

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Dec 31 2025

S.C. SUPREME COURT

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Honorable Daniel D. Hall, Circuit Court Judge

EZRA RYSUNN WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001145

APPENDIX

MOLLY M. KEEGAN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME II OF II

PAGES 501-764

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
TRIAL EXHIBIT- STATE'S EXHIBIT 40 (DVD OF JAIL PHONE
CALLS) PCR HEARING EXHIBITS- STATE’S 1, STATE’S 2]**

SCOTT D. ROBINSON LAW FIRM, LLC 501

ATTORNEY AND COUNSELOR AT LAW

**819 EAST NORTH STREET, 29601
P.O. BOX 10042, FEDERAL STATION,
GREENVILLE, SC 29603
PHONE: 864.271.6940 • FAX: 864.271.6941
EMAIL: SCOTTDROBINSON@BELLSOUTH.NET**

RECEIVED

July 25, 2016

JUL 25 2016

SC Court of Appeals

BY FACSIMILE 1-803-734-1839
The Honorable V. Claire Allen
Deputy Clerk
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: The State v. Ezra Williams
Appellate Case No. 2015-001904

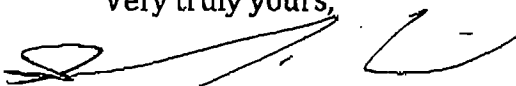
Dear Ms. Allen,

I apologize for the delay in getting the transcript ordered from the court reporter. My client is having difficulty coming up with the cost of the transcript.

I have thought that an idea may be to file a Motion to order only a portion of the transcript that really is the part of the trial that the appeal concerns. I would, of course, need to see if opposing counsel could consent. I have not contacted him yet but wanted to run this by you.

Again, my sincere apologies for this inconvenience. By the way, the person on your staff that assisted me this morning was great.

Very truly yours,



Scott D. Robinson

SDR: sr



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

September 06, 2016

Mr. Scott David Robinson, Esquire
PO Box 10042
Greenville SC 29603

Re: The State v. Ezra Williams
Appellate Case No. 2015-001904

Dear Counsel:

Our records indicate that the transcript in the above matter should have been delivered. As of today's date, we have not received any information indicating that the court reporter has been granted an extension. Further, you have not notified us that you have failed to receive the transcript, nor have we received your initial brief.

If you have not yet received the transcript, Rule 207 of the South Carolina Appellate Court Rules requires you to contact the Office of Court Administration. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1220 Senate Street, Suite 201
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

V. Elaine Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Rame Lambert Campbell, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

Ezra Rysunn Williams, Appellant.

Appellate Case No. 2015-001904

The Honorable R. Lawton McIntosh
Anderson County

Trial Court Case No. 2012GS0402575, 2012GS0402576,
2012GS0402473, 2012GS0402474

ORDER

Counsel for the Appellant has failed to provide proof that the transcript has been delivered, as required by Rule 207 of the South Carolina Appellate Court Rules, and as directed by the Court's letter of September 6, 2016. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Scott David Robinson, Esquire
Rame Lambert Campbell, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FILED

October 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSONEzra Ryson Williams #345989
Plaintiff(s)

vs.

State of South Carolina
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-04-02661(Please Print) Submitted By: Ezra Ryson Williams #345989
Address: Lieber Cove Inst Cooper B-32
P.O. Box 205
Ridgeville, SCSC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____State of South Carolina
Attorney General

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- ☐ Contracts:
- ☐ Construction (100)
 - ☐ Debt Collection (110)
 - ☐ Employment (120)
 - ☐ General (130)
 - ☐ Breach of Contract (140)
 - ☐ Other (199)

- ☐ Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
 - ☐ Legal Malpractice (210)
 - ☐ Medical Malpractice (220)
 - ☐ Notice/File Med Mal (230)
 - ☐ Other (299)

- ☐ Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
 - ☐ Conversion (310)
 - ☐ Motor Vehicle Accident (320)
 - ☐ Premises Liability (330)
 - ☐ Products Liability (340)
 - ☐ Personal Injury (350)
 - ☐ Wrongful Death (360)
 - ☐ Other (399)

- ☐ Real Property
- ☐ Claim & Delivery (400)
 - ☐ Condemnation (410)
 - ☐ Foreclosure (420)
 - ☐ Mechanic's Lien (430)
 - ☐ Partition (440)
 - ☐ Possession (450)
 - ☐ Building Code Violation (460)
 - ☐ Other (499)

- ☒ Inmate Petitions
- ☐ PCR (500)
 - ☐ Sexual Predator (510)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- ☐ Judgments/Settlements
- ☐ Death Settlements (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlements (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Other (799)

- ☐ Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture (840)
 - ☐ Other (899)

- ☐ Appeals
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil (910)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOT (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Administrative Law Judge (980)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Cases (991)
 - ☐ Other (999)

- ☐ Special/Complex/Other
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Out-of-State Depositions (650)

Submitting Party Signature: Ezra WilliamsDate: November 1, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

A TRUE COPY

DEC - 1 - 2016

Richard N. Kelly
ANDERSON CLERK OF COURTFILED-CLERK'S OFFICE
ANDERSON SC

2016 DEC - 1 AM 9:11

COMMON PLEAS AND
GENERAL SESSIONS

506

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS

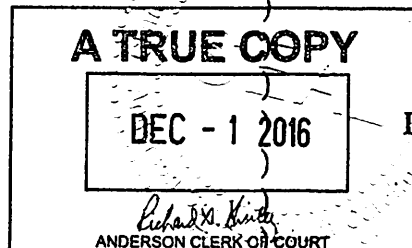
2016-CP-04-02661

Ezra Rysunn Williams, #345989

Full name and prison number (if any) of Applicant

v.

State of South Carolina



APPLICATION FOR

POST-CONVICTION RELIEF

COMMON PLEAS AND
GENERAL SESSIONS

2016 DEC - 1 AM 9:11

FILED-CLERK'S OFFICE
ANDERSON SCINSTRUCTIONS - 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 Lieber Corr. Inst.; South Carolina Dept. of Corrections
2. Name and location of Court which imposed sentence Anderson County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Kyndra Howell, Gantt, ~~Johnson~~ ZACHARY and Jeremiah Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-65-04-02576; Kidnapping

(b) 2012-GS-04-02473; Armed Robbery

(c) 2012-GS-04-02474; Poss of a Weapon during violent crime ⁵⁰⁷

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 12, 2015; fifty-five (55) years total aggr-

(b) egate sentence

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Trig

counsel filed "Notice of Appeal" and was retained to perfect appeal but failed to obtain trial transcript

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing: My family retained

(a) trial counsel to perfect appeal but Mr. Robinson failed to obtain trial transcript. Appeal was dismissed by the S.C. Court of Appeals, Rule 207, South Carolina Appellate Court Rules.

(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 Trial Counsel or(b) Ineffective Assistance of Appellate Counsel

(c) _____

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

Applicant was denied the effective assistance of trial/(a) appellate counsel in violation of his 6th Amend right to counsel(b) and the 14th Amend. right to due process; *Evitts v. Lucey*, 469(c) U.S. 387(1985), continued see attached page #8

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. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

disposition: Order Filed October 14, 2016, by the South Carolina

i. Court of Appeals dismissing appeal pursuant to Rule 207,

ii. SCACR, for failure to provide trial transcript

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? X - yes
 (c) your sentencing? X - yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of (Counsel) sentence? was retained to perfect appeal but failed to obtain
 (e) ^{trial transcript} preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Mr. Scott D. Robinson, Esquire, P.O. Box 10042
Federal Station, Greenville, S.C. 29603

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

2016-CP-04-02661

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

I, Ezra Rysunn Williams, #345989, 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.

X Ezra Williams

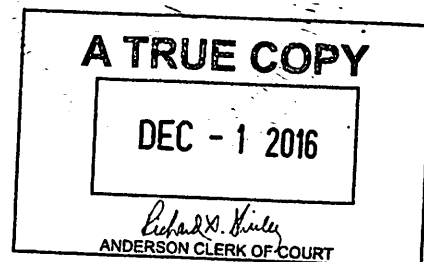
Applicant

SWORN or affirmed to and subscribed before me this
22 day of NOVEMBER, 2016.

Linda K. B.
Notary Public

My Commission Expires: 6-20-26

**FILED-CLERK'S OFFICE
ANDERSON SC
2016 DEC - 1 AM 9:11
COMMON PLEAS AND
GENERAL SESSIONS**



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

Applicant's sentence be vacated and resentenced so that he can perfect an appeal, or, granted a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Ezra Rysunn Williams #345989, 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.

X Ezra Williams

SWORN to and subscribed before me this 22
day of NOVEMBER, 2016.

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-20-26

FILED-CLERK'S OFFICE
ANDERSON SC
2016 DEC - 1 AM 9:11
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

DEC - 1 2016

Richard M. Kintley
ANDERSON CLERK OF COURT

11. (a) continued:

Applicant's family retained trial counsel to perfect his appeal. Prior to Applicant's family retaining counsel for appeal, trial counsel filed the "Notice of Appeal."

Applicant is not certain of the actual date of filing. But Applicant received a letter- ~~ORDER~~ from the Clerk of the South Carolina Court of Appeals that stated "Counsel for the Appellant has failed to provide proof that the transcript has been delivered, as required by Rule 207 of the South Carolina Appellate Court Rules and as directed by the Court's letter of September 6, 2016.... The "Remittitur" was sent down on November 2, 2016.

Applicant asserts that counsel's inaction- the failure to obtain the trial transcript denied him counsel at a critical stage of the proceedings.

Applicant further asserts that counsel- Mr. Robinson- should have acted in the Applicant's best interest and moved the Court of Appeals to appoint the appellate counsel from the South Carolina Office of Appellate Defense, rather than abandon the Applicant.

Applicant was denied his right to the effective assistance of appellate counsel at a critical stage of the proceedings and his right to his one and only direct appeal due to counsel's failure to obtain trial transcript.

The right to effective assistance of counsel is dependent on the right to counsel itself. "[M]eaningful access" to justice under the Due Process Clause means providing all the "tools necessary for an adequate defense." The right to the effective assistance of counsel is no accident. Evitts v. Lucey, 469 U.S. 387 (1985).

The Applicant asserts that his sentence should be vacated and the Applicant be resentenced so that he can perfect an appeal. See Rodriguez v. United States, 395 U.S. at 332. Or, granted a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

March 07, 2017

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Ezra Williams
Lower Court Case No. 2012GS0402575, 2012GS0402576,
2012GS0402473, 2012GS0402474
Appellate Case No. 2015-001904

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Ezra Rysunn Williams, 345989
Scott David Robinson, Esquire
Rame Lambert Campbell, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Ezra Rysunn Williams, #345989,

2016-CP-04-02661

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED-CLERK'S OFFICE
ANDERSON SC
2017 SEP 15 AM 10:51
COMMON PLEAS AND
GENERAL SESSIONS

In response to the post-conviction relief application filed on December 1, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. Applicant was indicted by the November 2012 term of the Anderson County Grand Jury for one count of armed robbery (2012-GS-04-02473) and one count of possession of a weapon during the commission of a violent crime (2012-GS-04-02474). Applicant was subsequently indicted by the December 2012 term of the Anderson County Grand Jury for one count of kidnapping (2012-GS-04-02576). Scott D. Robinson, Esquire, represented him. On August 10-12, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. Applicant was found guilty of all three charges as indicted. Judge McIntosh sentenced Applicant to consecutive sentences of thirty years for armed robbery and twenty-five years for kidnapping. Applicant was sentenced to a concurrent sentence of five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. An appeal was perfected by Scott D. Robinson, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal for failing to

provide proof that a transcript had been delivered, as required by Rule 207 of the South Carolina Appellate Court Rules. State v. Williams, Appellate Case No. 2015-001904 (Filed October 14, 2016). The Remittitur was returned on November 2, 2016.

Attached to this Return and incorporated by reference hereto are the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the application.

II.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Applicant was denied the effective assistance of trial/appellate counsel in violation of his 6th Amendment right to counsel and the 14th Amendment right to due process; *Evitts v. Lucy*, 469 U.S. 387 (1985)"
 - b. "...Mr. Robinson should have acted in Applicant's best interest and moved the Court of Appeals to appoint the appellate counsel from the South Carolina Office of Appellate Defense, rather than abandon the Applicant."
2. "Ineffective Assistance of Appellate Counsel"
 - a. "Applicant was denied his right to the effective assistance of appellate counsel at a critical stage of the proceedings and his right to his one and only direct appeal due to counsel's failure to obtain trial transcript."
3. "My family retained trial counsel to perfect appeal but Mr. Robinson failed to obtain trial transcript. Appeal was dismissed by the S.C. Court of Appeals, Rule 207, South Carolina Appellate Court Rules."
 - a. "...counsel's inaction- the failure to obtain the trial transcript denied him counsel at a critical stage of the proceedings."

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. 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 person authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

“there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that trial counsel failed to perfect an appeal because he failed to provide proof that a transcript was delivered, as required by Rule 207 of the South Carolina Appellate Court Rules. Counsel has a constitutionally imposed duty to consult with defendant about appeal when there is reason to think either (1) a rational defendant would want to appeal, or (2) this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel’s deficient failure to consult with him about an appeal, he would have timely appealed. Id., 528 U.S. at 484, 120 S. Ct. at 1038.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Id. at 119, 108 S.E.2d at 39. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108

S.E.2d at 40.

Respondent requests an evidentiary hearing be held to resolve the questions of fact raised by this allegation. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

VI.

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

VII.

WHEREFORE, Respondent requests an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether Applicant is entitled to belated appellate review pursuant to the procedure outlined in White v. State, 263 S.C. 110, 108 S.E.2d 35.

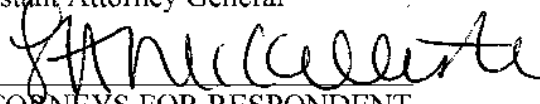
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

9/12, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

Ezra Williams, #345989,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2016-CP-04-02661

ORDER OF CONTINUANCE

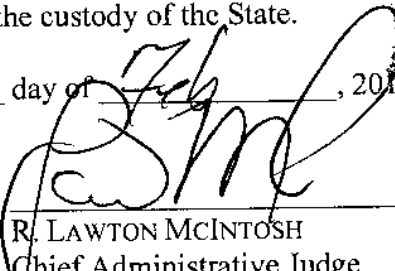
This matter comes before the Court by way of an application for post-conviction relief filed December 1, 2016. An evidentiary hearing into the matter is scheduled for February 21, 2018, at the Anderson County Courthouse. Respondent moves to continue this matter to the next regularly scheduled term of court for post-conviction relief for the Tenth Judicial Circuit, as the court reporter from Applicant's trial, Vivian Cross, has received an extension to produce the transcript until February 22, 2018. Respondent has conferred with counsel for Applicant, who does not oppose this continuance in light of the circumstances.

This Court finds that this matter should be continued until the next regularly scheduled term of court for post-conviction relief matters in the Tenth Judicial Circuit, at a time and date agreeable for Applicant, Respondent, and the necessary witnesses.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled for the next regularly scheduled term of court for post-conviction relief for the Tenth Judicial Circuit; and
2. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 9th day of Feb, 2018.


R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit


Anderson, South Carolina

FILED-CLERKS OFFICE
ANDERSON SC
2018 FEB -9 PM 4:29
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
)
)

EZRA WILLIAMS,
APPLICANT.

) SUPPLEMENTAL APPLICATION
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-04-2661
)
)

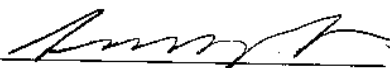
This matter comes before the Court by way of application of post conviction relief filed December 1, 2016, alleging ineffective assistance of trial counsel for failing to perfect the appeal resulting in a denial of due process. A Return was made on September 12, 2017. This application is intended to supplement Mr. Williams application and add allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:

- 1) failing to serve notice of or present witnesses and evidence supporting an alibi defense;
- 2) failing to investigate and review evidence available to him;
- 3) failing to make proper objections including the failure to object to juror number 110 who knew witness (p. 192), autopsy pictures and other photographs (p. 208, p. 299), recordings of jail calls (p. 222), DVR recordings (p. 266), and prejudicial conclusory statements made by lead investigator (p. 307, p. 355), and
- 4) failing to move for a mistrial after hung jury.

FILED-CLERK'S OFFICE
ANDERSON SC
2018 AUG 20 PM 12:02
COMMON PLEAS AND
GENERAL SESSIONS

Due Process violations due to the State vacating murder charge against key witness,
Zachary Gantt, after allowing him to tell jury that he plead to murder.

Respectfully submitted,



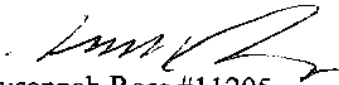
Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

This 7 day of August 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ~~GREENVILLE~~	)	~~THIRTEENTH~~ JUDICIAL CIRCUIT
Anderson	)	Tenth
	)	
EZRA WILLIAMS,	)	
APPLICANT.	)	MOTION FOR DISCOVERY
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2016-CP-04-2661

YOU WILL PLEASE TAKE NOTICE that the Appplicant, by and through the undersigned counsel of record, pursuant to Rule 26 of the South Carolina Rules of Civil Procedure moves for discovery relevant to his post conviction relief action. This motion pertains to all items in the 10th Circuit Solicitor's entire file relating to warrants J925280-1 and J925272-3 which includes all information in the custody, possession, control or knowledge of the State, private parties retained by the State, or any law enforcement agency involved in the investigation of the above captioned case, which may be favorable to the Applicant with regard to the offense with which he has been convicted as well as all items provided by the 10th Circuit Solicitor's office to Mr. William's trial attorney, Scott Robinson, Esq., pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure and Brady.

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Defendant
 330 E. Coffee St.
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 February 20, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
EZRA WILLIAMS,	)	
APPLICANT.	)	ORDER FOR PRODUCTION
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2016-CP-04-2661

This matter comes before the court by way of the Applicant's motion for the production of discovery relevant to his post conviction relief action pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. The motion requested all items in the Tenth Circuit Solicitor's file relating to warrants J925280-1 and J925272-3 including all information in the custody, possession, control or knowledge of the State, private parties retained by the State, or any law enforcement agency involved in the investigation of the above captioned case, which may be favorable to the Applicant with regard to the offense with which he has been convicted as well as all items provided by the 10th Circuit Solicitor's office to Mr. William's trial attorney, Scott Robinson, Esq., pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure and Brady. The court finds this request reasonable and grants Applicant's request to view and copy the file as defined above with the caveat that the solicitor may without prejudice object to the production of items it deems to be work product. Such items will then be reviewed by the court *in camera* to determine whether or not they must be produced. The assistant attorney general will also be permitted access to all items released to applicant's counsel in this matter.

19 MAY 2 AM 11:11:38
Anderson, SC COC, CP/GS

1 of 2
RSS

THEREFORE IT IS ORDERED that the Tenth Circuit Solicitor's office allow Applicant's counsel to view and copy all items relating to warrants J925280-1 and J925272-3 as stated above with the caveat that the solicitor may without prejudice object to the production of items it deems to be work product.

IT IS FURTHER ORDERED that the assistant attorney general will also be permitted access to all items released to applicant's counsel.

AND IT IS SO ORDERED.



R. Scott Sprouse
Circuit Court Judge

Dated:
Anderson, South Carolina

'19 MAY 2 AM 11:11:48
Anderson, SC CCC, CP/GS

2 of 2 RS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Ezra R. Williams, #345989,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-04-02661

ORDER OF CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing into the matter is scheduled for Monday, August 12, 2019, at the Anderson County Courthouse. Respondent has learned that one of its witnesses, Scott D. Robinson, Esquire, will be trying a murder case that has been set to begin on August 12, 2019, and is scheduled to continue throughout that week, thereby conflicting with the entire PCR term as scheduled.

As such, Respondent requests that this matter be continued so that the hearing can be rescheduled for a future date upon which Respondent's witness will be available. Respondent has attempted to communicate with Susannah C. Ross, Esquire, Applicant's PCR counsel, about the matter by email but has not received a response as of the making of this motion. For good cause shown, this Court finds this matter should be continued until the next term of court for post-conviction relief matters in the Tenth Judicial Circuit.

IT IS THEREFORE ORDERED:

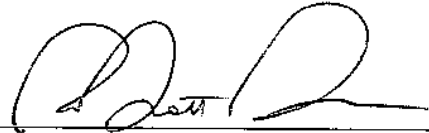
1. That this post-conviction relief matter shall be continued and re-scheduled for the next appropriate term of post-conviction relief hearings, and

19 JUL 29 PM12:28:33
Anderson, SC CDC, CP/66

RLS

2. That the Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 24 day of July, 2019.



R. SCOTT SPROUSE
Chief Administrative Judge
Tenth Judicial Circuit

Waltham, South Carolina

'19 JUL 29 PM 12:23:44
Anderson, SC COC, CP/GS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ~~GREENVILLE~~ <i>Anderson</i>	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
EZRA WILLIAMS,	)	
APPLICANT.	)	ORDER FOR EXPENSES
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2016-CP-04-2661
_____	)	

20 MAR 2 AM 8:40:52
Anderson, SC 29006-0910

THIS MATTER CAME BEFORE me pursuant to 17-3-50 (B) and (C) of the 1976 S.C. Code of Laws, as amended, and based upon a motion heard on February 19, 2020, by Applicant's appointed counsel for fees for the services of a investigator with expertise in the area of cellular phones. This Motion was based upon the following facts:

1. Applicant filed an application for PCR his August 12, 2015, conviction for kidnapping and armed robbery for which he was sentenced to twenty-five and thirty years. Counsel was appointed December 28, 2016.
2. The police investigator testified in the State's case in chief and said "We had Mr. Williams' cell phone records which showed that he was pinging off cell towers in the Homeland Park during the time of the incident." (R. p. 355, l.18) No phone records supporting this statement were entered in evidence at the trial though the phone records were in fact in discovery.
3. An review of the records by a certified mobile forensics examiner would assist appointed counsel in assessing the strength of the Applicant's argument that the investigator's trial testimony was misleading.

*1 of 2
RWS*

20 MAR 2 AM 4:43:57
Anderson, SC 000, CP 185

Upon hearing the arguments of Counsel for the Applicant, it appears and I so find that the services of a qualified professional are reasonable and necessary for the representation of the Applicant. I further find that, because of the seriousness of the charges for which Applicant was convicted and in light of the circumstances surrounding this case, payment of these services is necessary to ensure effective assistance of counsel and that such payment is appropriate. Finally, even though the total amount of these services exceeds the limit specified in S.C. Code § 17-3-50 (B), I find the excess amount of these services appropriate, pursuant to S.C. Code § 17-3-50(C), based upon the above listed facts upon which this motion was based. Therefore, it is hereby **ORDERED, ADJUDGED AND DECREED** that Counsel is authorized to expend a reasonable sum in an amount up to \$2500.00 (two thousand, five hundred) pursuant to the billing statement of the retained expert for the expenses of an evaluation. If further funding for court appearances are needed, the defense may appeal to the court another Order at that time. The case will remain off the roster until the investigative services are rendered.

AND IT IS SO ORDERED.



R. Scott Sprouse
Circuit Court Judge

Dated: 2-28-20
Anderson, South Carolina

2082

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Ezra Rysunn Williams, #345989,)

Case No.: 2016-CP-04-02661

Applicant,)

v.)

ORDER OF CONTINUANCE

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Ezra Rysunn Williams ("Applicant") on December 1, 2016. An evidentiary hearing in this matter was scheduled to take place by WebEx on October 21, 2021. Susannah C. Ross, Esquire, represents Applicant. Assistant Attorney General Taylor Z. Smith represents the State ("Respondent").

On October 5, 2021, Respondent learned that Rame Lambert Campbell, one of Respondent's material witnesses, needed more time to prepare to testify at the evidentiary hearing in this matter because he is presently caring for an elderly relative, he no longer works as a solicitor at the Tenth Circuit Solicitor's Office, and he needs to review the files of the Solicitor's Office for Applicant and Applicant's co-defendants. For this reason, Respondent moved for a continuance, and Applicant, through counsel, had no objection to the request.

For good cause shown, this hearing shall be continued until the next appropriate term of

court for post-conviction relief matters in the Tenth Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled for the next appropriate term of post-conviction relief hearings in the Tenth Judicial Circuit.

AND IT IS SO ORDERED this 14 day of Oct, 2021.

Anderson, South Carolina

~~J. Cordell Maddox, Jr.~~
~~Chief Judge for Administrative Purposes~~
Tenth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
)
)
)

EZRA WILLIAMS,
APPLICANT.

) ORDER FOR CONTINUANCE
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-04-2661
)
)

22 FEB 25 PM 4:16:45
Anderson, SC COC, CP/65

This matter comes before the Court by way of an application for post-conviction relief filed December 1, 2016. An evidentiary hearing is scheduled for hearing on March 3, 2019, via the WebEx platform. The Applicant moves for a continuance to the next regularly scheduled term for post-conviction relief for the Tenth Judicial Circuit in the above matter. There are a number of allegations relating to the Applicant's trial, evidence presented and omitted, as well as an anticipated expert witness along with other lay witness in the Applicant's case. Applicant's counsel states that the case is complex and the evidence could be more effectively presented at an in person hearing versus a web based platform and requests a continuance. The Applicant is serving a fifty-five year sentence and joins in the request. The assistant attorney general takes no position. I find that a continuance is warranted in this matter.

IT IS THEREFORE ORDERED that the post-conviction relief matter is continued.

AND IT IS SO ORDERED this 25 day of February, 2022.

W. Shalika RLM
Anderson, South Carolina

R. Lawton McIntosh
Circuit Court Judge

CASE # 2016-CP-04-2661

R. Lawton McIntosh
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

EZRA WILLIAMS,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

ORDER FOR CONTINUANCE

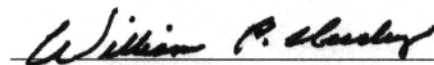
CASE # 2016-CP-04-2661

22 MAR 4 AM 11:22:44
Anderson, SC CJC, CP/SS

This matter comes before the Court by way of an application for post-conviction relief filed December 1, 2016. An evidentiary hearing is scheduled for hearing on March 3, 2019, via the WebEx platform. The Applicant moves for a continuance to the next regularly scheduled term for post-conviction relief for the Tenth Judicial Circuit in the above matter. There are a number of allegations relating to the Applicant's trial, evidence presented and omitted, as well as an anticipated expert witness along with other lay witness in the Applicant's case. Applicant's counsel states that the case is complex and the evidence could be more effectively presented at an in person hearing versus a web based platform and requests a continuance. The Applicant is serving a fifty-five year sentence and joins in the request. The assistant attorney general takes no position. I find that a continuance is warranted in this matter.

IT IS THEREFORE ORDERED that the post-conviction relief matter is continued.

AND IT IS SO ORDERED this 2ND day of MARCH, 2022.


William P. Keesley
Circuit Court Judge

Anderson, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
))
))
EZRA WILLIAMS,)
APPLICANT.) ORDER FOR EXPENSES
v.))
))
THE STATE OF SOUTH CAROLINA,)
RESPONDENT.) CASE # 2016-CP-04-2661
_____)

22 MAR 4 AM 11:22:41
Hinder son, SC COC, CP/68

THIS MATTER CAME BEFORE me pursuant to 17-3-50 (B) and (C) of the 1976 S.C. Code of Laws, as amended, and based upon a request by Applicant's appointed counsel for fees for the services of a investigator with expertise in the area of cellular phones. This Motion was based upon the following facts:

1. Applicant has a PCR pending for his August 12, 2015, conviction for kidnapping and armed robbery for which he was sentenced to fifty-five years.
2. The police investigator testified in the State's case in chief and said "We had Mr. Williams' cell phone records which showed that he was pinging off cell towers in the Homeland Park during the time of the incident." (R. p. 355, l.18) No phone records supporting this statement were presented at the trial.
3. An expert has reviewed of the records and his testimony authenticating his report and providing his opinions would assist appointed counsel and the hearing judge in assessing Applicant's case.

Upon hearing the arguments of Counsel for the Applicant, it appears and I so find that the services of a qualified professional are reasonable and necessary for the representation of the Applicant. I further find that, because of the seriousness of the charges for which Applicant was convicted and in light of the circumstances surrounding this case, payment of these services is necessary to ensure effective assistance of counsel and that such payment is appropriate. Finally, even though the total amount of these services exceeds the limit specified in S.C. Code § 17-3-50 (B), I find the excess amount of these services appropriate, pursuant to S.C. Code § 17-3-50(C), based upon the above listed facts upon which this motion was based. Therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Counsel is authorized to expend a reasonable sum in an amount up to \$3000.00 (three thousand) pursuant to the billing statement of the retained expert for the expenses of an evaluation and court appearances necessary for the defense without further Order of this Court.

AND IT IS SO ORDERED.

Dated: March 2, 2022
Edgell, South Carolina

William P. Keesley
William P. Keesley
Circuit Court Judge

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT

)
) ORDER FOR CONTINUANCE

)
)
)
)
) CASE # 2016-CP-04-2661

CASE # 2016-CP-04-2661

IT IS THEREFORE ORDERED that the post-conviction relief matter is continued.


R. Scott Sprouse
Chief Administrative Judge

Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Ezra Rysunn Williams, #345989,

2016-CP-04-02661

Applicant,

v.

AMENDED RETURN

State of South Carolina,

Respondent.

The Respondent State of South Carolina makes an Amended Return to the Supplemental Application for Post-conviction relief file dated August 2018 by appointed counsel Susannah Ross. The original application was filed on December 1, 2016. The Respondent made its original Return on September 12, 2017. Respondent would show this Court the following:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. Applicant was indicted by the November 2012 term of the Anderson County Grand Jury for one count of armed robbery (2012-GS-04-02473) and one count of possession of a weapon during the commission of a violent crime (2012-GS-04-02474). Applicant was subsequently indicted by the December 2012 term of the Anderson County Grand Jury for one count of kidnapping (2012-GS-04-02576). Scott D. Robinson, Esquire, represented him. The State was represented by Rame Campbell and Brantley Haigler. On August 10-12, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. Applicant was found guilty of all three charges as indicted. Judge McIntosh sentenced Applicant to consecutive sentences of thirty years for armed robbery and twenty-five years for kidnapping.

Applicant was sentenced to a concurrent sentence of five years for possession of a weapon during the

commission of a violent crime.

Applicant filed a timely notice of appeal. An appeal was handled by Scott D. Robinson, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide proof that a transcript had been delivered, as required by Rule 207 of the South Carolina Appellate Court Rules. State v. Williams, Appellate Case No. 2015-001904 (Filed October 14, 2016). The Remittitur was returned on November 2, 2016.

Attached to the original Return and incorporated by reference hereto are the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application.

II.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Applicant was denied the effective assistance of trial/appellate counsel in violation of his 6th Amendment right to counsel and the 14th Amendment right to due process; Evitts v. Lucey, 469 U.S. 387 (1985)"
 - b. "...Mr. Robinson should have acted in Applicant's best interest and moved the Court of Appeals to appoint the appellate counsel from the South Carolina Office of Appellate Defense, rather than abandon the Applicant."
2. "Ineffective Assistance of Appellate Counsel"
 - a. "Applicant was denied his right to the effective assistance of appellate counsel at a critical stage of the proceedings and his right to his one and only direct appeal due to counsel's failure to obtain trial transcript."
3. "My family retained trial counsel to perfect appeal but Mr. Robinson failed to obtain trial transcript. Appeal was dismissed by the S.C. Court of Appeals, Rule 207, South Carolina Appellate Court Rules."
 - a. "...counsel's inaction- the failure to obtain the trial transcript denied him counsel at a critical stage of the proceedings."

In the Supplemental Application, though counsel, he alleges the following:

4. Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:
- a. failing to serve notice of or present witnesses and evidence supporting an alibi defense¹;
 - b. failing to investigate and review evidence available to him;
 - c. failing to make proper objections including:
 - i. the failure to object to juror number 110 who knew witness (p. 192) ,
 - ii. autopsy pictures and other photographs (p. 208, p. 299),
 - iii. recordings of jail calls (p. 222),
 - iv. DVR recordings (p. 266), and
 - v. prejudicial conclusory statements made by lead investigator (p. 307, p. 355),
 - d. failing to move for a mistrial after hung jury.
5. Due Process violations due to the State vacating murder charge against key witness, Zachary Gantt, after allowing him to tell jury that he plead to murder.

