

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lancaster County

S.C. SUPREME COURT

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

JOHN M. GHENT, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000932

APPENDIX

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JURY CHARGE

1 express hatred or ill will for another, or when the person
2 prepared beforehand to do the act which was later
3 accomplished. For example, lying in wait for a person or
4 any other acts of preparation going to show that the deed
5 was within the defendant's mind, that would be expressed
6 malice. Malice can be inferred from conduct showing a
7 total disregard for human life. Let's talk about voluntary
8 manslaughter. If you find the State has failed to prove
9 beyond a reasonable doubt that the defendant committed
10 murder, you may consider whether the State has proved
11 beyond a reasonable doubt that the defendant committed the
12 lesser offense of voluntary manslaughter. To prove
13 voluntary manslaughter the State must prove beyond a
14 reasonable doubt that the defendant took the life of
15 another in the sudden heat of passion based on sufficient
16 legal provocation. Both heat of passion and sufficient
17 legal provocation must be present at the time of the
18 killing to justify -- or excuse me, to constitute voluntary
19 manslaughter. A sudden heat of passion may for a time
20 affect a person's self-control and temporarily disturb a
21 person's reason. The sudden heat of passion must be the
22 type that would make an ordinary person unable to coolly
23 reflect on their actions and would produce an
24 uncontrollable impulse to do violence. Sufficient legal
25 provocation must be the type that would make a person of

JURY CHARGE

1 ordinary reason and caution to become enraged and to lose
2 control temporarily. The provocation needed for voluntary
3 manslaughter must come from some act of or related to the
4 victim. Words alone, however vulgar or insulting, are not
5 enough to be legal provocation. Now, where death is caused
6 by the use of a deadly weapon the words must be accompanied
7 by some overt threatening act which could have produced
8 that heat of passion. The exercise of a legal right, no
9 matter how offensive it is to another, is never a
10 sufficient provocation for voluntary manslaughter. If the
11 heat of passion had cooled or if there was enough time
12 between the provocation, if any, and the killing for the
13 passion of a reasonable person to cool, the killing would
14 not be voluntary manslaughter. Now, in deciding whether a
15 reasonable person would have had enough time to cool off
16 you, the jury, should consider all of the circumstances
17 surrounding the killing. You may consider the nature of
18 the provocation if there was any, the defendant's mental
19 and physical state, and the circumstances and relationships
20 between the parties. Involuntary manslaughter. Now, if
21 you find the State has failed to prove beyond a reasonable
22 doubt that the defendant has committed voluntary
23 manslaughter you then may consider whether the State has
24 proven beyond a reasonable doubt the lesser offense of
25 involuntary manslaughter. To prove involuntary

JURY CHARGE

1 manslaughter the State must prove beyond a reasonable doubt
2 that the defendant unintentionally killed the victim
3 without malice, but while engaged in an unlawful activity
4 not naturally tending to cause death or great bodily harm,
5 or that the defendant unintentionally killed the victim
6 without malice while engaged in a lawful activity with
7 reckless disregard for the safety of others. Unintentional
8 means that the defendant did not intend for anyone to be
9 killed or seriously injured. Reckless disregard for the
10 safety of others is more than mere negligence or
11 carelessness. Mere negligence or carelessness is the
12 failure to use the care that a person of ordinary reason
13 would use under the same circumstances. Recklessness is a
14 conscious failure to use ordinary care. Reckless disregard
15 for the safety of others means that you're not interested
16 in the consequences of your acts or the rights and safety
17 of others. If a person who knows or should know that
18 ordinary care requires certain precautions be taken for the
19 safety of others but that person fails to use those
20 precautions without concern, the person's actions are
21 considered reckless. The State must also prove beyond a
22 reasonable doubt that the defendant's act was the proximate
23 cause of the death. Proximate cause is a direct cause,
24 it's the immediate cause, it's the official cause. It's
25 that cause without which the death of the victim would not

JURY CHARGE

1 have resulted. There must be a chain of causation from the
2 time of the injury afflicted by the defendant until the
3 time of victim's death. Proximate cause does not
4 necessarily mean that it occurred immediately prior to
5 death. The defendant has raised the defense of accident.
6 An act may be excused on the ground of accident if it is
7 shown that the act was unintentional, that the defendant
8 was acting lawfully, and that reasonable care was used by
9 the defendant in the handling of a weapon. The burden is
10 on the State to prove beyond a reasonable doubt that the
11 act was not an accident but was caused by the negligence or
12 carelessness on the part of the defendant in the handling
13 of a weapon or by unlawful activity by the defendant.
14 Evidence of a suicide attempt is probative of a defendant's
15 consciousness of guilt, and you ladies and gentlemen of the
16 jury can give this evidence of a suicide attempt whatever
17 weight, if any, you think it deserves. Possession or
18 display of a firearm or knife during the commission of a
19 violent crime. The defendant has also been charged with
20 possession of a weapon during the commission of or attempt
21 to commit a violent crime. The State must prove beyond a
22 reasonable doubt that the defendant visibly displayed a
23 weapon during the commission of a violent crime. A knife
24 is an instrument or tool with a sharp cutting blade whether
25 or not fastened to a handle which could be used to inflict

JURY CHARGE

1 a cut, slash or wound. A knife is considered to be a
2 weapon. In order to find the defendant guilty of
3 possession of a weapon during the commission of a violent
4 crime you must first find the defendant guilty of either
5 committing a violent crime or attempting to commit a
6 violent crime. Murder and voluntary manslaughter are both
7 considered to be violent crimes. The State must prove
8 beyond a reasonable doubt that the weapon further advanced
9 or helped during the commission of the crime. Now, ladies
10 and gentlemen, let me say something about your
11 deliberations. The word deliberation is defined as a
12 careful consideration weighing up with a view to a
13 decision. The genius of our jury system is that it allows
14 12 good people, both men and women, from differing
15 backgrounds, life experiences and perspectives to consider
16 the evidence and talk about it and ultimately reach a
17 verdict. The task of a jury is called deliberations for a
18 reason, you the jurors, are to consider the evidence in
19 this case carefully and deliberately, discuss it in a calm,
20 thorough and curious manner. Remember, you're not
21 partisans or advocates for either side favoring one side or
22 the other, you are judges of the facts. Your sole duty is
23 to sort through this information that you received in this
24 trial and find the truth of the evidence presented in this
25 courtroom. Now, the supreme law of our land, the United

JURY CHARGE

1 States Constitution, affords everyone a day in court and a
2 fair trial, so this case is very important to both sides
3 because it is their day in court. I charge you to listen
4 to the view of your fellow jurors and carefully consider
5 their viewpoints and courteously discuss the evidence.
6 Remember, you're doing something deliberately, you're not
7 in a big hurry and you are tasked with a duty of utmost
8 importance. Now, in conclusion, ladies and gentlemen,
9 you've been selected by both the State and the defense to
10 be fair and impartial jurors. It is your duty in your
11 deliberations to determine the truth in this case giving
12 the defendant the benefit of every reasonable doubt on
13 these charges, and from the facts which you determine to be
14 true, you take and apply the law, which I have just now
15 given to you, and thus arrive at a verdict which speaks the
16 truth in this case. I have told you the standards that you
17 have to apply to the charges in these indictments as well
18 as any lesser offenses. You've heard the evidence and now
19 you've heard the law. Whatever your verdict is as to the
20 indictments, guilty or not guilty, Madam Forelady, you will
21 indicate it by marking the jury's decision in whatever the
22 blank is on the verdict form, and I will go over the
23 verdict form really quick with you. The first charge is as
24 to the offense of murder, we, the jury, unanimously find
25 the defendant, and you just check one, either not guilty,

JURY CHARGE

1 guilty of murder, or guilty of the lesser offense of
2 voluntary manslaughter, or guilty of the lesser offense of
3 involuntary manslaughter, okay? Then as to the possession
4 or display of a firearm or knife during the commission of a
5 violent crime, you check one, either not guilty or guilty,
6 and then you sign it and you date it. Now, Madam Forelady,
7 you cannot sign or date or mark the jury's verdict on this
8 verdict form until the jury has reached a unanimous
9 verdict, okay? Remember that this is not your verdict
10 alone. Now, ladies and gentlemen, I'm going to send you
11 back to your jury room and we're going to have lunch for
12 you so you will be able to work through lunch, but do not
13 begin to discuss the case until you've received all of the
14 exhibits and the verdict form, once you get those things
15 that will be your signal to start deliberating. And once
16 you start your deliberations you will deliberate until
17 you've reached a unanimous verdict, at which time you'll
18 knock on the door and we'll bring you back out here to
19 receive your verdict. So you may now retire to the jury
20 room, everybody except for the alternates, okay? Thank you
21 very much.

22 (The jury left the courtroom.)

23 THE COURT: All right. Any exceptions to the charge
24 from the State?

25 MR. NEWMAN: None from the State, Your Honor.

JURY CHARGE

1 MR. LIFSEY: I just renew my objections I made
2 yesterday to you charging voluntary manslaughter and to
3 your suicide charge.

4 THE COURT: All right, noted and overruled. All
5 right.

6 (The alternates were dismissed and the jury began
7 deliberations.)

8 THE COURT: I received a note from the jury that says,
9 "Can we get the information from the judge that he read to
10 us with the legal definitions?" I have spoken to both the
11 State and the defense, it's my understanding that y'all do
12 not object to me sending the entire charge that I read back
13 to the jury rather than just bits and pieces; is that
14 correct?

15 MS. COLLINS: Yes, sir, Your Honor.

16 MR. LIFSEY: That's correct, Your Honor.

17 THE COURT: Well, then so ordered. I will send it
18 back to them, just mark the note as Court's Exhibit 1.

19 (The jury resumed deliberations and returned with a
20 Verdict.)

21 THE COURT: I remind everybody in the courtroom I
22 don't need any outbursts in here. I know this is a very
23 emotional time, I will ask that everybody try to control
24 your emotions. All right. It's my understanding we have a
25 verdict, bring the jury.

1 (The jury returned to the courtroom.)

2 THE COURT: All member of the jury are present. Madam
3 Forelady, it's my understanding that the jury has reached a
4 verdict.

5 THE JUROR: Yes.

6 THE COURT: Is the verdict unanimous?

7 THE JUROR: Yes.

8 THE COURT: Did you mark that on the verdict form?

9 THE JUROR: I did.

10 THE COURT: If you would hand that to the clerk,
11 please. All right. Clerk, you may publish the verdict.

12 THE CLERK: Case 2014-GS-29-47 and 48, State of South
13 Carolina versus John Marion Ghent, Jr., defendant. As to
14 the offense of murder we, the jury, unanimously find the
15 defendant guilty of murder. As to the possession or
16 display of a firearm or knife during the commission of a
17 violent crime we, the jury, unanimously find the defendant
18 guilty. I certify this decision was the unanimous decision
19 of the jury, Teri B. Sherrill, forelady. Signed March 17,
20 2016. Ladies and gentlemen of the jury, if this be your
21 verdict so say you all by the raising of your right hands.
22 Let the record reflect all jurors raised their right hands.
23 We're going to do polling. Madam Forelady, is this your
24 verdict and is this still your verdict?

25 THE JUROR: It is.

JURY VERDICT

1 THE CLERK: Edgar Mahaffey, is this your verdict and
2 is this still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Barbara Watts, is this your verdict and is
5 this still your verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: Amanda Gamble, is this your verdict and is
8 this still your verdict?

9 THE JUROR: Yes, sir.

10 THE CLERK: Marian Lowery, is this your verdict and is
11 this still your verdict?

12 THE JUROR: Yes, sir.

13 THE CLERK: Wendy Vandyke, is this your verdict and is
14 this still your verdict?

15 THE JUROR: Yes, sir.

16 THE CLERK: Julie Carter, is this your verdict and is
17 this still your verdict?

18 THE JUROR: Yes, sir.

19 THE CLERK: Deborah Lucas, is this your verdict and is
20 this still your verdict?

21 THE JUROR: Yes, sir.

22 THE CLERK: Christopher Witherspoon, is this your
23 verdict and is this still your verdict?

24 THE JUROR: Yes, sir.

25 THE CLERK: Kimberly Sorenson, is this your verdict

JURY VERDICT

1 and is this still your verdict?

2 THE JUROR: Yes, sir.

3 THE CLERK: Jimmy Stacks, is this your verdict and is
4 this still your verdict?

5 THE JUROR: Yes, sir.

6 THE CLERK: Marilynn Michau, is this your verdict and
7 is this still your verdict?

8 THE JUROR: Yes, sir.

9 THE CLERK: Thank you.

10 (The jury was dismissed.)

11 THE COURT: Mr. Lifsey?

12 MR. LIFSEY: Your Honor, at this time I would make a
13 motion for a new trial based on the motion I made at the --
14 directed verdict motion I made at the end of the State's
15 case and at the end of all of the evidence and the
16 additional grounds to the objection to the jury charge that
17 I made.

18 THE COURT: That motion is denied. Your client is
19 clearly protected in the record in this case.

20 MR. LIFSEY: Thank you.

21 THE COURT: We'll stand down prior to sentencing, that
22 will give the State time to prepare a sentencing sheet. I
23 will be glad to hear from the victim's family, I would ask
24 that for timing purposes that, you know, certainly I don't
25 want to -- if anybody has anything to say I will be glad to

JURY VERDICT

1 listen to them but it would be great if y'all would pick
2 out no more than three representatives from the family if
3 you would like to before we go to sentencing. And as well
4 as I will extend the same courtesy to the defense, okay?
5 We'll be in recess for about 15 minutes while we prepare
6 that and then we will commence with sentencing.

7 (A recess was taken.)

8 THE COURT: Due to my concern for Mr. Ghent's health
9 I'm going to let him remain seated there until I formally
10 announce the sentence, okay? Solicitor, I will be glad to
11 hear from the State then in regards to sentencing.

12 MS. COLLINS: Your Honor, Mr. Newman will make the
13 final remarks on behalf of the prosecution team, but I
14 would just like to say that this is, as are most domestic
15 violence acts, a senseless violent act. And the tragedy of
16 this case is that it takes away from this community not
17 only a very good woman who was a hard-working woman who had
18 raised two children and was very important in the lives of
19 all of her grandchildren, but most importantly it deprives
20 those children and grandchildren of the remaining years of
21 her life, to look to her for love and the wisdom that we're
22 sure she would have shared with them. And I respectfully
23 request that you sentence the defendant to life in prison.
24 He does have a prior record which, of course, compared to
25 the acts before you pales in comparison, but I'll be glad

SENTENCING HEARING

1 to share that with you if you want to hear it.

2 THE COURT: All right. Go ahead.

3 MS. COLLINS: He has two convictions for driving under
4 the influence, a conviction for possession of crack,
5 multiple counts of fraudulent check, and one count of
6 public drunk. That's all.

7 THE COURT: All right.

8 MR. NEWMAN: Your Honor, Pastor Randy Mellachamp
9 (phonetically) from Camp Creek Baptist Church is the
10 family's pastor, he will speak for the family, as well as
11 Ms. Tressa Howle who is the sister of the victim, they will
12 speak at the proper time. Your Honor, I'll just say, this
13 is the very worst case of domestic violence that there can
14 be and that's when it in ends in a very violent, very
15 tragic stabbing death. This woman for no reason was
16 stabbed and bled to death while her husband did nothing to
17 help her. Your Honor, for those reasons we ask for life
18 without parole. And I ask you to hear from the family.

19 THE COURT: I will be glad to hear from the family.
20 Yes, sir?

21 SPEAKER: Thank you, Your Honor. I appreciate the
22 opportunity, and obviously a little nervous to speak on
23 behalf of the family. But I have known Elaine for six
24 years of the eight years I've been here in Lancaster, known
25 the Ghents and their entire family the full eight years,

SENTENCING HEARING

1 almost nine that I've been here. Great family, close
2 family. Ms. Elaine was a bright light to our community.
3 Two things that we will always remember about her was that
4 she was a caring mother and an amazing grandmother. I was
5 there on the day that Hunter Ray, Tabitha's youngest, was
6 born, and there was no one more excited that day, literally
7 jumping up and down with joy than Elaine. She will
8 unfortunately not get to see that young lady grow up and
9 neither will they get to understand that love. So the
10 family has asked me to just to remind the Court and to
11 remind you of what they miss now. I also speak on behalf
12 of Jonathan in Tabitha who in that one moment not only lost
13 their mother but lost their father, a great deal of losses
14 happened. The family has asked and requested that the
15 Court please give life. As Jonathan and Tabitha have
16 asked, life plus that one day because that one day made the
17 difference in their entire lives. Elaine was love to her
18 family. As Mr. Ghent has said on the witness stand he was
19 her right hand, she was the unifier of the family and she
20 was a great emotion and care to this family. So we would
21 ask that you would in this case remand this gentleman to
22 custody for life without parole. Thank you, sir.

23 THE COURT: Thank you. Yes, ma'am?

24 SPEAKER: I'm Tressa Howle, I'm Elaine's sister. And
25 we're just asking as a family that you would take into

SENTENCING HEARING

1 consideration life and one day, because in one day he's
2 changed all of our lives. We're lost without her and she
3 has meant so much to us and now she is gone and we don't
4 have nobody, I'm the only one left. We just miss her so
5 much and we would ask that you please give him life and one
6 day, please.

