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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

R, Scott Sprouse, Circuit Court Judge

Case No. 2020-CP-30-00046

Darrell E. Raines, Jr. #366420

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Darrell E. Raines, Jr. appeals the order of the Honorable R. Scott Sprouse dated September 8, 2025. Appellant received written notice of entry of this order on September 29, 2025.

October 3, 2025

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STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Darrell E. Raines, #366420 Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-30-00046 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Darrell E. Raines ("Applicant"), on January 13, 2020. The Court convened an evidentiary hearing into the matter on December 2, 2022, at the Abbeville County Courthouse. Applicant was present at the hearing and represented by Don A. Thompson, Esq. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has failed to establish that he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During its November 2013 term, the Laurens County Grand Jury indicted Applicant for murder (13-GS-30-1932) and possession of a weapon during a violent crime (13-GS-30-1933). Bryan C. Able, Esquire, ("Counsel") represented Applicant. Deputy Solicitor Dale Scott of the Eighth Circuit Solicitor's Office prosecuted the case.

On December 7-11, 2015, Applicant proceeded to a jury trial before the Honorable Donald

B. Hocker. The jury found Applicant guilty on both counts. Applicant was sentenced to life imprisonment for murder and a consecutive sentence of five years for possession of a weapon during a violent crime.

Applicant subsequently timely filed a notice of appeal. By an unpublished opinion, the South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Raines*, Op. No. 2019-UP-188 (S.C. Ct. App. filed May 29, 2019). The Remittitur was sent June 14, 2019.

Factual Summary

Victim joined an online dating website, PlentyofFish.com, in an effort to find companionship. (Trial Tr. 118). In the beginning of August 2013, Victim began chatting with Darrell Raines online. (Trial TR. 118). Raines was going through a similar break up of his marriage. (Trial Tr. 138.) He had recently moved into to his mother's house in Berea, South Carolina after separating from his wife. (State's Exhibit #47.) Raines' inability to obtain steady work led to financial difficulties. (State's Exhibit #47.) In fact, multiple text messages from August 2013 reveal that Raines was desperate for a gun but could not afford one. (State's Exhibit #32.)

Raines and Victim talked online for about a week before they met in person. (Trial Tr. 119). On Tuesday, August 13, 2013, Victim drove to Georgia to meet her mother, Penny Smithers. (Trial Tr. 138.) Victim's two children were going to visit with Penny in Florida until the following Tuesday, August 20, when Victim would retrieve them. (Trial Tr. 138.) When Victim returned from meeting Penny on August 13, she finally met Raines in person. (State's Exhibit #47.) The two spent that night together and from there began dating. (State's Exhibit #47.) They would frequently call and text one another. (State's Exhibits #32.). During this time, Raines was able to

gain extensive access to Victim's life. Raines obtained a copy of Victim's apartment key and was given access to her computer. (Trial Tr. 350).

Victim's Disappearance

On Sunday, August 18, 2013, Victim left for work at 2:00 p.m. (Trial Tr. 122.) Victim worked the evening hours at Charter Communications in Simpsonville. (Trial Tr. 114.) She would usually leave home around 2:00 p.m. and return between 12:30 and 1:00 a.m. (Trial Tr. 115.) Around 6:30 p.m., Victim spoke to Penny on the phone and confirmed they would meet on Tuesday, August 20, to exchange the kids. (Trial Tr. 114.) At 8:00 p.m., Victim had her dinner break. (Trial Tr. 170.) She left Charter and drove to a gas station in Taylors, South Carolina, where she used her debit card at 8:03 p.m. to purchase coffee and cigarettes. (Trial Tr. 286; State's Exhibit #36.) Victim briefly met with her estranged husband and then drove back to Charter Communications. (Trial Tr. 171.) At 12:00 a.m. on August 19, Victim left work. (Trial Tr. 441-442.)

On the morning of Monday, August 19, Victim's neighbor, Lauren Searcy, became worried when she did not see Victim's car parked outside her apartment. (Trial Tr. 123-124.) Concerned for Victim's safety, Lauren sent a text message to Raines asking if he had heard from Victim. (Trial Tr. 123). When Raines responded that he had not spoken to Victim, Lauren checked Victim's Facebook account for any information. (Trial Tr. 126.) Lauren saw that a message had been posted from Victim's Facebook account on August 19 at 4:07 a.m., stating that Victim was leaving for Florida to pick up her kids. (Trial Tr. 127.) The message troubled Lauren because she knew Victim was not supposed to leave until Tuesday August 20. (Trial Tr. 127.) Furthermore, as Lauren would explain to the police, she did not believe the message was written by Victim because that was "not the way Victim would talk." (Trial Tr. 128.) That afternoon, Penny contacted Lauren. (Trial Tr.