M3.
A

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625

¹ "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Grooms v. Solem, 923 F.2d 88, 90 (8th Cir.1991). See Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014)

(1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

1. Failure to investigate alibi

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Grooms v. Solem, 923 F.2d 88, 90 (8th Cir.1991). See Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014).² See State v. Robbins, 275 S.C. 373, 271 S.E.2d

² Rule 5

(e) Notice of Alibi.

(1) *Notice of Alibi by Defendant.* Upon written request of the prosecution stating the time, date and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such time as the court may direct, upon

319 (1980) (since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all).³

Officer Danny Barton testified on cross-examination by Robinson that Martha Everett may have provided an alibi by claiming that he had been with her that night and he had gone to Cici's Pizza and stayed there all night. Tr.p. 359. Barton claimed that Applicant's phone records did not ping in the area of Cici's Pizza. Tr.p. 360-361. On direct examination, Barton had claimed that with Williams phone records he knew who Williams was contacting that night and his phone had been pinging of Homeland Park cell towers all night long. Officer Barton asserted that they had learned from his jail house calls to Martha Everett that he was wanting an alibi from her. He stated they visited her and everything that she told them they were unable to substantiate. Tr.p. 335-336. (Martha Everett did not testify at trial). 4

The record reflects that the defense did not introduce evidence after the State closed its case. Tr.p. 377-378. Prior to closing the case, the Applicant waived his right to testify. Tr.p. 323-328., 330-332. During closing, defense refers to jury call about alibi. Tr.p. 436.

Respondent submits that the Applicant has not set forth facts to show that counsel was

the prosecution a written notice of his intention to offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

3 Officer Danny Barton testified on cross-examination by Robinson that Martha Everett may have provided an alibi by claiming that he had been with her that night and he had gone to Cici's Pizza and stayed there all night. Tr.p. 359. Barton claimed that Applicant's phone records did not ping in the area of Cici's Pizza. Tr.p. 360-361. On direct examination, Barton claimed that with Williams phone records he knew who Williams was contacting that night and his phone had been pinging of Homeland Park cell towers all night long. Officer Barton asserted that they had learned from his jail house calls to Martha Everett that he was wanting an alibi from her. He stated they visited her and everything that she told them they were unable to substantiate. Tr.p. 335-336. (Martha Everett did not testify at trial).

4 During the sentencing proceeding, Martha Everett indicated that she had celebrated her daughter's birthday at Cici's Pizza and that he was with them. Tr.p. 487, l. 12-16. Hi grandmother, Anne Williams indicate at sentencing indicated they celebrated family birthdays and that they went to Coci's to celebrate birthdays and that July 2, was a family member's birthday (sister of his daughter). Tr.p. 483-484) *Note, the abduction occurred on July 1, 2012 and*

deficient or prejudicial in either the investigation or presentation in light of the jail call concerns and his knowledge of Martha Everett's testimony by Mr. Robinson.

2. Failure to remove juror 110.

Juror 110 seated as Alternate 2 . Tr.p. 39-40. The juror incident occurred after testimony of Jonathon Johnson who she knew as "B.J.". She did not recognize his full name on the witness list and she also worked with his mother. Tr.p. 190. (Court Exhibit 4). Both the defense and state did not object to bringing her in for inquiry by the court. Judge McIntosh inquired of Juror 110 whether it could effect her ability to make a decision according to the law and testimony and that she could be fair and impartial. Neither side objected to her staying on the jury. Tr.p. 192.⁵ Importantly, juror 110 remained an alternate throughout the trial and did not deliberate on the verdict, unlike alternate juror 46. See Tr.p. 69-71, 75, 447.

All criminal defendants have the right to a trial by an impartial jury." *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (citing U.S. Const. amends. VI and XIV). To that end, the jury must render its verdict free from outside influences of all kinds. *Kelly*, 331 S.C. at 141, 502 S.E.2d at 105 (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct.App.1993)). To protect both parties' right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to "elicit such facts as will enable [the parties] intelligently to exercise their right of peremptory challenge." *Woods*, 345 S.C. at 587, 550 S.E.2d at 284. *State v. Coaxum*, 410 S.C. 320, 327, 764 S.E.2d 242, 245 (2014).

In *Coaxum*, the Court held that if a juror's nondisclosure is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is,

death during the late night hours of July 1.

5 The record reveals that potential witnesses were read to the venire during the jury selection, including Jonathan

replace the juror with an alternate, or declare a mistrial. *Cf. id.* (“ ‘Only where a juror’s intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial court inquire into prejudice.’ ” (quoting *Doyle v. Kennedy Heating & Serv., Inc.*, 33 S.W.3d 199, 201 (Mo.Ct.App.2000))). Paralleling the inquiry in cases of intentional concealment, the trial court in the unintentional concealment situation must determine whether the information concealed would have supported a challenge for cause or would have been a material factor in a party’s exercise of its peremptory challenges. *State v. Stone*, 350 S.C. 442, 448, 567 S.E.2d 244, 247–48 (2002) (citing *Woods*, 345 S.C. at 587–88, 550 S.E.2d at 284).

However, “where the failure to disclose is innocent, no inference of bias can be drawn.” *Woods*, 345 S.C. at 589, 550 S.E.2d at 285. Accordingly, the moving party has a heightened burden to show that the concealed information indicates the juror is potentially biased, and that the concealed information would have been a material factor in the party’s exercise of its peremptory challenges. In other words, the moving party must show that it was prejudiced by the concealment because it was unable to strike a potential—and material—source of bias. Our previous decisions have not focused on the need for this prejudice analysis, and the court of appeals has periodically omitted it when considering cases involving a juror’s unintentional nondisclosure during *voir dire*. For example, the court of appeals has previously read *Stone* and its progeny to essentially eliminate the trial court’s ability to remove a juror for an unintentional concealment, no matter how relevant the information disclosed would have been to exercising a peremptory strike:

When a party contends a juror should be removed for failure to disclose information during *voir dire*, *Stone* requires the trial judge to consider two criteria from *Woods*. If the judge finds both of the *Woods* criteria exist, the judge must remove the juror. However, if either of the criteria is absent, the judge may not remove the juror on that basis. Here, we need only look to the absence of the

first criterion to affirm. As in *Stone*, this juror's failure to disclose the information was innocent. Thus, the removal of the juror would have been error.

State v. Burgess, 391 S.C. 15, 19–20, 703 S.E.2d 512, 514–15 (Ct.App.2010) (bold emphasis added) (citations omitted). *State v. Coaxum*, 410 S.C. 320, 328–30, 764 S.E.2d 242, 246–47 (2014).

Here, alternate juror 110 explained that it was innocent nondisclosure due to the fact that she did not know his real name. With the juror's affirmative statements to the trial judge about impartiality, there was not showing that required further steps by reasonable counsel. It was not the situation suggested in *Coaxum* that would have required disqualification and removal by the court due to intentional concealment. Not only has deficient performance not been shown, but *Strickland* prejudice has not been shown because juror 110 did not sit in deliberations so there is no reasonable probability that the result of the proceeding would have been different.

3. Failure to object to autopsy photographs

The record reveals that the State introduced various photographs of the body during the trial during pathologist Dr. Brett Woodard's testimony. Tr.p. 206-208. State Exhibits 26, 27, 28, 29, 30. As represented in his testimony each photograph was described as follows:

State's Exhibit 26 represents the bindings that were on his wrists behind his back. We've separated it, took it off so that we could release the wrists. We took a picture of them as we saw them on that day. State's Exhibit 27 represents him and shows the bindings about his wrists before we cleaned the area. It is substantially as we saw him before we did anything to him. State's Exhibit 28 represents some of the cuts that I spoke of on — this was on the right leg. You can see several cuts on the right leg. State's Exhibit 29 represents the left leg. You can see the cuts on the left leg. State's Exhibit 30 represents the discoloration on the abdomen, which appeared to be a burn.

Tr.p. 207. The exhibits were entered without objection.

The admission of autopsy photographs has been discussed in non-capital murder trials. In

State v. Holder, the defendant alleged the trial court erred in admitting autopsy photographs in a homicide by child abuse case despite the testimony of the doctor who performed the autopsy that while he could explain the victim's internal injuries to the jury without the photos, "he was not sure if he could explain it to their understanding" without the photos. 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009). The Supreme Court affirmed the admission of the photos, noting they demonstrated the victim's injuries in a way the jury, which may have been unversed in medical issues, could easily understand. *Id.* at 290–91, 676 S.E.2d at 697. The Court also noted while the photos were graphic, "there is no suggestion their admission had an undue tendency to suggest a decision on an improper basis." *Id.* at 291, 676 S.E.2d at 697; *but see State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (holding, based on Rule 403, SCRE, the admission of a photo of the victim's dilated anus during autopsy was error because it "did not go to the circumstances of the crime, the characteristics of the defendant, nor to the existence of aggravating circumstances ... [t]he sole purpose of the photo was to insinuate that perhaps there was sexual abuse when, in fact, there was absolutely no evidence of such an assault").

In *State v. Collins*, a defendant was tried for several crimes, including involuntary manslaughter, related to his unrestrained dogs mauling a ten-year-old child to death. 409 S.C. 524, 531–34, 763 S.E.2d 22, 26–28 (2014). The trial court allowed the admission of seven autopsy photos taken by the forensic pathologist. *Id.* at 532–33, 763 S.E.2d at 27. In *Collins*, the "nature and extent" of the victim's injuries was disputed by the defendant, and the photos, while gruesome, clearly showed the Victim's injuries. *Id.* at 532–33, 533 n.3, 763 S.E.2d at 27 n.3. Thus, this Court stated the photos should not be excluded on the ground they were gruesome when the photos were "highly probative, corroborative, and material in establishing the elements of the offenses charged; its probative value outweighed its potential prejudice; and the [court of appeals] should not have invaded the trial court's discretion in admitting this crucial evidence

based on its emotional reaction to the subject matter presented.” *Id.* at 535–36, 763 S.E.2d at 28. Yet, a majority of this Court in *Collins* reasoned the admission of the photos was error, although two of us concluded the error was harmless. *Id.* at 539–40, 763 S.E.2d at 30–31. Nevertheless, we noted “this case was tried in 2009, prior to our decision in *Torres*, where we expressed our concern over the State’s seeming practice of seeking admission of highly prejudicial and inflammatory autopsy photographs.” *Id.* at 539, 763 S.E.2d at 30 (Kittredge, J., concurring).

Recently, in *State v. Nelson*, No. 2021-001356, 2023 WL 5075051, at *5 (S.C. Aug. 9, 2023), the Court concluded that the excessively gruesome colored photographs involving 113 injuries had minimal probative value and a substantial danger of unfair prejudice that outweighed it.

Respondent submits that Applicant’s failure to object was not deficient in light of the record concerning the photographs that were introduced which had evident probative value and minimal prejudicial effect.

4. Failed to object to jail calls

The Applicant contends counsel was deficient in failing to object to the introduction of jail calls. However, the record disputes that counsel failed to object. Counsel Robinson initially objected to the introduction of State Exhibit 40 asserting hearsay and the trial court denied the hearsay motion. Tr.p. 215-217, 221. Counsel further challenged the alleged lack of authentication (Rule 901-902) concerning the calls, citing Rules of Evidence 602(lack of personal knowledge), 601 (competency of witness), 701 (opinion by lay witness) as well as Evidence Rules 1001,1002, 1003. Tr. p. 219. Barton testified in camera about foundation. Tr. p. 222-224. See also Tr.p. 310-313 (Barton describing the system and his knowledge and review of the particular calls).

The trial court denied the subsequent defense motion on the record. Tr. 316-317. Exhibit 40 was admitted. Defense counsel the objected to testimony that voice was Ezra Williams. Court

overruled the objection. Tr.p. 320. Defense objected to “other detectives” recognizing the voice which the trial court sustained as hearsay as to somebody else identifying. Tr.p. 320.

The State moved to play the 2 recording from July 24, 2012 and July 29, 2012. Tr.p. 321. Defense objects. Court notes for record (overruled). Tr.p, 321. State subsequently identified these calls were made to Martha Everett as suggesting need to get an alibi. Tr.p. 333-335.

“[E]vidence must be authenticated or identified in order to be admissible.” **476 *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). A witness with knowledge may authenticate evidence by testifying that “a matter is what it is claimed to be.” Rule 901(b)(1), SCRE. “The authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic.” *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). “The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims.” *Id*⁶

Respondent submits that the Applicant has failed to asset why counsel performance was deficient concerning his timely objections to the admission pf the jail calls.

5. Failed to object to admission of DVD of video from seized DVR.

At trial, State Exhibit 31 and 32 were introduced without objection. (Tr.p. 264-265) as representing what Detective Danny Barton reviewed on the seized DVR system from 3304 Jerry Drive. The DVR had been recovered from a built in closet wall. Tr.p. 254-257. State Exhibits

⁶ *Young v. State*, 696 N.E.2d 386, 389 (Ind. 1998) (“A caller's identity can be established by circumstantial evidence, and need not be proven beyond a reasonable doubt.”); *Johnson v. State*, 699 N.E.2d 746, 749 (Ind. Ct. App. 1998) (“A recording is not admissible unless the voices contained thereon are identified. ... However, circumstantial evidence may be utilized for identification purposes.”); *State v. C.D.L.*, 250 P.3d 69, 78 (Utah Ct. App. 2011) (“Authentication of a telephone caller's identity can be accomplished by combining that caller's self-identification during the call with circumstances surrounding the call.”); *State v. Williams*, 136 Wash.App. 486, 150 P.3d 111, 118 (2007) (“A sound recording, in particular, need not be authenticated by a witness with personal knowledge of the events recorded. Rather, the trial court may consider any information sufficient to *401 support the prima facie showing that the evidence is authentic.”).

14, 15, 16, 17, 33, 35 which were still photographs from the DVD/DVR were introduced without objection. Tr.p. 278-279. The photographs were described and discussed during the testimony. Tr.p. 280-283.

The Applicant does not assert what objection should have been raised concerning this evidence. Respondent submits that sufficient foundation was presented concerning the admissibility of the evidence and its relevance.

6. Counsel should have objected to the alleged prejudicial statements of Investigator Barton at Tr.p. 307 and 355 -356.

During the trial, the following evidence was presented that he now challenges:

Q. Based upon your investigation, what evidence do you have that points to that Mr. Williams was present that night and was an active participant in the armed robbery, kidnaping and possession of a weapon and ultimately the murder and death of C.J. Patel?

A. Obviously we had Zachary Gantt's statement. We spoke with Jeremiah --not Jeremiah. We spoke with Jonathan Johnson who you heard earlier. We have his statement. While he doesn't know what happened, he did put --

ROBINSON : Your Honor , objection. He's vouching for the witness in this case, a previous witness.

Court: Overruled.

Tr.p 307.

Q. Can you please tell the ladies and gentlemen of the jury some of the factors or some of the reasons why you took out the warrants against the defendant for armed robbery, possession of a weapon during the commission of a violent crime, kidnaping and murder?

A. Yes, sir. Based on Zachary Gantt's statement acknowledging his involvement as well as the codefendants involvement in this incident, and one of the codefendants being Ezra Williams. We were able to substantiate Mr. Gantt's, most all the details of the statement that he gave us.

We also spoke with Kizzie Roebuck, who had spoken with Ezra -- you heard from her yesterday. We had her statement.

We had Jonathon Johnson's statement, who put Ezra at the scene during

the time of the incident.

We had Mr. Williams' cell phone records which showed that h□ was pinging off cell towers in the Homeland Park during the time of the incident.

That coupled with the vehicle found a year later, matching the description of the one that was on the video at Kyndra Howell's residence, we had enough evidence to charge Mr. Williams with armed robbery, possession of a weapon during the commission of a violent crime, kidnaping and murder of C.J. Patel.

Tr.p. 354-356. No objection was made to this testimony.

Respondent submits that counsel was not deficient in failing to object. His testimony is a summary of why Investigator Barton took out warrants and reflected evidence that had been presented at trial. Similarly *Strickland* prejudice has not been shown.

7. Failing to move for a mistrial after a hung jury.

“There is a strong presumption trial counsel provided adequate assistance.” *Green v. State*, 351 S.C. 184, 192, 569 S.E.2d 318, 322 (2002). To prove ineffective assistance of counsel, an applicant must show counsel was deficient, and that deficiency prejudiced the applicant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In other words, “the applicant must show trial counsel's performance 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.” *Green*, 351 S.C. at 192, 569 S.E.2d at 322. “A reasonable probability is one sufficient to undermine confidence in the trial's outcome.” *Id.* If a petitioner fails to prove prejudice, an appellate court does not need to consider deficiency. See *Jones v. State*, 332 S.C. 329, 342, 504 S.E.2d 822, 828 (1998) (“Because Jones clearly fails to meet *Strickland* 's prejudice prong, we need not address the first prong of the test.”).

The jury began its deliberations at 11:53 AM. Tr.p. 448. There was a jury question at 1:46 PM requesting the jail phone calls to be replayed. Tr.p. 448-449. Jury returned to deliberations at 2:15 PM. At 3:29 PM another note from the jury was received (Court Exhibit 7) which inquired what they should do if they are unable to reach a verdict. Tr.p. 451. The court

brought the jury in and inquired of the foreperson if they were hopelessly deadlocked and she stated she really did not know. Tr.p. 453, l. 13.

The judge then inquired of counsel and each opined that they thought an *Allen* charge would be appropriate. Tr.p. 453, l. 18-24.

The Court gave the jury a modified *Allen* charge. Tr.p. 454-456. The jury returned to deliberate at 3:49 PM. Tr.p. 456.

At 5:06 PM, the jury sent another note (Court Exhibit 8). This note asserted that they were confused as it is it was appropriate to go with their gut feeling, and another explanation on the way to view circumstantial evidence, Tr.p. 457.

M. & H. The jury returned at 5:09 PM and the court inquired of the forelady. Judge McIntosh then decided to give his general and final instructions again. Tr.p. 459-460. The State and defense counsel Robinson did not have an exception to the decision. Tr.p. 460, l. 1-5. Judge McIntosh then repeated the general instructions to the jury. Tr.p. 460-477. The forelady indicated at the conclusion that she thought it addressed their concerns. Tr.p. 477, l. 6-20. Counsel for the defense and the State did not have objections to the instructions. Tr.p. 477, l. 22- 478, l. 6. The jury began its deliberations at 5:32 PM. At 6:52 PM, the court was advised that the jury had reached a verdict. Tr.p. 478, l. 8.

A trial court should declare a mistrial as a last resort, when all other alternatives have been exhausted. A mistrial is a drastic step, "an extreme measure which should be taken only where an incident is so grievous that the prejudicial effect can be removed in no other way." *State v. Herring*, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009). The trial court was well within its discretion in refusing to *sua sponte* declare a mistrial simply because the jury, after some three and ½ hours of deliberation, announced a possible impasse. The trial court's superior position to observe the courtroom atmosphere, the jury's demeanor, and the tenor and rhythm of the trial

must be given deference. The trial court has several ways to respond to a potentially deadlocked jury, including delivering an Allen charge. In fact, the trial judge has a duty to urge the jury—without pressuring or coercing them—to reach a verdict. *State v. Williams*, 344 S.C. 260, 263, 543 S.E.2d 260, 262 (Ct. App. 2001).

Further, due to the length of time the jury had been deliberating and the court's duty to "urge the jury to agree upon a verdict provided he does not coerce them," the court did not abuse its discretion in giving the charge, making trial counsel's failure to object reasonable under prevailing professional norms. *Id.* at 587, 206 S.E.2d at 870; *State v. Bridges*, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982) ("[T]he conduct of a criminal trial is left largely to the sound discretion of the presiding judge and [appellate courts] will not interfere unless it clearly appears that the rights of the complaining party were prejudiced in some way."); *State v. Taylor*, 427 S.C. at 214, 829 S.E.2d at 727 ("A trial judge has a duty to urge jurors to reach a verdict, but must do so in a way that does not coerce them, eroding their independence and impartiality."); *id.* at 212, 829 S.E.2d at 726 (noting "the trial court's superior position to observe the courtroom atmosphere, the jury's demeanor, and the tenor and rhythm of the trial").

Further, assuming *arguendo* the jury did not indicate it was deadlocked, trial counsel was not deficient for not objecting to the charge because no standard requires a jury to announce it is deadlocked before a court can give an Allen-type charge. In fact, the American Bar Association, in proposing Criminal Justice Standards for a Trial by Jury, has proposed the following:

Standard 15- 5.4. Length of deliberations; deadlocked jury*

(a) *Before the jury retires* for deliberation, the court may give an instruction which informs the jury:

(1) that in order to return a verdict, each juror must agree thereto;

(2) that jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to

individual judgment;

(3) that each juror must decide the case for himself or herself but only after an impartial consideration of the evidence with the other jurors;

(4) that in the course of deliberations, a juror should not hesitate to reexamine his or her own views and change an opinion if the juror is convinced it is erroneous; and

(5) that no juror should surrender his or her honest belief as to the weight or effect of the evidence solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

(b) If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give or repeat an instruction as provided in section (a). The court should not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.

America Bar Association Criminal Justice Standards for Trial by Jury, Standard 15-5.4,

available at

[https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_jurytrial_blk/#5.4)

[archive/crimjust_standards_jurytrial_blk/#5.4](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_jurytrial_blk/#5.4) (last visited 6/2/2022) (emphasis added).⁷

Notably, the ABA standard permits a trial court to give an Allen-type charge *prior to* deliberations. Although South Carolina has not adopted this standard, our appellate courts have not issued any opinions directly contradicting it or otherwise indicating an Allen-type charge may only be given *after* a jury announces it is deadlocked.⁸ In the absence of any South Carolina case contradicting or rejecting this standard, it strains credibility to suggest that a South Carolina criminal defense attorney would be acting *below the prevailing professional norms* in not objecting to an Allen-type charge prior to a jury announcing it is deadlocked when the ABA standard permits a similar charge *prior to deliberations*.

⁷ In addition to being consistent with South Carolina law, the trial court's language was consistent with what is proposed in this ABA standard.

4. **Due Process violations due to the State vacating murder charge against key witness, Zachary Gantt, after allowing him to tell jury that he plead to murder.**

In the final claim, he contends that there was a due process violation when the State vacated Zachary Gantt's plea to murder subsequent to his testimony that he had pleaded guilty to murder. Tr.p. 117, 156. On September 17, 2015, Gantt appeared before Judge McIntosh subsequent to the August 10-12 trial. In that proceeding, the State reduced the original murder charge to voluntary manslaughter with a recommendation of 22 years. *State v Gantt*, September 17, 2015, Tr.p. 3, l. 19-22. Judge McIntosh sentenced him to 22 years concurrent on voluntary manslaughter, kidnapping and armed robbery.

M
#17
Respondent respectfully submits that this is not a due process violation. At the time of the trial, he had pled to murder and sentencing had been deferred. After the trial and the not guilty verdict of the Applicant on murder, the entry of the revised plea was made before the trial judge.

His suggestion fails to create a due process violation.

IV.

Applicant alleges that trial counsel failed to perfect an appeal because he failed to provide proof that a transcript was delivered, as required by Rule 207 of the South Carolina Appellate Court Rules. Counsel has a constitutionally imposed duty to consult with defendant about appeal when there is reason to think either (1) a rational defendant would want to appeal, or (2) this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id.

528 U.S. at 484, 120 S. Ct. at 1038.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Id. at 119, 108 S.E.2d at 39. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 40.

Respondent requests an evidentiary hearing be held to resolve the questions of fact raised by this allegation. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

VI.

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

VII.

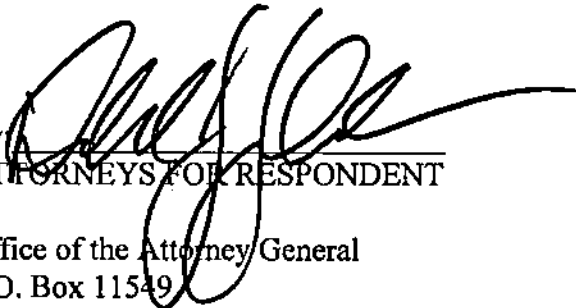
WHEREFORE, Respondent requests an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether Applicant is entitled to belated appellate review pursuant to the procedure outlined in White v. State, 263 S.C. 110, 108 S.E.2d 35.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

'23 AUG 21 PM4:15:55
Anderson, SC C0C, CP/GS

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

_____, 2023

'23 AUG 21 PM4:16:10
Anderson, SC COC, CP/GS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Ezra Rysunn Williams, #345989)

2016-CP-04-02661

Applicant,)

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)

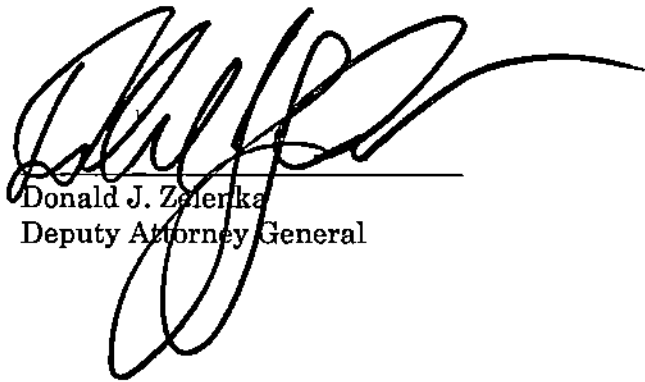
Respondent.)

1. I am counsel for Respondent in the above-captioned action.

2. I have this day served a copy of the **Respondent's Amended Return by personal service** in the above-captioned matter on the following attorney via email on August 20, 2023 and personal hand delivery service at the Anderson County Courthouse on August 21, 2023.

Susannah Ross
susannah@rossenderlin.com
Counsel for Applicant

DATED this 21st day of August, 2023.



Donald J. Zelenka
Deputy Attorney General

'23 AUG 21 PM4:16:16
Anderson, SC COC, CP/6S

State of South Carolina
County of Anderson

Court of Common Pleas

Ezra Rysunn Williams	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2016-CP-04-02661
	)	
State of South Carolina	)	
	)	
<u>Defendant.</u>	)	

August 22, 2023
Anderson, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge.

A P P E A R A N C E S:

Susannah Ross, Esquire
Attorney for the Applicant

Donald Zelenka, Deputy Attorney General
Attorney General's Office

Lisa Scott
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Applicant's - letter		X
1	State's		X
2	State's		X

- - -

P R O C E E D I N G S

* * * * *

THE COURT: All right. Ms. Ross, are you ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: State ready to proceed?

MR. ZELENKA: State is, Your Honor.

THE COURT: We're on the record in 2016 -- 2016-CP-04-02661, *Ezra Rysunn Williams, the Applicant in this PCR hearing, v. The State of South Carolina*. Mr. Williams is represented by Susannah Ross, an attorney from Greenville. Mr. Don Zelenka is representing the State of South Carolina. This hearing is being held pursuant to the application for relief filed by Mr. Williams. Mr. Zelenka, I'll hear from you.

MR. ZELENKA: Thank you, Your Honor. And I believe I provided you the other day a copy of the members' return.

THE COURT: I have that.

MR. ZELENKA: Okay. The Applicant, Ezra Williams, was incarcerated in the South Carolina Department of Corrections pursuant to the Anderson County Court who ordered the commitment. He was indicted by the Anderson Grand Jury in 2012 for

1 armed robbery, the possession of a weapon during a
2 violent crime, kidnapping, and murder.

3 Scott Robinson represented him, but Deputy
4 Solicitors Rame Campbell and Assistant Solicitor
5 Brantly Haigler, both of the Tenth Circuit
6 Solicitor's office presented the case.

7 On August 10th through 12th, 2015, the
8 Applicant proceeded to trial before Judge McIntosh
9 and a jury. He was found guilty of armed robbery,
10 possession of a weapon, and kidnapping as indicted,
11 but he was not found guilty of murder.

12 The applicant was sentenced to consecutive
13 sentences of 30 years for armed robbery, 25 years
14 kidnapping, and he was sentenced to a concurrent
15 term of 5 years for the possession of a weapon
16 during the commission of a violent crime.

17 Mr. Robinson filed a timely notice of appeal to
18 the Appellate Courts on October 14, 2016. The Court
19 of Appeals dismissed the Applicant's appeal because
20 Mr. Robinson failed to provide proof that a
21 transcript had been delivered as required under Rule
22 207 of the South Carolina Appellate Court Rules.

23 We filed an application for post-conviction
24 relief on December 1, 2016, directing -- claiming
25 that his rights with the direct appeal had been

1 deprived of seeking relief under *Wyatt v. State*
2 because the (inaudible) was failed to be protected.

3 The State filed a return on September 12, 2017,
4 requesting a hearing on whether he knowingly and
5 voluntarily waived his right to an appeal.

6 Ms. Ross represented the Applicant at the time
7 following an amended application on August 28, 2018,
8 alleging that Robinson was constitutionally
9 ineffective in failing to serve notice of alibi,
10 present witnesses, and supporting evidence at trial
11 by failing to investigate or review evidence
12 available to him, failing to make certain
13 evidentiary objections at trial, failing to move for
14 a mistrial when the jury indicated during
15 deliberations that it could not reach a unanimous
16 verdict, and that his due process rights were
17 violated when the State vacated the murder charge
18 against Mr. Williams' codefendant, Zach Gantt, after
19 the codefendant had testified at Williams' trial,
20 that he had pled guilty to murder.

21 The State is ready to proceed, Your Honor.

22 THE COURT: Ms. Ross.

23 MS. ROSS: Thank you, Your Honor. May it
24 please the Court?

25 Those were the allegations in the amended

1 allegations. This was a case where there were a
2 number of codefendants and two testified at
3 Mr. Williams' trial, one of them being Zachary
4 Gantt. He testified fairly consistent with the
5 third statement that he had made to law enforcement.
6 The prior two statements told a different story.
7 And he testified at the questioning by the Solicitor
8 on page 117, line 18, and 118, line 7, and page 156,
9 line 19.

10 Over and over again he was telling that jury
11 that he had already pled guilty to murder when he
12 presented that testimony, but that was really the
13 harshest evidence against Mr. Williams.

14 The jury had questions. They were undecided.
15 I direct your attention to that at the end.

16 One other codefendant witness, Jonathan
17 Johnson, testified, but it didn't clearly implicate
18 Mr. Williams. At page 183, he said that he had gone
19 over to Kyndra's, and this is the codefendant's
20 home, the victim was robbed and held against his
21 will.

22 So he said that he was at Kyndra's and some guy
23 opened the door, don't know his name, and haven't
24 seen him since. And that was his testimony while
25 Mr. Williams was sitting at the defense table in the

1 courtroom. The codefendant said, "I haven't seen
2 this person since."

3 So I don't think there was overwhelming
4 evidence in this case. And then, again, a lot of it
5 was based on one witness, who the Solicitor informed
6 the jury had pled guilty to murder. And, in fact,
7 that -- that plea was vacated and he ended up
8 sentenced to voluntary manslaughter for a much, much
9 lesser sentence and faced much less. And that's our
10 due process violation.

11 We base that on a number of cases that I'll
12 argue at the end, but right now I just have *Poore v.*
13 *Texas*, which was a 1957 case that sets up this
14 situation where -- if I can approach ---

15 THE COURT: Yes.

16 MS. ROSS: --- where if the State presents
17 evidence to a jury that's untrue, that's a due
18 process that denied Mr. Williams his fair trial.

19 There are other cases. I should know how to
20 pronounce it. It's *Napue v. Illinois*, 360 U.S. 264,
21 page 275. It's a seminal case on granting relief
22 based on the prosecution's failure to correct all
23 the testimony. And that's a 1959 case.

24 And there's *Riddle v. Osmond*, *Simmons v. State*.
25 There are a number of cases, which I can address at

1 the end, but I'd also like to offer a report.

2 I hired a forensic cell phone expert, Tom
3 Slavianski, on this case a number of years ago to
4 review some phone maps that were created for this
5 trial in the Solicitor's file, but were not actually
6 produced during the trial and put in evidence, but
7 the maps did, I believe, form the basis of some
8 testimony by Investigator Ben Garden in the case.
9 And his finding on that was that best practices
10 weren't used.