7 THE COURT: Thank you, ma'am.

8 MR. NEWMAN: Your Honor, that's all from the family.

9 THE COURT: All right. Thank you, Solicitor. Mr.
10 Lifsey?

11 MR. LIFSEY: Thank you. Your Honor, I first met John
12 Ghent really probably just a week or two after he was
13 arrested and probably less than a week after he was
14 arrested. When I first looked at this case and I first
15 looked at my client and the evidence against him and the
16 discovery provided me by the solicitor's office, it was
17 sincerely my hope, and frankly I kind of believed early on
18 that we would be able to resolve this case in the way of a
19 plea rather than a trial. Unfortunately we have not been
20 able to, and in fairness a lot of people have asked me why
21 did you try this case. My client is 56 years old now, 54
22 when this happened, he's in poor health. He suffers from
23 diabetes, he has high blood pressure, I think he's lost how
24 many, three teeth since you've been sitting out in the
25 Lancaster County jail. As you know and Your Honor knows

SENTENCING HEARING

1 the minimum of murder is 30 years in prison. Your Honor,
2 you and I discussed and I argued to you a few weeks ago in
3 Chester County on another case the mortality figures in the
4 South Carolina Department of Corrections, and the bottom
5 line is there just aren't many people in their 80's in the
6 South Carolina Department of Corrections. There is
7 absolutely nothing to suggest my client will be alive that
8 long. And so -- what I'm about to say I certainly mean as
9 no disrespect at all to the solicitor's office, we have
10 different roles in this matter, and while I don't agree
11 with them often in the courtroom I respect the role that
12 Solicitor Newman has and Deputy Solicitor Collins, but they
13 made the decision not to reduce the charge from murder,
14 which is absolutely their right to make that call, like I
15 said, I respect our roles in this system. I will tell you
16 when they made the call not to reduce the charge from
17 murder, which is absolutely their right to do, my client is
18 faced in a position to plead or go to trial, he believes he
19 will spend the remainder of his life in prison. Your
20 Honor, the jury has spoken, I don't quibble at all with the
21 jury's verdict. I also believe that the emotion you heard
22 on those phone calls was genuine. I think those things,
23 the jury's finding of guilt and the emotion of those phone
24 calls can both be true. Almost every time I have spoken to
25 John Ghent at the jail, and I can't -- over the last couple

SENTENCING HEARING

1 of years I can't begin to count how many times I've been to
2 the jail to speak to him, he at some point ends up in the
3 position he is in now which is sobbing and telling me how
4 sorry he has been. Your Honor, I believe that whatever
5 sentence you impose will be effectively a life sentence.
6 In deciding what to impose my -- whatever the Court does is
7 your discretion, that's your role, just like their role is
8 to make charges, your role is to decide sentence, but I
9 will tell you that in my opinion a life without parole
10 sentence should be reserved for the worst of the worst. I
11 think I've had two clients get life without parole in the
12 last two years maybe, or three years, one of those was a
13 man who stabbed a 78 year old woman almost 30 times to
14 death, his own great grandmother. And the other was a case
15 of a particularly horrible gruesome murder by someone with
16 a criminal record significantly more than my client. I
17 don't believe as horrible as these facts are that they rise
18 to that level, however I understand the Court's decision
19 must be whatever the Court's decision may be. But I would
20 ask the Court to take all of that into account and realize
21 the health situation of my client and his age and the
22 documented instances of death in the department of
23 corrections in making your sentence. Thank you.

24 THE COURT: Thank you, Mr. Lifsey. Anybody else wish
25 to address me on behalf of the defense?

SENTENCING HEARING

1 MR. LIFSEY: No, sir, they don't. I will say, I want
2 to especially thank his sister, Betsy Steen, who has been
3 here. This as been a horrible event for her as much as it
4 has been for anyone else. She has voluntarily met with the
5 prosecutors about what she knows in this case, and I think
6 she alone with the entire family has just lived a nightmare
7 and I just want to express my appreciation to her for her
8 help to me throughout this process, Judge. But they
9 don't -- it's emotional to them, they don't wish to address
10 the Court. I told John he could say something if he wanted
11 to but he certainly didn't have to.

12 THE COURT: Mr. Ghent, I will be glad to hear from you
13 if you would like to tell me anything before I impose
14 sentence.

15 THE DEFENDANT: I would just like to family that I'm
16 sorry, I didn't really mean to kill her. I really am
17 sorry. I just want to tell y'all -- the kids that I'm
18 sorry that this ever happened. I wish it would have been
19 me, if I could take her place now I would. I just want to
20 say I hope you some day will forgive me and I'm sorry.

21 THE COURT: All right. I'm going to ask the defendant
22 to please stand for sentence. On indictment 14-GS-29-47,
23 having been convicted of the crime of murder, the sentence
24 of the Court is 54 years. On indictment 14-GS-29-48,
25 having been convicted of possession of a weapon during a

SENTENCING HEARING

1 violent crime, the sentence of the Court is five years run
2 consecutive. Good luck to you, sir. That concludes the
3 trial of this case.

4 (End of the hearing.)

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FORM 5

STATE OF SOUTH CAROLINA

County of LancasterJohn Marion Ghent Jr. 367453

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020CP2900722

APPLICATION FOR

POST-CONVICTION RELIEF

2020 MAR -8 AM 9:47

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention [REDACTED]
Broad River Corr. Inst.
2. Name and location of Court which imposed sentence Lancaster 104 N. Main St.
County General Session PO Box 1909 Lancaster, SC 29720
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014652900047 (murder)
 - (b) 2014652900048 (Weapon poss.)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 17, 2016 MURDER 54 YEARS
- (b) MARCH 17, 2016 POSS. OF WEAPON 5 YEARS CONSECUTIVE
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty [REDACTED]
- (b) after a plea of not guilty TRIAL
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS 2016 00643
- ii. S.C. SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DELETED-OPINION # 2019 UP-272
- ii. DELETED-2019-001771
- iii. _____
- (c) the date of each such result:
- i. September 19, 2019
- ii. MARCH 12, 2020
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OPINION # 2019-UP-272
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) MENTAL INCAPACITY AND INSTABILITY
- (c) TRIAL JUDGE IMPROPER DUTY INSTRUCTIONS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAGE (1) ONE
- (b) SEE ATTACHED PAGE (2) TWO
- (c) SEE ATTACHED PAGE (3) THREE
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. NA
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. NA
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. LIA
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. LIA
- iv. _____

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

- i. _____
- ii. _____
- iii. LIA
- iv. _____

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

 LIA

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

(a) which grounds have been presented:

- i. _____
- ii. LIA
- iii. _____

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

- i. _____
- ii. LIA
- iii. _____

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

- (a) _____
 (b) NA
 (c) _____

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

- (a) your arraignment and plea? NA
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

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

- (a) the name and address of each attorney who represented you:
 i. TRIAL ATTORNEY - MR. MIKE LITSEY - LANCASTER
PUBLIC DEFENDER'S OFFICE - 104 W. MAIN STREET
P.O. BOX 1809 LANCASTER, S.C. 29720
 ii. _____
 iii. MR. ROBERT M. DUDEK - DIVISION OF APPELLATE
DEFENSE - P.O. BOX 11589 COLUMBIA, S.C. 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. MIKE LITSEY - TRIAL ATTORNEY
 ii. _____
ROBERT DUDEK - APPEALS ATTORNEY
 iii. _____
WRIT ATTORNEY

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

A New Trial

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

NO

STATE OF SOUTH CAROLINA)

County of LANCASTER)

VERIFICATION

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

John M. Ghent Jr

SWORN to and subscribed before me this 17
day of April, 2020.

S O (L.S.)
Notary Public

My Commission Expires: 10/16/20

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

I, JOHN M. GHENT JR, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

John M. Ghent Jr
Applicant

SWORN or affirmed to and subscribed before me this
17 day of April, 2020.

[Signature]
Notary Public

My Commission Expires: 10/16/26

MY TRIAL COUNSEL, MR. MIKE LIFSEY, WAS INEFFECTIVE AND NEGLIGENT IN HIS DUTIES AND RESPONSIBILITY IN MY PURSUIT OF JUSTICE AND REMAINING IMPARTIAL. MR. LIFSEY FAILED TO BRING TO THE COURT'S ATTENTION MY YEARS OF HEAVY MENTAL HEALTH PROBLEMS, THE PRESENT TREATMENTS I WAS PARTAKING OF, THE MEDICATIONS THAT WAS PRESCRIBED FOR THIS ABNORMAL CONDITION, AND MOST IMPORTANTLY, BY HIM NOT SUBPOENING MY MENTAL HEALTH COUNSELOR TO VERIFY MY PRESENT MENTAL CONDITION. MR. LIFSEY FAILED TO BRING TO THE COURT'S ATTENTION THE LONG TERM EFFECT OF MY DRUG ABUSE IN BEING ABLE TO MAKE DECISIVE AND RATIONAL DECISIONS. MR. LIFSEY FAILED TO BRING TO THE COURT'S ATTENTION THAT THIS INCIDENT WAS AN ACCIDENT THAT HAPPENED DURING A VERY HEARTBREAKING TIME IN MY LIFE IN THE POSSIBILITY OF ME LOSING ALL THAT I EVER WANTED: MY WIFE AND FAMILY. MR. LIFSEY FAILED TO BRING TO THE COURT'S ATTENTION THAT THIS INCIDENT WAS A CRIME OF PASSION. I DO BELIEVE THAT IF MR. LIFSEY HAD BROUGHT THESE MATTERS BEFORE THE COURT, MY TRIAL WOULD HAVE TURNED OUT DIFFERENTLY.

(Page 2) MENTAL INCAPACITY AND INSTABILITY

MY TRIAL COUNSEL, MR. MIKE LITSEY, FAILED IN HIS DUTIES AND RESPONSIBILITIES IN MY DEFENSE IN NOT BRINGING TO THE COURT'S ATTENTION, MY INCAPACITY AND MY UNSTABLE STATE OF MIND DURING MY ENCOUNTER WITH MY DECEASED WIFE AT THE TIME OF THE ACCIDENT. MY TRIAL ATTORNEY, MR. MIKE LITSEY, FAILED TO INVESTIGATE AND TO BRING TO THE TRIAL COURT'S ATTENTION THAT AT THE TIME OF THE ACCIDENT, I WAS ACTIVELY SEEING AND PARTICIPATING IN A TREATMENT AND COUNSELING FACILITY IN LANCASTER, SC, AT THE CATAWBA MENTAL HEALTH FACILITY, AND HAD BEEN SINCE 2006. DURING MY INCARCERATION AT THE LANCASTER COUNTY DETENTION CENTER, I WAS TAKEN TO THE CATAWBA MENTAL HEALTH FACILITY FOR TREATMENT AND COUNSELING IN NOV/DEC 2013. THE TREATMENT AND COUNSELING WAS FOR THE SEVERITY OF MY CONDITION. IF TRIAL COUNSEL HAD DELVE INTO MY MENTAL INCAPACITY AND MY UNSTABLE STATE OF MIND AND BROUGHT IT TO THE TRIAL COURT'S ATTENTION, THE OUTCOME OF MY TRIAL WOULD HAVE BEEN DIFFERENT.

MY TRIAL ATTORNEY, MR. MIKE LITSEY, FAILED IN HIS MEAGER ATTEMPT TO ARGUE AND CONVINCE THE TRIAL COURT AND ITS JUDGE, THAT BY INSTRUCTING THE JURY THAT "EVIDENCE OF A SUICIDE ATTEMPT IS PROBATIVE OF A DEFENDANT'S CONSCIOUSNESS OF GUILT," WAS NOT ONLY IMPROPER, IT WAS HIGHLY PREJUDICIAL, ERRONEOUS, AND DOWNRIGHT LAUD JUDICIAL. THE TRIAL JUDGE IRREPARABLE ACT HAS CAUSED DAMAGE THAT MAY NOT BE REPAIRED. TRIAL COUNSEL FAILED TO ARGUE THAT THE DEFENDANT'S SUICIDE ATTEMPT WAS APPARENT FROM THE RECORD, AND ALSO, WHERE THE FACTS OF THE FATAL INCIDENT MADE ACCIDENT, INVOLUNTARY MANSLAUGHTER, AND VOLUNTARY MANSLAUGHTER VERDICTS OPTIONAL. TRIAL COUNSEL WAS NOT DILIGENT IN HIS EFFORTS TO SUPPORT THE CLAIM OF ACCIDENTAL DEATH AND THAT THE STRUGGLE WITH THE KNIFE PROVES JUST THAT: AN ACCIDENT. IF TRIAL COUNSEL WAS MORE DILIGENT AND FORTHCOMING IN BEING MORE DIRECT, MY TRIAL OUTCOME WOULD HAVE BEEN DIFFERENT.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

John Marion Ghent, Jr., #367453,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No.: 2020-CP-29-0722

RETURN

(Counsel Appointed)

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LANCASTER COUNTY

In response to John Marion Ghent, Jr.'s (Applicant) action for post-conviction relief (PCR) commenced May 8, 2020, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the January 2013 term of the Lancaster County Grand Jury for murder (2014-GS-29-47). Subsequently, Applicant was indicted at the January 2014 term of the Lancaster County Grand Jury for possession of a weapon during the commission of a violent crime (2014-GS-29-48). Applicant was represented by Assistant Public Defender Michael Lifsey. Deputy Solicitor Lisa Collins prosecuted the case.

Applicant proceeded to a jury trial beginning March 14, 2016, with the Honorable Brian M. Gibbons presiding. (Trial Tr. 1). After four days of trial, the jury returned a guilty verdict on each charge. (Trial Tr. 404). On March 17, 2016, Judge Gibbons sentenced Applicant to fifty-four years for murder and a consecutive five years for possession of a weapon during the commission of a violent crime. (Trial Tr. 406–407). Timely notice of appeal followed on March 23, 2016. (Trial Tr. 412).

On appeal, Applicant was represented by Chief Appellate Defender Robert M. Dudek who briefed the following issue:

- I. Whether the court erred by instructing the jury that “evidence of a suicide attempt is probative of a defendant’s consciousness of guilt” since this was an improper jury instruction, it was a charge on the facts, and it was highly prejudicial?

The case was submitted on briefs, and the court of appeals affirmed. *State v. Ghent*, Op. No. 2019-UP-272 (S.C. Ct. App. filed July 24, 2019). Thereafter, on August 8, 2019, Applicant petitioned for rehearing; however, the Court of Appeals denied Applicant’s petition. *State v. Ghent*, S.C. Ct. App. Order filed September 19, 2019. Applicant then petitioned for a writ of certiorari to the Supreme Court; however, the Supreme Court denied certiorari. *State v. Ghent*, S.C. Sup. Ct. Order filed March 12, 2020. The case was remitted back to the circuit court March 13, 2020.

II. Facts

Applicant stabbed his wife, Elaine, in the chest with a fourteen-and-a-half inch-long filet knife at approximately 4:00 AM on October 28, 2017. (Trial Tr. 76–77; 92; 168). The knife entered her lung slightly left of center. (Trial Tr. 22). The wound was nine-tenths of an inch long with a slight twist and was made by a single-edged knife. (Trial Tr. 23). Other signs of injury included two surface scratches to the back of her right hand, two bruises to the left forearm, and one bruise near the stab wound on her chest. (Trial Tr. 23). She bled out within minutes. (Trial Tr. 28).

Between 4:00 and 4:15 AM, Applicant left apologetic voicemail messages for his daughter Tabitha and his sister Betsy. (Trial Tr. 56; 261–263). Waking up around 7:00 that morning, Tabitha listened to the message and immediately sent her husband over to her parent’s house to check on them. (Trial Tr. 53–54; 58). After a minute of knocking, Applicant and Elaine’s son, Johnathan, and his wife came to the door. (Trial Tr. 59; 82). They lived with Applicant and Elaine along with two children of their own. (Trial Tr. 60). Elaine’s father Roddy and sister Tressa also arrived at

the house. (Trial Tr. 65; 71). Johnathan rammed open the door to Applicant and Elaine's locked bedroom and found Applicant lying on the bed facing his bloodied, deceased wife. (Trial Tr. 82–84). Immediately, “Johnathan grabbed [Applicant] and took him out to the kitchen” and began beating on him. (Trial Tr. 84). Other family members became sick from the gore. (Trial Tr. 65; Trial Tr. 126; 168; 184–186). “After about the 20th punch [Applicant] said, ‘I f--- stabbed her.’” (Trial Tr. 84).

Over the next couple of days, Applicant volunteered confessions to nearly everyone he encountered. Law enforcement arrived on scene and found him lying on his back on the kitchen floor, nonresponsive, largely uninjured, and covered in what appeared to be flour. (Trial Tr. 125–126; 137). He had at least one laceration to a wrist but it did not required medical treatment. (Trial Tr. 137–138). On a non-emergency ride to the hospital, Applicant volunteered to EMS that his “son hit [him] in the face because [he had] killed [his] wife.” (Trial Tr. 147–149; 158; 162; 163; 417). Applicant's vitals were stable and his blood pressure was near perfect, but his blood sugar was high. (Trial Tr. 139–142). He showed no signs of overdose despite stating he had taken a copious amount of unknown pills. (Trial Tr. 417). At all times he was conscious, oriented, speaking clearly, and alert to person, place and time. (Trial Tr. 143; 144).

Not only did Applicant repeatedly claim responsibility for his wife's murder, but he volunteered why. At the hospital, Applicant told the deputy standing watch that he “killed her because she was going to leave [him]. She loved [him] but was not in love with [him]. She was staying out until 3:00 or 4:00 in the morning with her girlfriends and not coming home.” (Trial Tr. 269). Applicant expounded, saying

he tried to slit his wrists but it didn't work so he took pills and he thought he would die but that didn't work. So he said his son drug him out of the bed and beat him. Son asked why did he do it, to kill his mama and Ghent stated because she was going to leave him.

(Trial Tr. 270). The deputy typed Applicant's confession onto his cell phone. (Trial Tr. 270). They were the only two people in the hospital room. (Trial Tr. 269). The deputy did not ask any questions to elicit this information, Applicant just volunteered it. (Trial Tr. 270).