144.) Penny had been trying to call Victim all day and received no answer. (Trial Tr. 144.) This was especially worrisome to Penny because August 19 was Victim's daughter's 8th birthday. (Trial Tr. 139.) Penny became even more concerned when she received a strange Facebook message from Victim's account at 5:16 a.m. on August 19, claiming she was on the way to Florida. (Trial Tr. 143; 146; State's Exhibit 5.) Another Facebook message posted from Victim's account at 7:29 p.m. on August 19 claimed Victim was going to Savannah, Georgia to be with some friends. (Trial Tr. 128; State's Exhibit 4.) Because Victim did not know anyone in Savannah and the message did not sound like Victim, Lauren filed a missing persons report later that night on Monday, August 19. (Trial Tr. 146.)

Surveillance from the ATM showed Raines, alone in his truck, withdrawing the maximum daily withdrawal amount of $500 from Victim's account on several occasions. (Trial Tr. 257; 289; 469; State's Exhibit #26 and #29.) Raines claimed Victim gave him her bank card and pin number on Saturday, August 17, the night before she went missing. (Trial Tr. 259; 261.) Raines claimed Victim was giving him $200 for a car payment. (Trial Tr. 261-62.)

On Friday, August 23, a severely decomposed body was discovered in a field on Bramlett Church Road in Gray Court. (Trial Tr. 531-32; State's Exhibits #12 and #37.) That same day, investigators located Victim's abandoned car. Using the information obtained from Raines' and Victim's cell phone records, investigators determined that Raines' and Victim's phones pinged off cell phone towers in very close proximity to each other at 12:03 a.m. on August 19. (Trial Tr. 269-70). Ultimately, it was determined that Victim died of a gunshot to the back of her neck.

Present Application

In his post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

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1. Ineffective Assistance of Counsel:
    a. "Failing to impeach a witness incarcerated at the time of the applicant's trial.
    b. "Failing to object to or motion to exclude the testimony of a witness not listed on the witness list."
    c. "Failing to provide the applicant with the information gathered from his phone."
    d. "Failing to hire a qualified independent researcher to provide data analysis of the information gathered from the applicant's cell phone."
    e. "Making inappropriate and inflammatory statements during the closing arguments of the applicant's trial."
    f. "Failing to raise the objection to a witness testifying how cell phones and cell towers operate."
    g. "Failing to raise the objection to the introduction of State's exhibit into evidence."
    h. "Failing to do due diligence and adequately prepare for applicant's trial."

As relief, Applicant requests a new trial.

An evidentiary hearing was held at the Abbeville County courthouse on December 2, 2022.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject convictions and sentences, Applicant's appellate records, and Applicant's application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

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upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable

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probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In some cases, overwhelming evidence of guilt will preclude a finding of prejudice. "A reasonable probability of a different result does not exist when there is overwhelming evidence of guilt." *Hillerby v. State*, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (citing *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991)). An applicant's failure to prove prejudice necessarily defeats an allegation of ineffective assistance, and a reviewing court need not even reach the deficiency prong. *See Strickland*, 466 U.S. at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.").

In this case, the South Carolina Court of Appeals has already determined that the evidence against Applicant was overwhelming. *See Raines*, Op. No. 2019-UP-188 (S.C. Ct. App. filed May 29, 2019). The court of appeals held the overwhelming nature of the evidence against Applicant rendered any error harmless. *Id.* The standard for finding "harmless error" on direct appeal is far more favorable to appellants than the prejudice analysis for ineffective assistance of counsel claims is to PCR applicants. A reviewing court cannot pronounce an error "harmless" unless it concludes,

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beyond a reasonable doubt, that the error did not contribute to the verdict. *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). "The question a reviewing court must ask is this: absent the [alleged error], is it clear beyond a reasonable doubt that the jury would have returned a verdict of guilty?" *United States v. Hasting*, 461 U.S. 499, 511 (1983). In contrast, a court applying the ineffective assistance of counsel standard may only find prejudice if the applicant shows a reasonable probability that the alleged error *did* lead to a different result. *Strickland*, 466 U.S. at 696 (holding "a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.").