11 MR. ZELENKA: Object. He doesn't say that.

12 THE COURT: All right.

13 MS. ROSS: I'll hand this up and allow you to
14 determine. He -- he had some conclusions on page 3
15 that he provides. Finding a number -- numerous
16 faults and errors in the report outlined above. And
17 I would offer that at this time as Applicant's
18 Exhibit 1.

19 MR. ZELENKA: Your Honor, I don't have any
20 objection for the -- this exhibit coming in. My
21 preference obviously would be for the expert witness
22 to come and explain why he got to those conclusions,
23 but for the limited purpose of this being
24 introduced, I don't have an objection.

25 THE COURT: All right. Thank you.

1 MS. ROSS: Thank you. And I too would love for
2 that expert to be available, but he's told me he's
3 not available for the next six months, so I decided
4 to present at this time. So we would go ahead and
5 call Zachary Gantt.

6 THE CLERK: Please come forward and raise your
7 right hand.

8 THE WITNESS: (Complying.)

9 THE CLERK: Do you swear or affirm to tell the
10 truth, the whole truth, and nothing but the truth?

11 THE WITNESS: I do.

12 THE CLERK: Okay. You can take the witness
13 stand.

14 THE WITNESS: (Complying.)

15 ZACHARY GANTT,
16 having been produced and first duly sworn as a
17 witness on behalf of the Applicant, then testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. ROSS:

21 Q. Hey, there. Good afternoon, Mr. Gantt. Now,
22 are you aware of why you're here? Have we discussed
23 that?

24 A. Yes, ma'am.

25 Q. And you testified at Ezra Williams' trial,

1 correct?

2 A. Yes, ma'am.

3 Q. And at some point, you sent me a letter about
4 that prior testimony. Do you recall that?

5 A. Yes, ma'am.

6 Q. And do you recall what the general -- what you
7 said generally in that letter or what the gist of
8 that letter was?

9 A. Basically, saying that Mr. Williams was never
10 really involved with the -- with the case.

11 Q. Okay. Now, at that trial, you testified that
12 he was involved; is that correct?

13 A. Yes, ma'am.

14 Q. Now, was that true, that prior testimony at
15 Mr. Williams' trial?

16 A. No, ma'am.

17 Q. Now, why -- why did you testify like that? Can
18 you just explain to the Court why you testified
19 untruthfully at Mr. Williams' trial?

20 A. Well, I basically was forced into it, like
21 tricked into it. I testified saying that he was
22 part of the case, and he really wasn't.

23 Q. And how old were you when the incident
24 occurred?

25 A. I was only 17.

1 Q. Were you treated as an adult or as a juvenile?

2 A. I was held as an adult.

3 Q. Okay. And how many statements did you end up
4 giving to law enforcement before you testified at
5 Mr. Williams' trial? Do you recall?

6 A. I want to say three.

7 Q. Now, the earlier ones did not implicate
8 Mr. Williams, did they?

9 A. No, ma'am.

10 Q. Now, what was different about the third one
11 that implicated Mr. Williams?

12 A. The third one was titled. You see what I'm
13 saying? And it was words basically put in my mouth.

14 Q. Okay. Did you type it?

15 A. No, ma'am.

16 Q. Who typed it?

17 A. The detective.

18 Q. Okay. And what made you end up signing that
19 typed up statement?

20 A. (No response.)

21 Q. Did you feel intimidated or pressured?

22 A. Yeah, basically.

23 Q. But that statement wasn't the truth?

24 A. No, ma'am.

25 Q. Now, let's talk a little bit about just -- just

1 -- I caught a note there. Let me switch back to the
2 transcript. I want you to look at line 18 on page
3 117 that I'm going to show you.

4 When you got on the stand at Mr. Williams'
5 trial, what was the first question the Solicitor
6 asked you?

7 A. Did I pled guilty.

8 Q. To what?

9 A. To murder, possession of a weapon during a
10 violent crime, armed robbery, and violent
11 kidnapping.

12 Q. So that was the first thing the jury heard and
13 what was your response?

14 A. Yes.

15 Q. And that was the first thing the jury heard
16 from you. I'd ask you to turn the page to 118.
17 I'll turn it for you. Sorry about that.

18 Okay. At line 7. What -- what did he ask you
19 there at line 7?

20 A. When I pled, had any of my charges been
21 reduced.

22 Q. And you said?

23 A. No.

24 Q. And then just at 156, line 9. Excuse me. 156,
25 line 12. They're asking you about going and

1 locating the body. What did they ask you there and
2 when you did this?

3 A. "Was and -- anything promised to you to get
4 this?" "No."

5 Q. Okay. And then they go on and ask what?

6 A. "Did they offer you anything, any type of --
7 what is that -- leniency?"

8 Q. Uh-huh.

9 A. "No."

10 Q. Now, just what was the -- what is the truth
11 about Ezra's involvement in this incident?

12 A. Like I said, he ain't have no involvement in
13 it. Basically, he was supposed to come pick me up
14 so we were supposed to go to a party or something
15 like that. But like I told you before, I told him
16 that I had something going on.

17 Q. But he did come over there to pick you up?

18 A. Yeah, he came to pick me up, but he never -- he
19 never stayed.

20 Q. But he never stayed. So was he involved in any
21 of the -- the torture that you talk about ---

22 A. No.

23 Q. --- or the killing?

24 A. No, ma'am.

25 Q. Now, there was some testimony that you had

1 spoken to Ezra about hiring -- him hiring an
2 attorney to represent you. Did -- did Ezra ever
3 tell you that he was going to hire an attorney to
4 represent you?

5 A. I never talked to him about nothing like that.

6 Q. Did you ever talk to him at the jail after your
7 arrest?

8 A. No, ma'am.

9 MS. ROSS: I have nothing further.

10 THE COURT: Mr. Zelenka.

11 CROSS-EXAMINATION

12 BY MR. ZELENKA:

13 Q. Mr. Gantt, how are you today?

14 A. I'm alright.

15 Q. You know what your oath is, don't you? What
16 your oath is?

17 A. What my oath is?

18 Q. Yeah, when you raised your right hand and swear
19 to tell the truth?

20 A. Yes, sir.

21 Q. Do you believe in your oath?

22 A. Yes, sir.

23 Q. Okay. On September 17th of 2015, you came --
24 after the trial, you came back before Judge McIntosh
25 and you were allowed to remove your plea to murder

1 and your plea became voluntary manslaughter for a
2 lesser sentence. Do you remember that?

3 A. Yes, sir.

4 Q. And you pled guilty to that. Do you know why
5 that revision was offered by the Solicitor's office
6 of your plea?

7 A. (No response.)

8 Q. You're saying -- you're going to have to speak.

9 A. No. Can you repeat that?

10 Q. Well, do you know -- do you know why the State
11 offered up for you to plead to a lesser offense
12 rather than the original murder plea that you plead
13 to on November 17th and 18th of 2014?

14 A. No, sir.

15 Q. You don't? Okay. Was -- when you testified
16 before the jury under -- under oath, you had pled
17 guilty to murder at that time, correct?

18 A. Yes, sir.

19 Q. And when you pled guilty to murder, did you
20 know that you were subsequently going to be allowed
21 to plead guilty to voluntary manslaughter?

22 A. No, sir.

23 Q. You did not know that, did you?

24 A. No, sir.

25 Q. And that had not been offered by the State or

1 by law enforcement at -- prior to your testimony and
2 your earlier guilty plea; isn't that correct?

3 A. Yes, sir.

4 Q. Yes. It was only offered to you after the
5 testimony at the trial occurred and Ezra Williams
6 did not receive a conviction for murder, correct?

7 A. Repeat that one more time.

8 Q. Okay. That was a little confusing even for me.
9 It was not offered until a period of time after Ezra
10 Williams had been found not guilty of murder,
11 correct?

12 A. Yes, sir.

13 Q. And based upon what your defense lawyer and the
14 Solicitor's office discussed, they thought it would
15 be better and fairer to you, who was not the trigger
16 person, to not be sentenced to murder. And you were
17 told essentially that, weren't you?

18 A. Yes, sir.

19 Q. Did you say "yes, sir"?

20 A. Yes, sir.

21 Q. Okay. Now, let's go a little bit. The
22 statement you gave to law enforcement, the third
23 statement that was consistent with your sworn
24 testimony at trial, who did you say shot the victim
25 in that situation? Who did you tell the judge under

1 oath was the person who -- who killed and shot the
2 victim, Mr. Patel?

3 A. I mean, back then I said Mr. Williams.

4 Q. Okay. That wasn't the first time you said it.
5 You had said it previously, too. You had said it in
6 your statement, didn't you?

7 A. Yes, sir.

8 Q. Okay. And so when you went into court, you had
9 already said that Mr. Williams was involved.
10 Mr. Williams was actually the trigger person in the
11 case that caused the death of Mr. Patel, correct?

12 A. Yes, sir.

13 Q. All right. Now, describe to me your role
14 concerning the abduction of Mr. Patel. What did you
15 do on July 1st through July 2nd? What did you do?

16 A. I mean, I helped kidnap him.

17 Q. Pardon me?

18 A. I said I helped -- I helped kidnap him.

19 Q. You helped kidnap him, Mr. Patel, from whose
20 house?

21 A. Kyndra.

22 Q. Excuse me?

23 A. Kyndra.

24 Q. Okay. From -- how did you pronounce that
25 again?

1 A. Kyndra.

2 Q. From Kyndra's house. And Kyndra had already
3 gotten Mr. Patel to come to her house for what
4 reason?

5 A. I couldn't really tell you that part. I just
6 knew that he came over there.

7 Q. Okay. And when you went over there and you
8 told Mr. Gantt that you were into something, what
9 did you think was going to go on?

10 A. I just thought it -- he was going -- he was
11 going to give up what we asked and that was it.

12 Q. Going to give up what you asked, which meant
13 give up money?

14 A. Yes, sir.

15 Q. Give up his PIN number, correct?

16 A. Yes, sir.

17 Q. Anything else he was going to give up?

18 A. No, sir.

19 Q. And he wasn't going to give it up willingly,
20 was he?

21 A. Not after we asked.

22 Q. Okay. And while that was occurring, were you
23 at Kyndra's house being part of the beatings?

24 A. Yes, sir.

25 Q. Okay. Were you part of the stabbings?

1 A. Yes, sir.

2 Q. Part of the torturing that occurred on
3 Mr. Patel?

4 A. Yes, sir.

5 Q. And when did Mr. Gantt get there?

6 A. When who?

7 Q. Excuse me. You're Mr. Gantt. When did Ezra
8 Williams get there?

9 A. It was nighttime I want to say.

10 Q. Nighttime when he got there?

11 A. Yes, sir.

12 Q. Okay. So he came to Kyndra's house at night;
13 is that correct?

14 A. Yeah, but he was only coming to pick me up.

15 Q. Coming to pick you up. What had occurred
16 before he was coming to pick you up?

17 A. You said what had occurred?

18 Q. Yeah.

19 A. The torturing and all of that had occurred by
20 then.

21 Q. Was the victim still at Kyndra's house?

22 A. Yeah, he was still there.

23 Q. Okay. What happened next?

24 A. After what?

25 Q. After Mr. Gantt came there?

1 A. He came -- like I said, he came and picked me
2 up, but I had done told him I had something going
3 on, so he left.

4 Q. Okay. So you're not saying he didn't stay?

5 A. No. I'm saying that -- yeah, he didn't stay.
6 He left.

7 Q. Okay. That's not what you said in court, is
8 it?

9 A. No.

10 Q. Okay. What did you say in court?

11 A. (No response.)

12 Q. Under oath?

13 A. That he was -- that he was there.

14 Q. That he was there. When you spoke in court
15 about him being there, was Mr. Patel already bound
16 up?

17 A. Yes, sir.

18 Q. Did Ezra see that?

19 A. I mean, that's what I originally said that
20 he -- that he did, but he didn't.

21 Q. But now you're saying he didn't?

22 A. Yeah, he wasn't ---

23 Q. So he didn't ---

24 A. --- he wasn't in the house.

25 Q. So your story now is he didn't even see

1 Mr. Patel?

2 A. Yeah, he wasn't in the house.

3 Q. Are you saying he didn't know anything about
4 Mr. Patel being in there?

5 A. Yes, sir.

6 Q. Now, when you testified at trial, you had
7 Mr. Williams being an intimate part of the continued
8 kidnapping, correct?

9 A. Yes, sir.

10 Q. And who did you say carried him out to the area
11 where the car and body was left -- the body was
12 left?

13 A. I think I said it was ---

14 Q. Huh?

15 A. I think I said it was me and somebody else.

16 Q. Okay. And -- and where did you say Ezra was
17 when you went out there?

18 A. In the original -- in the original, I said he
19 was -- he was out there in the woods.

20 Q. Okay. Did he indicate that the person should
21 be killed?

22 A. Originally, I said no.

23 Q. Okay. Well -- well, who -- who did the
24 shooting out there? Who shot Mr. Patel?

25 A. The man that shot him, he's dead himself.

1 Q. Pardon me?

2 A. The man who shot him is dead himself.

3 Q. Who is that?

4 A. William Jeffery.

5 Q. Why didn't you say that in court?

6 A. Because I was -- I was bribed to say something
7 different.

8 Q. You were what?

9 A. I was bribed to say something different.

10 Q. By whom?

11 A. At the time it was William Jeffrey.

12 Q. Did law enforcement know that?

13 A. Did law enforcement? No. But the law
14 enforcement did come in, coerce me into saying
15 something -- some other things themselves.

16 Q. What was that?

17 A. Basically, what was typed on that paper.

18 Q. Okay. But then you -- you, under oath, said
19 something different; is that true?

20 A. Yeah.

21 Q. Okay. Did you ever tell law enforcement that
22 you were not telling the truth when you testified?

23 A. I can't remember.

24 Q. You don't remember if you ever told law
25 enforcement that you weren't telling the truth when

1 you testified?

2 A. It's been a long time since then.

3 Q. Okay. How close are you to Ezra Williams?

4 A. I never really knew him.

5 Q. Huh?

6 A. I never really knew him too good.

7 Q. You never knew him?

8 A. Not that good.

9 Q. Have you ever spent time in jail with him?

10 A. Only besides this situation right here.

11 Q. Okay. Never at the Department of Corrections?

12 A. No, sir.

13 Q. Did you have any communications at all with

14 Ezra Williams while you're in custody in the

15 Department of Corrections?

16 A. No, sir.

17 Q. He never wrote you? You never wrote him?

18 A. No, sir.

19 Q. You never told him that you lied when you

20 testified and you wanted to make it right?

21 A. No, sir.

22 Q. Did you tell anybody else to do that on your

23 behalf?

24 A. No, sir.

25 Q. Yet when you're under oath at trial facing the

1 risk of perjury, you gave a much different version,
2 correct?

3 A. Yes, sir.

4 Q. You put the gun in the hand of Mr. Williams,
5 correct?

6 A. Yes, sir.

7 Q. Why did you do that?

8 A. Once again, I was bribed and forced.

9 Q. Okay. How -- how -- how were -- how were you
10 threatened by that individual?

11 A. The one with ---

12 Q. The one you say caused you to make alleged
13 false statements at trial?

14 A. I was bribed by him.

15 Q. Maybe I don't understand what you're saying.

16 A. Bribed. Like I was -- I was given money to do
17 it.

18 Q. Okay. How much money were you given?

19 A. It was -- it was a good bit.

20 Q. What's a good bit?

21 A. It was like 5,000 or a little more.

22 Q. So you -- \$5,000?

23 A. Or a little bit -- it might've been a little
24 more.

25 Q. Okay. So -- and you're given that at what

1 time?

2 A. I was given nothing.

3 Q. Huh?

4 A. Like probably a couple of days before I even
5 got locked up.

6 Q. So you were given money to -- by who again?

7 A. William Jeffrey.

8 Q. William Jeffrey. And who is that individual?
9 How is he involved in this case?

10 A. He's -- he's deceased now, but he's the one
11 that played the big role in this case.

12 Q. Okay. When did he die?

13 A. Since I've been locked up.

14 Q. Okay. How did you get the money?

15 A. Hand to hand.

16 Q. He handed it to you?

17 A. Hand to hand.

18 Q. Okay. And when you were locked up, did you
19 have any more communication with him about that?

20 A. No, sir.

21 Q. What did he tell you to say?

22 A. Basically -- he basically told me to put
23 Mr. Williams in the place of everything that he did.

24 Q. Okay. Did you ever tell that to law
25 enforcement?

1 A. No, sir.

2 Q. Did you ever tell that to the jury?

3 A. No, sir.

4 Q. Could you have?

5 A. Probably -- probably so.

6 Q. Nothing stopped you from telling the truth, did
7 it?

8 A. I mean, being bribed. Besides giving me money,
9 no.

10 Q. No? Nothing stopped you?

11 A. I could've -- I could've told them what he did,
12 but I thought about the money.

13 Q. Okay. So it's all about the money. And you
14 understand that accepting a bribe is subordination
15 of perjury and can, if proven beyond a reasonable
16 doubt, cause you some issues. Do you understand
17 that?

18 A. Now I do.

19 Q. You didn't before?

20 A. No, sir.

21 Q. You thought you could just go into court and
22 lie so much that you risk putting somebody in jail
23 for the rest of their life? You didn't think there
24 could be consequences for that?

25 A. In the back of my mind, at the -- at the time

1 it went on, I thought about it.

2 Q. And you don't think there would be consequences
3 if you come into this courtroom room and lie to get
4 somebody out of jail? You don't think there will be
5 consequences for that?

6 A. Yes, sir.

7 Q. Pardon me?

8 A. Yes, sir.

9 Q. Are you saying "yes, sir"?

10 A. Yes, sir.

11 Q. Okay. Did you testify at any other trials?

12 A. I think one other one.

13 Q. One other one?

14 A. If I'm not mistaken.

15 Q. Okay. What did you say in that other trial
16 about anyone's guilt? Was it the same way you
17 testified in the trial against this defendant?

18 A. I want to say it was. I can't remember that.

19 Q. You don't remember?

20 A. I can't remember that.

21 Q. Mr. Gantt, you were given an opportunity by the
22 State of South Carolina to plead to a sentence and a
23 conviction after you had already acknowledged you
24 were guilty of murder; is that correct?

25 A. Yes, sir.

1 Q. Are you now saying you entered that sentence
2 for voluntary manslaughter based upon your own lies
3 that you did in court? Is that what you're telling
4 this Court?

5 A. Yes, sir.

6 MR. ZELENKA: Court's indulgence. Thank you,
7 Your Honor. No further questions.

8 THE COURT: Redirect.

9 MS. ROSS: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. ROSS:

12 Q. Now, you mentioned Chill Will in your testimony
13 at the trial, didn't you? Do you recall that?

14 A. If the lawyers say I did.

15 Q. I'll refer you to page 126, line -- starting at
16 line 7, 8, 9.

17 A. Yes, ma'am.

18 Q. Now, so it's -- it's not like the State had
19 never heard you mention Chill Will, is it?

20 A. Yeah, they heard me mention him.

21 Q. Hadn't you mentioned -- had you mentioned him
22 in prior statements to the law enforcement, or do
23 you recall?

24 A. I can't really recall.

25 Q. Your testimony at Mr. Williams' trial was

1 consistent with a typed statement; is that correct?

2 A. Yes, ma'am.

3 Q. Was there ever a recording of that statement
4 from words coming out of your mouth?

5 A. No, ma'am.

6 Q. You simply signed what the State gave you?

7 A. Yes, ma'am.

8 Q. And before your testimony in front of
9 Mr. Williams, didn't you practice with the State on
10 what to say? Did you review your testimony?

11 A. Yes, ma'am.

12 Q. Did you feel like that you were free to tell
13 the truth that Ezra wasn't guilty at the time of
14 your testimony before?

15 A. Not really, I didn't. I didn't -- I didn't
16 even say I felt free because, you know, every --
17 every -- every time I kind of explained that I ain't
18 remember something, they would kind of bring it up.
19 So, basically, it was like they was trying to force
20 me to remember things that I didn't remember.

21 Q. Things that implicated Ezra Williams, correct?

22 A. Yes, ma'am.

23 Q. Now, there was -- you were arrested because you
24 were seen on a video at Kyndra's house. Did anyone
25 know that that camera was there? Did you know that

1 camera was there before you were arrested?

2 A. No, ma'am.

3 Q. But that was the basis -- your family, everyone
4 knew that was why you got brought into this was
5 because of the video?

6 A. Yes, ma'am.

7 Q. All right. Are you telling the truth today?

8 A. Yes, ma'am.

9 MS. ROSS: Nothing further.

10 THE COURT: Recross.

11 MR. ZELENKA: Just one.

12 RECROSS-EXAMINATION

13 BY MR. ZELENKA:

14 Q. You said you did not feel free to tell the
15 truth at the time of the trial, if I understood what
16 you just said?

17 A. Yes, sir.

18 Q. But you had already received the \$5,000?

19 A. Yes, sir.

20 Q. So you could've said anything at trial and you
21 still have that money, right?

22 A. Correct.

23 Q. There weren't any additional threats out to you
24 or anything like that to cause you not to tell or
25 not to say what the truth was at that trial,

1 correct?

2 A. Correct.

3 MS. ROSS: Just -- just quickly.

4 FURTHER REDIRECT EXAMINATION

5 BY MS. ROSS:

6 Q. However, you were -- you were facing sentencing
7 and you could've gotten a life sentence, right?

8 A. Yes, ma'am.

9 Q. Did you feel like the Solicitor and the State
10 and the investigators were accepting the test -- the
11 statements you gave before when you denied Ezra's
12 involvement?

13 A. Can you repeat that one more time?

14 Q. Did they seem to accept the statements that you
15 made when you said Ezra was not involved, those
16 first statements?

17 A. No, ma'am.

18 MS. ROSS: All right. Nothing further.

19 THE COURT: Mr. Zelenka, I'll give you an
20 opportunity for further questioning if you wish.

21 MR. ZELENKA: No -- no further questions.

22 THE COURT: All right. Thank you. You can
23 step down, Mr. Gantt.

24 (Witness excused.)

25 THE COURT: Ms. Ross, call your next witness.

1 MS. ROSS: (No response.)

2 THE CLERK: Please come forward and raise your
3 right hand.

4 THE APPLICANT: (Complying.)

5 THE CLERK: Do you swear or affirm to tell the
6 truth, the whole truth, and nothing but the truth?

7 THE APPLICANT: Yes, ma'am.

8 THE CLERK: And if you could please take the
9 witness stand.

10 THE APPLICANT: (Complying.)

11 EZRA WILLIAMS,
12 having been produced and first duly sworn as a
13 witness on behalf of the Applicant, then testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q. Hi. Please speak loudly and clearly so we can
18 all understand you.

19 Now, Mr. Williams, you understand you have a
20 substantial sentence here. I think 50 years; is
21 that correct?

22 A. Fifty-five.

23 Q. Fifty-five years. However, at the PCR, the
24 relief is that you would start over again facing
25 armed robbery, kidnapping, and I think there

1 might've been a burglary, all over again?

2 A. Yes, ma'am.

3 Q. And you still wish to go forward?

4 A. (Nonverbal response.)

5 Q. Now, I'm just going to go through some
6 allegations. Did -- did you request or desire to
7 appeal your case?

8 A. Yes, ma'am.

9 Q. And did your family retain Scott Robinson to do
10 that appeal?

11 A. Yes, ma'am.

12 Q. I'm going to show you this letter. Do you
13 recall seeing that, or can you tell the Court what
14 that is?

15 A. Yes, ma'am. I remember it.

16 Q. Okay. And -- and what's the gist of what it
17 says?

18 A. Saying my family and I began to do my direct
19 appeal.

20 Q. Okay. Did he ever perfect that direct appeal?

21 A. No, ma'am.

22 Q. And it was because he failed to order a
23 transcript; is that correct?

24 A. Yes, ma'am.

25 THE COURT: Lawyers approach.

1 (Sidebar discussion.)

2 THE COURT: I'm going to instruct the bailiffs
3 if you would to take Mr. Gantt. He's being
4 released. Check with the attorneys. He's not
5 required for any further testimony, so let's take
6 him back.

7 (Mr. Gantt left the courtroom.)

8 THE COURT: Ms. Ross.

9 BY MS. ROSS:

10 Q. Just -- so you never got -- you wanted an
11 appeal, you asked for an appeal, and your case was
12 never appealed?

13 A. Yes, ma'am.

14 Q. All right. Now, just moving on. You also had
15 at least a partial alibi defense; is that correct?

16 A. Yes, ma'am.

17 Q. Can you tell the -- the Court about that?

18 A. It was -- the day that all of this was
19 happening, I believe the kidnapping had just started
20 around 7:00, and I happened to be at Cicis Pizza
21 with my family and my daughter.

22 And after that, we went to my child's mother's
23 house and stayed there for a while. Probably till
24 maybe, if I'm can remember correctly, about 9:00ish.
25 And then that's when Mr. Gantt called.

1 Q. Okay. Now, let's just talk a little bit about
2 when Mr. Gantt called. Did you -- did you
3 eventually go over to Homeland Park?

4 A. Yes, ma'am.

5 Q. Now, when you went over there, were you part of
6 the kidnapping or armed robbery?

7 A. No, ma'am.

8 Q. Did you see Mr. Patel at all?

9 A. Never seen him.

10 Q. Did -- did you by any chance know there were
11 cameras on that house?

12 A. No.

13 Q. And -- okay. And as far as an alibi, do you
14 know -- are you aware of whether Scott Robinson,
15 your lawyer, ever pursued your alibi defense?

16 A. He did -- I bought it up, but he never pursued
17 it?

18 Q. What did he say about it, or did he tell you --

19 A. I can't remember the real direct reason that he
20 gave me.

21 Q. Did -- do you know if he ever served notice of
22 an alibi defense or anything?

23 A. No. I'm pretty sure he never did any of that.

24 Q. Okay. As far as other investigations, do you
25 think he investigated your case as much as he should

1 have?

2 A. No, ma'am.

3 Q. I'm going to refer you to page -- I have it
4 correctly down here -- 61, line 6.

5 Essentially, there was a DVR video. Do you
6 remember anything about that in your trial?

7 A. Yes, ma'am.

8 Q. And Mr. Robinson had moved to have it not come
9 in because he hasn't reviewed it; is that correct?

10 A. Yes.

11 Q. And is his motion to have that held back
12 granted or denied? Do you know or can you tell from
13 there?

14 A. What page did you say?

15 Q. I think it's line 6.

16 A. "I'm denying your motion." It was denied.

17 Q. Okay. So the issue was that -- he said -- he
18 didn't have -- he didn't review evidence against you
19 in your trial, but it came in anyway because the
20 judge found that Mr. Robinson should've actually
21 reviewed it?

22 A. Yes, ma'am.

23 Q. All right. Now, there were a lot of phone
24 records and -- that came in your case; is that
25 correct?

1 A. Yes, ma'am.

2 Q. And in those phone records, there were a lot of
3 calls I believe from Kyndra to you?

4 A. Yes, ma'am.

5 Q. And did you -- how long were those calls? Did
6 you pick up any of those calls?

7 A. The majority were like under 32 seconds.

8 Q. And -- and page 335 and 336, there's some
9 testimony by Investigator Danny Barton about his
10 questioning Martha Everett. And if you could just
11 read that to yourself. I just have a question based
12 on 335. Just kind of...

13 A. Okay.

14 Q. And then he's talking about going to see her.
15 And then on page 336, what does he say about your
16 phone pinging?

17 A. "The cell phone has been pinging off Homeland
18 Park cell phone towers all night long."

19 Q. Now, do you recall the trial at all, like his
20 testimony? What -- what's happening at the trial?

21 A. What ---

22 Q. Let me rephrase that. Was the transcript --
23 did Scott Robinson ever say "object" to that
24 testimony saying you're not an expert in phone or
25 what -- what are you basing this on? Was there any

1 kind of objection by Mr. Robinson to that testimony?

2 A. I don't believe so.

3 Q. And did he hire an expert or anything to take a
4 look at the phone records and see if they were
5 accurate?

6 A. No, ma'am.

7 Q. Or whether that statement was accurate?

8 A. No, ma'am.

9 Q. Now -- beg the Court's indulgence. Do you know
10 whether Mr. Robinson reviewed any of the ATM videos
11 or anything like that?

12 A. I'm pretty sure he didn't.

13 Q. But you know some of those showed you, correct?

14 A. Correct.

15 Q. Just going down to -- I'm going to go through
16 the transcript with you. Mr. Robinson's not
17 available to testify, so I'm going to try to ask you
18 some questions that are apparent in the transcript
19 to testify about.

20 A. All right.

21 Q. At page 192, line 4, did Scott Robinson object
22 to keeping I believe it was Juror 110 in your jury
23 pool even though he ---

24 A. He said, "No, sir."

25 Q. He had no objection?

1 A. "No, sir, Judge."

2 Q. Do you recall what the problem was with that
3 juror?

4 A. I believe he was either related to one of the
5 witnesses or knew him to a certain extent.

6 Q. Okay. I'll leave that there to just kind of
7 flip. And I'm sort of just arguing on like -- do
8 you recall if he objected to autopsy pictures and
9 other photographs that came in?

10 A. I don't recall off the top of my head.

11 Q. Would you let the record speak for itself on
12 that whether he did or didn't?

13 A. (No response.)

14 Q. And at page 222 -- beg the Court's indulgence.
15 Some jail calls came in that you had made. Did he
16 object to those, the procedure of the recordings?

17 A. (No response.)

18 Q. I withdraw that question. Page 265, line 6.
19 Did Mr. Robinson have any objection to the DV -- the
20 videos coming in, pictures of the videos from
21 Kyndra's house?

22 A. No -- no, ma'am.

23 Q. Do you recall if the actual video from that
24 system came in or whether it was the State's
25 rerecording of those videos?

1 A. I think they said they had the whole DVR, but
2 he just never reviewed it.

3 Q. Okay. And he didn't object to it?

4 A. No, ma'am.

5 Q. Beg the Court's indulgence. Now, just going to
6 more statements that came in without objections. At
7 page 306, line 9 ---

8 MR. ZELENKA: What page?

9 BY MS. ROSS:

10 Q. Page 306, line 9. The State asked Investigator
11 Danny Barton basically why he took warrants out on
12 you, correct?

13 A. Yes, ma'am.

14 Q. And he then talks about -- or summarizes why he
15 did. And, again, to go through his view of the
16 case. At any point, did Scott Robinson object to
17 that?

18 A. I don't think so.

19 Q. And in it, he refers to Zachary Gant's
20 statement, correct?

21 A. Yes, ma'am.

22 Q. And Jonathan Johnson's statement, correct?

23 A. Yes, ma'am.

24 Q. Do you recall what Jonathan Johnson said at
25 your trial?

1 A. That somebody else opened the door, and he
2 never seen him again. He don't know who that person
3 was.

4 Q. At page 184, line 5, what does he say?

5 A. "Yes, sir. I went to the door and I remember
6 that someone answered the door. I didn't know his
7 name. And still to this day, I haven't seen him
8 again."

9 Q. Okay. When he was saying that, were you
10 sitting right there at the defense table?

11 A. Yes, ma'am.

12 Q. And he didn't say, "That's him. That's the guy
13 I saw"?

14 A. No, ma'am.

15 Q. Yet when Mr. -- the investigator is talking
16 about that, he characterized the statement as if
17 Mr. Johnson had identified you?

18 A. Yes, ma'am.

19 Q. At page 309, he then states that Kyndra had had
20 contact with you all -- all day?

21 A. Yes, ma'am.

22 Q. But what did you say before about that, those
23 -- those calls ---

24 A. Those calls were under 32 seconds. They
25 weren't answered.

1 Q. All right. And on page 337, he talks about the
2 car movements. And at line 10, he talks about
3 previous testimony yesterday. Ezra Williams was
4 driving a gold-silver light colored Oldsmobile or
5 Buick. And he talked about it as if that was a done
6 fact. Do you recall, did Mr. Johnson say anything
7 about a Buick or an Oldsmobile?

8 A. I can't recall. I don't know if he said
9 anything that specific.

10 Q. And at page -- actually, no further questions
11 on that. Basically, just one question. Generally,
12 why didn't you testify?

13 A. I had a prior case, and Scott didn't feel like
14 that would be good for me to testify.

15 Q. All right. But you agreed to that and you --
16 then you were asked on the record and went along
17 with not testifying?