The deputy standing guard later that evening allowed Applicant to call his sister Betsy. (Trial Tr. 278). This is what this deputy heard Applicant volunteer to his sister during the chaperoned phone call:

Shortly after the conversation started Mr. Ghent began to sob and stated that he had killed his wife. He said he had been drinking for the both of them and taking pills. When his wife got home they had a confrontation that began and he at that point began to stab her. His wife begged him to stop. Ghent made the statement he had been thinking about it for three weeks. Mr. Ghent then stated he cut his own wrists and got on the bed next to his wife – next to his wife's body, told her that he would die with her. And then the next thing he realized was that his son had found them in the bed and his son began kicking him in the head and body. When he calmed down that was pretty much the extent of that conversation.

(Trial Tr. 280–281). Applicant was alert, aware, and speaking plainly on both occasions. (Trial Tr. 271; 277).

At the hospital, Applicant required no medical treatment to the superficial abrasions on his wrists. (Trial Tr. 38–39). Applicant's treating physician noted that Applicant reported experiencing pain at a "zero" on a zero-to-ten scale. (Trial Tr. 41). He did state that he had taken two blood pressure medications and an antidepressant, presented with low blood pressure, and was treated accordingly. (Trial Tr. 42). Applicant normally took high blood pressure medicine. (Trial Tr. 42). He was ushered from the emergency room into general admission at 11:46 AM on October 28, and discharged into the custody of law enforcement on the 30th. (Trial Tr. 40–41). At all times, Applicant presented as alert and oriented. (Trial Tr. 39–40; 43).

Aside from Applicant's own confessions, direct evidence linked Applicant to the murder.

The forensic pathologist opined that the knife recovered from the bedroom floor and brought to the autopsy likely caused the wound. (Trial Tr. 24–25). A DNA analysis conducted with samples from Applicant, the victim, and that bloody knife determined that Elaine's DNA profile matched that found on the knife with a probability of 1 in 2.2 quintillion. (Trial Tr. 253–254). With a probability of 1 in 4500, Applicant was a minor contributor to the DNA on the knife based upon a Y-chromosome analysis. (Trial Tr. 254). This analysis could not exclude Applicant's fraternal male relatives due to their sharing the same Y-chromosome DNA profile. (Trial Tr. 254–260).

Still other evidence indicated that Applicant contemplated the murder. Johnathan and Tressa's daughter Raylee usually slept with Applicant and Elaine, but that night Applicant said she had to sleep with her own parents, and slammed the door shut before going to bed. (Trial Tr. 79). When Applicant and Elaine were discovered, there was a note taped to the outside of the bedroom door that said "DON'T LET RAYLEE COME IN. HOPE YOU ARE HAPPY NOW!! SORRY!! SELL HOUSE AND SPLIT WITH SISTER!" (Trial Tr. 133–134; 416). A handwriting analyst opined that Applicant wrote the note. (Trial Tr. 238). Applicant consented to the production of twenty-five handwriting samples used for the comparative analysis. (Trial Tr. 216–217).

The victim's family and friends corroborated Applicant's confessed reasoning. It seemed that everybody knew that she wanted to leave him. (Trial Tr. 48–49; 103; 108;113). Elaine had financially supported Applicant, who had been out of work for ten years. (Trial Tr. 48). When Elaine could not afford their mortgage and her car, Elaine's father assisted. (Trial Tr. 48; 64–65). Applicant would charge odds and ends against Elaine's credit account at work. (Trial Tr. 107). Tired of paying his way, she had asked him to leave, but he refused. (Trial Tr. 71). When Elaine got into a car accident a few months before her death, she began caring more for herself, changed her hairstyle, began an affair, and was described as being "happy for the first time in a long time."

(Trial Tr. 69–70; 115). Elaine’s co-workers and friends knew that Elaine was actively looking for a new place to live. (Trial Tr. 110; 113). It was her paramour who saw her last: they met up when Elaine got off work around midnight and stayed together until about 2:00 or 3:00 in the morning. (Trial Tr. 114; 116–117). Elaine went home and texted her lover that she made it there safely. (Trial Tr. 119). She texted him that night at about 2:45 or 3:00 AM. (Trial Tr. 223). No one but Applicant heard from her after. (Trial Tr. 81; 100)

According to Applicant, who testified at trial, Elaine fell victim during a struggle over the knife Applicant was going to use to kill himself. He had been thinking about the prospect of suicide for three or four weeks as a response to the prospect of Elaine planning to leave him. (Trial Tr. 295–296; 331–332). He had previously spoken to his daughter Tabitha about killing himself. (Trial Tr. 56). The day before the early-morning incident, October 27, was Applicant’s birthday. (Trial Tr. 295). When Elaine came home from work in the early morning hours, Applicant initiated a conversation with Elaine to see if “she was really serious about leaving.” (Trial Tr. 297). He could not “remember whether she even answered [him] or not,” (Trial Tr., p. 298), but he “picked up the knife [he] had beside the bed because [he] was already planning on cutting [his] wrists and all and . . . [she must have] seen the knife in [his hand.]” (Trial Tr. 297).

A struggle ensued over the knife wherein, according to Applicant, Elaine grabbed his arm trying to get him to let it go. (Trial Tr. 298). By Applicant’s own demonstration, he held the knife in his fist a threatening way, and not in a manner demonstrative of drawing the knife across his wrist in a suicide attempt. (Trial Tr. 315; 383). By Applicant’s own admission, he “was standing at the foot of the bed” blocking the door to the bedroom. (Trial Tr. 298; 345). During this interaction, according to Applicant, “she grabbed ahold of [his] wrist” and his “hand just slipped – arm just slipped out of her hand and went straight into her chest.” (Trial Tr. 299). Panicking, he

guessed he pulled the knife out “and throwed it down or ripped it out.” (Trial Tr. 299). Then, Applicant testified,

I just let her lay down and I put her to bed. I just let her lay the way she fell. I got up and went in and washed the blood off my hands and stuff and I went and sat on the bed, that’s when I got the pills, I tried to cut my wrists first. . . . [B]ut something wouldn’t let me cut my wrists. . . . Then I got up and went and looking around trying to see what kind of pills I could take to see what I had. I know she had blood pressure pills and stuff . . . I just swallowed all of them. And then I went back to the bed and I thought about my granddaughter, I didn’t want her to come and see us so I wrote the note to not let her come in. I called my sister and my daughter, told them I was sorry . . . I was planning on being dead when they found us and I just wanted to let them know I was sorry.

(Trial Tr. 299–300).

III. Current Application

Applicant timely commenced this PCR action on May 8, 2020. Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - i. Mental incapacity and instability
 - ii. Counsel failed to bring to the courts attention my years of having mental health problems, the present treatments I was partaking of, the medications that was prescribed for this abnormal condition, and most importantly by him not subpoenaing my mental health counselor to verify my present mental health conditions.
 - iii. Mr. Lifsey failed to bring to the courts attention the long term effect of my drug abuse in being able to make decisive and rational decisions.
 - iv. Mr. Lifsey failed to bring to the courts attention that the incident was an accident that happened during a very heartbreaking time in my life and the possibility of me losing everything that I ever wanted
 - v. Mr. Lifsey failed to bring to the courts attention that this incident was a crime of passion
2. Trial Judge improper jury instructions

Applicant requests the court grant him a new trial.

Attached to this return and incorporated herein are the Lancaster County Clerk of Court records, Applicant's SCDC records, the trial transcript, Applicant's appellate records, and the records of this PCR action. The State reserves the right to amend this return upon receipt of relevant information.

IV. Response to Allegation of Ineffective Assistance of Counsel

The State submits Applicant's allegations of ineffective assistance of counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions

regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). 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 ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

The State submits Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases. . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to,

the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCF (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State, pursuant to *Love* as discussed above.

VI. Any and All other Allegations

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

VII. Conclusion

WHEREFORE, having made its return, the State requests an evidentiary hearing be held on Applicant's claims of ineffective assistance of counsel.

Respectfully submitted,

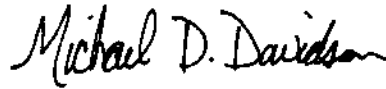
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

November 17, 2020

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS

2020-CP-29-0722

John Marion Ghent, Jr., #367453

Applicant,

vs

State of South Carolina,

Respondent,

AFFIDAVIT OF SERVICE BY MAIL

FILED
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OF COURT
2020 NOV 19 PM 2:37
CLERK OF COURT
LANCASTER, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ola A. Johnson
P.O. Box 549
Lexington, SC, 29071

DATED this the 17th day of November, 2020.


Erik Marcusson, Legal Assistant
for Respondent

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF LANCASTER) CASE NO. 2020-CP-29-00722

February 23, 2024

BEFORE: The Honorable Patrick C. Fant

John Marion Ghent, Jr.

Applicant,

vs.

The State of South Carolina,

Respondent.

APPEARANCES:

Russell Barlow, Esq.
Attorney General for the Respondent.

Ola Johnson, Esq.
Attorney for the Applicant.

Official Court Reporter,
Cynthia D. Weaver

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1 February 23, 2024

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: You ready?

4 MR. BARLOW: Yes, sir, Your Honor.

5 THE COURT: Is this Mr. Ghent?

6 MR. BARLOW: This is. Thank you, Your Honor. May
7 it please the Court?

8 Russ Barlow on behalf of the State of South
9 Carolina. This is the Post Conviction Relief Matter of John
10 M. Ghent, Jr. versus the State, Case No. 2020-CP-29-0722 out
11 of Lancaster County.

12 Applicant was indicted at the January 2013 term of
13 the Lancaster County Grand Jury for Murder, 2014-GS-29-47.
14 Subsequently, Applicant was indicted at the January 2014
15 term of the Lancaster County Grand Jury for the possession
16 of a weapon during the commission of a violent crime;
17 2014-GS-29-48. Applicant was represented by Assistant
18 Public Defender Michael Lifsey and Deputy Solicitor Lisa
19 Collins prosecuted the case.

20 Applicant proceeded to a jury trial on March 14,
21 2016, with the Honorable Brian M. Gibbons, presiding. After
22 four days of trial the jury returned a guilty verdict on
23 each charge. On March 17, 2016, Judge Gibbons sentenced the
24 Applicant to 54 years for murder and consecutive five years
25 for possession of a weapon during the commission of a

1 violent crime.

2 Applicant timely filed a Notice of Appeal on March
3 23, 2016, and he was represented by Chief Appellate Defender
4 Robert M. Dudek and briefed the issue of whether the Court
5 erred by instructing the jury that evidence of a suicide
6 attempt is probative of a defendant's consciousness of
7 guilt. Since this was an improper jury instruction it was a
8 charge on the facts and it was highly prejudicial. The case
9 was submitted on briefs and the Court of Appeals affirmed,
10 State v. Ghent, Opinion 2019, UP 272, Court of Appeals filed
11 July 24, 2019.

12 Thereafter, on August 8, 2019 Applicant petitioned
13 for rehearing and the Court of Appeals denied Applicant's
14 petition by order filed September 19, 2019. Applicant then
15 petitioned for a Writ of Cert to the Supreme Court, however,
16 the Supreme Court denied Cert in State v. Ghent, Order --
17 excuse me, SC Supreme Court Order filed March 12, 2020. The
18 Remittitur was returned to the Circuit Court on March 13,
19 2020.

20 Applicant timely commenced this PCR action on
21 May 8, 2020, alleging ineffective assistance of counsel in
22 regards to his mental incapacity and instability, his mental
23 health problems, failed to bring to the Court's attention
24 his long-term effective drug abuse, failed to bring to the
25 Court's attention that it was an accident, failed to bring

1 to the Court's attention that the incident was a crime of
2 passion, and the improper jury instructions.

3 On August 21, 2023, Applicant through Counsel
4 amended his application to allege ten instances of
5 ineffective assistance of trial counsel. And before this
6 Court are the Lancaster County Clerk of Court Records,
7 Applicant's records from the South Carolina Department of
8 Corrections, Applicant's complete appellate records, those
9 to include the entire trial transcript and the records of
10 this PCR action.

11 And, at this time, Your Honor, we would ask
12 Counsel to state which allegations he intends to move
13 forward on.

14 THE COURT: Okay.

15 MR. JOHNSON: Thank you, Your Honor.

16 Ola Johnson, for Mr. Ghent.

17 THE COURT: Nice to meet you, Mr. Johnson.

18 MR. JOHNSON: Nice to meet you, Judge.

19 We're going forward on those 10, as well, adopted
20 from the original application. The allegations, I believe,
21 are pretty accurate in the way the Attorney General
22 described them that he's arguing there was a mistake in
23 effective -- and arguing against that jury charge,
24 ineffective for addressing mental health issues and
25 treatment, and ineffective for not sufficiently arguing that

1 there should have been some mitigation, some evidence that
2 this could have been an accidental death and, in addition to
3 those 10 grounds listed in our amended application. So
4 that's what we're going forward on and Mr. Ghent is our only
5 witness, Judge.

6 THE COURT: So let me just make sure I'm clear.

7 In the initial PCR there were six issues raised,
8 ineffective assistance of counsel, and then in the amended
9 one there were 10; is that correct?

10 MR. BARLOW: Yes, Your Honor.

11 THE COURT: And what you're saying is you're
12 raising all of those?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: I just want to be sure we're clear so
15 I can look at the orders from here.

16 MR. BARLOW: In light of that, Your Honor, at this
17 time I would move to strike his -- the trial judge's
18 improper jury instructions, because that was a matter that
19 was taken up on appellate and the Appellate Court has
20 already ruled on that and has affirmed his conviction.

21 THE COURT: And I would agree with that. So that
22 can be stricken.

23 Do you want to be heard on that, Mr. Johnson?

24 MR. JOHNSON: No, sir. I'm just going to -- I
25 think my client's argument would be that there's -- as far

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1 as -- ineffective as far as arguing against a jury trial or
2 possibly explaining, you know, better how he could have
3 handled that at trial from the jury, but that's limited to
4 that.

5 THE COURT: Okay.

6 MR. BARLOW: In light of that, Your Honor,
7 then I -- that's fine.

8 THE COURT: Okay. Thank you.

9 Mr. Johnson?

10 MR. JOHNSON: Yes, sir. We just call Mr. Ghent at
11 this time.

12 THE BAILIFF: Right this way, sir.

13 JOHN MARION GHENT, JR. having been duly
14 sworn, testified as follows:

15 MR. JOHNSON: Your Honor, is it better for me to
16 stand here?

17 THE COURT: That's perfectly fine. I know that
18 she'll -- the Court Reporter will -- we just want to make
19 sure that she can hear you.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: I assume that microphone is on but I
22 think you've got to push and get the green light on.

23 MR. JOHNSON: It appears to be.

24 DIRECT EXAMINATION

25 BY MR. JOHNSON:

JOHN M. GHENT, JR. - DIRECT BY MR. JOHNSON

1 Q. All right. Mr. Ghent, who represented you in this
2 matter?

3 A. Mike Lifsey.

4 Q. I'm sorry?

5 A. Mike Lifsey.

6 Q. Okay. Do you see him in the court today?

7 A. (Nods head.)

8 Q. Is that a "Yes"? You have to answer out loud.

9 A. Yeah.

10 Q. Okay. You have to answer out loud.

11 This is the attorney that represented you?

12 A. All right.

13 Q. Yes?

14 A. Yes.

15 Q. Okay. And when he represented you, did you -- can
16 you explain to the Court, did you feel that there were some
17 issues regarding your mental health treatment and your
18 history that he should have addressed and brought before the
19 Court?

20 A. Yes. Because, like I say, I've been -- I've been
21 seeing mental health for like probably five or 10 years or
22 something before all of this happened.

23 Q. Okay. And was there also a history substance
24 abuse you felt that should have been addressed?

25 A. Yeah.

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1 Q. Okay. And did he do anything to bring that up as
2 far as judging your competence prior to trial or presenting
3 that in mitigation and sentencing?

4 A. No, sir.

5 Q. Okay. And regarding the effectiveness or lack --
6 your claim of ineffective assistance of counsel, regarding
7 evidence, do you feel that there was insufficient job to
8 demonstrate to the jury that this could have been an
9 accidental death?

10 A. Yes, like I said, I was just planning on killing
11 myself, actually.

12 Q. Well, why would you -- what was -- describe that
13 to me, how did he fail to do that, present this to the jury
14 that the reasons or the basis for this being an accidental
15 death as opposed to a murder?

16 A. Well, I know the Solicitor, they was trying to say
17 that I just, you know, walked up to her in the bed while she
18 was asleep. But we was trying to talk with each other and
19 they was -- I mean, I've been going over this in my mind for
20 10 years that -- that -- trying to figure out what happened
21 and all and how it happened and or what was said and there
22 was like five or 10 minutes there that I just -- I can't --
23 I've been trying bring it back but I can't. I just don't
24 know exactly what really happened.

25 Q. Do you feel like he could have done a more

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1 effective job at arguing against the jury charge regarding
2 the attempted suicide as evidence of guilt on your part --

3 A. Yes.

4 Q. -- can you talk about that?

5 What else do you feel he should have done to argue
6 that?

7 A. I'm not sure, I mean, I know there -- while it was
8 going on I know there was several times that I was -- when
9 things were brought up, I can't remember at this time now
10 what it was, but then I was wondering why come he didn't say
11 something, you know, and I didn't know. I mean, I'm not --
12 not know about law or court or nothing, so I didn't know I
13 could say something to him. I mean, I didn't know I could
14 have mentioned to him, Why don't you say something about
15 this or something, I mean, like I say, I'm not into law.