In light of the court of appeals' holding that the evidence against Applicant was "overwhelming," such that it rendered harmless the errors committed by the trial court, it will not be easy for Applicant to convince this Court that the result of his trial would likely have been different but for Counsel's alleged errors. Nevertheless, it is conceivable that Counsel's conduct contributed to the "overwhelming" nature of the evidence in the record before the court of appeals, so this Court cannot find that court's holding, by itself, dispositive of the prejudice issue. Therefore, this Court proceeds to examine the individual allegations of ineffective assistance raised by Applicant:

A. Failure to impeach testimony of Christian Yates

Applicant claims Counsel was ineffective for failing to impeach one of the State's witnesses, Christian Yates, with evidence that she was incarcerated at the time she testified at Applicant's trial. The Court finds Applicant has failed to meet his burden of proof as to this allegation.

At trial, the State called Yates, who testified that she was awakened by two gunshots around

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1:00 or 1:30 in the morning on August 19, 2013. At the time, Yates was living on Bramlett Church Road. Several days later, after a friend of the family came to cut bushes on her property, Yates was told "that something had been found" in a nearby field. Yates went to investigate on Friday, August 23, 2013, and discovered a human body. (Tr. pp.210–18).

On cross-examination, Counsel elicited from Yates that she had "no idea whatsoever" as to how long the body had been lying in the field. She also explained that, after hearing the gunshots, she looked out the window but could not see anything or anybody. (Tr. pp.218–25).

At the PCR hearing, Applicant claimed Yates was brought to the courthouse from the women's prison and changed into street clothes prior to testifying. Applicant could not remember what she was convicted for, but he claimed Counsel should have impeached her with evidence of her conviction.

Counsel testified Yates was the first witness he spoke to during his investigation of the case. He testified she was not in jail at the time he spoke to her, and he was not aware of her having any police record. He also explained that her testimony concerned only the undisputed facts that the Victim had been shot and her body had been found in the lot near Yates' property; Yates was not able to see anything out of her window and could not identify anybody. He explained that the State was able to use cell site location data to put Applicant in the Gray Court area around 8:00 p.m. on August 18th, 2013, but Yates testified she heard the gunshots at approximately 1:00 a.m. on the 19th, so Yates' testimony as to the timing of the gunshots was not particularly harmful to his client.

The Court finds Applicant has failed to meet his burden of proving that Counsel was ineffective as to this issue. Even if Counsel had attempted to impeach Yates with her criminal record, Yates' credibility was not a significant factor in Applicant's trial. Her testimony primarily

concerned the location where Victim's body was found and the fact that Victim was shot, neither of which were disputed. Her testimony did nothing to implicate Applicant as the culprit. Applicant argues that, because Yates was able to testify that the shooting occurred around 1:00 a.m. on August 19th, that information tends to suggest Applicant was the shooter because the State used cell site location data to prove Applicant was in the Gray Court area at 8:00 p.m. the previous day. The Court finds this tenuous connection—between Applicant's presence in the approximate area of Gray Court at 8:00, and the shooting near Yates' property *five hours* later—was not so damning that the jury would likely have reached a different verdict if Counsel had impeached Yates' testimony.

Applicant has failed to prove he was prejudiced by Counsel's failure to impeach Yates. This allegation is, therefore, denied and dismissed with prejudice.

B. Failure to object to or move to exclude Penny Smithers' testimony

Applicant also claims Counsel was ineffective for failing to object to, or move to exclude, the testimony of Penny Smithers, the Victim's mother, on the ground she was not included on the State's list of anticipated witnesses. The Court finds Applicant has failed to prove this allegation.

At the evidentiary hearing, Counsel explained that he was not surprised by Penny Smithers being called as a witness. He testified that the solicitor had an "open file" policy, that he knew well in advance that Smithers was going to be a witness, and that her testimony was consistent with what he had prepared for her to testify.

Applicant has not asserted that Smithers' omission from the State's witness list caused any unfair surprise or deprived Counsel of a full opportunity to investigate and prepare for Smithers' testimony. However, Applicant complains that the jury was not asked about Smithers on *voir dire*; therefore, he argues one or more jurors might have known Smithers and harbored some kind of

bias as a result. This argument is purely speculative. Applicant has presented no evidence of actual juror bias; in fact, Applicant has not proved, or even asserted, that any juror actually knew Smithers at all.[1] Therefore, this Court finds Applicant has not met his burden of proving prejudice. This allegation is, therefore, denied and dismissed with prejudice.

C. Failure to provide Applicant with information from his cell phone

Applicant contends Counsel was ineffective for failing to provide him with information gathered from the "dump" of his cell phone because it was too voluminous. The Court finds this allegation is meritless.

To prove prejudice from his attorney's failure to provide or review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by further review of the discovery. *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). Furthermore, the applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* at 76 (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced the 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)).