18 A. Yes, ma'am.

19 Q. Now, looking at page 458 and 459. There was a
20 hung jury. Do you remember that?

21 A. Yes, ma'am.

22 Q. Did you -- did Mr. Robinson ever ask for a
23 mistrial on that?

24 A. No, ma'am.

25 Q. And he never asked to go ahead -- and the jury

1 asked the Court should they go on their gut,
2 correct?

3 A. Yes.

4 Q. And, again, Mr. Robinson ever ask for a
5 mistrial at that point where the jury's about to go
6 with their gut?

7 A. No ma'am.

8 MS. ROSS: Unless there's anything else you
9 would like to say, I don't have any more questions
10 for direct.

11 THE APPLICANT: No, ma'am.

12 THE COURT: Mr. Zelenka. I tell you what,
13 let's take a quick five-minute break. Five minutes.

14 (From 3:09 to 3:23 p.m., recess.)

15 THE COURT: Mr. Zelenka.

16 CROSS-EXAMINATION

17 BY MR. ZELENKA:

18 Q. Mr. Williams, concerning the direct appeal from
19 your conviction, we've had to introduce a letter
20 that occurred after the case was dismissed because
21 they hadn't -- your lawyer hadn't provided the Court
22 with notice that he had received the transcript. Do
23 you recall the communication with your lawyer where
24 he was indicating he was trying to get money from
25 your family to pay for the transcript?

1 A. No, sir.

2 Q. You don't remember any of that?

3 A. No, sir.

4 Q. Had -- do you know of anything your lawyer had
5 done to try to get the office of appellate defense
6 to pay for the transcript?

7 A. No, sir.

8 Q. Okay. When did you first learn that
9 Mr. Robinson hadn't been able to get the transcript
10 of your trial?

11 A. I got a letter in the mail from like a
12 remitter -- from a remitter and saying that,
13 basically, the transcript had been failed to be
14 ordered.

15 Q. Is that the letter we're talking about?

16 A. Okay.

17 Q. Huh?

18 A. That's the letter saying that he tried to
19 contact my family.

20 Q. Uh-huh. Does that look like the letter you
21 were just referring to?

22 A. No. That's not the letter.

23 Q. Oh, it's not that letter. Okay.

24 A. Matter of fact, I believe I got that letter
25 after -- the first -- the first indication that I

1 had was from a remitter ---

2 Q. Okay.

3 A. --- saying it was thrown out.

4 Q. Right.

5 A. And then I believe I contacted him and he
6 might've sent me something like that, but I know
7 that wasn't the first ---

8 Q. Okay.

9 A. --- communication.

10 Q. All right. But you did get this letter from
11 him?

12 A. I'm not -- I'm not 100 percent sure, but I want
13 to say it is. It's been a long time.

14 Q. But you wanted to appeal your case?

15 A. Yes.

16 Q. You never indicated ---

17 A. Never indicated ---

18 Q. --- to Mr. Robinson that you did not want your
19 case appealed?

20 A. Yeah, I never said that.

21 Q. Mr. Robinson, based upon what appeared to be a
22 financial issue ---

23 A. Yes, sir.

24 Q. --- with your family about the amount for the
25 transcript, wasn't able to complete that -- that

1 part of perfecting the appeal to the Court of
2 Appeals?

3 A. To this day, don't even know how much it
4 would've cost. He didn't say. I wasn't informed
5 about that.

6 Q. Okay. But you knew Mr. Robinson was contacting
7 your family concerning the transcript, didn't you?

8 A. Like I say, I believe if I got a letter, that
9 was after I got the remitter letter, like the letter
10 from the remitter because that's what made me call
11 him, like there's a problem.

12 Q. Okay. All right.

13 A. And then I believe if I got that letter right
14 there after that, I'm not 100 percent sure, but I
15 know I didn't get it beforehand.

16 Q. All right. You chose not to testify at trial?

17 A. Yes, sir.

18 Q. You waived your right to testify to the Court,
19 and Mr. Robinson had gone over that information with
20 you and the risk it would be without testifying or
21 putting up defense witnesses, which didn't occur
22 either, correct?

23 A. Correct.

24 Q. Why did Mr. Robinson indicate to you that it
25 would be in your best interest at that time of the

1 trial not to testify?

2 A. It was two things. It was I had prior cases.
3 And then he want -- he said he would get the closing
4 arguments or something like that, and that's what he
5 wanted to do.

6 Q. Okay. So what he meant is if he put up
7 evidence like one of your family members or Martha
8 Everett or anybody else, he would lose that right to
9 make the last statement to the jury before they made
10 their determination. It would go to the government.

11 A. I don't know about somebody else, like that was
12 never brought up.

13 Q. Okay.

14 A. I don't know why Martha would. Like I don't
15 even understand how that would have anything to do
16 with it.

17 Q. Okay. But those were the reasons he indicated.
18 With that information, did you know that he was not
19 going to put up alibi witnesses?

20 A. Like I said, during the case, he would always
21 brush it off, you know. Like he would brush it off
22 like that's not something that he wanted to do. So
23 it was never like, oh, we're not go to do this
24 because I don't want to put up your alibi, like that
25 was never a thing.

1 Q. Okay. Did you give a statement to the police
2 setting out your role or non-role in the case?

3 A. No, sir.

4 Q. So knowing any other way to get your statement,
5 your version to ---

6 A. It's not ---

7 Q. --- to the jury?

8 A. --- it's not like the State wanted to hear
9 anything I had to say either. Once I said I wanted
10 an attorney, nobody wanted to talk to me after that.

11 Q. Oh, I understand that. And that would be
12 appropriate. I'm not asking that. But if there had
13 been a statement out there, the government wasn't
14 going to be able to put that in. And Mr. Robinson
15 wasn't going to be able to rely on that, like he may
16 have done in some other cases. That's all I'm
17 saying. So your version really never got to the
18 jury?

19 A. No. Never got there.

20 Q. Okay. And who would your alibi witnesses have
21 been?

22 A. Martha Everett, Lincoln Oliver -- Lincoln
23 Oliver, Kevin Everett, and that's pretty much it.
24 Then I had like a dinner receipt from where I was
25 out. Work schedules to show that I was with those

1 -- with those people at the time.

2 Q. Now, did you receive a call from Mr. Gantt
3 during that evening?

4 A. No. Me and Gantt never -- we haven't even
5 talked.

6 Q. Okay. On that evening, on July 1st, Mr. Gantt
7 testified that he had a call, called you, and you
8 came over and offered to pick him up.

9 A. Oh, you're talking about -- I thought you was
10 talking about like some jail calls or something.

11 Q. No, I'm sorry.

12 A. What was the question again?

13 Q. Okay. Did you and Mr. Gantt have a telephone
14 conversation on July 1st that caused you to go over
15 to Kyndra's home?

16 A. Yeah, I talked to Kyndra and Gantt that night.

17 Q. Okay. So you did go over to Kyndra's house
18 that night?

19 A. Yes, sir.

20 Q. And you left Cicis Pizza to go there or what?

21 A. No. I was at her -- my child's mother's house
22 till later in the evening. It was late before I
23 went over there. Like he said, it was dark. It
24 was -- trying to be safe, it was probably about nine
25 o'clock.

1 Q. Okay. How long were you at Cicis Pizza?

2 A. I know we were there at 7:00. Maybe an hour.

3 Q. Okay.

4 A. Something like that.

5 Q. And why were you at Cicis Pizza?

6 A. I believe we were taking my daughters out
7 because it was around their birthdays. And their
8 birthdays are kind close together, so we celebrate
9 together. And we just said, "Let's go to see Cicis
10 Pizza." It was really, you know what I'm saying,
11 didn't know it was going to have to be an alibi. We
12 were just going out to eat.

13 Q. Okay. You're sure it was that night?

14 A. Yes.

15 Q. Okay. Did you tell your lawyer that?

16 A. Yes.

17 Q. Okay. Where did you go after you left Kyndra's
18 house?

19 A. A couple, just, gas stations, hung around,
20 smoked. Just nowhere in particular.

21 Q. You're just hanging out that night riding
22 around?

23 A. Yeah, I really spent more time with Kyndra
24 after. He had what he was going on. I split up
25 with Kyndra.

1 Q. How long did you stay at the home, Kyndra's
2 place?

3 A. I can't remember if it was the rest of the
4 night or earlier that morning. I think I had to
5 take the girls to school that morning, so I hung out
6 pretty late.

7 Q. Okay. Anybody see you going around that night?

8 A. No. Nobody. No.

9 Q. When did you first hear about Mr. Patel being
10 killed?

11 A. I think it was more so like at the gas stations
12 and stuff. He was missing at first, like a missing
13 man-type things. I didn't know until the newspaper
14 article that it was Homeland Park. And then I
15 didn't know it was those in particular people until
16 they started getting arrested.

17 Q. I thought you said you were with Kyndra that
18 night?

19 A. But that don't mean I was doing what they were
20 doing. Yeah, I mean, I was with Kyndra, but she
21 didn't make no mention of what they was doing.

22 Q. She didn't tell you anything about the
23 abduction? the beatings? the attempt to get the PIN
24 numbers? the attempt to use those PIN numbers?

25 A. No, sir.

1 Q. Nothing?

2 A. No, sir.

3 Q. And did you give all that information to
4 Mr. Robinson?

5 A. Yes, sir.

6 Q. Okay. Did you go over the discovery that
7 Mr. Robinson was provided by the government,
8 Mr. Campbell, Mr. Haigler for law enforcement?

9 A. I guess being incarcerated, I only got bits of
10 it. I got -- I was never able to see. Half of --
11 half the discovery, I didn't know about until my
12 trial date. Like, I only got the basics, probably
13 about a stack of stuff like this.

14 Q. Stack of stuff like that? You're putting your
15 fingers up about two inches.

16 A. Yeah.

17 Q. Okay.

18 A. And a lot of it was miscellaneous stuff like
19 checks and a bunch of stuff -- I guess Mr. Patel's
20 financial stuff like checks, pictures of checks, and
21 hotel receipts and stuff that had nothing to do with
22 what was going on in my opinion.

23 Q. Okay.

24 A. As far as half of the stuff that they showed
25 during my trial, I didn't know nothing about it

1 until my trial date.

2 Q. Okay. What's your relationship with Martha
3 Everett?

4 A. We had a -- we had a daughter together.

5 Q. Okay. And were you with her that night?

6 A. Earlier in the night. Yes, sir.

7 Q. Earlier in the night. Okay. About how long?

8 A. That's where I left from. I was with Cicis
9 Pizza and then went to her apartment and sat there
10 for a while until they called me.

11 Q. Okay. There was evidence at trial about the
12 jail calls that you made. Do you recall that?

13 A. Yes, sir.

14 Q. Had you listened to those jail calls before
15 trial or ---

16 A. No, sir.

17 Q. --- when they were played in trial, was that
18 the first time you'd heard those?

19 A. First time.

20 Q. Okay. So you had knowledge you made those
21 calls? That was your voice?

22 A. Yes, sir.

23 Q. Who else's voice was on those calls?

24 A. Martha. Yeah, I think that's the only one.

25 Q. All right. Thank you. The DVR recordings at

1 the scene, you were familiar with that house,
2 weren't you? Kyndra's house?

3 A. Yes, sir.

4 Q. Why were all the cameras on the house?

5 A. I don't know.

6 Q. Did you know the location of the cameras when
7 you went?

8 A. I didn't know about the cameras until this case
9 was going -- this case came up.

10 Q. Okay.

11 A. And they were saying that her landlord had
12 cameras.

13 Q. Okay. Do you remember where you parked your
14 car on that night?

15 A. Yes, sir.

16 Q. Was it was behind the house?

17 A. Beside the house.

18 Q. Beside it. Was it in view of the cameras?

19 A. There was about five cameras. I'm not really
20 sure where they're placed.

21 Q. Okay. Did you leave your car?

22 A. What you mean?

23 Q. Did you get out of the car?

24 A. Yes, sir.

25 Q. And where'd you go?

1 A. Into Kyndra's room. That's really the only
2 place.

3 Q. Okay. What time of day was that?

4 A. Late night. I don't know.

5 Q. Okay.

6 A. I don't know the time.

7 Q. Who else was there?

8 A. Kyndra and Zach. Kyndra and Zach.

9 Q. Kyndra and Zach. Anybody else in that room at
10 that time?

11 A. No. Not that I knew of.

12 Q. Was Patel there?

13 A. I never seen him.

14 Q. You never saw him, but you were there in the
15 house at that time?

16 A. You would have to see how the house is made.
17 It's easy to enter one room and not know what's
18 going on in another room.

19 Q. Okay. How well did you know Zach Gantt?

20 A. He hung out in the neighborhood. He was -- I
21 think he was related to William Jeffrey. He was
22 like everybody's little cousin. Me, personally,
23 like I got no relation to him.

24 Q. So you didn't -- are you saying you socialized
25 with him? didn't socialize with him?

1 A. He was kind of like the young -- the little kid
2 on the block, like, not personally, but I didn't
3 have no ill will towards him or nothing like that.

4 Q. Okay.

5 A. Like, if I ride by, he's walking. You need a
6 ride? You know what I'm saying? That's about it.

7 Q. Okay. But you both knew each other enough that
8 he had your phone number and you had his and you
9 were able to communicate back and forth?

10 A. I believe he was using Kyndra's phone --
11 Kyndra's phone, so it wasn't real hard for him to
12 call me and it wasn't nothing out the ordinary. She
13 also called me, like, alright, I'll be through.

14 Q. Okay. But you were close enough that he would
15 call you and ask you to come pick him up and you
16 would go?

17 A. Because he wanted to go somewhere. I mean,
18 it's not -- I just -- just for an example. If I was
19 riding by and he needed a ride, I'd give him a ride,
20 but it's not no personal, like, oh that's my --
21 that's my right hand or nothing. We don't have that
22 type of relationship.

23 Q. What's your relationship with Chill Will,
24 William Jeffrey?

25 A. Me and Chill, we were more of the same age. We

1 used to do a lot of the same things. We used to
2 hang out at the same spots. I was probably more
3 close to him than I was Zach.

4 Q. Why would Chill Will pay somebody \$5,000
5 concerning that crime?

6 A. That I can't answer. I didn't find out about
7 that until later on. I don't know.

8 Q. Does that surprise you?

9 A. Does what?

10 Q. Does that surprise you with your relationship
11 with Chill Will that something like that would occur
12 or you said it occurred?

13 A. Yes.

14 Q. Why?

15 A. Because why would he? Like we had no ill will.
16 We used to hang out every day. I used to -- his kid
17 played with my kids. I don't know why. I'm from
18 around there. You know what I'm saying? That's the
19 only thing I can think of.

20 Q. Okay. So you find that kind of incredible that
21 that would be ---

22 A. It didn't even cross my mind that that's what
23 was going on until I'm hearing it today exactly
24 what's going on.

25 Q. Okay. You said you heard it earlier that he

1 had paid \$5,000.

2 A. No. I heard that he was involved. I didn't
3 know nothing about that till just now.

4 Q. Okay.

5 A. Because it's been rumors since it happened.
6 You know, the streets talk. There's been rumors,
7 but I had no reason to believe he would do something
8 like that to me. For what?

9 Q. And what happened to Chill Will? How'd he die?

10 A. I believe he died in an armed robbery. I don't
11 know for sure, but that's what I heard.

12 Q. Do you know how long ago that was?

13 A. I don't.

14 MR. ZELENKA: Okay. No further questions.

15 Thank you, Your Honor.

16 THE COURT: All right. Any redirect?

17 REDIRECT EXAMINATION

18 BY MS. ROSS:

19 Q. This is the letter that -- this is the -- this
20 January 29th letter from Scott Robinson, this is
21 about -- a long time after your trial, correct?

22 A. Uh-huh.

23 Q. You said you'd already gotten the remitter when
24 you got that letter that you did?

25 A. Yeah. I got the remittor letter first.

1 MS. ROSS: All right. I just offer it as
2 Applicant's Exhibit 1 at this time.

3 MR. ZELENKA: No objection.

4 THE COURT: All right.

5 (Applicant's Exhibit No. 1 was received into
6 evidence.)

7 MS. ROSS: All right. I have no further
8 questions.

9 THE COURT: Anything further?

10 MR. ZELENKA: Nothing further.

11 THE COURT: You can step down, Mr. Williams.

12 (Witness excused.)

13 THE COURT: Ms. Ross, call your next witness.

14 MS. ROSS: We call Daniel Tally briefly at this
15 time.

16 THE CLERK: Please come forward and raise your
17 right hand.

18 THE WITNESS: (Complying.)

19 THE CLERK: Do you swear or affirm to tell the
20 truth, the whole truth, and nothing but the truth?

21 THE WITNESS: I do.

22 THE CLERK: You can take the witness stand.

23 THE WITNESS: (Complying.)

24 DANIEL TALLY,
25 having been produced and first duly sworn as a

1 witness on behalf of the Applicant, then testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q. This came up kind of quickly, but do you know
6 anything about how Scott Robinson was retained for
7 Ezra Williams' appeal?

8 A. I -- I talked to Scott myself. I handled
9 everything with Scott, making payments and meeting
10 with him throughout the entire process.

11 Q. How much money did you give him?

12 A. I gave him 10,000 for the trial and 5,000 for
13 the appeal.

14 Q. All right. And -- and then you came to find
15 out he never ---

16 A. He never -- after -- after the trial was done,
17 we went to his office. My mother went with me. We
18 went to his office that same week -- that next week,
19 and we went ahead and paid him the 5,000 for the
20 retainer for the appeal, and there was nothing else
21 done after that.

22 MS. ROSS: All right. No further questions.

23 THE COURT: Cross-examination.

24 MR. ZELENKA: No questions.

25 THE COURT: All right. Thank you, Mr. Tally.

1 You can step down.

2 (Witness excused.)

3 THE COURT: Ms. Ross, call your next witness.

4 MS. ROSS: Thank you, Your Honor. We call
5 Martha Everett.

6 THE CLERK: Please come forward and raise your
7 right hand.

8 THE WITNESS: (Complying.)

9 THE CLERK: Do you swear or affirm to tell the
10 truth, the whole truth, and nothing but the truth?

11 THE WITNESS: I do.

12 THE CLERK: Okay. You can take the stand.

13 THE WITNESS: (Complying.)

14 MARTHA EVERETT,
15 having been produced and first duly sworn as a
16 witness on behalf of the Applicant, then testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MS. ROSS:

20 Q. Hi there, Ms. Everett. How do you know
21 Mr. Williams?

22 A. We have a child together.

23 Q. All right. And I'm just going to hand you two
24 items that -- that you gave to me. Can you tell me
25 what those are?

1 A. It is the receipt that -- from the night that
2 we went to Cicis Pizza on the 1st and then also my
3 July schedule.

4 Q. All right. Okay. What's the date on the Cicis
5 Pizza receipt?

6 A. It is 7/1/2012.

7 Q. All right. And what is the significance of
8 that day?

9 A. My oldest daughter, her birthday is July 2nd,
10 so we were going that night for her birthday dinner.
11 We usually do a party altogether and then each kid
12 gets a birthday dinner, so we were doing birthday
13 dinner that night because I had to work the next
14 day. I work second shift.

15 Q. All right. And what -- what's the
16 significance -- so the Cicis Pizza receipt, you kept
17 that, correct?

18 A. Yes.

19 Q. And you've kept that because it's certainly a
20 partial alibi in this case?

21 A. Yes.

22 Q. All right. And you came forward with that
23 alibi early on?

24 A. Yes.

25 Q. And after you did, what happened?

1 A. I -- I know I asked if they could possibly get
2 video from Cicis. I think the excuse -- I can't
3 remember. It was from was that they don't keep
4 their video very long. And then I was just told to
5 hold onto it, make a copy, and keep the copies.
6 That way if we did utilize it, we would have it, but
7 it was never, like, oh, yeah, that's a good thing.
8 And then another issue that was said was because it
9 was cash versus card.

10 Q. From ---

11 A. That it wouldn't be worth anything and that's
12 part of the reason why I saved my work schedules for
13 July as well, because I was like, well, that's, you
14 know, what we did. That was my night off, so I
15 wanted to show that as well, so I kept both.

16 Q. Okay. Well, tell me a little bit about that.
17 What was the significance with the work schedule?
18 What -- what does it show?

19 A. So it shows that on July 1st, I was off. And
20 then I worked on the 2nd through the 4th, and then
21 wasn't off again until the 5th and the 6th.

22 Q. So what did Ezra have to do when you were at
23 work?

24 A. So he kept the girls when I worked.

25 Q. Okay. So he would've been keeping -- he kept

1 the girls on the 2nd?

2 A. For the second shift, yeah.

3 Q. And do you recall how long -- and continued to
4 care for them until pretty much his arrest; is that
5 correct?

6 A. Yes, ma'am. Right before he had -- he left for
7 a little while before when everything was going on.
8 He wasn't around, but after -- you know, before all
9 of this transpired, he was certainly there. He was
10 with my first child.

11 Q. Okay. And so he was with you for a significant
12 portion of -- of that night?

13 A. Yes.

14 Q. And were you willing to testify to that at the
15 trial?

16 A. Yes, ma'am.

17 Q. And did you make yourself available to testify?

18 A. Yes, ma'am.

19 Q. Did Scott Robinson ever call you and have a
20 conversation about testifying?

21 A. Yes, ma'am.

22 Q. And what was that conversation?

23 A. We talked about what I had, the information
24 that I had. He told me to make the copies, make
25 sure that I kept up with everything. And when I

1 asked him if this was something that we were going
2 to do, he said that he didn't think so because he
3 felt like they would tear me apart on the stand.

4 Q. Okay. And had you had some history with law
5 enforcement?

6 A. Yes, ma'am. After all of this began happening,
7 I had officers that followed me. I had officers
8 that would bang on my door. I stayed in government
9 assisted apartment at the time. I was already on
10 edge because of the situation, but they would come
11 and bang on my door. I was told several times that
12 my kids would be taken away, that I wouldn't have
13 anywhere to live, things of that nature because of
14 all this.

15 Q. Did that make you feel intimidated?

16 A. Very much.

17 Q. Now, before this happened, had law
18 enforcement -- did you feel like Ezra -- law
19 enforcement would cue in on Ezra?

20 A. Yes. Me and him were in a relationship prior
21 to this, and he had been in jail before with another
22 case and a friend of his. And the investigator from
23 that case would continuously pull him over and cause
24 issues as often as he could to -- I don't know if he
25 was trying to intimidate Ezra or what exactly he was

1 doing, but it was a constant problem, even after he
2 served his time from the other case that he had.

3 Q. All right. And at the time of this, how many
4 call -- how would you have gotten to work at this
5 time?

6 A. I drove.

7 Q. How many cars did y'all have?

8 A. So we used the one car that I had the majority
9 of the time always for transportation for myself and
10 my sister and for Ezra.

11 Q. All right. And did you notice anything
12 different about that car going to work on July 2nd
13 or anything like that?

14 A. No.

15 Q. How about in Ezra's demeanor or anything? Was
16 there anything different that you noticed?

17 A. Other than the fact that we were having
18 relationship issues, but no.

19 Q. And before that -- but that didn't have to do
20 with this charge? That was independent or
21 relationship issues, correct?

22 A. Correct. Yes.

23 MS. ROSS: Okay. All right. I have no further
24 questions.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Zelenka.

2 MR. ZELENKA: Just a few.

3 MS. ROSS: Judge, if I could approach.

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. ZELENKA:

7 Q. Ms. Everett, this Exhibit 2, it shows two adult
8 buffets, two adult drinks, and one child drink. How
9 do we know for sure that those two adults -- who
10 those two adults were?

11 A. I'm under oath.

12 Q. Pardon?

13 A. I said I'm oath and I'm testifying. That's the
14 only way I can give you. I would've love to have a
15 video, but I was told that we couldn't get it.

16 Q. Okay. And do you work at Cicis Pizza?

17 A. I do not.

18 Q. Okay.

19 A. I never have.

20 Q. Do you know when that bill was rung?

21 A. I'm sorry?

22 Q. Do you know when this bill was rung? When that
23 meal was served?

24 A. It's a buffet. We don't have one in Anderson
25 now, but it's a buffet-style restaurant. The pizzas

1 are out on the buffet, so you pay and you go in and
2 sit down and have what you would like.

3 Q. Okay. But it doesn't say what time frame ---

4 A. Yes, sir.

5 Q. --- does it?

6 A. 19:01 p.m.

7 Q. So that would be seven o'clock?

8 A. Yes, sir.

9 Q. Okay. Is that the time you checked out?

10 A. No, sir. That's the time that we went in.

11 Q. Okay.

12 A. Because at that restaurant particularly, you
13 walk in and pay first.

14 Q. Okay. So you went in at seven o'clock. Do you
15 know what time you left?

16 A. We would've had to have been there for at least
17 30 to 45 minutes. My sister did have to be at work
18 that night, so I think she had to be there at 8:30
19 or 8:00, so we were there for ---

20 Q. Again, tell me the significance of this on
21 July 1 and July 2?

22 A. Yes, sir. So this is my schedule from Summit
23 Place. It's where I worked at the time. And it
24 just shows that on July 1st, I was off that day.
25 And that was to speak to the fact that that's the

1 day that we celebrated my daughter's birthday, which
2 would've been the 2nd, but I had to work those days.

3 Q. Okay. Now, other than that, how long that
4 evening were you with the applicant?

5 A. So we went back to my apartment. And my
6 sister, we would've had taken her to work.

7 And then I'm honestly not sure of the time
8 frame now, but I know that if -- if he did leave, it
9 wouldn't have been until after my sister went to
10 work, but I just don't know the exact time frame.

11 Q. Well, he's -- so you're questioning his
12 testimony that he did leave?

13 A. I'm sorry?

14 Q. Are you questioning his testimony that he did
15 leave ---

16 A. No.

17 Q. --- or you don't recall him leaving?

18 A. I just don't recall the time. I'm sorry if I
19 said it in a way that you didn't understand.

20 Q. Asking you to clarify.

21 A. Yes, sir.

22 Q. So you know he did leave?

23 A. Yes.

24 Q. Okay. Do you know how long he was gone?

25 A. I do not.

1 MR. ZELENKA: No further questions.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MS. ROSS:

5 Q. Well, just -- but you know he -- he was back at
6 some point for you to go to work the next day?

7 A. Yes, ma'am.

8 Q. You went to sleep and ---

9 A. Yes, ma'am. And he was there and we had a talk
10 the next morning -- well, we had words the next
11 morning because of ---

12 Q. All right. And just -- do you recall what time
13 you had to be into work? If you don't, that's fine.

14 A. I'm sorry?

15 Q. I said, if you don't recall, that's ---

16 A. What did you say?

17 Q. What time were you at work or what time ---

18 A. I work the second shift, but we had small
19 children. So they were two and four, so they were
20 up early.

21 Q. All right.

22 A. And that was part of our agreement was that he
23 would take care of them in the morning times because
24 of the work schedule that I had.

25 MS. ROSS: Okay. Thank you. No further

1 questions.

2 THE COURT: Mr. Zelenka.

3 MR. ZELENKA: Nothing further.

4 THE COURT: Thank you, Ms. Everett. You can
5 step down.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 THE COURT: Ms. Ross, call your next witness.

9 MS. ROSS: That's the Applicant's case, Your
10 Honor.

11 THE COURT: Okay. Mr. Zelenka, do you have any
12 witnesses?

13 MR. ZELENKA: State would call Rame Campbell.

14 THE WITNESS: (Approaching.)

15 THE CLERK: Please raise your right hand.

16 THE WITNESS: (Complying.)

17 THE CLERK: Do you swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth?

19 THE WITNESS: I do.

20 THE CLERK: Okay. Have a seat.

21 THE WITNESS: (Complying.)

22 RAME CAMPBELL,

23 having been produced and first duly sworn as a
24 witness on behalf of the State, then testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. ZELENKA:

3 Q. Mr. Campbell, how are you today?

4 A. Good.

5 Q. How are you currently employed?

6 A. I am an assistant city attorney for the City of
7 Anderson.8 Q. Okay. How were you employed back around 2012
9 through 2017?10 A. I was a prosecutor solicitor here in the
11 Anderson Tenth Judicial Circuit.12 Q. Okay. And as -- how long had you been a
13 prosecutor in the circuit?

14 A. I started in '05 ---

15 Q. Okay.

16 A. --- through 2016. Some time in 2016.

17 Q. All right. And as part of that, were you the
18 prosecutor in the case of *State v. Ezra Williams*?

19 A. I was, along with Mr. Brantly Haigler.

20 Q. Okay. And he -- you pointed out, he's in the
21 courtroom right now?

22 A. Yes, sir.

23 Q. Okay. As part of that prosecution, did you
24 meet and discuss matters with Mr. Robinson who was
25 representing the applicant at the time?

1 A. We met on several occasions. We also met at
2 the sheriff's office to review evidence.

3 Q. Okay. And what was the purpose of those
4 meetings?

5 A. Preparing for trial. Showing the defense what
6 the State had to offer in the case.

7 Q. Okay. Did he seem interested and engaged in
8 the defense of the case?

9 A. Yes. I -- I dealt with Scott on --
10 Mr. Robinson on several trials and knew how he
11 operated. I mean, we had several cases against each
12 other, so we work well. And, you know, he knew my
13 -- how I presented evidence. And I would show him
14 everything that we had, and he was -- you know, he
15 took notes and the usual stuff he did.

16 Q. In preparation and during the time of the
17 trial, at some point in 2014, I believe it was
18 November, between the 17th and 18th of 2014, Zachary
19 Gantt entered a guilty plea to murder and other
20 charges involved in this incident. Do you recall
21 that?

22 A. Yes, sir.

23 Q. And what were the circumstances about any
24 negotiations or anything with Mr. Gantt and his
25 lawyer at that time?

1 A. At the time there was no negotiations regarding
2 sentencing. We were asking him to assist in the
3 trials of the case. He also assisted heavily in the
4 investigation of the case. And so he pled guilty,
5 and we deferred sentencing because he agreed to
6 testify at trial. We wanted to see if he was
7 actually going to follow through.

8 Q. When you say he assisted in the investigation
9 of the case, please summarize that for us.

10 A. Well, we wouldn't be here today if it wasn't
11 for Zach Gantt. It would take a lot longer to get
12 here. The -- Mr. Gantt was interviewed three
13 different occasions. And each statement he gave, he
14 gave just a little bit more information. The first
15 statement he kind of, you know, self-serving.

16 The second statement, he finally mentioned
17 Mr. Williams.

18 And the third statement, his aunt had actually
19 come from Greenville to visit with him. And they
20 actually had him at the sheriff's office and she had
21 showed up and she asked if she could see him. They
22 were like, "Sure. We'll put you in a room." And
23 she went and spoke to him without the presence of
24 law enforcement there, and she came out and said,
25 "He wants to talk to y'all."

1 At that point, he came out and said, "I want to
2 tell you basically everything." And they did a
3 statement, and then he took them out to where the
4 body was.

5 Q. Okay. And was the statement he gave
6 essentially consistent with his trial testimony?

7 A. He testified in this trial and in Jeremy
8 Johnson's trial. So, yeah, and it was consistent in
9 both occasions. And not only was it -- we didn't
10 just take his word on it. We corroborated what he
11 was telling us, and there was more than one person
12 that indicated that Mr. Williams was involved and
13 the shooter in this case.

14 Q. Okay. And had you ever heard any indication
15 that Chill Will was engaging in subordination or
16 perjury with Mr. Gantt in any way, shape, or form?

17 A. No. His name came up early on -- Mr. -- his
18 name came up early on in the investigation as a
19 possible lead at this point. We were dealing with a
20 missing persons. The sheriff's office basically had
21 a missing person's case. They did not have a murder
22 case to begin with.

23 His name had come up. He was a local gang
24 banger. He was known to law enforcement.
25 Everything didn't check out. They checked into it

1 and, you know, he's passed since then. I think -- I
2 think someone said he was killed in a robbery. I
3 know that was true. He was killed in the commission
4 of a crime.

5 Q. To assist the Court, about how long was it from
6 the time of the abduction of the victim until his
7 body was recovered?