16 Q. Okay. And, specifically, did you feel that your
17 attorney failed to properly review the evidence with you
18 prior to trial?

19 A. Yes. Yes.

20 Q. Well, how times did he review evidence with you at
21 all?

22 A. Maybe once, if it was any, I'm not sure.

23 Q. Was that at the county jail?

24 A. Yes, sir.

25 Q. Okay. Did you get to look at your evidence?

JOHN M. GHENT, JR. - DIRECT BY MR. JOHNSON

1 A. I'm not sure, I don't remember.

2 Q. Okay.

3 A. I know I never seen the crime scene photos or
4 anything like that. I mean, the only thing I remember
5 seeing was the autopsy and I couldn't look at much of that.

6 Q. Okay. Did your attorney give you a copy of the
7 State's evidence, do you recall that?

8 A. I don't think so.

9 Q. Didn't give you a copy of it? Okay.
10 How many times would you say Mr. Lifsey met with
11 you to prepare for this case?

12 A. I'd say probably four or five, I guess.

13 Q. Was that all at the county jail?

14 A. Yes, sir.

15 Q. Okay. Did you feel Mr. Lifsey did anything to
16 investigate or was he -- did he fail to properly investigate
17 the case or hire a private investigator or anything like
18 that?

19 A. I'm not sure.

20 Q. You're not aware of anything he did to do that?

21 A. Uh-uh.

22 Q. Do you feel he should have hired a private
23 investigator to come meet with you?

24 A. Maybe.

25 Q. Okay. Did you have any sort of an expert come

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1 speak to you about your prior mental health condition or
2 evaluate you and talk about the treatment you had at the
3 Catawba Center?

4 A. No. I didn't even get to see the counselor that I
5 was seeing before all of this happened.

6 Q. Okay. Did Mr. Lifsey bring you any records that
7 he had pulled regarding your mental health treatment and
8 talk to you about that?

9 A. I don't think so.

10 Q. Did you have a conversation or did Mr. Lifsey
11 explain to you why he failed to object to a statement from
12 Teresa Howell (ph) stating at trial on Page 177, Lines 3
13 through 5, where this witness testified, He killed her and
14 he said if you don't quit kicking me I'm going to kill you,
15 too, testifying about an allegation where they were saying
16 you had said that.

17 Did you have a conversation, did Mr. Lifsey ever
18 explained why he failed to object to that?

19 A. No, sir.

20 Q. Okay. And did you ever receive information from
21 Mr. Lifsey about failing to testify -- or why he failed to
22 object to testimony regarding a statement about a hearsay
23 statement, I heard him might say he hurt your mother, Page
24 185, Line 21?

25 A. No, sir.

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1 Q. Did you ever have a conversation with Mr. Lifsey
2 or did he ever explain why he failed to object to the
3 admissibility of the statement saying -- testifying that,
4 after about the 20th punch, "he" referring to you, said, I
5 fucking stabbed her, Page 187, Lines 13 through 15, from
6 Johnathan Ghent.

7 Now, explain Johnathan Ghent?

8 A. That's my son.

9 Q. His son, right. So these two -- these statements
10 regarding Page 185, Line 21, and Page 187, Lines 13 to 15,
11 he testified --

12 A. Yeah.

13 Q. -- correct?

14 And on these statements where he testified about
15 statements he's alleging that you made, Mr. Lifsey never
16 explained to you why he failed to object to those?

17 A. I don't even remember saying what he said I said,
18 I don't know.

19 Q. But Mr. Lifsey didn't tell you why he failed to
20 object to that?

21 A. No, sir.

22 Q. Okay. Moving on.

23 Did Mr. Lifsey have a conversation with you about
24 why he failed to object the EMS worker, Terry Faulkenberry
25 (ph) testifying that -- alleging that you said, His son had

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1 beat him up because he had just killed his mother. This is
2 referenced on Page 247, Lines 24, 25 to Page 248 Line 1.

3 Did Mr. Lifsey ever explain to you why he would
4 fail to object to that?

5 A. No, sir.

6 Q. No. Okay. And did Mr. Lifsey have a conversation
7 with you to explain why he failed to object to Deputy
8 Richard Weiss testifying that, Applicant stated he had
9 killed his wife, Page 385, Lines 12 through 15.

10 Did he ever explain that to you?

11 A. No, sir.

12 Q. Okay. Is there anything else about the content of
13 the evidence you feel like Mr. Lifsey should have done
14 better to prepare for trial or review evidence with you or
15 argue that to the jury?

16 A. Maybe, I'm not sure.

17 Q. You feel he was ineffective though the way he
18 handled it?

19 A. Yeah, I think so.

20 Q. Okay. Do you have anything else you want to add
21 related to these topics?

22 A. I don't know, but the one thing I was -- I was
23 concerned about, like I say, the crime scene photos, I know
24 when it all happened, when it was over, the way she was
25 laying, the way when she died, you know, my sister-in-law

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1 come in and she's the one that laid her back on the bed and
2 everything. I know they were trying to act like I just
3 stabbed her laying in the bed asleep or something. But, I
4 mean, we was just talking and it was my birthday, you know,
5 I was trying to have a good time with her, since she just
6 come home from work, but it didn't turn out the way it
7 planned.

8 Q. Do you feel like Mr. Lifsey should have brought
9 that up or explained that a little bit better to the jury?

10 A. Yeah.

11 MR. JOHNSON: Okay. No more questions, Your
12 Honor.

13 THE COURT: All right.

14 CROSS-EXAMINATION

15 BY MR. BARLOW:

16 Q. Good morning, Mr. Ghent.

17 A. Good morning.

18 Q. I want to get your last name correct. Is it Ghent
19 or Ghent?

20 A. Your guess is good as mine. Everybody asks me
21 that, friends of mine I know. I've asked my dad when was in
22 school and everything, he said well, we pronounce it wrong
23 anyway, so I'm not exactly sure, either way is fine.

24 Q. Fair enough. All right. So you're here today
25 alleging that Mr. Lifsey provided ineffective assistance of

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1 counsel, correct?

2 A. Yes, sir.

3 Q. And do you understand the relief that this Court
4 can give you?

5 A. Not really. I mean, like I say, I'm not too good
6 at court and law.

7 Q. Well, what relief are you seeking?

8 A. I'm just hoping to try to get some time back, you
9 know, just be able to get back home, spend some time with my
10 kids, my grandkids.

11 Q. Mr. Ghent, this Court in PCR -- we don't -- the
12 Court cannot grant you a time cut, they can't reduce your
13 sentence, they can't do any of that. What they can do is,
14 they can vacate your sentence and send you back to day one
15 you go back on of all your indictments, come back on and
16 then you are tried again for the crime again.

17 A. Okay.

18 Q. Okay. Do you understand that?

19 A. Yes, sir.

20 Q. Okay. And that's what you're wanting to do?

21 A. Yeah.

22 Q. Okay. So you want a new trial?

23 A. Yeah. Uh-huh.

24 Q. And the basis of your new trial is because
25 Mr. Lifsey was ineffective?

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1 A. Yeah.

2 Q. Okay. Well, let's jump into your allegations.

3 How -- I think your first one is...

4 MR. BARLOW: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 BY MR. BARLOW:

7 Q. Tell me your -- your -- what is it about your
8 mental incapacity and instability?

9 A. Well, I guess it started -- it started when my
10 grandma -- grandmother passed and then and my mom and dad --
11 my mom passed and then my granddaddy and then my dad. They
12 all passed right there within, you know, I think it was a
13 couple of years or so, it wasn't very much. And then I was
14 just real depressed and all and got -- started getting
15 heavier into drugs and stuff and everything. And I just
16 couldn't keep my mind on things and couldn't keep a job. It
17 was just very -- real depressed and stuff.

18 Q. But is it your contention that you were not
19 mentally competent to stand trial?

20 A. I'm not sure, I mean, I was -- I mean, I didn't --
21 my mind wasn't right. I mean, I know I wasn't thinking
22 right and didn't know what to do. I was really wanting -- I
23 was really wanting just to be dead myself and get it over
24 with.

25 Q. Let me ask you this: Did you understand who

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1 Mr. Lifsey was?

2 A. Yeah.

3 Q. Okay. Who was he?

4 A. He was my lawyer.

5 Q. Okay. And what does he do?

6 A. Practices law.

7 Q. Okay. In relation to how he represented you,
8 though, what was his job?

9 A. To represent me and try to get me an offer of
10 what -- I know he couldn't me out of it, but to try not get
11 as much time or, you know, whatever. But, I mean, I can't
12 say I didn't do it, because I know I did. I mean, I didn't
13 mean to. I mean, it wasn't planned that way. Like I say, I
14 was wanting to kill myself and I was just wanting talk to
15 her about what we was going through and stuff and it ended
16 up -- didn't turn out the way I was expecting.

17 Q. But you understood that Mr. Lifsey was your
18 defense attorney and he was there to defend you at trial,
19 correct?

20 A. Yes, sir.

21 Q. Okay. Did you understand the difference between
22 right and wrong?

23 A. Yeah.

24 Q. Did you understand the difference between right
25 and wrong when you committed the act?

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1 A. I mean, I guess I understood the difference
2 between it, but I didn't know what was happening at the
3 time.

4 Q. All right. Did you ever tell Mr. Lifsey about
5 your long-term drug abuse?

6 A. I'm not sure.

7 Q. Did you ever tell Mr. Lifsey anything about your
8 mental incapacity?

9 A. I'm not sure if I got a chance to say that or not,
10 I don't know. I know I was seeing mental health and all,
11 like I say, I guess I did, because I think they scheduled me
12 at the -- the county did, anyway, they sent me to the
13 counselor to talk to them one time while I was in the
14 county.

15 Q. Okay. So how many times did Mr. Lifsey meet with
16 you?

17 A. I'd say about four or five, I guess, I'm not sure.

18 Q. And was that at the jail?

19 A. Yeah.

20 Q. Okay. And just for -- what did y'all do -- what
21 did y'all discuss during this four to five times?

22 A. Just stuff about the case is all. He showed me
23 the autopsy photos and a couple of different things. I know
24 we talked about trying to get a bond, but they said -- then
25 he claimed that the reason he didn't -- didn't say nothing

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1 about me going up for bond because he figured I didn't have
2 the money to do it anyway. But, I mean, I had family, but,
3 you know, family owned their own business and stuff like
4 that, I mean, they might could have helped me. But we
5 didn't even -- I didn't -- and everybody in the county kept
6 telling me, you know, you're required a bond. So that's
7 when I started asking about one and then tell me that it
8 done been two years, what's use to worry about one now. So
9 they denied me bond.

10 Q. So you did have a bond hearing?

11 A. Yeah, after two-and-a-half years or two years.

12 Q. But it was denied?

13 A. Yeah.

14 Q. Okay. So you've testified just now that
15 Mr. Lifsey went over stuff with you when he saw you the four
16 to five times that he came to see you. You testified to the
17 autopsy photos and other things.

18 What else did he review with you?

19 A. I mean, I'm not sure. I mean, he just asked
20 questions about it and stuff. But, I mean, it's been so
21 long I can't exactly remember what all we talked about.

22 Q. Okay. Well, one of your allegations is he failed
23 to review the discovery with you. So my question is: What
24 discovery did he not review with you?

25 A. I don't know, only one I had wasn't -- wasn't

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1 about probably a half inch thick the one that they give me.
2 And then when I get to the -- got in prison, I sent to get a
3 copy of my discovery and it come up it was about three
4 inches thick.

5 Q. Okay. So you had your discovery?

6 A. Yeah.

7 Q. Okay. Because one of them I believe was that he
8 failed to provide a copy of the discovery, but you did get a
9 copy of your discovery?

10 A. After I got to prison.

11 Q. Okay. So what in your discovery did you all not
12 review?

13 A. We didn't review none of it.

14 Q. Such as?

15 A. Huh?

16 Q. Such as?

17 A. I mean, the only one I got was like a half-inch
18 thick, what they give me in the county.

19 Q. Right. But in this situation you've made the
20 allegation that he failed to review discovery. And what you
21 have to show is what discovery he did not review with you.

22 So what discovery did he not review with you?

23 A. I don't remember him ever reviewing none of it
24 with me, I mean.

25 Q. So you just testified prior to this that you

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1 actually reviewed the autopsy photos and other things. So
2 you said you all did review discovery, but now you're saying
3 you didn't?

4 A. I mean, it just -- the only thing he was doing was
5 like asking me questions about different things. I mean, he
6 never brought no discovery or whatever or -- whatever the
7 stuff is, I mean, I don't know. But he never brought
8 nothing like that with him to show and explain it to me.

9 Q. What would you have liked him to bring?

10 A. I don't know. I tell you, I don't nothing about
11 the law, I mean.

12 Q. All right.

13 A. I didn't know nothing about none of this stuff.

14 Q. All right. Your next allegation is counsel failed
15 to investigate and hire a private investigator. What would
16 you have liked him to investigate?

17 A. They could have looked at it -- I mean, they could
18 have told the way she was -- the way it happened, the way it
19 was laying, I mean, the way the everything -- something
20 could have been done I would think. I'm not no investigator
21 either so, I mean, I'm just a dumb old country hick.

22 Q. Okay. So your next allegation is they failed to
23 retain an expert to evaluate your competency.

24 Let me ask you this: You said that the county
25 has -- had you evaluated, correct? Or you have seen someone

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1 there?

2 A. I was seeing somebody before all this ever
3 happened for several years. They sent me to Three Rivers in
4 Columbia because I put a gun to my head and pulled the
5 trigger one day. And they say I was trying to commit
6 suicide to an admission of guilt. And I done threatened to
7 burn the house down with me in it before. This was all
8 before all this. So I wasn't trying to commit suicide
9 saying I was guilty. I've been trying to commit suicide for
10 a year before all this.

11 Q. One of your allegations is that Mr. Lifsey failed
12 to bring to the Court's attention that this was an accident.

13 A. Yeah, I tried telling him it was an accident, but
14 everybody kept saying there wasn't no way.

15 Q. Do you recall the jury -- or the judge giving the
16 jury the charge of accident?

17 A. I'm not sure. I don't remember.

18 Q. You don't recall that?

19 A. Uh-uh.

20 Q. So in one allegation you say it's an accident, but
21 in your next allegation you say, Failure to bring to the
22 Court's attention that it was a crime of passion.

23 So was it a crime of passion or was it an
24 accident?

25 A. I never said anything about it being a crime of

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1 passion. But I always said it was an accident, because, I
2 mean, we was just talking and she was trying to take the
3 knife away from me and it ended up slipping and stabbing her
4 one time in the chest. She grabbed the knife with her hand
5 one time and I guess her hand was bloody and that's when my
6 wrist slipped out of her hand.

7 MR. BARLOW: Beg the Court's indulgence.

8 BY MR. BARLOW:

9 Q. Do you recall filing your PCR application?

10 A. Uh-huh.

11 MR. BARLOW: Your Honor, may I approach?

12 THE COURT: Sure.

13 BY MR. BARLOW:

14 Q. I'm going to show you something. Do you recognize
15 that?

16 A. Yeah.

17 Q. Is that your handwriting?

18 A. No.

19 Q. It's not your handwriting?

20 A. Uh-uh.

21 Q. Who's handwriting is it?

22 A. Another guy in prison I had write it for me.

23 Q. Okay. Did you direct him to write that?

24 A. Yeah.

25 Q. And did he write out what you told him to say or

JOHN M. GHENT, JR. - CROSS BY MR. BARLOW

1 what you -- did he write out what you were saying to him?

2 A. I'm not sure.

3 Q. So you filed the application without looking at
4 what he wrote?

5 A. Yeah, I read it. I mean, I looked at it, but I
6 didn't like -- I don't remember, like I say, this has been
7 10 years ago. I mean, my memory is...

8 Q. If I may, here, that it was a crime of passion.
9 Do you see that?

10 A. Uh-huh.

11 Q. Okay. Is that still one of your allegations?

12 A. I mean, I don't know. I mean, like I said, there
13 was a few -- five or 10 minutes in between when all of this
14 happened, I don't remember what happened, what was said,
15 what was going on. And then after that -- that day I found
16 out that day she was seeing somebody else. So she may have
17 said something about seeing somebody to me, I don't
18 remember. I don't know if she told me she was seeing
19 somebody else at the time and I flipped or whatever I don't
20 know.

21 Q. So you --

22 A. Like I said, I've been trying for 10 years to
23 remember this 10 minutes that I lost and I can't remember.
24 I can't recall what happened, what was said, what went on, I
25 don't know.

MICHAEL LIFSEY - DIRECT BY MR. BARLOW

1 Q. Thank you, Mr. Ghent.

2 MR. BARLOW: Nothing further, Your Honor.

3 THE COURT: Thank you.

4 MR. JOHNSON: Nothing from defense.

5 THE COURT: Sir, you can step down.

6 Mr. Johnson, do you have anybody else?

7 MR. JOHNSON: Nothing further, Your Honor.

8 THE COURT: Okay.

9 MR. BARLOW: The State will call Mr. Michael
10 Lifsey.

11 MICHAEL LIFSEY, having been duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BARLOW:

15 Q. Mr. Lifsey.

16 A. Yes.

17 Q. Thank you for being here today.

18 How long have you been practicing law?

19 A. Almost 33 years.

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

21 A. All of it. The first two or three years out of
22 law school I was in a small town general practice. I did
23 some criminal defense, but I also did divorces and whatever
24 came through the door and whatever my boss told me to do at
25 the time. But, other than that, the rest of my time, so I

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1 would say almost 30 years, it's been either as a prosecutor
2 or a public defender.