Here, Applicant has not articulated any beneficial evidence he might have discovered or any new defenses he might have raised had he more thoroughly examined the cell phone data prior to his trial. Accordingly, the Court finds Applicant has not met his burden of proving that

[1] While the trial court did not ask jurors if they knew Penny Smithers by name, the judge did ask whether anyone on the jury panel knew "the family of Myranda Southern," the Victim. (Tr. p.32, lines 9–11). No jurors responded.

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Counsel's performance prejudiced him as to this allegation. This allegation is, therefore, denied and dismissed with prejudice.

D. Failure to hire an expert to analyze cell phone data

Applicant also claims Counsel was ineffective for failing to hire an independent expert to analyze the data from his cell phone. Once again, Applicant has failed to present any expert testimony at the evidentiary hearing to meet his burden of proving prejudice.

In addition, as Counsel pointed out in his testimony at the evidentiary hearing, the State's own expert could only testify as to the general location of Applicant's phone and could not testify as to his specific location; in fact, the State's expert could not put Applicant any closer than Simpsonville at the time of the crime, which is several miles away from where the body was found. Counsel testified he preferred to focus the jury's attention on the weakness of the State's location data, rather than counter it with an expert of his own. Counsel also stated he was worried that an independent expert might be able to put Applicant *closer* to the scene of the crime than the State's expert was able to, which would obviously have been harmful to the defense's case. Since Applicant has not provided any independent expert testimony, the Court cannot say that Counsel's fears were unfounded. Therefore, the court finds Counsel had a valid strategic reason for proceeding as he did; Applicant has failed to prove either deficiency or prejudice as to this issue. Accordingly, this allegation must be denied and dismissed with prejudice.

E. Making "inappropriate and inflammatory" statements during closing argument

Applicant next complains that Counsel made "inappropriate and inflammatory" statements in his closing argument to the jury. Specifically, Applicant complains about Counsel beginning his argument by reciting the State's theory of the case: "Darrell Raines murdered Myranda Southern because of his desire for Lisa Hamlett." (Tr.p.669, lines 16–20). This allegation is

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patently meritless. Applicant has merely taken this portion of Counsel's closing argument out of context and presented it as if Counsel were conceding his guilt. *In context*, however, Counsel was clearly *attacking* the State's theory of the case at arguably its weakest point—Applicant's motive for committing the murder. Counsel followed up this statement by repeatedly saying, "It doesn't make sense." (Tr.p.670, lines 5–6). Counsel then ably attacked the rest of the State's theory of the case, pointing out that Yates never saw who committed the shooting outside her window; that the State had no video, DNA, or fingerprint evidence putting Applicant at the scene of the crime; that there were tens of thousands of Hi-Point pistols produced in that year alone, and fifty dealers selling them in the State of South Carolina; that the State's cell phone expert could only put Applicant's phone in the "general area," not specifically the neighborhood where the crime occurred; that the State's ballistics expert could not testify that Applicant's gun fired the bullet recovered from the body; and many other arguments.

The Court finds the challenged comments, viewed in their proper context, were clearly part of Counsel's well-constructed argument that the State's theory of the case did not make sense. The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation. Accordingly, this allegation is denied and dismissed with prejudice.

F. Failure to object to testimony by the State's cell site location data expert

Applicant next argues that Counsel should have objected when the State asked Officer Dan Kelly to testify as to how cell phones and cell towers operate, which Applicant claims was outside the scope of Officer Kelly's expertise. This allegation is meritless. The transcript of Applicant's trial reflects that Counsel *did* object to the State's questioning of Officer Kelly on the ground "I think it requires an expert's testimony for him to describe how a cell phone works and how they connect to a tower. There's been no information provided as to this gentleman's expertise in that

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area." (Tr. p.592, lines 17–21). The trial court stated, "I'm not sure this is a situation where I necessarily have to qualify him as an expert"; however, the court asked the Solicitor to "lay a little bit of foundation" as to Officer Kelly's qualifications. (Tr. p.592, line 23–p.593, line 2).

The solicitor agreed, and the questioning of Officer Kelly continued. Officer Kelly explained that he was able to use cell tower information to determine the general location of a cell phone during a specified period of time, using a software program called GeoTime. (Tr. pp.593–97). Shortly thereafter, Counsel again objected that Officer Kelly "has crossed into the field of interpreting the results." (Tr. p.598, lines 2–5). The parties were then permitted to examine Officer Kelly, outside the presence of the jury, concerning his qualifications and training in interpreting cell site location data. (Tr. pp.601–05). The trial court also questioned Officer Kelly. (Tr. pp.605–06). Ultimately, the court ruled Officer Kelly was "an expert in the limited area of cell phone tower location as it relates to the use and interpretation of the GeoTime software program." (Tr. p.609, lines 18–21).