8 A. It was a few weeks. I can't recall off the top
9 of my head. The murder occurred or the abduction
10 happened on July the 1st of 2012. It probably was
11 three weeks maybe. It was long enough the body was
12 badly decomposing in a decomposition state. I
13 actually went out to the scene ---

14 Q. Okay.

15 A. --- way out in the woods.

16 Q. All right. Please continue about the
17 relationship the prosecution team had with
18 Mr. Gantt.

19 A. Okay. So, actually, at that point in time, I
20 had not met with Mr. Gantt or had spoken with him
21 nor had Mr. Haigler, because at that point the
22 solicitor's office wasn't even involved.

23 The -- they were dealing with a missing
24 persons. The place that the body was located was
25 off of Highway 29 going towards Hartwell. It's very

1 rural, heavily wooded, and it was basically off of
2 Old Little Road. Unless you knew where it was, you
3 wouldn't find it. It was a couple 100, 150 yards
4 back into the woods. That's where the body was
5 found. In fact, his shoes were halfway found
6 halfway there as they were walking down a path, and
7 his hands were tied behind his back. And so
8 that's -- that's where he was found.

9 If Mr. Gantt hadn't actually shown us where the
10 body was, it may have been during hunting season
11 possibly that the body could've been found or a
12 skeleton, or right now, they're actually clearing
13 the property. Ten years later, they're actually
14 clearing it. The body could've been come across,
15 but it was an area that was not very readily
16 accessible. So law enforcement probably wouldn't
17 have found him.

18 Q. Okay.

19 A. And it was Mr. Gantt, after his aunt had spoken
20 to him, says, "I'll cooperate and show you." And
21 he's 17, 18 at the time, and he did what he said he
22 was going to do.

23 Q. Okay. Did you -- after you got that
24 information on Mr. Williams, did you subsequently
25 seek to determine whether Mr. Williams had an alibi?

1 A. Yes.

2 Q. And -- and what did the prosecution team do
3 about that?

4 A. Well, initially, how I learned about the alibi
5 was Detective Barton and Detective Gedding had
6 listened to jailhouse phone calls and ---

7 MS. ROSS: And, Judge, just to put on the
8 record. This line of questioning, they're simply
9 restating what's in the transcript. Here the issue
10 is ineffective assistance of counsel and the
11 specific allegations.

12 THE COURT: I note your objection, but I
13 overrule that objection.

14 THE WITNESS: Regarding the issue of alibi,
15 Ms. Everett, she just testified, she was going to be
16 his alibi. They had been listening -- law
17 enforcement had been listening to the jailhouse
18 phone calls that Mr. Williams had been making. He
19 made two in particular, which they talked about
20 alibi. That's when it first came to the attention
21 of law enforcement.

22 Detective Gedding, as she mentioned, had -- you
23 know, Mr. Williams had past interaction with law
24 enforcement, and that was Mr. Gedding's case so he
25 knew about Mr. Williams. And he knew Ms. Everett.

1 They went to her apartment and spoke to her.
2 She basically kicked them out. Did mention Cicis
3 Pizza, which it didn't -- the time frame that she
4 gave -- what she testified here didn't coincide
5 because they talked about going to Cicis Pizza,
6 6:30, 7:00.

7 Time they were done, Mr. Williams' car is not
8 showing up on the video that we had in this case
9 until 9:35. So there's plenty of time in between.
10 And his car did not leave Ms. Kyndra Howell's
11 apartment until around 3:00 in the morning. That's
12 when they drove Mr. Williams out and he was
13 executed.

14 Q. And those jail calls were introduced at trial
15 as State Exhibit 40; is that correct?

16 A. They were -- they were an exhibit. They're
17 showing that he was trying to manufacture an alibi.
18 And Mr. Robinson knew about it and he looked into it
19 because I believe at the -- during the trial, I gave
20 him the rap sheet of Ms. Everett and asked if he was
21 going call to her as a witness.

22 And at that point, it was basically trial
23 decision, you know. It was probably not in his
24 client's best interest.

25 Q. So, essentially, what was on the rap sheet if

1 you recall?

2 A. It was impeachment evidence. That's all I can
3 -- I can recall. Any time we have a witness that's
4 going to take the stand, especially we already knew
5 her, we -- we would give him the rap sheet.

6 Q. Okay.

7 A. I can't recall what was on it, but if she took
8 the stand, I was going to use it.

9 Q. Okay. Let me back up. Did you go over the
10 jails calls with Mr. Robinson?

11 A. I'm sure we did because he had everything.
12 Mr. Haigler and I met with him and we gave him
13 everything and went over it and reviewed it
14 together.

15 Q. Okay. Did you go over the DVDs -- the DVD of
16 Kyndra's home that you had pointing out the -- what
17 you all thought was significant about it?

18 A. We did. When we talk about the video, the
19 reason why this case took kind of a while to get
20 some traction is initially the son, CJ Patel, had
21 called this in as a missing persons.

22 He had been using one of those "my find" apps
23 or something like that to locate the phone. And his
24 dad's phone, Mr. Patel, was pinging in the -- in the
25 area where Jerry Drive was, [REDACTED] Jerry Drive. And

1 it was pinging around there and Manly Road. And
2 Mr. Patel actually had gone there to begin with and
3 actually went to that house trying to look for his
4 dad. And that's how he went to law enforcement.

5 Law enforcement responds. I think a road
6 deputy went out there first. Checked it out. And
7 then later on, I think detectives went out. And
8 once they talked to the owner of the property, I
9 believe it Brian Gillmore, if I recall right. And
10 it's like -- he told him -- well, we got -- I have a
11 DVD recording. It's not exactly the best
12 neighborhood, so the guys, the landlord just kept it
13 going.

14 And at that point in time, we went and got
15 another search warrant. And then realized it was
16 behind a panel that had been screwed into a wall,
17 pulled it out, and downloaded it. It was days upon
18 days of video.

19 We just took the -- we gave -- they had access
20 to everything, but the relevant part was July 1st,
21 just that day because what it showed on the video.
22 It showed Kyndra Howell. It showed Zach Gantt and
23 Jeremiah Johnson. There's two Johnsons in this
24 case. There's a Jonathan and a Jeremiah. Jeremiah
25 is the codefendant. It showed those three at the --

1 in the house on video and also -- and it showed
2 Mr. Williams' car and we later identified as his car
3 coming in later that night. So it's consistent what
4 they were talking about is that he came in. He
5 received a phone call. He came over.

6 Q. All right. And when did you learn that
7 Mr. Williams had actually been charged in the case?

8 A. I -- I don't remember. He was the last one to
9 be charged. The exact date, I don't recall, but he
10 was the last one picked up. The video -- like I
11 said, the video had him.

12 Jeremiah Johnson also gave a statement that
13 indicated Mr. Williams was basically involved, he
14 was involved, and he pulled the trigger, and that's
15 what Zach Gantt stated the same thing.

16 Q. Okay. Now, during the trial, you introduced
17 the jail calls. You introduced the portion of the
18 DVDs. And as far as the jail calls, the record
19 reflects that you initially objected to those calls
20 and the Court ended up ruling them admissible; is
21 that correct?

22 A. Yes, sir.

23 Q. And the DVDs, they were introduced without
24 objection. Do you recall that?

25 A. I don't recall exactly, but I know they were

1 introduced.

2 Q. Okay.

3 A. I can't remember if he objected or not.

4 Q. Do you recall any discussions you may've had
5 with Mr. Robinson about that?

6 A. Not offhand. I remember we went over the
7 videos, and we explained what our theory of the case
8 was and how his client was involved.

9 Q. Okay.

10 A. That -- that's the best of my recollection.

11 Q. All right. During the testimony, and it's been
12 pointed out on earlier testimony, there was an issue
13 concerning cell sites and pinging. Do you recall
14 that?

15 A. Yes, sir.

16 Q. If you can if you recall it, explain how all of
17 that happened, what your theory was and the way that
18 that ended up getting presented if you can?

19 A. I will. I do remember this. This is -- you
20 got to remember, we're dealing with 2012. We're
21 dealing with 10 year -- technology 10 years ago.

22 And when this all started coming about, they
23 started -- law enforcement investigations, they will
24 start pulling phones and pulling records. They
25 pulled Mr. Williams' record, Kyndra Howell's record.

1 They had his phone pinging off the tower of Homeland
2 Park. And with the cell phone towers, where they
3 are, they have triangulations, and his phone was all
4 pinging at that one, not in the direction of Cicis
5 Pizza. That was in midtown here. This was at
6 Homeland Park.

7 Due to technology, the technology at that point
8 couldn't pinpoint it. It's not like a murder trial
9 where they can tell you how many steps he was taking
10 and what location. At that point, all we had was a
11 geographical location. And due to that fact and
12 because of what other evidence we had, we chose not
13 to use that in our case in chief because I couldn't
14 really pinpoint him to [REDACTED] Jerry Drive. And, you
15 know, that was just a -- that was just a judgement
16 call for trial. You know, we had other stuff we
17 were basing our case on. We weren't basing it on
18 cell phone records.

19 That was not -- and I did ask the question. So
20 I sought the return. I never asked that directly to
21 Mr. -- at Lieutenant Barton regarding how he came
22 about taking a warrant out, but he did indicate that
23 his phone was pinging and it was. It pinged off for
24 the victim's son and it pinged for law enforcement
25 when they were looking at his records, but we didn't

1 use it in our case in chief because I felt we had
2 other evidence that was a whole lot stronger and was
3 less confusing.

4 Q. Okay. And so I don't want to put words in your
5 mouth, but just so I understand. So you didn't
6 decide to introduce as affirmative evidence the
7 triangulation data in this case as part of your case
8 to show whereabouts and the like. Is that -- is
9 that basically what you're saying?

10 A. It would be more confusing. We felt it would
11 be more confusing to the case for a jury to
12 understand than it would be if we hadn't put it in,
13 so that's exactly right.

14 Q. Okay. When Investigator Barton gave those
15 comments concerning the cell phone pinging, did you
16 think you had any other obligation as a prosecutor
17 to take steps to clarify and clean it up based upon
18 the way you heard it?

19 A. No. It was not in a -- I did not -- I never
20 asked him -- and you can see in the transcript --
21 specifically anything about Mr. Israel's cell phone
22 because I hadn't planned on using it. And it was
23 one of those things I wasn't going to draw attention
24 to it by calling attention to it by pulling up more
25 witnesses to explain what he said. It was just what

1 he was talking about, well, I got a warrant. And
2 that was one of the reasons he used or stated that
3 he used, but in actuality in our case -- in our case
4 file, they actually, yes, that documented evidence
5 was there.

6 Q. Okay. There was a mention about an objection
7 to autopsy photos. And let me show you a letter
8 introduced at trial as State's Exhibit 26 and copies
9 of State Exhibit 27, 28, 29, and 30, and see if you
10 recognize those.

11 A. Yes, sir. I recognize them.

12 Q. Okay. And are those exhibits you introduced as
13 part of the trial through the pathologist in the
14 case?

15 A. Yes, sir. Those are the cleaned up sanitized
16 versions.

17 Q. Okay. And by cleaned up sanitized, what do you
18 mean?

19 A. Well, typically, Judge McIntosh was the trial
20 judge in this matter, and he did not like -- his
21 protocol was not to send back gory, bloody, you
22 know, basically, every evidence he knows is going to
23 be -- trying to inflame the jury. And so this type
24 of evidence, when you're showing the pictures,
25 especially, of a decomposed body, the marks, the

1 ligatures, the burn marks. This guy was tortured.

2 And he does not like those to go back, so we
3 clean them up. We did black and white photos. We
4 did one color photo basically of ligatures. I think
5 it was a telephone cord they tied him with, which
6 was corroborated by Zach Gantt's statement and
7 Jeremiah Johnson's statement. And so that's why
8 that one's in color, but everything else dealing
9 with the body was black and white.

10 Q. Okay. And the defense counsel did not object
11 to the introduction of these photographs; is that
12 correct?

13 A. Not that I recall.

14 MR. ZELENKA: Okay. Your Honor, we would move
15 these into evidence in these proceedings. We got
16 the original State Exhibit 26 from the General
17 Sessions file. The 27, 28, and 29 are copies of
18 those exhibits as they were presented at the time of
19 the original trial. If it's okay with the Court,
20 I'd like to make a color copy of this and return the
21 original to the file, but these are -- I don't want
22 to get the numbers mixed up. I just call them trial
23 State Exhibits 26 through 30 if that's okay.

24 THE COURT: All right. Ms. Ross?

25 MS. ROSS: Judge, my only position is, I find

1 that part of the transcript record is part of the
2 record, so I would argue these are already part of
3 the record and doesn't necessarily need to be
4 reintroduced.

5 THE COURT: Well, I'm going -- I'm going to
6 allow them in. In essence, it's a duplication of
7 what's already in the trial record.

8 Why not -- let's just for purposes of this
9 hearing, just staple them all together up in the
10 corner, and let's call them ---

11 MR. ZELENKA: Respondent's Exhibit 1.

12 THE COURT: One?

13 MR. ZELENKA: Yes.

14 THE COURT: Okay.

15 MR. ZELENKA: Do you want the original one
16 stapled in there, too?

17 THE COURT: Well, is this part of the -- well,
18 it's part of the trial record, right?

19 MR. ZELENKA: Yeah.

20 THE COURT: May better put it separate. The
21 other -- the other ones are copies?

22 MR. ZELENKA: They are.

23 THE COURT: All right. Let's just label the
24 original one Respondent's Exhibit 1 and then staple
25 those together and call them Respondent's Exhibit 2.

1 MR. ZELENKA: All right. That would be State's
2 Exhibit 1 on this particular exhibit. We don't have
3 a Respondent sticker.

4 (State's Exhibit Nos. 1 and 2 were received
5 into evidence.)

6 BY MR. ZELENKA:

7 Q. There's been some reference that transcript
8 page 307 and transcript page 354 to 356 about the
9 comments and questions that were asked of Detective
10 Martin, and let me give you a copy of the
11 transcript. And ask you to review what I have in
12 yellow at 306 and 307.

13 A. Okay. Yes, sir.

14 Q. Okay. And during the trial, what was the
15 prosecution's intent in asking those questions of
16 Investigator Martin?

17 A. It was basically to summarize how he wound up
18 making charges on Mr. Williams.

19 Q. Okay.

20 A. You know, Zach Gantt's statement, also Jeremiah
21 Johnson, the codefendant's statement.

22 There was a Jonathan Johnson who went by the
23 nickname of -- people called him "Bud," but he was a
24 drug addict. He identified Mr. Williams and was
25 paid with a piece of crack to clean up the car after

1 they disposed of the body. That was the main gist
2 of how we got to this crime. He wasn't --
3 Mr. Williams was basically brought in to be the
4 muscle. It had reached a point to where it was
5 beyond Mr. Gantt and Mr. Johnson ---

6 MS. ROSS: And, again, I'd object to the
7 restatement of the State's case.

8 THE COURT: Yeah, I -- I sustain the objection.

9 THE WITNESS: Go ahead.

10 BY MR. ZELENKA:

11 Q. Okay. Did you respond to complete your -- your
12 response?

13 A. Yeah.

14 Q. Okay. Let me ask you to refer to 340 -- 354
15 and 356.

16 A. 344?

17 Q. 354 to 356. Where it says -- 354 to 355. I'm
18 sorry. My -- my mistake.

19 A. All right.

20 Q. And ---

21 A. You want me to just ---

22 Q. Yeah, review it and then I'll ask you the same
23 question I asked on the other portion.

24 A. Okay.

25 Q. Okay. And -- and what was your intent in

1 asking that question?

2 A. The intent was just to show the jury why we
3 took charges out on Mr. Williams along with -- we
4 had -- there were four people that got charged in
5 this case and we're trying to basically narrow down,
6 since it was his trial, why the detectives took out
7 the charge -- the four charges against him for this
8 crime.

9 Q. Okay. And there was ---

10 A. How we reached it.

11 Q. --- and there was no objection to that
12 question?

13 A. Not that I recall. No, sir.

14 Q. Okay. A couple of other things. There was a
15 reference to one of the jurors, Juror 110, who after
16 one of the witness's testimony, I believe it was
17 Mr. Johnson, indicated that she or he -- I think it
18 was she -- had recognized him during the testimony.
19 Do you recall that?

20 A. Yes, sir.

21 Q. And do you recall that the decision was made by
22 both parties not to seek to remove her based upon
23 that information when the names were given? At the
24 outset of the trial when the witness list was given,
25 she didn't recognize them by that name, but by the

1 other name?

2 A. Correct. She did not know him as Jonathan
3 Johnson. She knew him as "Bug" or "BJ." And it
4 wasn't till he actually testified because he was not
5 present in the courtroom when the names were read
6 and stood up and introduced himself to the jury. I
7 believe it was a lengthy witness list.

8 And once she actually saw him on the stand,
9 that's when she realized she had some sort of
10 familiarity with him. Knew him. I can't recall
11 what the relationship was, but as soon as she did
12 that, she brought it to our attention, to the
13 Court's attention.

14 If I recall, Judge McIntosh then brought her
15 out. Had her questioned to see if she could be fair
16 and impartial. And I don't think the relationship
17 was close enough to cause a problem. He wasn't a
18 main witness.

19 Q. She had also worked with Johnson's mother?

20 A. Again, I don't recall that part.

21 Q. And I think my last series of questions should
22 go to the alleged issue when the jurors came back a
23 couple of hours after deliberations and indicated
24 they may be deadlocked. Do you recall that?

25 A. I don't remember it being that. I think the

1 return called it a hung jury. I don't remember it
2 being a hung jury. They had questions. And I think
3 their hang up was hand of one, hand of all. And
4 that was the issue that was -- that happened in
5 Kyndra Howell's trial, same thing.

6 They came -- they came out. I can't remember.
7 He probably gave an Allen charge. I don't recall it
8 exactly, but I'm assuming he did at that point in
9 time. So they deliberated probably about 6 hours in
10 the case, and they found him not guilty of murder
11 and found him guilty of the rest of the crimes. And
12 so they did basically take everything into
13 consideration.

14 Q. All right. And that's all reflected in the
15 record. And then the decision was made by the
16 government not to ask for a mistrial. The decision
17 was made -- Mr. Robinson not to ask for a mistrial
18 on a hung jury, even after the decision came out,
19 correct?

20 A. That's correct.

21 Q. Now, with respect to Mr. Gantt, you took a plea
22 at one point. Deferred sentencing. He testified at
23 trial consistent with his third statement.

24 And in September, another proceeding occurred
25 in which you went before Judge McIntosh for the

1 sentencing proceeding. And at that time a decision
2 was made by the government to revise his original
3 plea. Can you explain how that all played out?

4 A. Yes, sir. It actually came about because of
5 the case officer, Danny Barton. We -- Kyndra Howell
6 was tried in February of 2015. Jeremiah Johnson was
7 tried in June of 2015. And Ezra Williams was tried
8 in August of 2015. And then Zach's sentencing
9 hearing was in September.

10 The person who planned this, it was a robbery
11 initially to steal money from him. Get his PIN
12 number from the ATM, rob him there, and then take
13 his money out of his bank account. That was the
14 whole reason why this ball got rolling here. He was
15 not part of the plan. He didn't plan this. He just
16 happened to be over there as the video showed. He
17 was in the neighborhood and called him over.

18 Q. Okay. The he -- the he you're referring to,
19 was that ---

20 THE COURT: Hold on just a second.

21 MS. ROSS: Again, I would just object to the
22 posturing of the transcripts there. You can
23 certainly say what he --

24 THE COURT: Yeah, I sustain the objection.
25 Let's move on.

1 BY MR. ZELENKA:

2 Q. Okay. Why -- why was he offered a lesser
3 sentence?

4 A. Because he cooperated. Because he was 18.
5 Because he took us to the body. Because everything
6 he said we can corroborate and back it up because he
7 testified in two different trials. He didn't plan
8 it. He didn't pull the trigger. And so the case
9 officer -- the case officer basically felt it
10 was ---

11 THE COURT: Hold on.

12 MS. ROSS: Again, I object. He doesn't know
13 that.

14 THE COURT: I note -- I note your objection.
15 I'll overrule the objection. Go ahead and answer
16 the question.

17 THE WITNESS: So after it was said and done
18 because he did the most to help the State with this
19 bad crime, we didn't feel like it was fair that the
20 two that were really involved who gave the victim
21 the murder, that he should catch the murder charge.
22 And so we agreed to reduce it to voluntary. That
23 was with his cooperation of his lawyer.

24 BY MR. ZELENKA:

25 Q. Okay. At -- at any time, did you ever have an

1 indication from him or from anybody else that there
2 was a possibility that he had an expectation that
3 that was going to occur before it occurred?

4 A. No, sir. We -- we actually expected everybody
5 was going to get convicted because of the brutality
6 of this crime. They committed a murder and get life
7 sentences, and it just didn't pan out.

8 Q. And Wendy Palm (phonetic) was a witness in Ezra
9 Williams' case and there was an indication that he
10 pled to murder and sentencing would be in the
11 future. Was there any belief on the part of you or
12 on any representations you made to Mr. Gantt that if
13 he testified favorably, his charges would be reduced
14 to something other than murder?

15 A. No, sir. That was -- we had contemplated at
16 that point in time is when after his trial that he
17 was found not guilty of the murder, in which we all
18 felt he was the trigger puller in this case, so that
19 entered into the equation.

20 MR. ZELENKA: Okay. Court's indulgence. I'm
21 pretty sure I'm through. No further questions.

22 THE COURT: Any cross-examination?

23 MS. ROSS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. ROSS:

1 Q. Afternoon, Mr. Campbell.

2 A. Thank you.

3 Q. So just going back to potential expectations or
4 your decision making. He had helped you to locate
5 this body years before, you know, the trial ---

6 A. That's correct.

7 Q. --- for quite some time. And was Mr. Williams'
8 trial the last in the order of these trials?

9 A. He was.

10 Q. And so he had done most of everything to assist
11 you that you just mentioned before Mr. Williams'
12 trial, except for actually testifying against him?

13 A. He was one of the main witnesses in the trial
14 against Mr. Williams. And before that, you know, he
15 testified in Jeremiah Johnson's trial. He helped us
16 find the body.

17 Q. So most of those things that you said were the
18 reasons that you, again, made that decision, had
19 already occurred precedent to Ezra Williams' trial?

20 A. Yes. And I'm assuming -- I believe Hugh Wilber
21 represented him. I think he would've approached us
22 after Mr. Williams' trial and discussed it, too.

23 Q. All right. And just going back to -- just that
24 questioning on page -- I believe it's 354. You just
25 testified to it about it earlier, about when you

1 asked Investigator Barton, "What were the reasons
2 you took out warrants?" And then he started listing
3 things and talking about what witnesses said.

4 There was no -- Mr. Robinson didn't make any
5 objection to anything like bolstering or suggesting
6 that that means why you take out a warrant to
7 suggest there's some kind of State action behind
8 those decisions. I'm not articulating myself very
9 well. Mr. Robinson did not object to -- to that
10 line of questioning?

11 A. Not -- no. It would be in the record. I'll
12 let the record speak for itself. I don't recall him
13 doing that, unless there's somewhere in the record
14 that he does.

15 Q. All right. And you testified a number of times
16 about witness statements implicating Mr. Williams,
17 but as far as what was presented at his trial, there
18 was Zachary Gantt and Jonathan Johnson, correct, who
19 testified?

20 A. Correct.

21 Q. Jeremiah Johnson did not testify?

22 A. That's correct.

23 Q. And so the only evidence that slipped in about
24 his testimony implicating Mr. Williams was from
25 Investigator Barton, if, in fact, there wasn't any.

1 I know you referred to some.

2 A. He -- I don't believe in his trial he referred
3 to Jeremiah Johnson. And Mr. John -- Jeremiah
4 Johnson did not indicate to us he was going to
5 testify, and so Jonathan Johnson's only statement
6 that he mentioned to my knowledge.

7 Q. Okay. But he did mention Jonathan Johnson, you
8 believe, who had just testified earlier?

9 A. Yes, ma'am.

10 Q. And on page 184, isn't it true that line 5 that
11 he said that, "Someone came to the door that I've
12 never seen before and I've never seen since." And
13 then it goes on to say, "Wasn't there some kind of
14 nickname, Caleb?"

15 A. Yeah, Mr. Williams' nickname was Cuervo,
16 Cuarvo, or something like that, and that's how the
17 street -- everybody knew him by his street name, not
18 Ezra Williams.

19 Q. That was disputed by some witnesses at the
20 trial, though, that they had different nicknames
21 that they brought up besides that one, didn't they,
22 or do ---

23 A. I can't recall that. I've always known him
24 based on my review of the case file, his name was
25 Cuervo, Cuarvo, or, you know, Ezra Williams was his

1 real name.

2 Q. Now, Jonathan Johnson at no time during his
3 testimony identified Ezra Williams as a person that
4 he saw come to the door? Ezra Williams was sitting
5 at the defense table, right?

6 A. I think he stated -- his answer says some kind
7 of -- I think they called him Cuervo phonetic or
8 something like that. I don't know his name.

9 Q. Right. Just before he did that, he said, "To
10 this day, I had never seen him before. And to this
11 day, I haven't seen him again."

12 A. Right.

13 Q. And after that, there's no identification?

14 A. Correct.

15 MS. ROSS: Okay. No further questions.

16 MR. ZELENKA: Nothing on redirect.

17 THE COURT: All right. Thank you.

18 Mr. Campbell, you can step down.

19 (Witness excused.)

20 THE COURT: Mr. Zelenka, call your next
21 witness.

22 MR. ZELENKA: That's the State's case.

23 THE COURT: I'll be glad to hear from the
24 attorneys. Mr. Zelenka.

25 MR. ZELENKA: May it please the Court? We

1 submit that they have failed to show ineffective
2 assistance of due process by the way that this case
3 was presented and the actions of Mr. Robinson in
4 defense of his client. Filed an amended return
5 earlier that I would essentially go by and rely upon
6 significant extent, but, essentially, under the
7 Strickland and Post-Conviction Relief Act, the
8 burden was on the applicant to show that defense
9 counsel acted efficiently. Failed to act within the
10 standards required of lawyers practicing criminal
11 law, and that prejudice was shown absent any of the
12 omissions. There was a reasonable probability that
13 the result of the proceeding would have been
14 different. And we submit that they failed to
15 satisfy their burden.

16 The first allegation they made was the failure
17 to investigate alibi. It's clear that Mr. Robinson
18 had investigated an alibi, considered an alibi
19 because, in fact, he pointed it out that some time
20 during the trial that he was trying to build a sense
21 of an alibi defense through the jail calls and some
22 of the references that have been made through Danny
23 Barton's testimony. And I cited to those in the
24 return about the cross-examination of Cicis Pizza.
25 That's transcript page 359, 360, and 361. And that

1 sort of information that came out.

2 There was information also that a decision was
3 made potentially not to call Martha Everett
4 potentially because of the defendant's desire to get
5 the last argument in the case. A decision not to
6 call the defendant, that the defendant agreed to it
7 in that circumstance. To rely upon the case for
8 when it came out. The defendant could've testified,
9 but then more importantly it was acknowledged by the
10 defendant in the proceeding here today that he, in
11 fact, left Cicis Pizza and, in fact, was -- was on
12 the scene of the crime at nine o'clock at night.

13 So it would be very difficult as, you know,
14 alibi is a very, very strong and a defense that
15 requires the ability to remove any possibility that
16 you could've been on that scene essentially. It's
17 clear that he was on the scene by his own statements
18 here, and that's probably information that the
19 defense counsel had and probably information that
20 would've influenced him in doing that.

21 Again, the burden is on the defendant to show
22 that that -- whatever action he took was -- was not
23 necessarily appropriate. We have the additional
24 information that there was a rap sheet that was
25 going to be used, and the State was prepared to

1 address Martha Everett on what had occurred that
2 night.

3 With respect to a failure to remove Juror 110,
4 that's a discretionary act. The record reflects the
5 witness's name was said in the opening. I believe
6 it was set out in the initial questions. They have
7 the entire jury list, which included this juror's
8 name. She indicated that she hadn't recognized him,
9 but it was she knew him as "BJ." Did not recognize
10 his full name on the witness last and also worked
11 with his mother. And that was set out in Court
12 Exhibit 4 and it says page 190 of the transcript.

13 Judge McIntosh got a sense of the lawyers and
14 where to go, then he asked the juror to come out.
15 He inquired of the juror. She explained it was
16 inadvertent. For that reason, she could be fair and
17 impartial to each side. Both the State and the
18 defense were asked whether they wanted that juror
19 removed. That juror wasn't removed.

20 But, more importantly, as to how they can't
21 show that the juror issue was critical to the case
22 is the juror was an alternate. And the juror didn't
23 sit in the deliberations, so it's difficult to see
24 how he was deprived of an impartial jury by the
25 failure to remove one of their peers when the other

1 alternate was seated and this one wasn't if you
2 review the record.

3 And aside of the *State v. Coaxum* case, that's
4 C-o-a-x-u-m, in the South Carolina Supreme Court, in
5 response to that, how mistrials should be the last
6 thing that necessarily occurs in the case, and it
7 shouldn't. And the Court needs to inquire as to
8 whether it's prejudicial and whether that
9 concealment was intentional or unintentional
10 concealment, and it clearly reveals that this was
11 unintentional concealment. Supported by the fact
12 that the juror herself indicated to the Court that
13 it was unintentional during the proceedings. This
14 wasn't something that occurred after court. I think
15 the Court acted wisely, that this was innocent, and
16 there's no inference of bias that could be given by
17 that juror.

18 Failure to object to autopsy photographs. As
19 you know, the Supreme Court as recently as a few
20 weeks ago, was very interested in limiting the
21 prejudicial impact that autopsy photographs can have
22 in guilt proceedings, which would be looked at
23 different than in capital proceedings that we are
24 used to.

25 But in this particular case, and you've got the

1 photograph before you. I think they pass any muster
2 that the Supreme Court and, certainly, Judge
3 McIntosh had at that particular time about the
4 admissibility of those photographs. They were
5 explained before their admissibility, and the
6 pathologist used them in a very sensitive way in
7 making that particular presentation, unlike the
8 photographs in the recent case which would the South
9 Carolina Supreme Court flipped.

10 These photographs were black and white. They
11 did not -- they were not what I would consider and I
12 don't know that the defense could really argue that
13 those were gory and gruesome photographs. And I
14 think the Court was wise in utilizing its discretion
15 allowing the photographs to come in, even though
16 there wasn't an objection.

17 And the case I was referring to as recently
18 came out is *State v. Nelson*. That was a decision by
19 the South Carolina Supreme Court August 9, 2023.
20 And it's Appellate Case No. 2021-01356.

21 Again, on the next issue they raised is failing
22 to object to jail calls. I would submit as I laid
23 out in the return, I think it clearly allowed the
24 accurate authentication of those photo -- excuse
25 me -- of the jail calls to be done. Individuals

1 could recognize the voices that were on the calls.
2 And I believe they were satisfied by the manner that
3 they were done. That information was provided to
4 defense counsel who didn't object.

5 Again, the burden of proof is on the defendant.
6 The defendant today acknowledged the voice on the
7 jail calls were his and acknowledged the other voice
8 on the jail calls were Martha's. That was the
9 reason that they were introduced. They failed on
10 their burden of proof on that.

11 Similarly, I'm not aware of what the objection
12 would be to the admissibility of the DVDs or videos.
13 The defense counsel worked with the State in getting
14 an understanding of what those DVDs were. And
15 through the discovery process, they had the
16 information and still photographs were made from
17 those. There weren't objections, which it showed
18 the location of the defendant's car from those
19 numerous DVD slides essentially that were developed
20 and presented in court, and they haven't shown what
21 the appropriate objection would be that counsel
22 failed to do.

23 Again, the prosecutor, Mr. Rame Campbell,
24 explained the testimony. He, in his testimony,
25 reasonably asked the questions of Investigator

1 Barton at 307 and 355 and 356 that were brought out,
2 and I would submit that even if we assume that
3 counsel may have been deficient in not objecting to
4 that, the limited impact of that information, I
5 submit, did not underline the confidence of the
6 verdict, which was one of the standards for
7 prejudice under Strickland. And I submit they
8 failed to show there was a reasonable probability
9 the result would've been different.