3 Q. So you've been on both sides of the isle?

4 A. Yes, sir.

5 Q. Okay. Were you appointed or retained?

6 A. On this case?

7 Q. In this case.

8 A. I was appointed. I was the Circuit Defender at
9 the time. So, you know, I took a regular, despite the
10 managerial responsibilities of that for the circuit, I also
11 took a caseload of murder cases myself.

12 Q. And roughly how long before this trial were you
13 appointed?

14 A. I was appointed shortly after his arrest, excuse
15 me, our office was appointed shortly after his arrest. The
16 procedure at the time was my office manager Sherry Plyler,
17 she did case assignments herself, but she always discussed
18 the homicides with me and how to assign them and so I would
19 have made the decision. My memory is, fairly, shortly after
20 his arrest that I handled it myself.

21 Q. And during that time did the Solicitor's Office
22 provide you with discovery?

23 A. They did.

24 Q. Okay. Did you have any issues with getting
25 discovery from them?

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1 A. No.

2 Q. Okay.

3 A. Not that I remember at all.

4 Q. And did you review the discovery with him?

5 A. I did. All that he wanted to review. My memory
6 is that he did not -- my memory is that he did not wish to
7 see the crime scene photos. Which is understandable because,
8 I mean, it was his wife, he was emotional about it. I think
9 maybe we started to look at autopsy photos and didn't he
10 want to look at them, which also is very understandable,
11 and -- but I reviewed anything he wanted to.

12 Q. So can you give us a brief overview of your
13 understanding of the State's evidence in this case?

14 A. Well, the victim was his wife. She was stabbed to
15 death. Multiple people said that Mr. Ghent had admitted
16 that he had killed her. They had a granddaughter that was
17 spending the night with them that was sort of in the habit
18 of spending the night with them and left -- and occasionally
19 in the mornings would get up and come into the bed with
20 them. And there was a note on the door of the bed not to
21 let her come in the room. He left a voice mail with some
22 people apologizing for what had happened.

23 I mean, so there were sort of -- there was -- I
24 mean, that was the story, basically. It was his wife. He
25 stabbed her. Multiple people he apologized for it several

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1 times in the presence of law enforcement and/or two other
2 family members. But when I talked to him, he maintained as
3 he did, I believe, here on the stand, that it was an -- it
4 was an accident. That his story to me was that he was going
5 to kill himself and that when he took the knife, as if to
6 stab himself, that his wife tried to grab the knife away
7 from him and there was a struggle and during the struggle
8 she was accidentally stabbed.

9 The problem with that was the sort of
10 self-implicating notes and messages, you know, made that a
11 harder argument for the juror to believe.

12 Q. And you're basically going into my next question,
13 which was: What was your defense strategy in this case?

14 A. Well, my first strategy was I hoped the
15 Solicitor's Office would offer involuntary manslaughter.
16 You know, the problem -- the problem was he was, I think 54,
17 he was in his mid-50s when we started, when he got locked up
18 and he was not in good physical health. He had high blood
19 pressure, he had the ailments that we all have as we get
20 older and even worse so.

21 So, as you know, the minimum on a murder charge is
22 30 years in prison. And so it was his belief, which I
23 believe was accurate, based on everything I've ever seen
24 about studies of life expectancy in the Department of
25 Corrections, that if he got the minimum of murder, he would

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1 probably never be released.

2 So, first of all, I guess our first hope was that
3 we could talk to the Solicitor's Office into offering
4 involuntary. If we could have done that, at least there was
5 a bigger hope of him one day not being in prison.

6 However, the Solicitor's Office did not offer
7 involuntary manslaughter, which, of course, if their right.
8 I mean, you know, they're elected and they're not me. And
9 so, you know, they have a right to take whatever position
10 they want to take on cases and they would not come off the
11 murder. So to begin with, that was sort of the problem we
12 faced.

13 When we actually -- when they would not come off
14 the murder and he would not plea, which I understand why he
15 wouldn't plea, because of the life expectancy issue, then
16 our defense was that it was an accident and that it wasn't
17 an intentional murder, it wasn't malicious murder.

18 Q. Were you able to discuss that with your client?

19 A. I did.

20 Q. Okay.

21 A. I mean, he is, as you might have got from the
22 questioning, you know, like a lot of criminal defendants he
23 has a limited educational background. I mean, he was
24 perfectly, he was not a difficult client to deal with, he
25 was pleasant to talk to, but, I mean, he had a limited --

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1 trying to explain complicated legal concepts was not always
2 easy. But I met with him multiple times and I explained all
3 of that to him. And he was pretty consistent with me that
4 it was an accident. So, I mean, that was our strategy going
5 forward and we did discuss it.

6 Q. Let's jump right in to some of the allegations.

7 So the first one I'm going to go with is the
8 mental incapacity or instability that he talks about. Did
9 you have any reason in your professional capacity as his
10 attorney to doubt his competency to understand the
11 proceedings?

12 A. No. No. He was -- I'm not a psychiatrist or a
13 psychologist, I'm just a lawyer, but, I mean, I've
14 represented plenty of people who have mental health problems
15 including people who weren't competent or people who had a
16 mental health defense that might give rise to lack of
17 criminal responsibility and he didn't. To my -- all
18 appearances from my interviews with him I did not have those
19 concerns with him. As to competency, he appeared oriented
20 as to time and space. He knew where he was. He knew who I
21 was. He knew, in rough layman's terms, what court was and
22 what court was like from watching TV shows and that kind of
23 thing. So he seemed to be competent to stand trial. As you
24 know the standards for competency are really pretty low, I
25 mean, you just got to be able to assist your own counsel in

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1 your own defense.

2 As for criminal responsibility, I mean, he told a
3 story that, if the jury had believed it, would have made him
4 not guilty. You know, the standard for criminal
5 responsibility, at least for insanity, is knowing the
6 difference between right and wrong. So if you tell a
7 self-protective story, by definition, at least to me, you
8 know, you don't have really a mental health -- you have a
9 knowledge of right and wrong, you're telling a story to that
10 effect.

11 So I didn't see any -- any evidence of mental
12 illness that would affect his competency to stand trial or
13 criminal responsibility. He certainly was depressed. I
14 mean, his suicide attempt indicated that. But, I mean,
15 depression generally does not give rise to the kind of
16 delusions that give you a competency issue and it certainly
17 didn't appear so based on my questioning of him and talking
18 to him.

19 Q. Okay. And you're aware of the -- and you're aware
20 of the -- or are you aware of the GDER (ph) and the
21 Strickland Standards when it comes to an attorney may rely
22 on their own perceptions of a defendant to determine whether
23 they need to be mentally evaluated or not, correct?

24 A. Mr. Barlow, I rely on you to educate me on the law
25 and PCRs. I'm not being smart about that. I just tell

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1 you -- once again, I'm not a psychiatrist or psychologist,
2 but I have represented plenty of defendants, including
3 people who weren't competent to stand trial and several who
4 were ultimately found not guilty by reason of insanity. And
5 he did not appear to fit in the pattern of those folks,
6 which were generally delusional or suffered from a mental --
7 a major mental illness such as schizophrenia or something
8 like that that gave rise to delusions. He did not appear in
9 my layperson's opinion to have any of those issues.

10 Q. Thank you. All right. Let's jump into some other
11 ones. How -- do you recall how many times approximately you
12 met with him?

13 A. Well, you know, I'm embarrassed to you that I
14 can't tell you the exact number. In my semi-defense, I'm
15 retired now from the Public Defender's Office and I have not
16 had possession of his file so it's possible of my poor
17 record keeping. I know I met with him at least the four or
18 five times that he described, I believe I would have met
19 with him significantly more than that during the time period
20 prior to -- I see some individual notes in here that
21 indicate at least four or five separate meetings. So I
22 can't really dispute him on that account. But I honestly
23 believe that I met with him more than that. Obviously, in
24 preparation for a major murder trial, it would have been my
25 practice to meet with him multiple times.

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1 Q. Okay. You've testified a little bit to this but
2 did you review discovery with Mr. Ghent?

3 A. Yes, sir. I went over the State's evidence
4 against him. I would have gone through all the paperwork.
5 As I said, my memory is he did not wish to view the
6 pictures. Whether the crime scene photos -- I don't think
7 we even started on the crime scene photos. And my memory is
8 we began looking at autopsy photos and he indicated he
9 didn't want to review those. Which is perfectly
10 understandable, plenty of clients of mine that are charged
11 with murder, because, you know, by their nature, crime scene
12 photos of a homicide are graphic. And a lot of people,
13 especially in a situation like this, where I think he really
14 did feel legitimate regret of what had happened. A lot of
15 people don't want to view this. He didn't want view those,
16 but everything else that he wanted to review we did.

17 Q. Did you hire an investigator?

18 A. I don't believe I did.

19 Q. And at the time when you were prepping this case
20 did you feel or did you have any reason to think you needed
21 an investigator?

22 A. I did not.

23 Q. And did Mr. Ghent share with you his long-term
24 effects of his drug use?

25 A. I don't remember. I don't remember. I remember

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1 us discussing his depression and -- but I don't really
2 remember any great discussion of drug use. I mean, as you
3 know, generally, voluntary intoxication is not a defense to
4 a crime. And I don't remember him describing -- I would
5 have asked him about -- I would have asked about that I
6 know, I mean, I always ask people about their drug use, but
7 I don't remember anything significant regarding that.

8 Q. Lets's jump in -- do you have a copy of the
9 transcript?

10 A. I do.

11 Q. Okay. If you would turn to Page 177 for me and
12 look at Lines 3 and 5, and this is going to be on the
13 allegation of Ms. Teresa Howell who I believe was EMS.
14 Teresa Howell testified, and if you could read Lines 3 and 5
15 and tell us, first, was there a basis to object and, second,
16 why you did not object?

17 THE COURT: Counsel, what page was that again?

18 MR. BARLOW: 177, Your Honor.

19 THE COURT: 177, in the transcript?

20 MR. BARLOW: Yes, sir.

21 THE WITNESS: 177, Line 3, the question is: What
22 was Butch's response? Answer: He said he killed her and he
23 said -- that's in quotation marks -- If you don't quit
24 kicking me, I'm going to kill you too, end quote.

25 So your next question is why I didn't object to

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1 that?

2 BY MR. BARLOW:

3 Q. Well, the first questions was: Was there a basis
4 to object? And the second is: Why didn't you?

5 A. Well, I don't -- I didn't believe it was
6 objectionable because, obviously, a statement by a party
7 opponent is excluded from the definition of hearsay. And
8 he's Butch, maybe that's not clear for the record, but
9 Butch -- Butch Ghent is him.

10 So I thought, first of all, it was a statement by
11 a party opponent, so it was excluded from the definition of
12 hearsay. It also fit within, even if you viewed it as
13 hearsay, probably is a statement against interest, so I
14 didn't really see it as objectionable.

15 Q. Okay. Let's move to the next one. If you would
16 turn to Page 185 of the transcript, and it's going to be
17 Line 21, and this will be Johnathan Ghent, or Ghent,
18 testimony, I believe on direct, yes.

19 Same question would be: Was there a basis for
20 objection? And number two: Why didn't you object?

21 A. All. This is the 21 through 23 you said?

22 Q. Yes, sir.

23 A. Okay. I didn't realize this until it was pointed
24 out to me and I read this. I probably should have objected
25 to that. I'm going to be straightforward with that, because

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1 he appears to be, the witness, whichever witness this is,
2 appears recounting what another person told him. And so,
3 yeah, I think I should have objected to that. I can't tell
4 you why I didn't other than, you know, it's a murder trial
5 and sometimes you just miss things. So I should have
6 objected to that. That appears to be, to look at it, sort
7 of -- I mean, I guess you could argue it's hearsay within
8 hearsay. I don't know. It looked to me -- I would have
9 objected to that, should have objected to that, I think.

10 Q. Let me ask you this question: Do you object to
11 every hearsay statement in a trial?

12 A. Well, you know, it sort of depends on how the
13 trial is going. I mean, generally, yes, I mean, but, no,
14 you know, I don't object to every little objectionable
15 thing. I mean, you know, lawyers get to lead witnesses and
16 things and I don't object to all of those. But I can't -- I
17 don't have any independent memory of this incident. I mean,
18 looking at it, it appears to be hearsay, it appears to be
19 something I should have objected to.

20 Now, it's cumulative to -- I mean, I don't want to
21 exaggerate, but what a million other people in this case
22 said. So, I mean, but I probably definitely should have
23 objected to that, I mean, based on hearsay.

24 Q. If you could turn to Page 187.

25 A. Okay.

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1 Q. And it's going to be, I believe it's Lines 13, it
2 begins -- this is still with Johnathan Ghent on direct --
3 but it says Lines 13 through 15.

4 A. You want me to read that?

5 Q. Sure.

6 A. I'm going to start with 12, this makes more sense:
7 I grabbed my father -- this is Johnathan Ghent, which is his
8 son testifying I believe -- I grabbed my father and I
9 throwed -- drug him to the kitchen and started punching him.
10 As I was punching him I asked him what did he do to my
11 mother. And after about the 20th punch he said, I fucking
12 stabbed her.

13 Q. So the same question would be: Is there a basis
14 for objection? And: Why didn't you object?

15 A. Well, I didn't think it was objectionable because
16 I thought, like I say, I think it's excluded from the
17 definition of hearsay by being a statement of a party
18 opponent. And even if it were hearsay I think it is a
19 statement against interest.

20 Q. Thank you. The next one is going to be Page 247
21 of the transcript. This is going to Terry Faulkenberry (ph)
22 on direct, and it's going to be Lines 24 and 25 and that's
23 going to go over to Page 248, Line 1 one. Same questions.

24 A. All right. The beginning of 24: I asked what
25 happened to him -- and he's speaking -- they're speaking to

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1 Mr. Ghent -- and he told me that his son had beat him up
2 because he had just killed his mother.

3 Well, first of all, I think I had a pretrial
4 hearing -- this is the EMS worker, I believe?

5 Q. Yes.

6 A. I believe I had a pretrial hearing.

7 Q. Uh-huh.

8 A. I believe if you flip back a couple of pages -- I
9 had objected to it at the pretrial hearing as being sort of
10 at the direction of the State. Now, the judge overruled
11 that objection, and I understand why he overruled it, but I
12 think I did argue it at least, even though she was not a
13 police officer I argued that she was acting in direction of
14 law enforcement.

15 But I think if you flip back two pages to Page 244
16 of the transcript, in addition to objecting at the pretrial,
17 I think I objected on 244 to that line of questioning. On
18 page -- I'm looking at Lines 5 -- 5 through 7 where I renew
19 my pretrial objection, and Judge Gibbons indicated to me
20 that I was protected on that issue.

21 So I think I -- I think I did object to it. And,
22 ultimately, I think the Judge's ruling was correct, because
23 I don't think she was acting at the behest of law
24 enforcement, but I do think I objected and I think I
25 preserved that error or it was at least it was my attempt to

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1 preserve that error.

2 Q. And, Your Honor, his pretrial motions, I believe
3 it begins on 10 and it goes onto the Terry Faulkenberry
4 stuff there and I think it goes through 15 or 17 on that on
5 those pages.

6 A. I think I objected to all the law enforcement-ish
7 witnesses, okay, both the officers and the EMS people is my
8 memory. I have not reviewed the transcript in detail, but
9 that's my memory of it.

10 We had a Denno Hearing or a pretrial hearing where
11 I think Ms. Collins put up just about everybody including
12 the non-law enforcement witnesses. But I think -- I think I
13 objected specifically to the EMS folks and the police
14 officers is what my memory.

15 MR. BARLOW: And beg the Court's indulgence.

16 BY MR. BARLOW:

17 Q. If you would to turn to Page 385 of the trial
18 transcript, it's going to be Lines 12 through 15, this is
19 Richard Weiss on direct.

20 A. Yes.

21 Q. Same questions on 12 through 15.

22 A. Do you want me to read it?

23 Q. Sure.

24 A. What -- this is -- and this is occurring in the
25 hospital bed. He was -- he was superficially cut and I

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1 think had taken some medication, so they took him to the
2 hospital. So there was at least some period of time where
3 Mr. Ghent was in the hospital.

4 Can you tell -- and Deputy Weiss was basically
5 sitting in the hospital room because he was in custody: Can
6 you tell us deputy what did you hear the defendant say while
7 he was on the telephone to his sister?

8 And the answer: Shortly after the conversation
9 started Mr. Ghent began to sob and stated he had killed his
10 wife.

11 Q. Was there --

12 A. Well, I mean, I didn't think that was really -- I
13 can't remember if I objected to that or not. But, I mean,
14 the truth of it is, I don't really think it's objectionable
15 because I don't think it's in response to questioning.

16 First of all, it's a statement by a party -- just
17 as the other two, it's a statement by a party opponent.
18 It's a statement against interest. It's -- so you -- so I
19 don't think there's an objection there. You can't really
20 argue Miranda because it's not in response to questioning.

21 I mean, Weiss is basically -- I think my memory is
22 Weiss let him use a phone, I can't remember it was Weiss's
23 phone or let him use the hospital phone, but Weiss didn't
24 ask him anything. Weiss just observed -- overhead
25 conversation he was having with another person.

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1 So, like I said, I don't think it's hearsay. I
2 don't think it's -- if it is hearsay it's a statement
3 against interest. And I don't think Miranda is implicated
4 because while he was in custody it was not a response to
5 questioning. He's got to have both custody and questioning
6 is my understanding on Miranda.

7 Q. And I'm going to jump back, and we're right at the
8 end here, but I want to go back to his original application.
9 There was a -- I did not really cover it with him, but I
10 want to ask you, did he ever indicate to you that he had,
11 one, a mental health counselor and, two, mental health
12 records that he wanted?