Clearly, Counsel did raise the issue and obtain a ruling. Applicant's current claim—that Officer Kelly was qualified only to give an opinion on the results of the GeoTime cell site location data software program, rather than on how cell phones interact with cell towers—is without merit. As an expert in the use of GeoTime software to interpret cell site location data, Officer Kelly would obviously also be more qualified than the average layperson to give an opinion on how cell phones interact with cell towers to create cell site location data in the first place. Counsel cannot have been deficient for failing to waste the trial court's time with pointless hair-splitting after he had already raised the issue of Officer Kelly's expertise and obtained a ruling. Moreover, as already discussed, Counsel correctly observed that the content of Officer Kelly's expert testimony was not particularly harmful to his client, since Kelly could only testify as to the "general location" of

Applicant's phone at the time of the shooting and could not put Applicant any closer to the crime scene than Simpsonville, several miles away. For these reasons, this Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this issue. Accordingly, this allegation is denied and dismissed with prejudice.

G. Failure to object to the introduction of State's exhibits 31 and 32 into evidence

Applicant also claims Counsel was ineffective for failing to object to State's exhibits 31 and 32 at the time those exhibits were offered into evidence. The Court finds this allegation is without merit.

Applicant has not explained how he was prejudiced by State's exhibits 31 and 32 being introduced into evidence. State's exhibit 31 was an excerpt from State's exhibit 30, the report generated from Applicant's cell phone extraction. (Tr. p.301, line 23–p.302, line 15; p.305, line 15–p.306, line 7). State's exhibit 31 consisted of text messages and phone call information over a few particular dates in August, near the time of Victim's disappearance. State's Exhibit 32 had the same content as State's exhibit 31, printed on a poster board for use as a visual aid. (Tr. p.315, lines 10–12).

Counsel objected to the introduction of this evidence, on the ground that the exhibits contained text messages from Victim, which would be hearsay. (Tr. p.307, lines 4–6). The State countered that the messages were not being offered for the truth of the matter asserted, but to show that Applicant and Victim were talking to each other on the phone around the "critical time" of 12:03 a.m. to 1:30 a.m. on August 19th. (Tr. p.307, line 14–p.311, line 2). The trial court agreed that it was not being offered for the truth of the matter asserted and stated, "I'm going to allow it in." (Tr. p.311, line 3–p.312, line 6). The solicitor then explained that he did not intend to introduce the exhibits into evidence yet, but simply to mark the exhibits for identification. (Tr.

p.312, lines 7–14). The trial court stated, "that resolves the objection for now," but indicated that Counsel could renew his objection when the State did offer to enter the exhibits into evidence. (Tr. p.313, lines 6–10).

Counsel did not renew his hearsay objection when State's exhibits 31 and 32 were later admitted into evidence. (Tr. p.539, lines 2–21). However, this Court finds Applicant has failed to prove that Counsel's failure to renew his objection was deficient, or that he was prejudiced thereby. As the trial court observed, the cell phone extraction report was not being offered to prove the truth of the matters asserted in Victim's text messages; it was being offered to show that Applicant was communicating with Victim until just after midnight on August 19th—the last time anyone saw Victim alive—and that Applicant had deleted a large number of text messages between him and Victim before turning his phone over to law enforcement. The actual content of Victim's text messages to Applicant does not appear to have been relevant to the State's case.

Applicant bears the burden of showing that Counsel would have been successful if he had renewed his objection on hearsay grounds. Similarly, Applicant has the burden of proving that the result of his trial probably would have been different had Counsel succeeded in suppressing the content of Victim's text messages. Applicant has made neither of these showings. Therefore, the Court finds this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

H. Failure to do due diligence and adequately prepare for trial

Applicant concludes his application with a general allegation that Counsel failed to do "due diligence" and to make adequate preparations for trial. At the evidentiary hearing, Applicant clarified that this allegation was merely a restatement of his other issues relating to Counsel's failure to impeach Christian Yates, failure to address the cell phone extraction report, failure to

hire an independent expert, and failure to challenge Ms. Smithers being allowed to testify. These allegations have already been addressed and found meritless, so this redundant allegation must likewise be denied and dismissed with prejudice.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not met his burden of proof as to any of his allegations. Accordingly, this application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and

2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8 **day of** September **, 2025.**

R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Walhalla, South Carolina