10 As far as the failing to move for a mistrial
11 after a hung jury, I would submit that if you review
12 the record in that case and the cites which I set
13 out, there was never really a hung jury in this
14 case. There was some questions about what do we do
15 if we're deadlocked? The Court made inquiry of the
16 foreperson. The foreperson said, "I'm not sure."
17 And then there were questions that were done
18 following that. And that was with the defense team,
19 defense counsel. And the State then moved to have a
20 modified Allen instruction. And I would submit that
21 subsequent, they were asking additional questions
22 and the jury verdict was not in my mind. They
23 obtained a verdict after those particular charges.
24 And I've cited *State v. Williams* on that. A very
25 short time, it was about 2 hours from that initial

1 assertion was made, and I would submit that there's
2 no standard about the length of deliberations that
3 needs to be done. So I also cited DBA standard in
4 my brief.

5 And if I haven't addressed the Zach Gantt
6 claim, let me address it now as far as the due
7 process part of it. It's clear that the reason that
8 Mr. Gantt was removed from having a murder charge
9 against him was the fact that the way the
10 prosecution team saw it was ministers of justice,
11 which they're required to do under Rule 3.8 that was
12 unfair that an individual be charged with murder,
13 convicted of murder when the State's theory was he
14 was a lesser culpable individual. And the
15 individuals that were, in fact, the trigger person
16 under the prosecution theory and the others, got no
17 sentences for that particular action of who did the
18 actual murder. And it was unfair as a minister of
19 justice under 3.8 to allow this individual, who was
20 not trigger person, to get that type of sentence.

21 There have been no preconceived agreement at
22 the time he testified that he was charged with
23 murder and then pled guilty with murder that in any
24 way suggests due process violations or unfairness to
25 the defendant under these circumstances. So I think

1 the due process suggestion is in error.

2 To the extent we have newly discovered evidence
3 from Mr. Gantt, I think the rule -- standard rule
4 under *State v. Whitner* is you have to view
5 recantations with a lot of questions. And here I
6 think it's clear the recantation needs to be
7 questioned greatly on this witness's behalf.

8 And it's unclear what motivated him to come and
9 do this, but it's that -- that requirement -- that
10 would be the requirement up to you, but you have to
11 find, I would submit, that he was being truthful
12 when he testified about the recantation when under
13 oath multiple times before the judge, a jury. He
14 was willing to say what he said consistent with the
15 facts of the case and circumstances of the case.
16 The existence of the defendant's vehicle behind the
17 scene of the crime to suggest what he suggested from
18 this witness stand.

19 And to the extent he took an oath today, he
20 took an oath those previous times, and I would
21 submit that burden failed in this proceeding. He
22 did not meet the standards that would require this
23 case to be undermined. I have no further comments.
24 If you have any of me, Judge, I'll be happy to take
25 them.

1 THE COURT: All right. Thank you. Just
2 briefly let me hear you on the issue of your -- the
3 last issue was the failure to perfect the appeal.
4 The failure to effect the appeal. Just the
5 State's -- I mean, I can read the brief.

6 MR. ZELENKA: Yeah, thank you.

7 THE COURT: But that appeared to be one thing
8 you had not addressed.

9 MR. ZELENKA: Yeah, and I didn't -- I didn't
10 mean to. Actually, that may have been one of the
11 parts that I should've addressed.

12 Under South Carolina law, *White v. State*, if an
13 individual does not freely and voluntarily waive his
14 right to appeal, he's entitled to a belated appeal
15 consent under *Lay v. State*. The *Lay v. State* would
16 require this Court to essentially deny the
17 application, but make a determination that this
18 defendant did not freely and voluntarily waive his
19 right to appeal. And his lawyer may have done
20 something to preserve those rights before the Court.

21 This record reflects that Mr. Robinson was
22 retained to do it. He had an obligation to either
23 satisfy the appellate court rules and have those
24 matters presented before the Court or take steps to
25 secure that right to appeal for this defendant,

1 either by moving before the Court to have the Office
2 of Appellate Defense assume responsibility based
3 upon indigency or, in fact, take steps to create a
4 post-conviction relief proceeding where outside of
5 the requirements of ineffective assistance of
6 counsel.

7 If his client had chosen to waive the appeal,
8 that's one thing, but I think -- and I find this to
9 be credible. The information that he gave in court
10 today that he always wanted the appeal. He never
11 wavered from that appeal. He expected that appeal
12 to go forward.

13 He wasn't aware that there was an issue with
14 his family members. Not him, but his family
15 members, not being able to pay for the transcript or
16 not being paid enough for the transcript. He should
17 be entitled to the *Lay v. State* appeal. So he
18 should be given that -- that opportunity the way
19 I -- I review this case, Your Honor.

20 THE COURT: All right. Ms. Ross.

21 MS. ROSS: Thank you, Your Honor. And, again,
22 I certainly agree regarding the appeal issue. I
23 think that is clear.

24 I would point out Ezra Williams received a
25 55-year sentence, though he was acquitted on the

1 murder, the judge ran kidnapping, armed robbery, and
2 maybe a weapon charge consecutive resulting in a
3 55-year sentence for Mr. Williams.

4 So just to shed some light on the argument that
5 it's unfair that -- that Mr. Gantt would've had that
6 murder on his record. Clearly, he could've
7 sentenced to a comparable thing.

8 And, really, that's the most problematic thing
9 for me here. What would you ever say if someone
10 came back later and reduced someone's sentence after
11 that? Ezra Gantt was the -- excuse me -- Zachary
12 Gantt was the key witness against Ezra Williams in
13 his trial. He was a codefendant. He was the only
14 witness who identified Mr. Williams. And you heard
15 him recant today.

16 I don't know what the truth was, but I would
17 ask you to review the transcript. Look at
18 Mr. Gantt's testimony there. It's strange. And,
19 you know, it's odd, you know, he says he was driving
20 Mr. Williams' car. And then there was something
21 about how he got the keys. It's -- it's a
22 convoluted statement that -- that he gave.

23 But the other witness who testified is Jonathan
24 Johnson. Did not even ID Mr. Williams or say he
25 knew him. He's saying someone answered the door. I

1 saw someone at the house that day. He didn't ID the
2 -- you know, the defendant in the case who was
3 sitting right in front of him.

4 There was also another witness against
5 Mr. Williams was Kensie Roebuck, and that's Zachary
6 Gantt's mother. And she gave some testimony about
7 the cameras, saying that Mr. Williams -- and I'd ask
8 you to review it as part of the transcript, but
9 saying that Mr. Williams told her that he purposely
10 avoided being on cameras because he is so smart and
11 that he had gotten a lawyer for her nephew or son,
12 Zachary Gantt.

13 Both those things were disputed by all the
14 testimony here today. No one knew about these
15 cameras on the house because clearly they did this
16 big clean up. If they had known that there were
17 cameras, they would've clearly gotten that
18 information and hidden it themselves. So that --
19 those were the witness -- that was the testimony
20 against Mr. Williams.

21 And then these phone records, which you have
22 the report saying that they're not convincing. All
23 you have, you know, this trial came in during the
24 case was he was pinged all over the place in
25 Homeland Park, which Mr. Robinson didn't question

1 the investigator's expertise. He didn't have the
2 judge do no 704 questioning of that testimony. And
3 that -- I leave it to your review, Judge, of course,
4 but that was the key evidence against Mr. Williams.
5 There was no forensics aside from that that I --
6 that I saw.

7 You -- you heard the testimony presented. It
8 is what it is there, but this was not an
9 overwhelming case. And I know it's tedious when I
10 go through the transcript and I'm trying to get all
11 these points and I understand that on PCR, it's not
12 necessarily cumulative evidence of ineffective
13 assistance. I'm just going through little things
14 that might've made a difference in this trial.

15 And this was a close trial. The jury was hung.
16 They were very close. And they were told by the
17 State that through the Investigator Barton's
18 testimony, "We had enough for a warrant because A,
19 B, C, D." To me, this is bolstering. It's
20 suggesting we have enough for you to convict because
21 of A, B, C, D. So there was no objection to that.

22 And then, secondly, they were told that the
23 witness who -- the one witness codefendant who said
24 Ezra Williams was the main person was told they
25 were -- they were lied to, that he had already pled

1 to murder. That he had no reason to give these
2 statements. And, in fact, that ended up not being
3 the truth. I'm not going to question the mindset of
4 the solicitor. You know, I wouldn't presume.
5 However, there are other cases.

6 I just -- I was defense on Clarence Jenkins'
7 case where a codefendant testified and went and
8 found a body. And afterwards the judge declined to,
9 again, reduce the charges because the jury had been
10 told this woman was charged with murder and so she
11 doesn't get to come back and not get charged with
12 murder because that is a misrepresentation to the
13 jury and what's to keep that from happening in every
14 case to clean up or to add gravitas to every sort of
15 dirty codefendant witness by saying they've already
16 pled.

17 And so that's my argument for Mr. Williams. I
18 think that the changing of the sentence did violate
19 his due process rights. I think it did deny him a
20 fair trial. Certainly, along with other things, his
21 witness -- alibi witnesses. There was some evidence
22 that they were intimidated, that that resulted in an
23 unfair trial for Mr. Williams. So I would ask that
24 he be offered an appeal under *White v. State* and
25 also be granted post-conviction relief in this

1 matter.

2 THE COURT: All right. Educate me on -- you
3 both agree that he needs to be granted an appeal.
4 How do we -- of course, whenever I asked on that one
5 particular issue, what does an order from this Court
6 look like on that one particular issue?

7 Mr. Zelenka, just ---

8 MR. ZELENKA: Well, the order usually ---

9 THE COURT: --- I'm going to ask you to prepare
10 that order. I'm just interested in what it would
11 look like.

12 MR. ZELENKA: No, I understand. Over the
13 years, that order has somewhat changed, but it
14 usually is that he's not entitled to post-conviction
15 relief on that ground, but the Court makes a finding
16 that he did not freely and voluntarily waive his
17 right to an appeal, be it ineffective assistance of
18 counsel and the advice or something on these
19 matters. And upon appeal of this proceeding, the
20 Court will then apply the procedure of *White v.*
21 *State* because it puts -- the denial of it puts the
22 burden back on the defendant to take the appeal of
23 the PCR up.

24 And then when it goes up on appeal, then
25 whether the record is reviewed -- I'm going into

1 this much -- too much -- is whether there's some
2 evidence in the record to support the conclusions
3 that the PCR hearing judge gave. And then there's a
4 briefing of the potential direct appeal issues on
5 *White v. State*, which depending upon how you rule on
6 the other merit cases would be combined in
7 essentially two separate briefings.

8 THE COURT: All right. I got lost about
9 halfway.

10 MR. ZELENKA: I figured you would.

11 MS. ROSS: I might be able to help.

12 THE COURT: All right.

13 MS. ROSS: The question presented one: Was the
14 PCR judge in error for granting relief pursuant to
15 *State v. White*?

16 Question number two: Here are the appellate
17 errors -- I mean, issue number two: Here are
18 appellate errors A, B, C, D.

19 THE COURT: Well, y'all are talking about
20 something down the road. My question simply is: As
21 a result of the agreement that he was -- that he did
22 not voluntarily, intelligently abandon his appeal, I
23 mean, I'm just simply -- I mean, what do I say in an
24 e-mail to you? The Court ---

25 MR. ZELENKA: I can -- I can e-mail you and

1 Ms. Ross the standard form that we have for those.

2 THE COURT: Okay.

3 MR. ZELENKA: If that works?

4 MS. ROSS: That would work.

5 THE COURT: Y'all work that out.

6 MR. ZELENKA: Yeah, it's always very confusing.

7 And I only helped with the confusion. I apologize.

8 THE COURT: That's alright.

9 MS. ROSS: I think I did, too.

10 THE COURT: I've got an old simple mind.

11 Y'all's job is to educate me, but I trust that it's

12 clear that I -- I will -- that I am going to find

13 that he -- that he did not and that both sides, the

14 applicant and the respondent both agree -- I mean,

15 applicant and State both agree that he never

16 voluntarily or intelligently abandoned his appeal.

17 That's my finding. I will sign the appropriate

18 order that states that. And then he's got to be

19 advised on what that means to him ---

20 MS. ROSS: I'll explain that to him.

21 THE COURT: --- and the next steps. All the

22 other issues, I will take all that under advisement

23 and I'll rule some time next month.

24 MS. ROSS: Thank you, Your Honor.

25 MR. ZELENKA: Thank you, Your Honor.

1 THE COURT: All right. Are we -- and then
2 these exhibits, I think, needs to go to the clerk
3 for the trial.

4 MS. ROSS: And may he stay here for about 3
5 minutes while I explain this to him?

6 THE COURT: That's a court security issue.

7 MS. ROSS: Sure.

8 (At 5:07 p.m., the proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 22nd day of August, 2023.

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

August 7, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

SCOTT D. ROBINSON LAW FIRM, LLC
ATTORNEY AND COUNSELOR AT LAW

819 EAST NORTH STREET, 29601
P.O. BOX 10042, FEDERAL STATION,
GREENVILLE, SC 29603
PHONE: 864.271.6940 • FAX: 864.271.6941
EMAIL: SCOTTDROBINSON@BELLSOUTH.NET

23 AUG 23 AM 9:51:56
Hendershot, SC COC, CP/68

January 29, 2017

LIEBER CORRECTIONAL INSTITUTION
P.O. BOX 205
RIDGEVILLE, SC 29472
ATTN: EZRA RYSUNN WILLIAMS
COOPER B-22

Dear Ezra:

I hope everything finds you well under the circumstances.

As you probably know your Appeal was dismissed on November 2, 2016 due to the inability of your family to pay for the transcript. Your family paid me for the Appeal but that does not cover the cost of the transcript. I have been unable to get anywhere with your family for the cost of the transcript.

Can you have your family call me immediately to discuss this matter on my cell number at 864.630.7523.

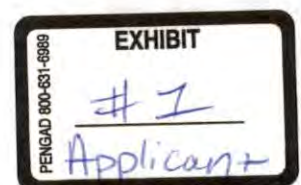
I would like to hear from you as well as soon as possible.

Sincerely,



Scott D. Robinson

SDR/br



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Ezra Rysunn Williams, #345989,

Applicant,

v.

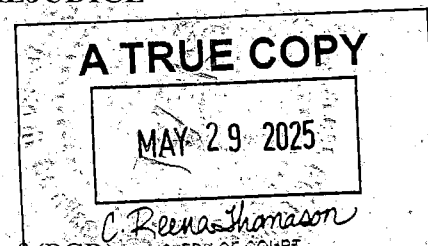
State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT

) CASE NO. 2016-CP-04-02661

**ORDER OF DISMISSAL
WITH PREJUDICE**



The matter before this Court is an action for post-conviction relief (PCR) commenced by Ezra Rysunn Williams (Applicant) PCR application filed on December 1, 2016, asserting various allegations of ineffective assistance of counsel. Respondent made its Return dated September 15, 2017, requesting an evidentiary hearing. Applicant filed a supplemental PCR application on August 21, 2018. Respondent filed an amended return on August 21, 2023.

An evidentiary hearing was convened at the Anderson County Courthouse on August 22, 2023. Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). Deputy Attorney General Donald J. Zelenka represented Respondent. Applicant proceeded forward on the claims set forth in his original and supplemental applications. In support of these claims, Applicant testified on his own behalf, and Applicant presented testimony from Zachary Gantt (Gantt), Daniel Tally (Tally), and Martha Everett (Everett). Respondent presented testimony from former 10th Circuit Assistant Solicitor and current Assistant City Attorney for Anderson County Rame L. Campbell (Campbell). This Court has before it the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Applicant's appellate records, and the application, the supplemental application and return.

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 dismissed this action with prejudice, except for a determination that the Applicant did not freely and voluntarily waive his right to a direct appeal and is entitled to a belated review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk. Applicant was indicted by the November 2012 term of the Anderson County Grand Jury for one count of Armed Robbery (2012-GS-04-02473) and one count of Possession of a Weapon During the Commission of a Violent Crime (2012-GS-04-02474). Applicant was subsequently indicted by the December 2012 term of the Anderson County Grand Jury for Murder (2012-GS-04-02575) and one count of Kidnapping (2012-GS-04-02576). Scott D. Robinson, Esquire, represented him. The State was represented by Assistant Solicitors Rame L. Campbell, Esquire, and Brantley Haigler, Esquire. On August 10-12, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. Applicant was found guilty of all charges **except murder**. Judge McIntosh sentenced Applicant to consecutive sentences of thirty years for armed robbery and twenty-five years for kidnapping. Applicant was sentenced to a concurrent sentence of five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Applicant's appeal was handled by Scott D. Robinson, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide proof that a transcript had been delivered, as required by Rule 207 of the South Carolina

Appellate Court Rules. State v. Williams, Appellate Case No. 2015-001904 (Filed October 14, 2016). The Remittitur was returned on November 2, 2016.

SUMMARY OF FACTS ADDUCED AT TRIAL & RELEVANT TESTIMONY

On Sunday, July 1, 2012, Chandrakant Patel (Patel), left work and went to meet Kyndra Howell (Howell), one of Applicant's girlfriends. (Trial Tr. p. 90). Patel was meeting Howell to pay her, or someone else, money in exchange for sex. (Trial Tr. pp. 90-1). Patel arrived at Howell's residence that afternoon in a black four-door Honda, and upon his arrival, Howell came outside and left with Patel. (Trial Tr. pp. 91-2). Shortly after, Patel and Howell returned, and both went inside Howell's residence. (Trial Tr. p. 92). At the time, Howell had no money and was about to be evicted, and enlisted the help of Gantt, Jermiah Johnson (Johnson), and Applicant to rob Patel. (Trial Tr. p. 92).

While Patel was alone in the home, Gantt and Johnson ambushed him, tied Patel's hands behind his back and beat him. (Trial Tr. 92). They retrieved seventy dollars and Patel's ATM cards from his wallet. (Trial Tr. p. 92-3). Gantt and Johnson continued to beat Patel, wanting Patel to give them the PIN numbers to his ATM cards. (Trial Tr. p. 93). Multiple attempts were made to use Patels ATM cards at gas stations and at AMTs, which failed. Id. Applicant arrived at Howell's residence later, at which point the beating escalated to torture, Applicant using bug spray in Patel's eyes, cutting him with a knife, and heating the knife on a hot stove and burning Patel with it. Id. Patel refused to provide Applicant and his co-defendants with the PIN numbers, and Applicant and his co-defendants decided to kill Patel. Id.

Applicant and his co-defendants drove Patel to a heavily wooded area at the corner of Highway 29 and Big Water Road, walked Patel about a hundred and ten yards into the woods,

where Applicant shot Patel in the back of the head. Id. After this, Applicant and his co-defendants went back to Howell's residence and smoked a blunt while someone cleaned Patel's car. (Trial Tr. p. 94). After cleaning Patel's car, Applicant and his co-defendants dumped the car in Fair Play. Id. Patel's body was discovered ten days later. Id.

DETECTIVE BARTON'S TESTIMONY

A. Jail Cell Calls and Possible Alibi

Outside the presence of the jury, Trial Counsel proffered Detective Danny Barton (Detective Barton) concerning his training in keeping records of jail calls at the detention center. (Trial Tr. 223). Detective Barton testified he did not have formal training on how to operate retrieval of jail calls. Id. Detective Barton testified each inmate gets a PIN number to make a phone call, a recorded message precedes the call informing the inmate the call is being recorded, the inmate enters their PIN number, identifies themselves on the call, and the person on the other end has the option to accept or reject the call. (Trial Tr. pp. 223-4). Detective Barton testified he was taught how to use the system when he received a password, but there was no actual training. (Trial Tr. p. 224).

On direct examination, Detective Barton testified he was the lead detective on the disappearance of Patel, and he also brought the charges against Applicant. (Trial Tr. pp. 225-6). Concerning Applicant's jail cell calls, Detective Barton testified he listened to Applicant's jail cell calls, and the two recordings of Applicant's jail calls the State entered into evidence¹ pertained to Applicant's possible alibi. (Trial Tr. pp. 315-6; St. Ex. 40). Before the two recordings were played

¹ Trial Counsel objected to the introduction of the jail cell based on foundation. (Trial Tr. pp. 315-16). The court noted Trial Counsel's objection and admitted the recordings of Applicant's jail calls. (Trial Tr. pp. 316-17; St. Ex. 40).

for the jury, Detective Barton identified Applicant's voice on the recordings². (Trial Tr. p. 320). Detective Barton testified the two voices on the recordings were Applicant's and Everett's, and then the recordings were played for the jury³. (Trial Tr. p. 321).

Detective Barton testified the jail calls revealed Everett planned to be Applicant's alibi, and this prompted Detective Barton and Sergeant Rob Gebing to meet with Everett to get a statement from her. (Trial Tr. pp. 334-6). Detective Barton testified was unable to substantiate Everett's alibi story, considering Applicant's cellphone was pinging Homeland Park cell tower all night long of the incident, and Everett refused to give a written statement. (Trial Tr. p. 336). Detective Barton testified Everett did not approach him at all to provide an alibi for Applicant. Id.

On cross examination, Detective Barton testified Everett informed him Applicant was with her at Cici's Pizza the night of the incident and stayed with her all night long. (Trial Tr. p. 359). Detective Barton testified Applicant's cell phone records indicate that alibi is not accurate, as Applicant's phone pinged off Homeland Park when the incident occurred, not at Cici's or Friendship Court, where Everett lives. (Trial Tr. p. 360). Detective Barton testified he cautioned Everett about lying on the stand, and informed Everett he could prove Applicant was not with her all night when he met with Everett to get her statement. (Trial Tr. pp. 361-62).

B. Applicant's Cell Phone Records

Concerning Applicant's phone calls to Howell the night of the incident, Detective Barton testified he obtained Applicant's cell phone records, and learned that Applicant and Howell had contact all day the day of the incident. (Trial Tr. p. 309). Detective Barton testified the contact stopped around the time of the incident, and during the incident there were a few more texts and

² Trial Counsel objected to Detective Barton's identification as hearsay. (Trial Tr. p. 320, ll.16-17). The court overruled Trial Counsel's objection. (Trial tr. p. 320, l. 18).

³ Trial Counsel renewed his previous objection. (Trial Tr. p. 321, l. 23).

phone calls between Howell and Applicant. Id. Detective Barton testified at some point during the incident at night Howell left to try the ATM cards. Id.

On cross-examination, Detective Barton testified Applicant's cellphone records did not establish Applicant was at the scene, but that he was in the Homeland Park area at the time of the incident. (Trial Tr. p. 357).

C. DVR Video from Howell's Residence

Concerning the DVR video from Howell's residence, Detective Barton testified the landlord of Howell's residence informed him he installed a digital video recorder (DVR) connected to the camera's outside Howell's residence. (Trial Tr. pp. 255-6). Detective Barton testified he executed a search warrant to retrieve the DVR, which was built into a closet wall in the residence so no one could know it was there. (Trial Tr. p. 257). Detective Barton testified he reviewed the DVR and observed Patel arriving to the residence, Patel speaking with Howell, Gantt and Johnson at the residence, and another car parked behind the residence he was unable to initially identify. (Trial Tr. pp. 257-8). Detective Barton testified the DVD discs containing the period of DVR recordings pertinent to Applicant's case fairly and accurately represent what he observed on the DVR system, and he did not change or materially alter them in shape, manner or form⁴. (Trial Tr. p. 264; St. Ex. 31, 32).

On cross-examination, Detective Barton testified he retrieved the DVR video on July 5, 2019, and had complete control over the videos throughout the investigation. (Trial Tr. 357-8). Detective Barton testified he recovered the entire DVR video and testified he never conceded the DVR video was not complete. (Trial Tr. p. 358). Detective Barton testified he burned the portion

⁴ Trial Counsel did not object to the admission of the DVR recordings. (Trial Tr. p. 265). However, Trial Counsel had a pre-trial motion to suppress the DVR recordings which was denied by the court. (Trial Tr. pp. 50-61).

of the DVR video from 2:00 PM of July 1st to the morning hours of July 2nd on two different discs, and the DVR itself is in evidence. (Trial Tr. p. 358).

DR. WOODARD'S TESTIMONY

Doctor Brett Woodard (Dr. Woodard) testified he conducted Patel's autopsy on July 12, 2012. (Trial Tr. pp. 192-3). Dr. Woodard testified the coroner's office asked him to complete an undescriptive autopsy, meaning whatever dissections or specimens are acquired are properly collected and a full dissection of the body is done. (Trial Tr. pp. 199-200). Dr. Woodard testified Patel's body was in advanced stages of decomposition. (Trial Tr. p. 201). Dr. Woodard testified he first collected insect life off the body for DNA samples and then examined the body as it was, including the clothes on the body. (Trial Tr. pp. 201-2). Dr. Woodard testified Patel's hands were tied behind his back with a wire, and there was a gunshot wound to Patel's head. (Trial Tr. pp. 202-3). Additionally, Dr. Woodard testified there were cuts to Patel's legs and discoloration that suggested a possible burn injury to Patel's abdomen. (Trial Tr. p. 203).

Dr. Woodard testified he took photographs of the autopsy. (Trial Tr. pp. 206-7; St. Ex. 26, 27, 28, 29, and 30). Dr. Woodard testified Exhibit 26 represented the bindings that were on Patel's wrists behind his back. (Trial Tr. p. 206-7). Dr. Woodard testified Exhibit 27 represented Patel's body with the bindings on his wrists before Dr. Woodard cleaned the area. Id. Dr. Woodard testified Exhibit 28 represented some of the cuts on Patel's right leg. Id. Dr. Woodard testified Exhibit 29 represented the cuts on Patel's left leg. Id. Dr. Woodard testified Exhibit 30 represented the discoloration on Patel's abdomen, which appeared to be a burn. Id. Dr. Woodard testified the photographs accurately represented what he observed. (Trial Tr. pp. 207-8).

GANTT'S TESTIMONY

Zachery Gantt testified he pled guilty on November of 2014 to murder, possession of

weapon during the commission of a violence crime, armed robbery and kidnapping, and his sentence was deferred. (Trial Tr. pp. 117-8). Gantt acknowledged his involvement in the crime and testified that three other people were involved: Howell, Johnson, and Applicant. (Trial Tr. p. 118). Gantt testified Applicant went by the street name "Quavo". (Trial Tr. p. 120). Gantt testified he had previously visited Howell's residence a couple of times, and he had seen Applicant there a couple of times. (Trial Tr. p. 121). Gantt testified he knew Johnson through William Jeffries, known as "Chill Will". (Trial Tr. p. 126).

Gantt testified the robbery was Howell's idea. (Trial Tr. p. 127). Gantt testified Howell brought Patel into the house, and then he and Johnson attacked him and tied his hands behind his back. (Trial Tr. pp. 127-8). Gantt testified they took Patel's phone, money, and credit cards from his pockets. (Trial Tr. pp. 128-9). Gantt testified they had expected to get more from Patel, and continued to beat Patel, trying to get Patel to give them his PIN numbers to his credit cards. (Trial Tr. pp. 129-30). Gantt testified this went on for a couple of hours. (Trial Tr. p. 131).

Gantt testified Applicant came to Howell's residence while Patel was being held there, and it was dark outside when Applicant arrived. (Trial Tr. p. 132). Gantt testified Applicant arrived in a four door Oldsmobile. Id. Gantt testified Applicant had an opportunity to see Patel when he arrived at the residence, as Applicant walked towards the kitchen and the door was open to the room Patel was in. (Trial Tr. pp. 134). Gantt testified Applicant came into the room, looked at Patel, said something, and then started beating Patel. (Trial Tr. pp. 134-5). Gantt testified Applicant then got a knife, heated it on the stove, and stuck it on Patel's stomach, and then he got bug spray and used it on Patel's eyes. (Trial Tr. pp. 135-6). Gantt testified Applicant continued to torture Patel after doing this. (Trial Tr. p. 136).

Gantt testified a gun was not used to threaten Patel at the residence, and the idea of killing

Patel had not been brought up at the house. (Trial Tr. p. 137). Gantt testified at no point did anyone try to stop the torture or get help for Patel, and no discussions took place about letting Patel go. (Trial Tr. pp. 137-8). Gantt testified the idea to move him from the residence came up after Patel would not give up his PIN number even after the torture continued. (Trial Tr. p. 138). Gantt testified they took Patel out of side door of the residence to Patel's car. (Trial Tr. pp. 138-40). Gantt testified Applicant drove the car a good distance from the residence to Big Walker Road, a heavily wooded area with not many homes around. (Trial Tr. pp. 140-42).

Gantt testified they took Patel into the woods, Applicant asked Patel if still would not give the PIN numbers, Applicant was silent, and then applicant shot him in the head. (Trial Tr. pp. 144-5). Gantt testified Applicant used a Hi Point .9 millimeter and shot Patel once in the head, and Gantt was standing right next to Applicant when he shot Patel. (Trial Tr. pp. 145-6). Gantt testified Patel's hands were still tied behind his back when Applicant shot him. (Trial Tr. p. 146). Gantt testified they then drove Patel's car back to Howell's residence, and then sat in the residence and smoked weed. (Trial Tr. pp. 147-8).

CURRENT ACTION BEFORE THIS COURT

In his original PCR application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Ineffective Assistance of Appellate Counsel"⁵
 - a. "Applicant was denied his right to the effective assistance of appellate counsel at a critical stage of the proceedings and his right to his one and only direct appeal due to counsel's failure to obtain trial transcript."
 - b. "My family retained trial counsel to perfect appeal but Mr. Robinson failed to obtain trial transcript. Appeal was dismissed by the S.C. Court of Appeals, Rule 207, South Carolina"

⁵ At the evidentiary hearing, these allegations were presented as a request for belated review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Appellate Court Rules.”

- c. “...counsel’s inaction- the failure to obtain the trial transcript denied him counsel at a critical stage of the proceedings.”
- d. “...Mr. Robinson should have acted in Applicant’s best interest and moved the Court of Appeals to appoint the appellate counsel from the South Carolina Office of Appellate Defense, rather than abandon the Applicant.”

In the Supplemental Application, through counsel, Applicant additionally alleged the following:

1. Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:
 - a. Failing to serve notice of or present witnesses and evidence supporting an alibi defense;
 - b. Failing to investigate and review evidence available to him;
 - c. Failing to make proper objections including:
 - i. Failure to object to juror number 110 who knew witness (p. 192),
 - ii. Failure to object to autopsy pictures and other photographs (p. 208, p. 299),
 - iii. Failure to object to recordings of jail calls (p. 222),
 - iv. Failure to object to DVR recordings (p. 266), and
 - v. Failure to object to prejudicial conclusory statements made by lead investigator (p. 307, p. 355),
 - d. Failing to move for a mistrial after hung jury.
3. Due Process violations due to the State vacating murder charge against key witness, Zachary Gantt, after allowing him to tell jury that he plead to murder.

SUMMARY OF THE TESTIMONY AT THE EVIDENTIARY HEARING

GANTT’S TESTIMONY

On direct examination, Gantt testified he sent a letter about his prior testimony to PCR Counsel, in which Gantt stated Applicant was never involved in the case. Gantt testified his testimony implicating Applicant was not true, and he was forced and tricked into testifying Applicant was part of the crime. Gantt testified he was seventeen when crime occurred, but he was charged as an adult. Gantt testified he gave three statements to law enforcement before

trial, and his earlier statements did not implicate Applicant. Gantt testified his third statement was typed by a detective, and Gantt signed the statement because he was intimidated and pressured, but the statement was not true. Gantt testified Applicant had no involvement in the crime, and Applicant only picked him up to go to a party⁶.

On cross-examination, Gantt testified he believes in the oath he took to tell the truth. Gantt testified he does not know why his charge of murder was reduced to voluntary manslaughter, and testified he was not offered reduced charge of voluntary manslaughter at time of testimony at Applicant's trial, but was offered reduced charge after Applicant had not been found guilty of murder. Gantt testified the reduced charged was offered based on discussions between his defense counsel and solicitor, because they thought it would be unfair if Gantt was charged with murder and he was not the trigger person. Gantt testified he had already implicated Applicant in crime, and testified multiple times, even before trial, that Gantt was the one who shot the victim.