13 A. I -- well, no to the second part, okay, of your
14 question. I remember him discussing that he had suffered
15 from depression, okay. And I can't remember specific
16 details of what exactly he told me but I'm sure he told me
17 he had somebody that was treating him for depression or he'd
18 seen a counselor. It seems like there was a suicide attempt
19 or something at some point. But, no, he didn't request my
20 getting records. And, as I said, there was nothing in his
21 demeanor with me, excuse me, that raised a question as to
22 his competency to stand trial, so I didn't ask for it.

23 Q. And lastly here it is going to go into kind of
24 his -- it's going into his allegations of failure to bring
25 to the Court's attention that it was an accident and so

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1 forth. But do you recall what jury charges you got in this
2 case?

3 A. Oh, yeah. The judge charged involuntary
4 manslaughter and he charged the defense of accident. Which,
5 I mean, I asked for and I was pleasantly surprised that he
6 charged it, because it was a close call. It was really -- I
7 mean, there are some judges that wouldn't have charged
8 either one. I mean, I'm glad Judge Gibbons charged it. I
9 wouldn't have asked for it if I didn't think there was a
10 legally arguable basis for it. But he did charge accident
11 and I have not reviewed my closing argument in this case,
12 but I'm sure I argued it was an accident with the jury.

13 Q. Thank you, Mr. Lifsey. Answer any questions
14 Mr. Johnson has.

15 A. Sure.

CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q. Mr. Lifsey, did you have an investigator with your
19 office work this case?

20 A. No, I don't think at that -- I'm trying to
21 remember the timing of all this. I don't really think at
22 that time we had in-house investigators. We generally
23 relied -- I guess, I'm retired so I can say this now --
24 whenever I needed an investigator, we got the State to pay
25 for it. We tried to get an order if we thought we needed an

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1 investigator and got Columbia to pay for it. So I don't
2 believe we -- they do now. Right as I was retiring the
3 legislature approved money for investigators for each Public
4 Defender's Office, but at the time, we did not have one. I
5 don't believe we had an in-house investigator.

6 Q. Okay. And when you met with Mr. Ghent, did you
7 ever have anyone else from the office meet with him to
8 review evidence or was it just you?

9 A. I don't recall anybody else. I think it was just
10 me.

11 Q. Okay. When you say you provided -- you provided a
12 full copy of the evidence to Mr. Gent. Is that what you're
13 saying?

14 A. I can't -- you know some clients want a physical
15 copy of it and some clients don't. I can't remember if he
16 had -- if he wanted a copy, we would have given it to him.
17 We would not, with a couple of exceptions, you know, the
18 jail here in Lancaster had an issue with explicit photos.
19 Like if, you know, crime scene, particularly bloody, kind
20 of, crime scene photos, so we might -- we would not have
21 given that to him if we had it in paper form, you know, we
22 may have had it just on electronics, which we couldn't have
23 given him anyway, but I can't remember.

24 The answer to your question is, like I say, I
25 can't remember, if he had wanted it, we would of, as a

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1 matter of course, made him a copy. And it appears that at
2 some point after he was convicted he asked for a copy of his
3 file and we gave him a copy of his file.

4 Q. Okay. And your testimony about the number of
5 times you met with Applicant, you're saying you're not sure,
6 could it have been fewer than the five or six times listed
7 in his testimony?

8 A. Well, I think he -- I don't -- I don't recall. I
9 see at least -- I see some handwritten notes of mine. Once
10 again, this file's not been in my possession for a while and
11 I didn't have time to really review it since I'm not working
12 at the office anymore prior to this hearing to go through it
13 in great detail. But there appear to be handwritten notes
14 reflecting at least three or four meetings.

15 So when he says four or five I'm convinced I would
16 have met him more than that just because it was my habit to
17 but I can't really argue with that because I haven't gone
18 through in enough detail to tell you.

19 Q. Okay. You said you didn't have an investigator
20 work the case. Did you personally sit down and try to
21 interview any witnesses yourself?

22 A. No. Most of the facts were not in real dispute,
23 as I remember. You know, I mean, this was -- I mean, the
24 fact -- what was in dispute is what happened in a room with
25 him and his wife when she got stabbed. Now, obviously,

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1 there's only two people that were aware of that. One of
2 them is dead and the other was him and he explained it fully
3 to me.

4 The rest of the people were just witnesses that
5 were basically giving statements about what he said. So I
6 don't really think I talked to any -- I probably -- I'm sure
7 I called the EMS people or the -- the, you know, those kind
8 of people. I know Richard Weiss used to be a probation
9 agent and I know Richard and I'm sure I talked to him about
10 that. Davie Kendricks testified, I talked to Davie about
11 it. So I did talk to witnesses about it but really, there
12 really wasn't a lot of factual dispute about what happened
13 beyond, obviously, the most important fact which there were
14 only two witnesses to.

15 Q. Okay. And you didn't retain any experts regarding
16 mental health problems or addiction or anything to mitigate
17 at sentencing or for the trial regarding competency or
18 anything like that?

19 A. No, sir, I did not.

20 Q. Okay. In his original application regarding
21 arguing against this charge about the suicide attempts by
22 the Applicant as evidence of guilt, do you feel you could
23 have done anything else to argue against that?

24 A. No, sir. I mean, I think it's, with all due
25 respect to my friend who prosecuted the case, I think it's

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1 crazy they argued suicide and I think I objected to it and I
2 think I put on the record that they shouldn't be allowed to
3 argue it. And I remember talking to Bob Dudek about it who
4 handled it before. I mean, I called Bob -- Bob had this
5 issue on another case about suicide, I remember talking to
6 Bob about it because both of us sort of felt, unfortunately
7 doesn't seem like the courts agreed with us, but we both
8 felt like it was improper line of argument by the State.

9 Q. Do you feel like there's anything else -- well, as
10 far as an expert, you didn't retain any kind of an expert
11 who could have testified about crime scene or trying to
12 analyze the wound or whether or not this could have been an
13 accident that could examine what happened at the crime
14 scene, you didn't retain an expert to address that?

15 A. No, sir, I did not.

16 Q. Okay. And that could have -- that would have been
17 something to apply to this what was ultimately the charge of
18 accident or whether or not the jury would have determined
19 that?

20 A. Sure. If the witness would have been helpful, it
21 would have helped us.

22 Q. The testimony referencing on Page 177 from Teresa
23 Howell stating that the Applicant said he killed her and
24 said if you don't quit kicking me I'm going to kill you,
25 too.

MICHAEL LIFSEY - CROSS BY MR. JOHNSON

1 If you -- well, to preserve that, if there was an
2 objection you would have to object to it. You feel like
3 there was no need to preserve that.

4 A. Let me -- let me make sure I understand who Teresa
5 Howell was. I mean, she was not -- I'm not trying to avoid
6 answering your question or needlessly complicate it. I
7 think I preserved my objection to the EMS people.

8 Q. Okay.

9 A. I don't think Teresa Howell was an EMS person.

10 Q. Right.

11 A. So I don't think that it was objectionable.

12 Q. Wasn't objectionable. Okay. Moving on.

13 The testimony of Johnathan Ghent -- moving on --
14 this was the one starting on Page 185, Line 21, hearsay, in
15 testifying, here is the statement: I heard him say he hurt
16 your mother.

17 You're saying that's something you should have --
18 you should have objected to then?

19 A. I certainly should have. I don't remember -- I
20 didn't remember even that until I read it I think in your
21 amended application. But, yes, it appears to be hearsay and
22 if I had to do it again I certainly would object to that.

23 Q. Okay. And number -- I'm just jumping down the
24 list here to the statement testimony by Johnathan Ghent
25 failed to object on Page 187: After about the 20th punch

MICHAEL LIFSEY - CROSS BY MR. JOHNSON

1 he -- referring to Applicant -- said, I fucking stabbed her.

2 Do you feel like there's any objection there
3 regarding the voluntariness of that? If he -- his testimony
4 is that he punched somebody 20 times, can you explain that
5 that, would that have been objectionable as involuntary?

6 A. Well, I mean, you know it's not like a law
7 enforcement person. I mean, it's a -- it was his son, I
8 can't remember if he was his son or stepson, I can't
9 remember the relationship. I did not object to that, that's
10 all I can tell you.

11 Q. You don't think that that would be a basis as an
12 involuntary statement because he's not operating as a state
13 agent, basically?

14 A. I didn't -- I didn't really consider it because of
15 the fact that it was the son and it was -- you know, the son
16 had a record and had been in trouble, too. And I didn't
17 think the son was all that credible a witness, to be honest
18 with you, too, is the other part of it. Johnathan Ghent is
19 somebody that's been -- had been, I don't know what he is
20 now -- but had been in plenty of trouble himself at the
21 time. Our office was familiar with him and I don't think he
22 came across particularly well to the jury. I don't think it
23 hurt him all that much. And so, you know, I didn't -- I
24 didn't really -- I didn't find his -- his testimony was less
25 important than many of the other witnesses in my opinion.

MICHAEL LIFSEY - CROSS BY MR. JOHNSON

1 Q. Okay. Just moving on to the testimony of Terry
2 Faulkenberry, EMS. Did you say you felt you had preserved
3 your objections to the EMS worker's testimony? Is that -- I
4 don't want to misstate it.

5 A. I did. I can't remember where, which page -- what
6 page is this on?

7 Q. This is the one I referenced in the amended
8 application on No. 9, states, Page 247, Lines 24, 25, to
9 248, Line 1. The testimony of Terry Faulkenberry is
10 testifying the Applicant stated, quote, His son had beat him
11 up because he had just killed his mother.

12 A. Yes, sir. I believe, if you look on Page 244 of
13 the transcript.

14 Q. Uh-huh.

15 A. I renewed my objection to this next line of
16 questioning, that was my attempt to do that on Page -- Lines
17 5 through 9, the colloquy between me and the judge was my
18 attempt to preserve that issue.

19 Q. Okay. And, finally, the testimony of Deputy
20 Richard Weiss, you feel that when the testimony that came
21 out Page 358, Lines 12 through 15, you failed to object to
22 Deputy Weiss testifying when the Applicant stated he had
23 killed his wife. Is that something you felt was not
24 objectionable?

25 A. I felt it was not objectionable for the -- first

MICHAEL LIFSEY - CROSS BY MR. JOHNSON

1 of all, like I say, for the same reasons as lay witness as
2 to it wasn't hearsay because it was a party opponent and
3 even if it was hearsay it was a statement against interest,
4 which is an exception.

5 Even though Weiss was law enforcement it was not
6 in response to custodial interrogation. Obviously, he was
7 in custody, but I didn't believe -- Weiss was not
8 questioning, Weiss just listened, overheard a conversation
9 he had on the phone. So I didn't think it was
10 objectionable.

11 Q. Okay.

12 MR. JOHNSON: No more questions, Your Honor.

13 MR. BARLOW: Very briefly, Your Honor.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. BARLOW:

17 Q. Mr. Lifsey, I just want to ask you one followup
18 here and under Strickland as well, you know, that you have a
19 duty to undertake reasonable investigations, right? And in
20 your review of the evidence in this case, when you received
21 the discovery, did you feel at that time that you needed to
22 hire a private investigator to investigate the crime scene?

23 A. I did not. You know, this was pretty -- like I
24 say, it was pretty straight forward what happened. The
25 evidence the State had was pretty overwhelming. As I

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1 mentioned earlier, our hope, initially, was to just get it
2 to involuntary so he could have a chance to perhaps get out.
3 I didn't think, I mean, I didn't think there was any
4 necessity, I didn't see any necessity to hire a crime scene
5 reconstructionist or anything like that in this case.

6 Q. Thank you. Mr. Lifsey.

7 MR. BARLOW: Nothing further, Your Honor.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: Anything else?

11 MR. BARLOW: Your Honor, beg the Court's
12 indulgence.

13 THE COURT: Yes, sir.

14 MR. BARLOW: Your Honor, no further witnesses.

15 THE COURT: All right. Anything else?

16 MR. JOHNSON: No, sir.

17 THE COURT: Okay. I'll take this under advisement
18 and get back to you.

19 END OF REQUESTED PROCEEDINGS

20

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25

MICHAEL LIFSEY - CROSS BY MR. JOHNSON

CERTIFICATE OF REPORTER

State of South Carolina)

County of Lancaster)

I, Cynthia D. Weaver, Official Court Reporter the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas for Lancaster County, South Carolina, on the 23rd day of February, 2024.

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

April 23, 2024

Cynthia D Weaver

Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

FILED
OFFICE OF THE CLERK
IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

John M. Ghent, Jr., #367453,

2025-1-1-1

CASE NO. 2020-CP-29-00722

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:	Hon. Patrick Cleburne Fant, III
Applicant's Attorney:	Ola A. Johnson, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	Michael H. Lifsey, Esq.
Date of Hearing:	February 23, 2024
Court Reporter:	Cynthia D. Weaver

This matter comes before the Court by way of John M. Ghent, Jr's (Applicant) application for post-conviction relief (PCR) filed on May 8, 2020. Respondent, the State of South Carolina, filed its Return on November 19, 2020, requesting an evidentiary hearing on the claims of ineffective assistance of counsel. On August 21, 2023, Applicant filed an amended application for PCR.

On February 23, 2024, an evidentiary hearing was convened at the Lancaster County Courthouse before the Honorable Patrick Cleburne Fant, III. Applicant was present and represented by Ola A. Johnson, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded on the claims set forth in his original and amended applications. In support of these claims, Applicant testified on his own behalf. Respondent presented the testimony of Michael H. Lifsey, Esquire (Trial Counsel).

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the January 2013 term of the Lancaster County Grand Jury for Murder (2014-GS-29-47). Subsequently, Applicant was indicted at the January 2014 term of the Lancaster County Grand Jury for Possession of a Weapon During the Commission of a Violent Crime (2014-GS-29-48). Applicant was represented by Trial Counsel. Deputy Solicitor Lisa Collins prosecuted the case.

Applicant proceeded to a jury trial beginning March 14, 2016, with the Honorable Brian M. Gibbons presiding. After four days of trial, the jury returned a guilty verdict on each charge. On March 17, 2016, Judge Gibbons sentenced Applicant to fifty-four years for murder and a consecutive five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely Notice of Appeal. On appeal, Applicant was represented by Chief Appellate Defender Robert M. Dudek, who briefed the following issue:

Whether the court erred by instructing the jury that "evidence of a suicide attempt is probative of a defendant's consciousness of guilt" since this was an improper jury instruction, it was a charge on the facts, and it was highly prejudicial?

The case was submitted on briefs, and the South Carolina Court of Appeals affirmed. State v. Ghent, Op. No. 2019-UP-272 (S.C. Ct. App. filed July 24, 2019). Thereafter, on August 8, 2019, Applicant petitioned for rehearing; however, the Court of Appeals denied Applicant's petition.

State v. Ghent, S.C. Ct. App. Order filed September 19, 2019. Applicant then petitioned for a writ of certiorari to the Supreme Court; however, the Supreme Court denied certiorari. State v. Ghent, S.C. Sup. Ct. Order filed March 12, 2020. The Remittitur was returned to the circuit court on March 13, 2020.

FACTS GIVING RISE TO THE CONVICTION

Applicant stabbed his wife, Elaine, in the chest with a fourteen-and-a-half-inch-long filet knife at approximately 4:00 AM on October 28, 2017. (Trial Tr. pp. 76–77; 92; 168). The knife entered her lung slightly left of center. (Trial Tr. p. 22). The wound was nine-tenths of an inch long with a slight twist and was made by a single-edged knife. (Trial Tr. p. 23). Other signs of injury included two surface scratches to the back of her right hand, two bruises to the left forearm, and one bruise near the stab wound on her chest. (Trial Tr. p. 23). She bled out within minutes. (Trial Tr. p. 28).

Between 4:00 and 4:15 AM, Applicant left apologetic voicemail messages for his daughter Tabitha and his sister Betsy. (Trial Tr. pp. 56; 261–263). Waking up around 7:00 that morning, Tabitha listened to the message and immediately sent her husband to her parents' house to check on them. (Trial Tr. pp. 53–54; 58). After a minute of knocking, Applicant and Elaine's son, Johnathan, and his wife came to the door. (Trial Tr. pp. 59; 82). They lived with Applicant and Elaine, along with two children of their own. (Trial Tr. p. 60). Elaine's father, Roddy, and sister, Tressa, also arrived at the house. (Trial Tr. pp. 65; 71). Johnathan rammed open the door to Applicant and Elaine's locked bedroom and found Applicant lying on the bed facing his bloodied, deceased wife. (Trial Tr. pp. 82–84). Immediately, "Johnathan grabbed [Applicant] and took him out to the kitchen" and began beating him. (Trial Tr. p. 84). Other family members became sick from the gore. (Trial Tr. pp. 65; 126; 168; 184–186). "After about the 20th punch [Applicant]

said, 'I f--- stabbed her.'" (Trial Tr. p. 84).

Over the next few days, Applicant volunteered confessions to nearly everyone he encountered. Law enforcement arrived on the scene and found him lying on his back on the kitchen floor, nonresponsive, largely uninjured, and covered in what appeared to be flour. (Trial Tr. pp. 125–126; 137). He had at least one laceration to a wrist, but it did not require medical treatment. (Trial Tr. pp. 137–138). On a non-emergency ride to the hospital, Applicant volunteered to EMS that his "son hit [him] in the face because [he had] killed [his] wife." (Trial Tr. pp. 147–149; 158; 162; 163; 417). Applicant's vitals were stable, and his blood pressure was near perfect, but his blood sugar was high. (Trial Tr. pp. 139–142). He showed no signs of overdose despite stating he had taken a copious amount of unknown pills. (Trial Tr. p. 417). At all times, he was conscious, oriented, speaking clearly, and alert to person, place, and time. (Trial Tr. pp. 143; 144).

