her psychologically evaluated; however, she was unable to have Applicant evaluated due to the trial date coming up when it did. (PCR Tr. p. 12).

On direct examination, Trial Counsel testified that she did not recall discussing whether Applicant should undergo a psychological evaluation. (PCR Tr. p. 31).

Findings

This Court finds the combination of the record and Trial Counsel's testimony 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 [her] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome her burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony **not credible** that Trial Counsel advised her she would be psychologically evaluated. Trial Counsel testified her notes do not indicate she ever discussed having Applicant psychologically evaluated. Additionally, Applicant failed to provide on what basis she would have been psychologically evaluated, and the record is devoid of any reference that a psychological evaluation was necessary.

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

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failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that she 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, these allegations must be **DENIED** and **DISMISSED with PREJUDICE.**

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|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 her application. Therefore, this application for post–conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies the Applicant that she 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 the 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 10 **day of** Sept**, 2025.**

DONALD B. HOCKER
Presiding Judge
Fifth Judicial Circuit

Laurens, South Carolina

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