Gantt testified he helped kidnap the victim from Howell's residence. Gantt testified that, at the time, he believed the victim would give up the money and his PIN number, and nothing else would happen. Gantt testified he was there when "they" beat, stabbed, and tortured the victim. He contended Applicant arrived at Howell's house later at nighttime. Gantt testified Applicant came to pick him up but did not stay. Gantt stated his testimony at trial was the opposite, and that he testified Applicant was an intimate part of continued

⁶ During direct examination, Gantt referenced numerous statements he made at trial, including: (1) Testimony at trial stating he pled guilty (Trial Tr. p. 117, ll. 18-23); (2) Testimony where Gantt stated his charges were not reduced in exchange for plea (Trial Tr. p. 118, ll. 7-9); (3) Testimony where Gantt stated he gave a written statement to law enforcement confessing to his involvement in crime, took law enforcement to where victim's body was located, and testified he was not promised anything to do this. (Trial Tr. 156, ll. 3-14). Gantt's testimony at the evidentiary hearing was that all this trial testimony was a lie.

kidnapping at trial. Gantt testified the man who shot the victim is dead, but he does not have his name. Gantt testified he did not testify in court that someone else shot the victim because he was bribed to say Applicant did it. Gantt testified he was given five thousand dollars (\$5000.00) for his testimony implicating Applicant that he received personally from William Jeffrey⁷, who was involved in the kidnapping. Gantt testified William Jeffrey died later while Gantt was locked up. Gantt testified he had no communications with William Jeffrey while incarcerated. Gantt also testified law enforcement did not know he was being bribed, but they also coerced him into testifying. Applicant shot the victim at the same time. Gantt testified he was aware his testimony at evidentiary hearing could bring a perjury charge against him.

On re-direct, Gantt testified he signed the typed statement the State prepared, and the State practiced his testimony with him before Applicant's trial. Gantt testified the State was trying to force Gantt to remember things he did not remember. Gantt testified he did not know there were cameras at Howell's house. Gantt testified his testimony at the evidentiary hearing was the truth.

On re-cross, Gantt testified he did not feel free to tell the truth at Applicant's trial. Gantt testified he had already received the bribe before trial, and he could have said anything.

On re-re-cross, Gantt testified the Solicitor did not accept his initial statements stating Applicant was not involved.

APPLICANT'S TESTIMONY

On direct examination, Applicant testified he retained Trial Counsel to appeal his conviction, admitting a letter he sent to Trial Counsel into evidence. (App. Ex. 1). Applicant

⁷ In the trial transcript, there are references to William "Jeffries." Trial Tr.p. 157-158. These are the same individuals.

testified he had a partial alibi defense. Applicant testified at 7 PM he was at Cici's Pizza with his family, and thereafter went to his daughter's mother's house, and stayed there until 9 PM. Applicant testified Gantt called him around 9 PM, and then Applicant went over to Howell's house. Applicant stated he was not part of the armed robbery or kidnapping, and he never saw the victim. Applicant testified Trial Counsel never pursued alibi defense, and Applicant cannot recall why Trial Counsel did not pursue the defense. Applicant testified Trial Counsel never served notice of alibi defense. Applicant testified Trial Counsel did not investigate his case as much as he should have.

Applicant testified Trial Counsel made a motion to have DVR video not come in at trial because he did not review the video, and the motion was denied. (Trial Tr. p. 61). Applicant testified Trial Counsel never objected to the testimony of Detective Barton as non-expert testimony where he stated Applicant's cell phone had been pinging of cell towers all night long. (Trial Tr. pp. 335-6). Applicant testified Trial Counsel never hired an expert to refute Detective Barton's testimony. Applicant testified Trial Counsel probably did not review ATM videos, and the videos did not show Applicant. Applicant testified Trial Counsel never objected to keeping a juror who was related to a witness or knew a witness. (Trial Tr. p. 192). Applicant testified Trial Counsel did not object video from Howell's house. (Trial Tr. p. 265).

Applicant testified Trial Counsel failed to object to statements made by Detective Barton on page 309. Applicant testified Detective Barton characterized the phone calls like Applicant had been in contact with Howell all day when phone calls were 32 second long. (Trial Tr. p. 309). Applicant testified he recalled Johnson's testimony at trial that someone else opened door and that Johnson did not know the person. (Trial Tr. p. 184).

Applicant testified he did not testify because he had a prior charge and Trial Counsel did not feel like it would be good for Applicant to testify. Applicant testified he stated on the record he did not wish to testify.

Applicant testified Trial Counsel never asked for mistrial after there was a hung jury. (Trial Tr. pp. 458-9).

On cross-examination, Applicant testified he did not recall any communication with Trial Counsel about needing money for the transcript for the appeal. He stated the first he learned Trial Counsel was not able to get the transcript was when the remittitur was returned. Applicant testified he received the letter from Trial Counsel about issues with obtaining transcript after receiving the remittitur. (referencing App. Ex. 1). Applicant testified he wanted to appeal his case, and he never indicated to Trial Counsel he did not want to appeal. Applicant testified the letter indicated there was a financial issue with getting the transcript, and to this day Applicant does not know how much it would have cost to get transcript. Applicant testified if he had received the letter before remittitur he would have appealed it.

Applicant testified Trial Counsel informed him of risk of testifying and informed him if he put up family members to testify would lose the right to the final closing argument. Applicant testified there were no discussions with Trial Counsel about a possible alibi defense. Applicant testified he never gave statement to police about his involvement, and jury never learned his version of the events. Applicant testified his alibi witness would have been Martha Everett. Applicant testified Everett had a dinner receipt and work schedule for his alibi. Applicant testified Gantt called him at 9 PM, July 1st, and he went to Howell's after the call. Applicant testified he told Trial Counsel he had dinner at Cici's with family, went to Howell's after Gantt's call, and then hung around the gas station and smoked, doing nothing

in particular. Applicant testified he spent rest of night, until early morning, with Howell. Applicant testified he had to take his daughters to school that morning, although he was out pretty late.

Applicant testified he first heard the victim was missing while he was at the gas station, but did not know he was killed until he read the newspaper article about it. Applicant testified he was with Howell but did not know what was going on. Applicant testified he gave all this information to Trial Counsel. He claimed that Trial Counsel only went over a little bit of discovery, including checks, the victim's financials, and hotel receipts.

Applicant testified Martha Everett is the mother of his daughters. Applicant testified he did not listen to any jail calls before trial, but acknowledged that he made those calls and Everett's voice is on those calls. Applicant testified he did not know about the cameras at Howell's house, but he did park his car beside the house that night. Applicant testified Howell and Gantt were the only people at the house that night. Applicant testified he went into Howell's house that night. He stated that the house is situated in such a way where can enter one room and not know what's going on in another room. Applicant testified he knew Gantt from the neighborhood, and that Gantt is related to William Jeffrey. Applicant testified he did not know Gantt personally; he was just the young kid on the block. However, Applicant testified he would hang out with William Jeffrey, "Chill Will", and Applicant was closer to him than to Gantt. Applicant testified he did not know why William Jeffrey would bribe Gantt to testify against him. Applicant testified that he was aware that William Jeffrey died in an armed robbery.

DANIEL TALLY'S TESTIMONY

On direct examination, Tally testified he retained Robinson as Trial Counsel for Applicant, and Tally handled everything, including making payments and meetings. Tally

testified he gave ten thousand dollars (\$10,000) for the trial, and five thousand dollars (\$5000) for an appeal. Tally testified went to Trial Counsel's office after the trial during the same week it ended, and gave Trial Counsel the five thousand dollars. Tally testified there was nothing done after that.

MARTHA EVERETT'S TESTIMONY

On direct examination, Everett testified she has a child with Applicant, and presented receipt from Cici's Pizza and July schedule. (App. Ex. 2). The date of the receipt is July 1, 2012, Everett testified the significance of date was it was her oldest daughters' birthday. Everett testified she kept the receipt because it is partial alibi for the Applicant. Everett testified she brought the work schedule because it shows she was off that night and worked July 2nd. Everett testified when she worked that the Applicant took care of the kids. Everett testified Applicant was with her for a significant time that night, and she was willing to testify to that at the trial. Everett testified she made herself available to testify and discussed it with counsel Robinson. Everett testified counsel told her to make copies of receipts and work schedule but that he did not believe it would be beneficial to testify because State would tear her apart. Everett testified that she had a prior history law enforcement and claimed officers had followed before this incident occurred her intimidated her. She opined that law enforcement had targeted Applicant.

On cross-examination, Everett testified, under oath, the two adults at Cici's Pizza were her and Applicant. Everett testified they left Cici's Pizza after thirty to forty-five minutes, because sister had to be at work at 8:30 PM. Everett claimed she was with Applicant that evening at her apartment. Everett testified she was not completely sure of timeframe. Everett testified Applicant likely left after sister went to work. Everett testified she does not recall how long Applicant was gone that night after he left.

On re-direct, Everett testified that she and Applicant fought when he returned home in the morning, because Applicant had agreed he would take care of the kids in the morning.

FORMER ASSISTANT SOLICITOR RAME CAMPBELL'S TESTIMONY

On direct examination, Campbell testified he was the prosecutor on Applicant's case, and as part of prosecution he met and discussed matters with counsel Scott Robinson. Campbell testified the purpose of the meetings with Robinson was to prepare for trial. Campbell testified Trial Counsel was interested and engaged in Applicant's case. Campbell testified Trial Counsel knew how Campbell presented evidence because he had been on several cases opposing Campbell previously. Campbell testified he recalled that Gantt entered a guilty plea before the trial, and that sentencing was not part of the negotiations. Campbell testified he asked Gantt to assist in trial of case and investigations, and Gantt pled guilty after he agreed to testify at trial. Campbell testified he would not be here with a verdict without Gantt's assistance.

Campbell testified that Gantt was interviewed three times, and in each statement he gave more information. Campbell testified Gantt's first statement was self-serving, and his second statement mentioned Applicant. Campbell testified Gantt gave his third statement after he spoke with his aunt. Campbell testified Gantt's testimony was consistent throughout, and they made sure to corroborate his statements. He stated that multiple people placed Applicant at the scene of the incident. Campbell testified William Jeffrey's name came up in initial missing person case, and he was a known gang member that was killed in a robbery. Campbell testified that it was about three weeks from Patel's abduction to when the body was discovered. It was located in a heavily wooded area.

Campbell testified they also investigated Applicant's alleged alibi, Martha Everett. Campbell testified they listened to jail cell calls, and Applicant and Everett talked about an

alibi. Campbell testified they went to speak with Everett about Applicant's alibi, and she kicked them out. Campbell testified the timeframes Everett testified to were not the same she provided previously. Campbell testified the jail calls showed Applicant was trying to manufacture an alibi, and that Trial Counsel knew about it. Campbell testified he went over jail calls with Trial Counsel.

Campbell testified they also obtained DVR surveillance videos from Howell's house with search warrant and there were days of video. Campbell stated that the video showed Howell, Gantt, Johnson, and Applicant's car. Campbell testified Johnson also gave statement Applicant was involved.

Campbell testified he went over the State's theory of case and the videos with Trial Counsel prior to the trial. Campbell recalled cell sites and pinging evidence, as it was part of theory of case and in line with technology in 2012. Campbell testified the law enforcement investigation pulled phone records, and the evidence reflected that Applicant's phone pinged off cell tower in the park. Campbell testified there is no Cici's Pizza in Homeland Park. Campbell testified the technology in 2012 could not pinpoint Applicant, so he did not use it in trial because it could not pinpoint; Detective Barton merely testified shortly to the records. Campbell testified he did not see a reason to clarify pinging as he did not ask questions about cellphone, and he did not want to draw attention to it.

Campbell testified about his use of the autopsy photos. Campbell testified Judge McIntosh typically does not like showing bloody photos but allowed these autopsy photos because Campbell put them in black and white, rather than color. Campbell testified they did introduce one color photos for ligatures so it would not inflame the jury. Campbell testified

Trial Counsel did not object to the introduction of the autopsy photos. (Res. Ex. 1 & 2); (Trial St. Ex. 28-30).

In reference to questioning and comments on page 309 and 354 to 356 of the Trial Transcript, Campbell testified the intent was to explain why Detective Barton charged Applicant with background information.

Concerning the juror 110, Campbell testified that once the juror realized she knew the witness on the stand she brought it to court's attention, and she was questioned about her ability to remain fair and partial. Concerning Trial Counsel's failure to ask for mistrial, Campbell testified the jury had questions about the law, then there was an Allen⁸ charge, and the jury came back with a verdict in six hours. Regarding Gantt, Campbell testified decision to revise the plea came about because of a case officer. Campbell testified Gantt was offered a lesser sentence because he had cooperated, was young, and Gantt did not pull the trigger. Campbell testified that Gantt did a lot to help the State, and Campbell did not believe it would be fair if he was charged with murder when co-defendants were not. Campbell testified there was no promise to reduce charges prior to the trial, and Campbell only contemplated the revised offer after the results of Applicant's trial with the not guilty verdict on murder.

On cross-examination, Campbell testified Applicant's trial was the last trial out of all individuals charged, and Gantt had assisted them before this trial. Campbell testified that before Applicant's trial, Gantt had testified at Johnson's trial. Campbell testified Gantt's defense counsel approached him about reduction after the result of Applicant's trial. Lastly, Campbell testified Applicant's nickname was "Quavo", and he does not recall that this was in dispute.

⁸ Allen v. United States, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Trial Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the testifying witnesses, which allowed the Court to evaluate and scrutinize their credibility.

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

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80:

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

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). 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.")

INITIAL FINDINGS

As a matter of general impression, this Court finds Campbell's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented testimony of relevant background, facts, and discussions leading up to and during the trial:

This Court is also aware that at the time of the PCR hearing, his trial counsel, Scott D. Robinson, deemed having incapacity by the Supreme Court at the time of the hearing and not available to testify as a witness. See, In the Matter of Scott David Robinson, 430 S.C. 354, 887 S.E.2d 533 (May 15, 2023) (incapacity inactive status and finding his current condition renders him incapable of participating in any disciplinary proceedings). Further, the Order noted that Robinson was placed on interim suspension on February 9, 2023.

This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant that he rendered adequate assistance and exercised

reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1(a): Trial Counsel failed to serve notice of or present witnesses and evidence supporting an alibi defense.

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to present his alibi defense at trial. This Court finds the Applicant has failed to meet his burden of proof of this allegation by credible evidence. Specifically, Applicant provided that he informed Trial Counsel that at 7 PM, the day of the incident, he was at Cici's Pizza with his family; left home at 9 PM after receiving a call from Gantt; went to Howell's house, and went inside the home while the victim was there; went to a gas station; spent his time hanging out until the early morning and then went home.

On direct examination in this action, Martha Everett, Applicant's supposed alibi, testified Applicant was with her at Cici's Pizza, and they left the restaurant before her sister had to be at work at 8:30 PM. Everett also testified Applicant was with her a significant portion of the night. However, on cross-examination, Everett testified Applicant left the apartment after her sister went to work, and she is not exactly sure of the timeframe of Applicant's absence. On re-direct, Everett testified she argued with Applicant when he returned in the morning, because he was supposed to take care of the kids in the morning since she had to go to work. Everett testified she informed Trial Counsel about all of this.

On direct examination, Campbell testified he discussed everything with Trial Counsel, including jail calls between Applicant and Everett. Campbell testified it was apparent from the jail calls that Applicant and Everett were conspiring to manufacture an alibi, and Trial Counsel was aware of the calls. Campbell also testified that when they were investigating Applicant's alibi, he spoke with Ms. Everett and the timeframes she gave them at that time did not match her testimony at the evidentiary hearing.

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136)). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "Since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

This Court finds Trial Counsel was not deficient for failing to present questionable evidence and witness testimony of Applicant's alleged alibi. First, even if the testimony of Applicant and Everett were presented at trial, it does not account for all of Applicant's time that night and does not make it physically impossible for Applicant to take part in the kidnapping, torture, and murder of the victim. Second, this Court finds that Everett's PCR testimony is **not credible**, as it is inconsistent and self-serving. Everett initially testified Applicant was with her most of the night, but then testified he left around 9 PM and indicated that he was not back until

the next morning. Third, former assistant solicitor Campbell credibly testified Robinson was aware of jail calls showing Applicant and Everett, Applicant's girlfriend at the time and mother of his children, were manufacturing an alibi. This was also developed by the State at the trial.

In addition, the defense raised this general concept at trial. Officer Danny Barton testified on cross-examination by Robinson that Martha Everette may have provided an alibi by claiming that he had been with her that night and he had gone to Cici's Pizza and stayed there all night. Tr.p. 359. Barton stated though that Applicant's phone records did not ping in the area of Cici's Pizza that night. Tr.p. 360-361. [On direct examination, Barton claimed that with Williams' phone records he knew who Williams was contacting that night and his phone had been pinging off Homeland Park cell towers all night long. Officer Barton asserted that they had learned from his jail house calls to Martha Everette that he was wanting an alibi from her. Barton stated they visited her and everything that she told them they were unable to substantiate. Tr.p. 335-336.⁹ In addition, during the sentencing proceeding, Martha Everett indicated that she had celebrated her daughter's birthday at Cici's Pizza and that the Applicant was with them. Tr.p. 487, l. 12-16. His

⁹ On cross-examination by the defense, Det. Barton confirmed that Martha Everett did tell them that the Applicant had gone to Cici's and he had stayed there all night. Tr.p. 359, l. 19-25. When asked why that was not accurate, Detective Barton indicated that the phone records showed the statement was not accurate as well as the statements they had received, pointing out that his phone records showed his phone did not ping in the area of Cici's Pizza or her home in Friendship Park, but was pinging in Homeland Park and that during the time he was supposed to be with her, his records showed that the Applicant actually made a call to her. Trial Tr.p., 360. Det. Barton stated that this answer was based upon the codefendant's statement, when asked by the defense whether they had anyone to come to court to say "no, he was not there (at Cici's or with Everett) all night" Tr.p. 361. The defense then also questioned whether the officer had threatened Everett to take her kids from her to which Barton responded: "No, sir, I wouldn't call it a threat. It was cautioning her." He testified that they confronted Everett about lies and that they could prove he was not at Friendship Court all night long and that he could prove that he was not with her. He also declared that they told her "if you get up on the stand and lie, you will go to jail. At some point I did ask her what did she think would happen to her kids if she went to jail and their father was already in jail," as a caution Tr.p. 362, ll. 3-15.

grandmother, Anne Williams at sentencing indicated they celebrated family birthdays and that they went to Cici's to celebrate birthdays and that July 2, was a family member's birthday (sister of his daughter). Tr.p. 483-484) [Note, the abduction occurred on July 1, 2012 and death during the late night hours of July 1.] Further, the decision not to put of this evidence of limited use would have cost the Applicant the right to make the final closing statement which counsel indicated to the witness was of a strategic benefit. This decision to not call Everett as a witness was not the product of neglect nor ignorance but a sound strategic decision.

This Court further finds that had Ms. Everett testimony been presented, the Applicant has failed to show a reasonable probability that the result of the proceeding would have been different under the Strickland test. The Applicant was not convicted of the murder. Under the State's theory, the Applicant was the triggerman based upon Gantt's trial testimony. Trial Tr.p. 145-146. It was Gantt's testimony that the Applicant came over later that evening after the initial abduction when it was dark after the abduction and beating of the victim had gone on for several hours. Trial Tr.p. 131 -133. Applicant was not able to establish he was prejudiced by Trial Counsel's decision not to present an alibi witness. As stated above, Applicant's defense would not have been successful, and if Trial Counsel had presented the alibi evidence Applicant and Everett informed him of, the State had evidence of Applicant and Everett conspiring to create a fake alibi.

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

Allegation 1(b): Trial Counsel failed to investigate and review evidence available to him.

In Applicant's supplemental application, Applicant alleged Trial Counsel failed to investigate. Specifically, Applicant testified Trial Counsel did not investigate his case as much as

he should have, including reviewing the DVR video and ATM videos. Additionally, Applicant testified Trial Counsel only went over a bit of discovery.

At trial, State Exhibit 31 and 32 were introduced without objection. (Tr.p. 264-265) as representing what Detective Danny Barton reviewed on the seized DVR system from 3304 Jerry Drive. The DVR had been recovered from a built in closet wall. Tr.p. 254-257. State Exhibits 14, 15, 16, 17, 33, 35 which were still photographs from the DVD/DVR were introduced without objection. Tr.p. 278-279. The photographs were described and discussed during the testimony. Tr.p. 280-283.

On direct examination in this action, Campbell testified Trial Counsel was engaged and interested in Applicant's case, and Campbell and Trial Counsel met several times to discuss matters in preparation for trial. Campbell testified he went over the jail cell calls with Trial Counsel, and went over the State's theory of the case and all the videos with Trial Counsel.

During Applicant's testimony at the evidentiary hearing, he referenced the denial of counsel's motion to suppress the DVR video, implying his argument at trial showed he was unprepared and did not investigate. During his motion to suppress the DVR video, counsel argued the DVR should be suppressed because the State did not have the entire video and Trial Counsel did not know how much of the video was missing. (Trial Tr. pp. 52-53). Trial Counsel argued the missing footage could potentially contain exculpatory evidence. (Trial Tr. p. 54). However, Campbell informed the court that the events pertaining to the case took place in one day, and they were able to obtain the footage from that day that was relevant to the case. (Trial Tr. p. 58). Trial Counsel stated he received many videos from the State, which he reviewed, and based on the State's concession they did not have the whole DVR video, Trial Counsel wondered whether that

concession applied to DVR video from the day of the incident. (Trial Tr. p. 60). However, Trial Counsel did state he did not review the entire DVR. (Trial Tr. pp. 60-61).

The Applicant has failed to show in this action, other than the same speculation, that there was something in the videos that would have either led to an objection or the development of other evidence to support his defense. This Court finds that the Applicant has failed to do so.

Strickland v. Washington makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. 668, 691 (1984). "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, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597.

Further, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence that could have been discovered by a more thorough investigation. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial").

This Court finds Trial Counsel was not deficient in his investigation, and Applicant failed to present evidence showing resulting prejudice. This Court finds, based on Campbell's credible testimony, that Trial Counsel fulfilled his duty to investigate the facts and evidence in Applicant's case. Further, this Court finds based upon the combination of the record and Campbell's credible testimony evidence that Trial Counsel conducted reasonable investigations into the DVR videos. The State testified during the suppression hearing they downloaded the pertinent parts of the DVR video related to the day of the incident, they provided the evidence to Trial Counsel, and Trial Counsel testified on the record he reviewed the evidence the State provided. Trial Counsel's failure to review the entire DVR, containing weeks of videos not pertinent to Applicant's case, is not deficient. However, even if this Court found Trial Counsel was deficient, Applicant did not present any evidence, documentary or otherwise, of what Trial Counsel could have discovered if he had investigated Applicant's case more fully or reviewed the entire DVR that would have been helpful to Applicant or result in a different outcome.

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

Allegation 1(c)(i): Trial Counsel failed to object to inclusion of juror 110 after it was revealed the juror knew one of the witnesses.

This Court finds the Applicant has failed in his burden of proof because alternate juror 110 did not deliberate or render a verdict in the Applicant's case and therefore cannot satisfy the prejudice prong of Strickland. The Applicant is unable to show that had counsel objected to allowing this alternate to continue in the case that there is a reasonable probability that the result of the proceeding would have been different since alternate juror 110 was not included in the

deliberations, although the first alternate (juror 46) did sit. Trial Tr.p. 39 - 40, 69-71, 75-76 (Alternate Juror 46 seated to replace juror 80), p. 447 (alternate 110 not involved in deliberations). Because this alternate juror chosen in appellant's case was never called to deliberate and render a verdict, any alleged 6th Amendment deficiency error in failing to seek to have the juror removed was harmless and not prejudicial to the verdict. Cf. State v. Green, 301 S.C. 347, 392 S.E.2d 157, cert. denied, 498 U.S. 881, 111 S.Ct. 229, 112 L.Ed.2d 183 (1990) (any error in the qualification of an alternate capital juror is harmless beyond a reasonable doubt when no alternates were used in the case); State v. Holmes, 320 S.C. 259, 263, 464 S.E.2d 334, 336 (1995). For this initial reason, the allegation must be dismissed.

The Applicant also failed to show deficient performance. Applicant alleges Trial Counsel was constitutionally ineffective for failing to object inclusion of juror 110, after it was discovered, the juror knew one of the witnesses. Concerning this allegation, on direct examination, Applicant merely testified Trial Counsel failed to object to keeping a juror who was related or knew a witness, referencing page 192 of the Trial Transcript.

Juror 110 seated as Alternate 2. Tr.p. 39-40. The juror incident occurred after testimony of Jonathon Johnson who she knew as "B.J.". She did not recognize his full name on the witness list and she also worked with his mother. Tr.p. 190. (Court Exhibit 4). Both the defense and state did not object to bringing her in for inquiry by the court. Judge McIntosh inquired of Juror 110 whether it could affect her ability to make a decision according to the law and testimony and that she could be fair and impartial. Neither side objected to her staying on the jury. Tr.p. 192.¹⁰ Importantly, juror 110 remained an alternate throughout the trial and did not deliberate on the verdict, unlike alternate juror 46. See Tr.p. 69-71, 75, 447.

¹⁰ The record reveals that potential witnesses were read to the venire during the jury selection, including Jonathan Johnson. Tr.p. 9-10. Other than juror 184, no potential jurors responded to the court's inquiries. Tr. p. 11-12.

On direct examination in this action, Campbell testified that juror 110 realized she knew one of the witnesses when the witness was on the stand testifying, and once she realized, she brought it to the court's attention. Campbell testified the court then questioned juror 110 about their ability to remain partial and fair.

The trial record contains the following colloquy between the parties, the court, and juror 110:

THE COURT: I've been informed that one of our jurors, Juror Number [110], W____ M____, knows personally the last witness who was called, Mr. Johnson. She only knows him by his nickname, B.J., and did not recognize his full name on the witness list. She also worked with his mother. I don't know if that makes any difference at all. I think out of an abundance of caution I need to bring her in here and just ask her if, knowing the witness, that would keep her from being fair and impartial. Any objection to that approach?

MR. ROBINSON: No, sir.

CAMPBELL: (Negative gesture).

THE COURT: You said no?

MR. ROBINSON: I said "no."

THE COURT: And I see you shaking your head, Mr. Campbell.

SCAMPBELL: No objection.

THE COURT: Would you bring the juror in, please?

(Trial Tr. p. 190, ll. 1-23).

THE COURT: Madam Forelady, when I came back into the courtroom there was a note from you with regard Juror Number 110 who said that she knew the last witness who was called, Mr.

Johnson; however, that she only knows him by the nickname "B.J.", that she did not recognize his name on the witness list. Let me ask, -- and you also worked with his mother?

JUROR 110: (Affirmative nod).

THE COURT: Does that knowledge of the witness or employment with his mother, will that affect your ability to make a decision based on testimony and evidence and according to the law in this case?

JUROR 110: No, sir.

THE COURT: Can you be fair and impartial to both the State and to the Defense?

JUROR 110: Yes.

(Trial Tr. p. 191, ll. 5-25).

“All criminal defendants have the right to a trial by an impartial jury.” State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (citing U.S. Const. amends. VI and XIV). To safeguard these rights, “it is required that the jury render its verdict free from outside influences of whatever kind and nature.” State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998), quoting State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)). A trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party to protect both parties’ right to an impartial jury. Woods, 345 S.C. at 587, 550 S.E.2d at 284; State v. Gulledge, 277 S.C. 368, 370, 287 S.E.2d 488, 490 (1982) (“Through the judge, parties have a right to question jurors on their voir dire examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge.”)).

In the event of a juror's concealment, the trial court must inquire into whether the withheld information affects the jury's impartiality. Kelly, 331 S.C. at 141, 502 S.E.2d at 104; State v. Johnson, 248 S.C. 153, 149 S.E.2d 348 (1966) (the question of the impartiality of the juror is addressed to the discretion of the trial judge); State v. Loftis, 232 S.C. 35, 100 S.E.2d 671 (1957) (refusing to interfere with the discretion of a trial judge in matters involving the jury because the trial judge has the opportunity to consider the credibility of the jurors).

At the time of the trial and PCR hearing, the standard of review at trial was where the failure to disclose is innocent, no inference of bias can be drawn. State v. Woods, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001). Under this framework, if the concealment was intentional, it was inferred the juror was biased. State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 245–46 (2014). The moving party was entitled to a new trial as long as the party could show prejudice by demonstrating the information concealed would have either supported a challenge for cause or been a material factor in the use of the party's peremptory challenges. But if the concealment was unintentional, no bias could be inferred and the moving party could only receive a new trial if the party proved the concealed information suggested bias and the information would have been a material factor in the party's use of a peremptory challenge or would have resulted in a successful challenge for cause. See *id.* at 329, 764 S.E.2d at 246; S.C. Code Ann. § 14-7-1020 (describing process for setting aside a biased juror for cause).

Subsequent to the trial, the Supreme Court addressed this issue of intentional and non-intertextual in a new way and simplified the inquiry:

Where a party claims a juror has withheld material information in response to a *voir dire* question, the trial court must determine, preferably after a hearing, whether the juror's withholding suggests bias. This will typically turn on the nature of the information withheld, rather than the nature of the juror's state of mind in not disclosing it. The nature of the fox's disguise matters little to the chicken.

We have always maintained that it is the nature of the information concealed that drives the inquiry. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). The juror's intent may bear on the inquiry, but the ultimate question remains whether the juror was biased and whether the bias, in turn, caused prejudice. See, e.g., State v. Stone, 350 S.C. 442, 448–49, 567 S.E.2d 244, 247–48 (2002) (holding trial court abused discretion in removing juror during sentencing phase of capital trial where juror's innocent nondisclosure of “scant acquaintance” with witness did not affect her impartiality and “would neither have supported a challenge for cause nor would it have been a material factor” in party's exercise of preemptory strikes). We therefore hold today that **when a juror untruthfully answers or fails to answer a material *voir dire* question, the juror's bias may not be presumed, and a new trial may be ordered only when prejudice is proven by showing the concealed information reveals a potential for bias and would have made an objectively material difference in the moving party's use of a preemptory strike or resulted in a successful challenge for cause.** We overrule the “intentional versus unintentional” framework erected by the line of cases that began with State v. Gullege, 277 S.C. 368, 287 S.E.2d 488 (1982), and includes Coaxum and Woods.

State v. Rowell, 444 S.C. 109, 115–16, 906 S.E.2d 554, 557 (2024).

This Court finds - based on the combination of the record, existing law, and Campbell's **credible** testimony—that Trial Counsel was not deficient for failing to object to the inclusion of juror 110, and Applicant failed to show resulting prejudice from Trial Counsel's failure to object, viewed from the framework of counsel at the time of his action under Strickland in 2015. Juror 110 informed the court immediately once they realized they knew a witness, the court questioned juror 110 on their ability to remain impartial, and the trial court, in its discretion, determined juror 110 could remain impartial based on their answers. The Applicant has failed to show prejudice was proven by showing the concealed information reveals a potential for bias and would have made an objectively material difference in the moving party's use of a preemptory strike or resulted in a successful challenge for cause. To the contrary, it was not shown. Counsel was not deficient because there was no requirement for counsel to seek to remove the juror at that time or now after the hearing before the court that concluded the juror could be fair and impartial. Importantly, in regard to prejudice, juror 110's concealment was unintentional and prejudice was not proven when

the concealed information did not reveal a potential for bias and would have made an objectively material difference in the moving party's use of a peremptory strike or resulted in a successful challenge for cause of the second alternate juror who did not deliberate.

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

Allegation 1(c)(ii): Trial Counsel failed to object to the autopsy photos and other photographs.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the autopsy photos and other photographs at trial. Applicant did not present testimony concerning this allegation, effectively abandoning it. Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)) ("When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue."))). Normally, this Court would not address the merits of an allegation abandoned by the party asserting it. However, Respondent elicited testimony on this allegation through Campbell and entered the autopsy photos, the original and copies, into evidence, so this Court will address the allegation on the merits. (Res. Ex. 1 and 2). The trial record reflects that the autopsy photographs were introduced at trial without objection. Trial Tr.p. 207-208.

On direct examination in this PCR proceeding, former assistant solicitor Campbell testified that he cleaned up autopsy photos, putting them in black and white, and did one color photos for ligatures, so it would not inflame the jury. (Res. Ex. 1 & 2; Trial St. Ex. 28-30). Campbell additionally testified Judge McIntosh typically did not like showing bloody photos and allowed the photos because they were in black and white.