Not only did Applicant repeatedly claim responsibility for his wife's murder, but he also volunteered why. At the hospital, Applicant told the deputy standing watch that he "killed her because she was going to leave [him]. She loved [him] but was not in love with [him]. She was staying out until 3:00 or 4:00 in the morning with her girlfriends and not coming home." (Trial Tr. p. 269). Applicant expounded, saying:

He tried to slit his wrists but it didn't work so he took pills and he thought he would die but that didn't work. So he said his son drug him out of the bed and beat him. Son asked why did he do it, to kill his mama and Ghent stated because she was going to leave him.

(Trial Tr. p. 270). The deputy typed Applicant's confession onto his cell phone. (Trial Tr. p. 270). They were the only two people in the hospital room. (Trial Tr. p. 269). The deputy did not ask questions to elicit this information; Applicant just volunteered it. (Trial Tr. p. 270).

Later that evening, the deputy standing guard allowed the Applicant to call his sister, Betsy. (Trial Tr. p. 278). This is what this deputy heard Applicant volunteer to his sister during the

chaperoned phone call:

Shortly after the conversation started Mr. Ghent began to sob and stated that he had killed his wife. He said he had been drinking for the both of them and taking pills. When his wife got home they had a confrontation that began and he at that point began to stab her. His wife begged him to stop. Ghent made the statement he had been thinking about it for three weeks. Mr. Ghent then stated he cut his own wrists and got on the bed next to his wife – next to his wife's body, told her that he would die with her. And then the next thing he realized was that his son had found them in the bed and his son began kicking him in the head and body. When he calmed down that was pretty much the extent of that conversation.

(Trial Tr. pp. 280–281). Applicant was alert, aware, and speaking plainly on both occasions. (Trial Tr. pp. 271; 277).

At the hospital, Applicant required no medical treatment for the superficial abrasions on his wrists. (Trial Tr. pp. 38–39). Applicant's treating physician noted that Applicant reported experiencing pain at a "zero" on a zero-to-ten scale. (Trial Tr. p. 41). He did state that he had taken two blood pressure medications and an antidepressant, presented with low blood pressure, and was treated accordingly. (Trial Tr. p. 42). Applicant usually took high blood pressure medicine. (Trial Tr. p. 42). He was ushered from the emergency room into general admission at 11:46 AM on October 28 and discharged into the custody of law enforcement on the 30th. (Trial Tr. pp. 40–41). At all times, Applicant presented as alert and oriented. (Trial Tr. pp. 39–40; 43).

Aside from Applicant's own confessions, direct evidence linked Applicant to the murder. The forensic pathologist opined that the knife recovered from the bedroom floor and brought to the autopsy likely caused the wound. (Trial Tr. pp. 24–25). A DNA analysis conducted with samples from Applicant, the victim, and that bloody knife determined that Elaine's DNA profile matched that found on the knife with a probability of 1 in 2.2 quintillion. (Trial Tr. pp. 253–254). With a probability of 1 in 4500, Applicant was a minor contributor to the DNA on the knife based upon a Y-chromosome analysis. (Trial Tr. p. 254). This analysis could not exclude Applicant's

fraternal male relatives due to their sharing the same Y-chromosome DNA profile. (Trial Tr. pp. 254–260).

Still, other evidence indicated that Applicant contemplated the murder. Johnathan and Tressa's daughter, Raylee, usually slept with Applicant and Elaine, but that night, Applicant said she had to sleep with her own parents and slammed the door shut before going to bed. (Trial Tr. p. 79). When Applicant and Elaine were discovered, there was a note taped to the outside of the bedroom door that said, "DON'T LET RAYLEE COME IN. HOPE YOU ARE HAPPY NOW!! SORRY!! SELL HOUSE AND SPLIT WITH SISTER!" (Trial Tr. pp. 133–134; 416). A handwriting analyst opined that Applicant wrote the note. (Trial Tr. p. 238). Applicant consented to producing twenty-five handwriting samples used for the comparative analysis. (Trial Tr. pp. 216–217).

Elaine's family and friends corroborated Applicant's confessed reasoning. It seemed that everybody knew that she wanted to leave him. (Trial Tr. pp. 48–49; 103; 108;113). Elaine had financially supported Applicant, who had been out of work for ten years. (Trial Tr. p. 48). When Elaine could not afford their mortgage and her car, Elaine's father assisted. (Trial Tr. pp. 48; 64–65). Applicant would charge odds and ends against Elaine's credit account at work. (Trial Tr. p. 107). Tired of paying his way, she had asked him to leave, but he refused. (Trial Tr. p. 71). When Elaine got into a car accident a few months before her death, she began caring more for herself, changed her hairstyle, began an affair, and was described as being "happy for the first time in a long time." (Trial Tr. pp. 69–70; 115). Elaine's co-workers and friends knew Elaine was actively looking for a new place to live. (Trial Tr. pp. 110; 113). It was her paramour who saw her last: they met up when Elaine got off work around midnight and stayed together until about 2:00 or 3:00 in the morning. (Trial Tr. pp. 114; 116–117). Elaine went home and texted her lover that she

had made it there safely. (Trial Tr. p. 119). She texted him that night at about 2:45 or 3:00 AM. (Trial Tr. p. 223). No one but Applicant heard from her afterward. (Trial Tr. pp. 81; 100).

According to Applicant, who testified at trial, Elaine fell victim during a struggle over the knife Applicant was going to use to kill himself. He had been thinking about the prospect of suicide for three or four weeks as a response to the prospect of Elaine planning to leave him. (Trial Tr. pp. 295–296; 331–332). He had previously spoken to his daughter Tabitha about killing himself. (Trial Tr. p. 56). The day before the early morning incident, October 27, was Applicant's birthday. (Trial Tr. p. 295). When Elaine came home from work in the early morning hours, Applicant initiated a conversation with Elaine to see if "she was really serious about leaving." (Trial Tr. p. 297). He could not "remember whether she even answered [him] or not" (Trial Tr., p. 298), but he "picked up the knife [he] had beside the bed because [he] was already planning on cutting [his] wrists and all and . . . [she must have] seen the knife in [his hand.]" (Trial Tr. p. 297).

A struggle ensued over the knife wherein, according to Applicant, Elaine grabbed his arm, trying to get him to let it go. (Trial Tr. p. 298). By Applicant's own demonstration, he held the knife in his fist in a threatening way and not in a manner demonstrative of drawing the knife across his wrist in a suicide attempt. (Trial Tr. pp. 315; 383). By Applicant's own admission, he "was standing at the foot of the bed," blocking the door to the bedroom. (Trial Tr. pp. 298; 345). During this interaction, according to Applicant, "she grabbed ahold of [his] wrist," and his "hand just slipped – arm just slipped out of her hand and went straight into her chest." (Trial Tr. p. 299). Panicking, he guessed he pulled the knife out "and throwed it down or ripped it out." (Trial Tr. p. 299). Then, Applicant testified,

I just let her lay down and I put her to bed. I just let her lay the way she fell. I got up and went in and washed the blood off my hands and stuff and I went and sat on the bed, that's when I got the pills, I tried to cut my wrists first. . . . [B]ut something wouldn't let me cut my wrists. . . . Then I got up and went and looking around trying

to see what kind of pills I could take to see what I had. I know she had blood pressure pills and stuff . . . I just swallowed all of them. And then I went back to the bed and I thought about my granddaughter, I didn't want her to come and see us so I wrote the note to not let her come in. I called my sister and my daughter, told them I was sorry . . . I was planning on being dead when they found us and I just wanted to let them know I was sorry.

(Trial Tr. pp. 299–300).

CURRENT ACTION BEFORE THIS COURT

Applicant timely commenced this PCR action on May 8, 2020. Applicant alleges he is being held unlawfully for the following reasons:

- (1) Ineffective assistance of counsel
 - (a) Mental incapacity and instability
 - (b) Counsel failed to bring to the courts attention my years of having mental health problems, the present treatments I was partaking of, the medications that was prescribed for this abnormal condition, and most importantly by him not subpoenaing my mental health counselor to verify my present mental health conditions.
 - (c) Mr. Lifsey failed to bring to the courts attention the long term effect of my drug abuse in being able to make decisive and rational decisions.
 - (d) Mr. Lifsey failed to bring to the courts attention that the incident was an accident that happened during a very heartbreaking time in my life and the possibility of me losing everything that I ever wanted
 - (e) Mr. Lifsey failed to bring to the courts attention that this incident was a crime of passion
- (2) Trial Judge improper jury instructions

Respondent made its return to this application on November 19, 2020.

On March 26, 2015, Applicant filed his first amended application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

- (3) Ineffective Assistance of Counsel:
 - (a) Failed to properly review the evidence with Applicant.
 - (b) Failed to provide a copy of discovery to Applicant.
 - (c) Failed to meet with Applicant a sufficient number of times to properly review the evidence.
 - (d) Failed to properly investigate the State's case or hire a private investigator.
 - (e) Failed to retain an expert to evaluate Applicant to determine criminal responsibility, competence to stand trial, or for mitigation at sentencing.

- (f) Failed to object to Tressa Howle testifying that Applicant said, "he killed her and he said if you don't quit kicking me I'm going to kill you too." (p. 177, ll. 3-5).
- (g) Failed to object to Jonathan Ghent testifying to the hearsay statement that "I heard him (Mike) say he hurt your mother." (p. 185, l. 21).
- (h) Failed to object to Jonathan Ghent testifying that "after about the 20th punch he (the applicant) said I fucking stabbed her." (p. 187, ll. 13-15).
- (i) Failed to object to EMS worker Terri Faulkenberry testifying that Applicant stated "his son had beat him up because he had just killed his mother." (p. 247, l. 24 – p. 248, l. 1).
- (j) Failed to object to Deputy Richard Weiss testifying that Applicant stated he had killed his wife. (p. 385, ll. 12-15).

This Court has before it the Lancaster County Clerk of Court records regarding the subject convictions and sentences, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant's direct appeal, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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

Regarding the deficiency prong of the Strickland analysis, the proper measure of

performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish 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 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 and appellate 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 both evidentiary hearings and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), 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 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 facts 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 further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant they rendered adequate assistance and exercised reasonable professional judgment in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 1a: Mental incapacity and instability.

Allegation 1b: Trial Counsel failed to bring to the courts attention my years of having mental health problems, the present treatments I was partaking of the medications that was prescribed for this abnormal condition, and most importantly by him not subpoenaing my mental health counselor to verify my present mental health conditions.

Allegation 1c: Trial Counsel failed to bring to the court's attention the long-term effect of my drug abuse in being able to make decisive and rational decisions.

Allegation 3e: Trial Counsel failed to retain an expert to evaluate Applicant to determine criminal responsibility, competence to stand trial, or for mitigation at sentencing.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to retain an expert to evaluate Applicant to determine criminal responsibility, competence to stand trial, or for mitigation at sentencing. Additionally, Applicant contends Trial Counsel failed to subpoena his mental health counselor and his mental health records and failed to inform the trial court of his inability to make rational decisions based on his history of drug abuse. This Court finds these

allegations to be without merit.

"Due process of law prohibits the conviction of a person who is mentally incompetent." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings. Id., 308 S.C. at 232, 417 S.E.2d at 596. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he [or she] has the *ability* to understand the proceedings." Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting Godinez v. Moran, 509 U.S. 389 (1993)).

As to the deficiency prong under Strickland, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. Jeter, 308 S.C. at 233, 417 S.E.2d at 596. When establishing Strickland prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the original proceeding. Garren, 423 S.C. at 12, 813 S.E.2d at 710 (citing Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Id., 423 S.C. at 13-14, 813 S.E.2d at 711.

An applicant alleging incompetence *in fact* must show by a preponderance of the evidence that he was incompetent at the time of his original proceedings. Id., 423 S.C. at 16, 813 S.E.2d 704, 713; Hall v. Catoe, 360 S.C. 353, 358, 601 S.E.2d 335, 338 (2004).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he had "been seeing mental health for like probably five or ten years or something before all of this happened." (PCR Tr. p. 8). Applicant affirmed that he had a history of substance abuse that should have been addressed. (PCR Tr. p. 8).

On direct-examination, Trial Counsel testified that based on his perception, Applicant was competent and understood the proceedings. (PCR Tr. p. 31). Trial Counsel testified that he did not see "any evidence of mental illness that would affect [Applicant's] competency to stand trial or criminal responsibility." (PCR Tr. p. 32).

On cross-examination, Trial Counsel testified that he did not hire an expert. (PCR Tr. p. 46).

On redirect examination, Trial Counsel testified that he did not feel that an expert was necessary based on the facts in the case. (PCR Tr. p. 51).

Findings

This Court finds the combination of the record and Trial Counsel's credible 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 [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that Applicant failed to provide any credible evidence demonstrating incompetence at the time of his trial. Furthermore, this Court finds Applicant did not bring forth any expert witness to substantiate his claims, nor did he present his mental health counselor or relevant mental health records to this Court. See Garren, *supra*.

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

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

Allegation 1d: Trial Counsel failed to bring to the court's attention that the incident was an accident that happened during a very heartbreaking time in my life, and the possibility of me losing everything that I ever wanted.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to present to the jury that this was an accident and for failing to present that the murder was a crime of passion. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel could have done a better job at presenting that it was an accidental death because he was "just planning on killing himself." (PCR Tr. p. 9). Applicant testified that there are five or ten minutes from the night of the murder that he just cannot remember. (PCR Tr. p. 9).

On cross-examination, Applicant testified that he tried telling everyone it was an accident, but everyone kept saying it was not. (PCR Tr. p. 23). Applicant testified that he never said anything about it being a crime of passion. (PCR Tr. pp. 23–24). Applicant testified that he could not remember about ten minutes of that night, and he may have "flipped," but he could not recall. (PCR Tr. p. 24).

On direct examination, Trial Counsel testified that Applicant's story was that it was an accident. (PCR Tr. p. 29). Trial Counsel testified that it was difficult to overcome the "self-implicating notes and messages." (PCR Tr. p. 29). Trial Counsel testified that their defense at trial was that it was an accident and not a malicious murder. (PCR Tr. p. 30). Trial Counsel testified that he was able to have the jury charged with accident and involuntary manslaughter. (PCR Tr. p. 43).

Findings

As an initial matter, this Court finds Trial Counsel's testimony credible and Applicant's testimony on this matter not credible. This Court finds the combination of the record and Trial Counsel's credible 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 [his] case." *Ard v. Catoe, supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds the record provides the jury was charged on accident and involuntary manslaughter, which wholly refutes Applicant's allegation 1d.

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

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

Allegation 1e: Trial Counsel failed to bring to the court's attention that this incident was a crime of passion.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to bring to the court's attention that the incident was a crime of passion. This Court finds these allegations to be without merit.

PCR Evidentiary Hearing

On cross-examination, the following colloquy occurred with Applicant:

Q. So in one allegation you say it's an accident, but in your next allegation you say, Failure to bring to the Court's attention that it was a crime of passion. So was it a crime of passion or was it an accident?

A. I never said anything about it being a crime of passion. But I always said it was an accident, because, I mean, we was just talking and she was trying to take the knife away from me and it ended up slipping and stabbing her one time in the chest. She grabbed the knife with her hand one time and I guess her hand was bloody and that's when my wrist slipped out of her hand.

....

Q. I'm going to show you something. Do you recognize that?

A. Yeah.

Q. Is that your handwriting?

A. No.

Q. It's not your handwriting?

A. Uh-uh.

Q. Who's handwriting is it?

A. Another guy in prison I had write it for me.

Q. Okay. Did you direct him to write that?

A. Yeah.

Q. And did he write out what you told him to say or what you -- did he write out what you were saying to him?

A. I'm not sure.

Q. So you filed the application without looking at what he wrote?

A. Yeah, I read it. I mean, I looked at it, but I didn't like -- I don't remember, like I say, this has been 10 years ago. I mean, my memory is...

- Q. If I may, here, that it was a crime of passion. Do you see that?
- A. Uh- huh .
- Q. Okay. Is that still one of your allegations?
- A. I mean, I don't know. I mean, like I said, there was a few -- five or 10 minutes in between when all of this happened, I don't remember what happened, what was said, what was going on. And then after that -- that day I found out that day she was seeing somebody else. So she may have said something about seeing somebody to me, I don't remember. I don't know if she told me she was seeing somebody else at the time and I flipped or whatever I don't know.
- Q. So you - -
- A. Like I said, I've been trying for 10 years to remember this 10 minutes that I lost and I can't remember. I can't recall what happened, what was said, what went on, I don't know.

(PCR Tr. pp. 23–25).

On direct examination, Trial Counsel testified that Applicant's story was that it was an accident. (PCR Tr. p. 29).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. The record before this Court provides that the jury was charged on voluntary manslaughter. Thus, Applicant cannot show any resulting prejudice from Trial Counsel's alleged deficiency. 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, which we expect will often be so, that course should be followed.").

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

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

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

Allegation 2: Trial Counsel failed to effectively argue against the jury charge regarding the attempted suicide as evidence of guilt.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively argue against the jury charge regarding attempted suicide as evidence of guilt. This Court finds this allegation to be without merit.

"In reviewing jury charges for error, [the reviewing court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)). "[A] charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990) (citing State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)). If the charge "is substantially correct and covers the law [it] does not require reversal." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)). "Moreover, '[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011)). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)).

Trial

At trial, during the charge conference, the following colloquy occurred:

MR. NEWMAN: It's not that. It says, "Evidence of a suicide attempt is probative of the defendant's consciousness of guilt is generally admissible --

THE COURT: Consciousness of guilt is what you're trying to get at. What number is it?

MR. NEWMAN: Number 28.

THE COURT: Do you have any problem with that, Mr. Lifsey?

MR. LIFSEY: I think that 's the law but I don't think you should charge that. I know it's in the I don't know who puts together whatever is on the court's website but I believe that's an impermissible comment on the facts. I think the solicitor can argue that, but I would ask the Court to not charge that comment on the facts to the jury.

....

MR. NEWMAN: Your Honor, it's "Evidence of suicide attempt is probative on the defendant's consciousness of guilt and is generally admissible for whatever value"

THE COURT: And the defense objects to that. Your objection is noted on the record but I think that's a reasonable statement and that that is a statement of the law as well.

MR. LIFSEY: And I acknowledge it's a statement on the law, my objection is that it's a comment on the facts, but I understand the Court's ruling.

THE COURT: Sure. Well, so is accident, that's a comment on the facts as well. But I think under the fundamental fairness standard if I'm going to charge accident I'm going to charge suicide, and that's the purpose as my friends read this why I did that.

(Trial Tr. pp. 463–464; 465).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel could have done a better job at arguing the jury charge, presenting that it was an accidental death because he was "just planning on killing himself." (PCR Tr. p. 9). Applicant testified that there are five or ten minutes from the night of the murder that he just cannot remember. (PCR Tr. p. 9).

On cross-examination, Trial Counsel testified that he objected to the prosecution arguing suicide as evidence of guilt because he thought it was improper. (PCR Tr. pp. 46–47).

Findings

This Court finds the combination of the record and Trial Counsel's credible 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 [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that the record demonstrates Trial Counsel's objection to the suicide being presented as evidence of guilt, effectively preserving this issue for appeal. The South Carolina Court of Appeals reviewed this issue and determined that any potential error in the jury instruction was harmless, thereby affirming Applicant's conviction and sentence. Furthermore, the South Carolina Supreme Court declined to grant certiorari on this specific matter. It is clear that Trial Counsel cannot be deemed deficient for preserving an issue for appeal that ultimately proved unsuccessful, nor can the Applicant claim to have suffered any prejudice from the alleged deficiency.

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

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

Allegation 3a: Trial Counsel failed to properly review the evidence with Applicant.

Allegation 3b: Trial Counsel failed to provide a copy of discovery to Applicant.

Allegation 3d: Trial Counsel failed to properly investigate the State's case or hire a private investigator.

Applicant alleges Trial Counsel was constitutionally ineffective for failing properly review the evidence with Applicant, failing to provide a copy of discovery, failing to properly investigate the State's case, and for failing to hire a private investigator. This Court finds these allegations to be without merit.

A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[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

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).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel only reviewed the evidence with him "[m]aybe once." (PCR Tr. p. 10). Applicant testified that Trial Counsel "maybe" should have hired a private investigator. (PCR Tr. p. 11).

On cross-examination, Applicant testified that Trial Counsel gave him a half-inch-thick binder with his discovery before trial, and after trial, he received a three-inch binder. (PCR Tr. pp.

20–21). Applicant testified that they reviewed none of the discovery. (PCR Tr. p. 21). Applicant testified that Trial Counsel never brought any discovery for review. (PCR Tr. p. 22).

On direct examination, Trial Counsel testified that he reviewed discovery with Applicant, but due to the nature of the crime, Applicant was reserved in what he wanted to review. (PCR Tr. p. 28). Trial Counsel testified that he reviewed the State's evidence with Applicant. (PCR Tr. p. 34).

On redirect examination, Trial Counsel testified that based on the State's evidence, he did not need an investigator for this case. (PCR Tr. p. 51).

Findings

As an initial matter, this Court finds Trial Counsel's testimony credible and Applicant's testimony on these matters not credible. This Court finds the combination of the record and Trial Counsel's credible 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 [his] case." *Ard v. Catoe, supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds that Trial Counsel credibly testified that he reviewed the discovery with Applicant and that, based on the State's evidence, he did not need an investigator. Furthermore, Applicant failed to present any credible evidence of what Trial Counsel could have discovered or what other defenses Applicant could have requested Trial Counsel develop and present had counsel been more prepared or had they reviewed discovery further. Instead, Applicant presented only vague speculation, and mere speculation is not enough. *See Harris, Glover, supra*.

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

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

Allegation 3c: Trial Counsel failed to meet with Applicant a sufficient number of times to properly review the evidence.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. This Court finds this allegation to be without merit.

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

South Carolina case law has established that even if Trial Counsel only met with his client

very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (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); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel met with him four to five times. (PCR Tr. p. 11).

On cross-examination, Applicant testified that Trial Counsel met with him four to five times. (PCR Tr. p. 19).

On direct examination, Trial Counsel testified that some of his notes reflected that he met with Applicant four to five times, but he felt he met with him more than that. (PCR Tr. p. 33). Trial Counsel testified that it was his practice to meet with clients multiple times. (PCR Tr. p. 33).

On cross-examination, Trial Counsel testified that he could not argue Applicant's accounting for the number of times they met because he did not independently recall. (PCR Tr. p. 45).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that the record before this Court provides that Trial Counsel was prepared for Applicant's trial, that he was familiar with the facts of the case, and he knew the applicable law in the case. Applicant presented no credible evidence to this Court to show how additional time spent in consultation would have resulted in a different outcome at trial.

Turning to the portion of the allegation regarding the review of evidence, this Court has made its findings on this matter in Allegations 3a, 3b, and 3d, *supra*.

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

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

Allegations of Failure to Object

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence

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

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presum[e]" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d

203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Allegation 3f: Trial Counsel failed to object to Tressa Howle testifying that Applicant said, "he killed her, and he said if you don't quit kicking me, I'm going to kill you too." (p. 177, ll. 3-5).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to Tressa Howle's testimony that Applicant said, "he killed her and he said if you don't quit kicking me, I'm going to kill you too." (Trial Tr. p. 177, ll. 3-5). This Court finds this allegation to be without merit.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. See State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (S.C. App. 2001). However, an admission by a party opponent is by definition not hearsay. Rule 801(d)(2), SCRE.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he did not believe it was objectionable because it was a statement by a party opponent which is excluded from the definition of hearsay. (PCR Tr. p. 36). Trial Counsel testified that even if it fell within hearsay that it was "probably a statement against interest." (PCR Tr. p. 36).

On cross-examination, Trial Counsel testified that the testimony was not objectionable. (PCR Tr. p. 48).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See* Butler, *supra*. This Court finds that any objection by Trial Counsel to this testimony would have been futile as it was admissible pursuant to Rule 801(d)(2)(A), SCRE. *See* State v. Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) ("As a general rule, statements or declarations made by one accused of a crime are admissible against him.") (quoting State v. Plyler, 275 S.C. 291, 295, 270 S.E.2d 126, 128 (1980); United States v. Benson, 957 F.3d 218 (4th Cir. 2020) ("Rule 801(d)(2)(A) provides that a statement is not hearsay if 'the statement is offered against an opposing party' and 'was made by [that] party in an individual or representative capacity.' Thus, a defendant's own statements constitute 'admissions by a party-opponent and [are] admissible pursuant to' this Rule.") (citing United States v. Wills, 346 F.3d 476, 489 (4th Cir. 2003); *see also* Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence)).

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

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

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

Allegation 3g: Trial Counsel failed to object to Jonathan Ghent testifying to the hearsay statement that "I heard him (Mike) say he hurt your mother." (p. 185, l. 21).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to Jonathan Ghent's testimony, "I heard him (Mike) say he hurt your mother." (Trial Tr. p. 185, l. 21).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. See State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (S.C. App. 2001).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he should have objected to the statement. (PCR Tr. pp. 36–37). Trial Counsel testified that while it was cumulative to what others had testified to, he should have objected. (PCR Tr. p. 37).

On cross-examination, Trial Counsel testified that it was hearsay, and he should have objected. (PCR Tr. p. 48).

Findings

This Court finds that Trial Counsel has not articulated any strategic reason as to why he failed to object to the hearsay testimony. Instead, Trial Counsel testified that he missed the

testimony. As such, this Court finds Trial Counsel's failure to object to this hearsay testimony was deficient. Turning to prejudice, this Court finds that while Trial Counsel was deficient, Applicant can show no prejudice from the alleged deficiency. From the record, the elicited testimony was cumulative to other testimony at Applicant's trial. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("[T]he admission of improper evidence is harmless where it is merely cumulative to other evidence."). In PCR, the burden is placed on the Applicant to prove there is a reasonable probability, but for Counsel's unprofessional errors, the result of the proceeding would have been different. Butler, 286 S.C. at 334 S.E.2d at 818. Here, Applicant has failed to prove that this one-off hearsay statement, which was cumulative to the testimony of other witnesses, would have created a reasonable probability that the result of the proceeding would have been different.

Accordingly, this Court finds Applicant has failed to establish any prejudice flowing from Trial Counsel's deficiency. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 3h: Trial Counsel failed to object to Jonathan Ghent testifying that "after about the 20th punch, he (the applicant) said I fucking stabbed her." (p. 187, ll. 13-15).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to to object to Jonathan Ghent testifying that "after about the 20th punch, he [Applicant] said I fucking stabbed her." (Trial Tr. p. 187, ll. 13–15). This Court finds this allegation to be without merit.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. See State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (S.C. App. 2001). However, an admission by a party

opponent is by definition not hearsay. Rule 801(d)(2), SCRE.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that the statement was not objectionable because it was a statement of a party opponent and is excluded from the definition of hearsay. (PCR Tr. pp. 37–38).

On cross-examination, Trial Counsel testified that he did not think Jonathan Ghent was a credible witness and that his testimony was not that important. (PCR Tr. pp. 48–49).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that any objection by Trial Counsel to this testimony would have been futile as it was admissible pursuant to Rule 801(d)(2)(A), SCRE. See State v. Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) ("As a general rule, statements or declarations made by one accused of a crime are admissible against him.") (quoting State v. Plyler, 275 S.C. 291, 295, 270 S.E.2d 126, 128 (1980); United States v. Benson, 957 F.3d 218 (4th Cir. 2020) ("Rule 801(d)(2)(A) provides that a statement is not hearsay if 'the statement is offered against an opposing party' and 'was made by [that] party in an individual or representative capacity.' Thus, a defendant's own statements constitute 'admissions by a party-opponent and [are] admissible pursuant to' this Rule.") (citing United States v. Wills, 346 F.3d 476, 489 (4th Cir. 2003); see also Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails

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

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

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

Allegation 3i: Trial Counsel failed to object to EMS worker Terri Faulkenberry testifying that Applicant stated, "his son had beat him up because he had just killed his mother." (p. 247, l. 24 – p. 248, l. 1).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to EMS worker Terri Faulkenberry testifying that Applicant stated, "his son had beat him up because he had just killed his mother." (p. 247, l. 24 – p. 248, l. 1). This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he filed a motion *in limine* on this issue and argued it pretrial. (PCR Tr. pp. 38–39). Trial Counsel testified that he renewed his objection to the line of questioning by the EMS witness on page 244 of the trial transcript. (PCR Tr. p. 39). Trial Counsel testified that he thought the trial judge was correct in his ruling because the EMS worker was not acting in the direction of law enforcement.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. The record before this Court provides that Trial Counsel did file a motion *in limine* and argued that the statement from Applicant to EMS should not be admitted into evidence. During trial, Trial Counsel renewed his pretrial objections at the start of questioning the EMS witness. This Court finds that any objection by Trial Counsel to this testimony would have been futile as it was admissible pursuant to Rule 801(d)(2)(A), SCRE. See State v. Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) ("As a general rule, statements or declarations made by one accused of a crime are admissible against him.") (quoting State v. Plyler, 275 S.C. 291, 295, 270 S.E.2d 126, 128 (1980); United States v. Benson, 957 F.3d 218 (4th Cir. 2020) ("Rule 801(d)(2)(A) provides that a statement is not hearsay if 'the statement is offered against an opposing party' and 'was made by [that] party in an individual or representative capacity.' Thus, a defendant's own statements constitute 'admissions by a party-opponent and [are] admissible pursuant to' this Rule.") (citing United States v. Wills, 346 F.3d 476, 489 (4th Cir. 2003); see also Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence)).

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

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

Allegation 3j: Trial Counsel failed to object to Deputy Richard Weiss testifying that Applicant stated he had killed his wife. (p. 385, ll. 12-15).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to Deputy Richard Weiss testifying that Applicant stated he had killed his wife. (Trial Tr. p. 385, ll. 12-15). This Court finds this allegation to be without merit.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. See State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (S.C. App. 2001). However, an admission by a party opponent is by definition not hearsay. Rule 801(d)(2), SCRE.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he did not believe it was objectionable because it was a statement by a party opponent which is excluded from the definition of hearsay. (PCR Tr. p. 36). Trial Counsel testified that even if it fell within hearsay that it was "probably a statement against interest." (PCR Tr. p. 36).

On cross-examination, Trial Counsel testified that the testimony was not objectionable. (PCR Tr. p. 48).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that any objection by Trial Counsel to this testimony would have been futile as it was admissible pursuant to Rule 801(d)(2)(A), SCRE. See State v. Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) ("As a general rule, statements or declarations made by one accused of a crime are admissible against him.") (quoting State v. Plyler, 275 S.C. 291, 295, 270 S.E.2d 126, 128 (1980); United States v. Benson, 957 F.3d 218 (4th Cir. 2020) ("Rule 801(d)(2)(A) provides that a statement is not hearsay if 'the statement is offered against an opposing party' and 'was made by [that] party in an individual or representative capacity.' Thus, a defendant's own statements constitute 'admissions by a party-opponent and [are] admissible pursuant to' this Rule.") (citing United States v. Wills, 346 F.3d 476, 489 (4th Cir. 2003); see also Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence)).

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably

effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

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

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 23rd day of April, 2025.


 PATRICK CLEBURNE FANT, III
 Presiding Judge
 Sixth Judicial Circuit

LANCASTER, South Carolina

WITNESSES

M. Bailey - LCSO #13-39944

Litsey
DOCKET NO. 2014-GS-29- 47

The State of South Carolina

County of Lancaster

CLERK OF COURT
OFFICE OF THE CLERK OF COURT
LANCASTER, SC

2014 JAN -2 PM 2:00

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

ARREST WARRANT NUMBER/DOA

2013A2910101272 (DOA-10-28-13)

THE STATE
vs.

John Marion Ghent, Jr. 41-43

ACTION OF GRAND JURY

Sally Willey
Foreperson of Grand Jury
Date: *2 Jan 2014*

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

JAN 02 2014

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

CERTIFIED TO BE A TRUE COPY

Jeff Hammond
JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

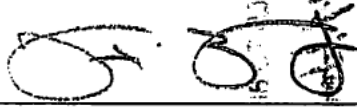
INDICTMENT

At a Court of General Sessions, convened on January 2, 2014, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That John Marion Ghent, Jr., did at 2615 Home Place Lane, in Lancaster County on or about [REDACTED] 2013, feloniously, willfully, and of his malice aforethought kill and murder Elaine Ann Ghent by stabbing her with a knife and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

COUNTY OF Lancaster
STATE VS.John Marion Ghent Jr

AKA:

Race: WHITE Sex: M Age: 56DOB: 1959 SS#: Address: Home Place LnCity, State, Zip: Lancaster, SC 29720-6309DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / MurderINDICTMENT/CASE#: 2014GS2900047A/W#: 2013A2910101272Date of Offense: 10/28/2013S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ray Newman 78667
Solicitor SC Bar#

Defendant

Jeff Hammond 015754
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 54 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminally
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

CERTIFIED TO BE A TRUE COPY

Jeff Hammond
JEFF HAMMONDObtain GED ☐ CLERK OF COMMON PLEAS
Attend Voc. Rehab. or Job Training ☐
May serve W/E beginning LANCASTER COUNTY, S.C.Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

3/17/16

WITNESSES

M. Bailey - LCSO #13-39944

Litany
DOCKET NO. 2014-GS-29- 48

The State of South Carolina
County of Lancaster

OFFICE OF THE CLERK
2014 JAN -2 11:00 AM
CLERK OF COMMON PLEAS
LANCASTER, SC

COURT OF GENERAL SESSIONS

JANUARY TERM 2014

ARREST WARRANT NUMBER/DOA

2013A2910101273 (DOA-10-28-13)

THE STATE
vs.

John Marion Ghent, Jr. 47-1/8

ACTION OF GRAND JURY

Sally Wiliz
Foreperson of Grand Jury

Date: *2 Jan 2014*

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

JAN 02 2014

Indictment for

**Possession or Display of Firearm or
Knife During Commission of a Violent
Crime**

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

CERTIFIED TO BE A TRUE COPY

Jeff Hammond

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

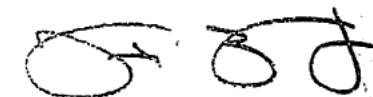
INDICTMENT

At a Court of General Sessions, convened on January 2, 2014, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That John Marion Ghent, Jr., did in Lancaster County on or about [REDACTED] 2013, possess or visibly display a firearm or knife, to wit: knife during his/her commission of a violent crime, to wit: Murder of Elaine Ann Ghent, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

COUNTY OF
STATE

Lancaster

VS.

John Marion Ghent Jr

AKA:

Race: WHITE Sex: M Age: 56

DOB: 1959 SS#:

Address: Home Place Ln

City, State, Zip: Lancaster, SC 29720-6309

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Newman

78667
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

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

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ ~~CONSECUTIVE~~ or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-23-35

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-0490 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2168

3/12/16

TO BE A TRUE COPY

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.