The admissibility of a photograph is a matter resting in the sound discretion of the trial judge, whose decision will not be reversed without a showing of an abuse of that discretion. Reed v. Tiffin Motor Homes, Inc., 697 F.2d 1192 (4th Cir. 1982); See also Ward v. Epting, 290 S.C. 547, 351 S.E.2d 867 (Ct. App. 1986) (determination of relevancy of photograph is within trial court's discretion). A photograph should be excluded if calculated to arouse the sympathy or prejudice of the jury or if irrelevant or unnecessary to substantiate facts. State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986); State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). To be classified as unfairly prejudicial, photographs must have a tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one. State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010).

In State v. Rosemond, Rosemond argued introduction of six enlarged color photos of the victims, three from the scene and three autopsy photos, should not have been admitted. 335 S.C. 593, 518 S.E.2d 588 (1999). The Supreme Court held the photographs were relevant, material, corroborated the pathologist's testimony, showed the victims in substantially the same condition as Rosemond left them, and the photos were not particularly gruesome as the bodies had been cleaned of blood. Id.; Torres, 390 S.C. 618, 703 S.E.2d 226 (autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant); State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014), quoting Nichols v. State, 267 Ala. 217, 100 So.2d 750, 756 (1958)) ("Courts and juries cannot be too squeamish about looking at unpleasant things, objects, or circumstances in proceedings to enforce the law and especially if truth is on trial. The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.")); See also Camargo v. State, 327 Ark. 631, 940 S.W.2d 464, 467 (1997) ("Even the

most gruesome photographs may be admissible if they tend to shed light on any issue... acceptable purposes are to show the condition of the victims' bodies, the probable type or location of the injuries, and the position in which the bodies were discovered." (internal citation omitted)).

At Applicant's trial, Brett Woodard, M.D., (Dr. Woodard), performed the autopsy on the victim's body. (Trial Tr. pp. 199-201). Dr. Woodard testified that after collecting the insects off the victim's decomposing body, he examined the victim's body as it was, the victim being clothed with a shirt, underwear, and his hands tied behind his back with a telephone cord. (Trial Tr. p. 201-2). Dr. Woodard testified the hands tied behind the victim's back indicated a homicide, as the victim had a gunshot wound to the head and he could not shoot himself with his hands tied behind his back. (Trial Tr. pp. 202-3). Dr. Woodard additionally testified the victim had cuts on his legs and a possible burn injury on his abdomen. (Trial Tr. p. 203). Dr. Woodward testified the photographs would help explain his testimony to the jury. (Trial Tr. p. 206)

The State then showed the photographs to the jury while Dr. Woodard explained the victim's condition, and the type and location of injuries the victim suffered, as follows:

State's Exhibit 26 represents the bindings that were on his wrists behind his back. We've separated it, took it off so that we could release the wrists. We took a picture of them as we saw them on that day.

State's Exhibit 27 represents him and shows the bindings about his wrists before we cleaned the area. It is substantially as we saw him before we did anything to him.

State's Exhibit 28 represents some of the cuts that I spoke of on — this was on the right leg. You can see several cuts on the right leg.

State's Exhibit 29 represents the left leg. You can see the cuts on the left leg.

State's Exhibit 30 represents the discoloration on the abdomen, which appeared to be a burn.

(Trial Tr. p. 207, ll. 5-22). The photographs were then introduced without objection. The assistant solicitor noted that they had already been shown to counsel Robinson. Trial Tr.p. 207-208: Trial Tr.p. 208. Dr. Woodard testified the photographs represented what he observed on July 12, 2012, when he conducted the victim's autopsy. (Trial Tr. pp. 207-8).

Dr. Woodard then used the photographs to describe the probative factors relevant to the claims of torture in the circumstances in the case:

. . . I'm first going to show you what has been marked State's Exhibit 26. If you could, please identify this.

A. Yes. If you see this orange ruler with the number associated with it, that's the number that we associated with this particular autopsy. These represent the bindings that were around his wrists behind his back. You'll see in the next picture some sort of telephone wire and then another cord of some sort.

Q. Showing you State's Exhibit 27. Please reference what we are looking at here.

A. We are looking at his back. Here are his hands. You can see this wire material that you saw in this last picture here, binding his wrists behind his back.

Q. Okay. This will be State's Exhibit 28.

A. This is the medial aspect or the or the inside aspect of his right leg. You can look here and you can see that there are cuts here; then there is another cut here, superficial cuts to the skin.

Q. State's Exhibit 29?

A. This shows his left leg. Here you can see the multiple cuts on the surface of his left leg. All of these had to be caused by a sharp object such as a knife.

Q. Looking on this picture, State's Exhibit 29, would this have been caused by any type of item/object?

A. Yeah, it's impossible to say that there wasn't a cut there, because the insects have gained entry to his body in this location. That often indicates that that is a site of trauma, but I can't say conclusively that there was a cut there that led to the insect activity.

Q. State's Exhibit 30, if you will identify what this is?

A. This is his abdomen. You see here this dark circular rim that had a very leathery quality to it that was different than the rest of his skin. It looks like a second degree burn injury.

...

Q. . . . Dr. Woodard, regarding the cuts that were on the body, these type of cuts, could they have been self-inflicted?

A. They could have. Given the entire scenario, it would seem unlikely.

Q. Were you able to recall approximately how deep these cuts were?

A. These were all superficial, just through the skin to the underlying portion of the skin that we call the dermis, the more leathery portion of your skin.

Q. Would it be enough for a person to feel the cut?

A. Absolutely. It'd be like when you cut yourself When you're doing something in the kitchen or what-have-you.. For a second, you don't feel it a lot and then it begins to bother you.

Trial Tr.p. 209, l. 4 – p. 211, l. 18.

This Court finds Trial Counsel was not deficient for failing to object to the introduction of the autopsy photos. Counsel was aware of the photographs prior to their introduction. He did not object when specifically given the opportunity. These photographs specifically support the claimed evidence of the victim being subjected to torture to assist the perpetrators in trying to get access to his money. The limited autopsy photographs clearly depict the circumstances of the crime and corroborate the testimony of Dr. Woodard concerning the type and location of injuries the victim suffered. See State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) (there is no abuse of discretion in the admission of photographs or charts if the offered photograph serves to corroborate testimony); State v. Benton, 443 S.C. 1, 901 S.E.2d 701, reh'g denied (June 20, 2024), cert. denied, 145 S. Ct. 443 (2024) (explaining autopsy photographs are probative if they “assist[] the jury in their task to understand other key evidence”); State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226,

228 (2010) (holding photographs should not be excluded if they are “necessary to substantiate material facts or conditions”); State v. Elders, 386 S.C. 474, 483, 688 S.E.2d 857, 862 (Ct. App. 2010) (“Ordinarily, it is not an abuse of discretion to admit photographs that corroborate testimony.”). This Court acknowledges that the probative value of the photograph was limited because the contested issue was proven through other evidence. See State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (“Although photographs may be used to corroborate other evidence ... it is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial.” (citation omitted)); State v. Nelson, 440 S.C. 413, 426, 891 S.E.2d 508, 514 (2023) (explaining the probative value of autopsy photographs are limited if they are “not needed to prove an issue in the case” or the issue is proven by other evidence). Nevertheless, This Court finds the probative value was not substantially outweighed by the danger of unfair prejudice, because the photographs were not particularly gruesome or inflammatory. See Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice”); Nelson, 440 S.C. at 426, 891 S.E.2d at 514 (holding it was error to admit “gruesome” autopsy photographs depicting partial decomposition, head wounds where the victim’s “skull had been shattered away,” and several cuts to the neck, when the only contested issue was who killed the victim, not the circumstances of her). They drew probative force from their unique power to make Gantt’s testimony more believable. The pictures gave important context to the testimony and other evidence about what occurred at the scenes. Under the specific circumstances of this case, the pictures assisted the jury in their task to understand other key evidence. This court finds deficient performance has not been shown.

This Court further finds that the Applicant has failed to show prejudice under the Strickland standard. The photographs were limited and the black and white photographs limited any prejudicial impact upon the jurors. The jurors were aware of the lengthy circumstances of the crime, its abduction, and claimed circumstances of torture which the photographs explained. Additionally, Campbell took steps to lessen the gruesome nature of the autopsy photographs by making them black and white. This court can confidently concluded that had the Applicant's counsel made an objection to the photographs and it was sustained, there is no reasonability that the result of the proceeding would have been different. See State v. Byers, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011) ("Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." (quoting State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006))); id. ("Where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,' an insubstantial error that does not affect the result of the trial is considered harmless." (quoting Pagan, 369 S.C. at 212, 631 S.E.2d at 267)). The record is loaded with compelling evidence incriminating Williams of each of the crimes he was convicted. The photographs conclude the photographs did not contribute to the verdict in any significant way. See State v. Benton, 443 S.C. 1, 9–10, 901 S.E.2d 701, 705, reh'g denied (June 20, 2024), cert. denied, 145 S. Ct. 443 (2024).

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

Allegation 1(c)(iii): Trial Counsel failed to object to recordings of jail phone calls.

In his application, Applicant alleged Trial Counsel was ineffective for failing to object to the recordings of the jail phone calls. These calls supported the state theory that the Applicant was

seeking to manufacture an alibi while he was in custody. This Court finds that Applicant failed to prove counsel was deficient or the Strickland prejudice was satisfied.

On cross-examination in this proceeding, Applicant testified he did not listen to the jail phone calls before trial. However, Applicant acknowledged he made the calls and Martha Everett's voice is also on the jail cell calls.

On direct examination, Campbell testified he reviewed the jail phone calls with Trial Counsel. No other testimony was elicited concerning the jail cell calls.

The record reflects counsel Robinson objected to the introduction of the recordings of the jail phone calls:

ROBINSON: May it please the Court, Your Honor, what we've got here they've already given me the stuff /discovery. I've received it, I've already listened to it. When they brought that today, they're going to be using two portions of some jailhouse calls that they have. I immediately wanted to check the Rules book and all that stuff because I -- I have an objection to those coming in, those tapes.

THE COURT: What is the nature of your objection? What Rule?

ROBINSON: Foundation and hearsay, Your Honor. The Rules that I looked are going to be 602 and 601, also the hearsay Rule as well.

(Trial Tr. p. 215, ll. 2-17). Trial Counsel argued his objection. It was primarily based upon his assertion that Detective Barton could not authenticate the calls because he had not had any dealings with the Applicant before this matter. Trial Tr.p. 221.

The trial judge denied the hearsay objection because he found it contained prior statements or admissions of the Applicant. Trial Tr.p. 221, l. 10-13. The trial judge, however, stated that the state had to still authenticate the recordings. Id., at 221.

The Applicant requested that Detective Barton be presented at that time *in camera* which the state agreed. The defense then called Detective Danny Barton to proffer the State's foundation in authenticating the recordings, outside of the presence of the jury; the court advised Trial Counsel to object to the jail cell recordings when the State moved to enter them into evidence. (Trial Tr. pp. 215-222). In that testimony, Det. Barton advised that he did not have prior dealings with the Applicant. He described the nature of how jail calls were recorded. By the use of the detainee's person PIN, similarly, to making a collect call. Trial Tr.p. 223-224.

The State next called Det. Barton in front of the jury. Trial Tr.p. 225. During his testimony detective Barton described previously working in the detention center in Anderson County. He described how phone calls are made from the jail using a PIN system. At some point in the call, the inmate will state his name. The PIN is individually given to each inmate. Trial Tr.p. 311-312. There is also an indication that the calls are being recorded. Detective Barton stated that he began listening when Gantt and Kyndra Howell went to jail and began contacting the Applicant. Tr.p. 313. The State moved to introduce a copy of the jail phone calls, State Exhibit 40, which included two phone calls that he listened to and observed. The Applicant objected on the basis of foundation. The trial court overruled the objection. Trial Tr.p. 315, l. 13-22.

Detective Barton stated that these two recordings were relevant because they pertained to an alibi. Defense counsel Robinson again objected to the introduction of State Exhibit 40 which the trial court admitted. Tr.p. 316-317.

The State continued with Det. Barton who testified that in listening to the recordings and the information put into the computer he testified that it was Ezra Williams who made the calls. Tr.p. 320. The defense objected as hearsay, which the trial judge sustained "to the extent you're talking about somebody else identifying the voice." Tr.p. 320-321. Barton stated that the calls

were made to Martha Everett. Barton stated that he pulls up the Applicant's name in the computer and it shows the call was made to Martha Everett, who is the Applicant's baby's mother at Friendship Court Apartments and we determined it was the Applicant's voice on the recordings of July 24, 2012 and July 29, 2012. Tr.p. 321. The recordings are then played for the jury. Trial Tr.p. 322. Detective Barton testified that he was able to identify Martha Everett as the person who received the phone calls. Detective Barton also learned from the phone calls that Everett was going to be Ezra's alibi. Tr.p. 334-335. Barton stated that as a result, he and Sergeant Gebing went to meet with Everett. He indicated that they met with her and everything that she told them, they were not able to substantiate and she refused to put anything in writing. Tr.p. 336.

"[E]vidence must be authenticated or identified in order to be admissible." State v. Brown, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). A witness with knowledge may authenticate evidence by testifying that "a matter is what it is claimed to be." Rule 901(b)(1), SCRE. "The authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic." State v. Green, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). "The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims." ¹¹

¹¹ Young v. State, 696 N.E.2d 386, 389 (Ind. 1998) ("A caller's identity can be established by circumstantial evidence, and need not be proven beyond a reasonable doubt."); Johnson v. State, 699 N.E.2d 746, 749 (Ind. Ct. App. 1998) ("A recording is not admissible unless the voices contained thereon are identified. ... However, circumstantial evidence may be utilized for identification purposes."); State v. C.D.L., 250 P.3d 69, 78 (Utah Ct. App. 2011) ("Authentication of a telephone caller's identity can be accomplished by combining that caller's self-identification during the call with circumstances surrounding the call."); State v. Williams, 136 Wash.App. 486, 150 P.3d 111, 118 (2007) ("A sound recording, in particular, need not be authenticated by a witness with personal knowledge of the events recorded. Rather, the trial court may consider any information sufficient to support the prima facie showing that the evidence is authentic.").

Rule 901(a) of the South Carolina Rules of Evidence requires authentication “as a condition precedent to admissibility ... by evidence sufficient to support a finding that the matter in question is what its proponent claims.” For this purpose, the rule provides a list of ten examples illustrating how a party can properly authenticate evidence. See Rule 901(b), SCRE. However, Rule 901 explicitly states the examples listed in subsection b are “by way of illustration only” and are not intended to be an exhaustive list of the ways to properly authenticate evidence. The rule provides a voice may be identified “by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.” Rule 901(b)(5), SCRE. Telephone conversations with an individual can be authenticated “by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if ... circumstances, including self-identification, show the person answering to be the one called.” Rule 901(b)(6), SCRE. State v. Thompson, 420 S.C. 386, 399–401, 803 S.E.2d 44, 50–51 (Ct. App. 2017).

Here, after the defense objected twice to the introduction of the calls, the trial judge admitted the evidence. Since counsel did object, this Court must conclude that counsel was not deficient and the Applicant failed in the burden of proof. The Applicant did not assert any specific basis for why counsel should have performed differently.

This Court finds Trial Counsel made an objection to the jail phone recordings, as evidenced by the record. Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom.¹² Thus, this allegation must be **DENIED** and **DISMISSED**.

¹² This Court would alternately find that Sixth Amendment prejudice had not been proven if somehow counsel was deficient. State laid adequate foundation to authenticate recorded jail

Allegation 1(c)(iv): Trial Counsel failed to object to DVR recordings.

In his application, Applicant alleged Trial Counsel failed to object to the DVR recordings, referencing page 266 of the Trial Transcript. On direct examination, Applicant testified Trial Counsel failed to object to the DVR video from Howell's house and specifically referenced page 265 of the Trial Transcript. Applicant's other testimony concerning the DVR video at the evidentiary hearing concerned denial of Trial Counsel's motion to suppress the DVR recordings. (Discussed supra Allegation 1(b).

Trial Counsel did not object to the admission of the DVR recordings during the trial. (Trial Tr. p. 265). However, Trial Counsel had a pre-trial motion to suppress the DVR recordings which was denied by the court. (Trial Tr. pp. 50-61).

In the earlier suppression hearing, the defense moved to suppress the video and a picture that were taken from the video. Tr.p. 51. Counselor Robinson claimed that Detective Barton, in his report, that Detective Folks made several attempts to retrieve the entire video from the DVR. He claimed that the State was unable to retrieve and counsel did not have the video. Counsel claimed that he did not know how much of the video was missing. Counsel Robinson argued that this was extremely important because witness Gantt who pled guilty could possibly have his statement

telephone calls through county investigator who was trained on recording system, and, thus, calls were admissible. His testimony was system was capable of recording calls, date and time of call, and PIN entered to make the call, which established capability and operating accuracy of system, and system required defendant to speak name into phone and enter unique PIN before making calls. Accord, People v. Little, 2021 IL App (1st) 181984, 455 Ill. Dec. 173, 191 N.E.3d 132 (App. Ct. 1st Dist. 2021); appeal denied, 451 Ill. Dec. 431, 183 N.E.3d 888 (Ill. 2021). The law does not require the State to show how the software operates at a technical level to establish an adequate foundation for admitting enhanced audio recordings. State v. Hillard, 511 P.3d 883 (Kan. 2022); People v. Logan, 198 A.D.3d 1181, 156 N.Y.S.3d 511 (3d Dept. 2021).

dispelled if the defense had the video. He opined inquiring how much of the video did the State have and whether they only retrieved the portion that would help them. Trial Tr.p 53.

The trial court inquired of counsel Robinson whether he was claiming that the State had lost or intentionally destroyed the evidence. Counsel Robinson clarified that it was not his position, but rather a claim that the video from the DVR could possibly be helpful. The trial court inquired of the basis of the motion and whether it was due process. Counsel clarified that it was based upon due process to provide his client a fair shake, but not anything intentional. “ I am saying that the problem is that, for whatever reason, this DVR spit out the part that was great for them and I don’t know what the rest of it is.” Trial Tr.p. 54, l. 16-25.

The judge inquired about the applicability of State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001) (“To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.” Id. at 538-39, 552 S.E.2d at 3070), State v. Reaves, 414 S.C. 118, 128, 777 S.E.2d 213, 218 (2015); State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990); California v Trombetta, 467 U.S. 479, 486, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); and Arizona v. Youngblood, 488 U.S. 51 (1988). The trial court then asserted that it appeared he was raising it for loss or destruction of evidence. Counsel Robinson declared that the trial court was accurate. However, counsel rejected the condition precedent that the State had destroyed the evidence in bad faith. Trial Tr.p. 55, l. 16-21. When asked if he had evidence or information about the second Youngblood prong of “the evidence [on the DVR] possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value

by other means,” counsel Robinson declared that it was not done dishonestly but that all he had was his speculation that it may have some exculpatory information. Trial Tr.p. 56, l. 4-19.

Counsel asserted his complaint was that there was part of the video that hurt him but he does not have any part that is exculpatory which could help me., no evidence that it was intentional. Tr.p. 56-57.

Solicitor Campbell complained that this was the first time in three years on this case that this issue came up. He stated as related to the DVR, there were two tapes that they pulled the time off, including April 9, 2013. Campbell asserted that Detective Barton will testify that during a search pursuant to a warrant with the landlord, they removed the entire DVR system from behind the wall where it was hidden. Campbell contended that they could not retrieve the whole DVR because it wouldn't fit on a couple of disks. They took it to Anderson City Police computer forensic examiner, Jim Bolt, where they tried to download the entire DVR system, but due to the numerous days it recorded and the amount of time they were unable to download the whole thing on disks. Trial Tr.p. 57-58. Campbell clarified to the trial judge that they were able to recover all the video from the day of the incident. He stated that they recovered a portion of time and Detective Barton reviewed the part he felt was relevant to his investigation, roughly from 4:00 in the afternoon to the next day. Trial Tr.p. 58-59. Campbell stated that the DVR was still in evidence because the Sheriffs Department purchased another one for the landlord. Trial Tr.p. 59.

Solicitor Campbell stated that he had spoken with counsel Robinson numerous times and asked him if he wanted to review the evidence and stated that this was the first time he had either spoken with him or Assistant Solicitor Haigler about what else could be on the DVR.

Judge McIntosh then inquired again of Mr. Robinson whether he was contending that during the hours of the incident that any video from that timeline had been lost, destroyed or

missing? Counsel Robinson Counsel stated that he was asserting his claim based upon what Campbell stated that they could not retrieve the entire videos. He confirmed that he had not reviewed the DVR himself. Trial Tr.p. 60. He was aware that the office had an open door policy on discovery and indicated he had gone through fifteen boxes of discovery, but did not physically attempt to review the DVR himself. Trial Tr.p. 61.

Judge McIntosh then denied the motion and did not find a due process violation. Trial Tr.p. 61, l. 7-17. Judge McIntosh concluded that counsel was asking him to engage in speculation as to what timeframe may be missing and information that was made available to him that he did not take advantage of. He opined that this may be more appropriate for cross-examination.

In the suppression hearing, counsel also attempted to suppress the video portion that showed the Applicant's alleged automobile and photographs made from the video of a 1994 Buick Regal. Trial Tr.p. 61. He asserted that the vehicle in the pictures does not have any stickers, but the vehicle according to the later purchaser had stickers on it. Tr.p. 62. Counsel Robinson was claiming it was not the same vehicle. Counsel claimed that the only person claiming it was the same vehicle was Zachary Gantt, whose credibility was in question. Trial Tr.p. 63. Robinson asserted that the Applicant sold his vehicle to his grandmother who then sold it to Joyce Johnson. Trial Tr.p. 63. Solicitor Campbell responded that they took stills from the house videos which was in color, but not black and white. He asserted it was from when the Applicant showed up at the crime scene. Campbell stated that there will be two witnesses at trial who will identify the vehicle as Williams vehicle and that he was the one who had the keys to it. And that he gave him the keys to drive it. He asserted that they can lay the foundation to all of that. Id. Campbell disagreed with counsel Robinson as to the identification of the vehicle based upon their perception, the photographs and the statement. He stated that although it was dark the photograph used stands out.

Campbell also stated that the vehicle went missing after the incident. They reviewed the title history on it and learned that it originally belonged to Martha Everett, the Applicant's girlfriend that he was living with at the time. When her name came up, officers went to interview her and she was trying to give an alibi for him. They then learned it was sold to his grandmother and then to his aunt. Then the officers, about a year later, found the vehicle with Ms. Johnson's neighborhood and took pictures of it because it is a very distinctive vehicle that was only made a few years. Campbell noted that in one of the photographs there was the same sticker in the bottom right hand corner that was there that night. Trial Tr.p. 65. Campbell stated that codefendant Gantt was going to identify the car that he drove and that he received the keys from the Applicant. Counsel opined that they could lay a proper foundation for its admission. As to this issue, the trial court reserved ruling. Trial Tr.p. 66.

At trial, State Exhibit 31 and 32 were introduced without objection. (Tr.p. 264-265) as representing what Detective Danny Barton reviewed on the seized DVR system from 3304 Jerry Drive. The DVR had been recovered from a built-in closet wall. Tr.p. 254-257. State Exhibits 14, 15, 16, 17, 33, 35 which were still photographs from the DVD/DVR were introduced without objection. Tr.p. 278-279. The photographs were described and discussed during the testimony. Tr.p. 280-283.

Concerning the DVR video from Howell's residence, Detective Barton testified the landlord of Howell's residence informed him he installed a digital video recorder (DVR) connected to the camera's outside Howell's residence. (Trial Tr. pp. 255-6). Detective Barton testified he executed a search warrant to retrieve the DVR, which was built into a closet wall in the residence so no one could know it was there. (Trial Tr. p. 257). Detective Barton testified he reviewed the DVR and observed Patel arriving to the residence, Patel speaking with Howell, Gantt and Johnson

at the residence, and another car parked behind the residence he was unable to initially identify. (Trial Tr. pp. 257-8). Detective Barton testified the DVD discs containing the period of DVR recordings pertinent to Applicant's case fairly and accurately represent what he observed on the DVR system, and he did not change or materially alter them in shape, manner or form. (Trial Tr. p. 264; St. Ex. 31, 32).

On cross-examination by counsel Robinson, Detective Barton testified he retrieved the DVR video on July 5, 2019, and had complete control over the videos throughout the investigation. (Trial Tr. 357-8). Detective Barton testified he recovered the entire DVR video and testified he never conceded the DVR video was not complete. (Trial Tr. p. 358). Detective Barton testified he burned the portion of the DVR video from 2:00 PM of July 1st to the morning hours of July 2nd on two different discs, and the DVR itself is in evidence. (Trial Tr. p. 358).

On direct examination in this proceeding, Campbell testified they obtained the DVR from Howell's house with a search warrant and there were days of video seized. He stated that Howell, Gantt, Johnson, and the Applicant's car were on the video. Importantly, Campbell testified he reviewed all the videos with Trial Counsel.

As discussed above, Trial Counsel made a motion to suppress the DVR videos, and the court denied his motion. (Trial Tr. pp. 54-61). At trial Detective Barton testified he learned about the DVR from the landlord of the property, and he retrieved the DVR with a search warrant. (Trial Tr. pp. 255-7). Detective Barton testified to the contents of the DVR video, as follows:

Q. As a result of that, did you learn anything to help with this investigation?

A. Yes, sir. I did see on the DVR system that around just after 5:30 p.m. that C.J. Patel did actually arrive at 3304 Jerry Drive. He did have contact with Kyndra Howell at that residence. He and Kyndra Howell left and they had came back. They both went inside Kyndra's house and that was

the last time that C.J. Patel was ever seen alive. It also shows two black males, who we have identified as Zach Gantt and Jeremiah Johnson, codefendants in this case, arriving on scene. Jeremiah actually arrives in a silver Cadillac and they both go inside Kyndra Howell's residence. Later on that night another vehicle, which we could not identify at the time, arrived at the house, parked behind the house. Other than that, the vehicles come and go all night long. It also shows Kyndra Howell moved C.J.'s vehicle behind the house, like she is trying to hide it.

(Trial Tr. pp. 257, ll. 17-25 – 258, ll. 1-19). Detective Barton identified the DVD discs, Exhibit 31 and 32, as videos recorded from the DVR relating to his testimony. (Trial Tr. p. 264). Detective Barton additionally testified the Exhibits represented what he observed on the DVR recordings, and he did not change or materially alter the videos in any shape, manner, or form. (Trial Tr. pp. 264-5). The Exhibits were then admitted without objection. (Trial Tr. p. 265).

“Relevant evidence” means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE; Bonaparte v. Floyd, 291 S.C. 427, 354 S.E.2d 40, 86 A.L.R.4th 103 (Ct. App. 1987) (Relevancy generally means the logical relation between the proposed evidence and a fact to be established.). Additionally, “evidence must be authenticated or identified in order to be admissible.” State v. Brown, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). A witness with knowledge may authenticate evidence by testifying that “a matter is what it is claimed to be.” Rule 901(b)(1), SCRE; State v. Gray, 438 S.C. 130, 882 S.E.2d 469 (Ct. App. 2022), reh'g denied (Jan. 23, 2023), cert. denied (Oct. 3, 2023) (Witnesses personal knowledge and ownership of the security system that recorded the video, and knowledge of the camera's location and what it recorded, was sufficient to authenticate the video, even if he did not contemporaneously watch the monitor when the shooting occurred and was not present at the scene of the shooting)).

In Applicant's case, the DVR recording showing Patel, Applicant's co-defendant's, and Applicant's car at Howell's residence the day of the incident and the morning after the incident were obviously relevant. Additionally, Detective Barton properly obtained the DVR recordings, viewed the recordings, the recordings were in his control throughout the investigation, and was able to testify the recordings shown in court accurately depicted what he observed; properly authenticating the recordings, and Judge McIntosh admitting the recordings into evidence. State v. Green, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), aff'd as modified, 432 S.C. 97, 851 S.E.2d 440 (2020) ("The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims.")).

Trial Counsel did not object to the admission of the DVR recordings, but Trial Counsel did attempt to suppress the recordings and had the opportunity to cross-examine Detective Barton concerning the completeness of the DVR recordings. (Trial Tr. pp. 357-58). Important to note is the fact Gantt, an eyewitness, placed Applicant at the scene, testifying Applicant tortured and killed Patel. (Trial Tr. pp. 134-145).

This Court finds Trial Counsel was not deficient, and finds Applicant failed to establish prejudice flowing from Trial Counsel's conduct. First, Trial Counsel attempted to suppress the recordings, cross-examined Detective Barton about the recordings, and the recordings were relevant and properly authenticated. Second, Applicant failed to show how Trial Counsel objecting to the DVR recordings would have changed the outcome of his trial. The DVR recordings placed Applicant's car at the scene, but Gantt established Applicant was present at the scene of the incident, and tortured and shot Patel in the head.

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

Allegation 1(c)(v): Trial Counsel failed to object to prejudicial conclusory statements made by lead investigator.

Applicant alleged Trial Counsel was deficient for failing to object to statements Detective Barton made in his testimony. Specifically, Applicant testified Trial Counsel failed to object to Detective Barton's testimony concerning his cell phone and failed to object to Detective Barton's stating "[Applicant] and [Howell] had had contact about all day long." (Trial Tr. p. 309, ll. 12-14).

On direct examination, Applicant testified Trial Counsel did not object to Detective Barton's testimony as non-expert testimony when he stated Applicant's "cell phone had been pinging off Homeland Park cell towers all night long the night of the incident." (Trial Tr. p. 355, ll. 6-8). Additionally, Applicant testified Trial Counsel should have objected to Trial Counsel's statements that Applicant had been on the phone all day with Howell when his phone calls were thirty-two seconds long.

On direct examination, Campbell testified the cell sites and pinging were part of the State's theory of the case and the evidence was in line with the technology of 2012. Campbell testified law enforcement officers pulled Applicant's phone records and Applicant's phone pinged off the cell tower in Homeland Park. Campbell testified there is no Cici's Pizza in Homeland Park. Campbell testified the technology in 2012 could not pinpoint Applicant, so the State did not use it in trial and Detective Barton merely testified to the records. Campbell testified he did not see a reason to clarify the pinging as he did not ask questions about Applicant's cellphone and he did not

want to draw attention to it. Campbell testified the intent of his questioning of Detective Barton on page 309 and page 354 to 356 was to explain why Detective Barton charged Applicant.

At trial, Detective Barton testified to the following concerning Applicant's cell phone records:

Q. Before we get to that, after Mr. Williams was arrested, were you able to--did he have a cell phone?

A. Yes sir, he did.

Q. Did y'all attempt to get his cell phone records?

A. Yes, sir, we did.

Q. And what did you learn from his cell phone records?

A. The day of the incident, he and Kyndra Howell had had contact about all day long. The contact kind of stopped right around, right before or right around the time that this incident happened. During — when the incident was occurring, there were a few more texts and phone calls made between Kyndra and Ezra. But like I said earlier, Kyndra had left the house at some point that night to go try the ATM cards.

(Trial Tr. p. 309, ll. 3-22).

At one point, defense counsel put an off the record conference on the record. Counsel noted that Detective Barton previously had tried to state that he had talked with Jeremiah Johnson and the hearsay objection was sustained. Counsel indicated that the State was then trying to go into the same area with Detective Barton based upon what Gantt and Johnson had told him and different statements that are not part of this record at that point. Judge McIntosh expressed some concern about a Confrontation Clause issue. Solicitor Campbell responded that it had not been said this day. Judge McIntosh sustained the objection on a Confrontation Clause basis and directed that Johnson's statement is not mentioned. Tr.p. 347-348. Counsel asserted that he had a similar objection if it was replaced with a generic statement to codefendants. Judge McIntosh clarified

that he did not mean that the State would be allowed to go into what they said. He agreed to allow a proffer of the testimony. Tr.p. 359.

During a proffer, the State inquired of Det. Barton, he was asked what factors played into his request for an arrest warrant of Williams. Tr.p. 353-352. As to his listing of the factors, counsel Robinson objected to some statements that he thought was factual inaccurate, which the Court stated went to weight, not admissibility. Judge McIntosh noted his objection and opined that was not opinion testimony. Counsel Robinson next objected that the testimony could be prejudicial coming from a law enforcement officer and asserted its prejudicial impact outweighs its probative value, similar to a Rule 403 objection. Tr.p. 353. Judge McIntosh stated that in the proffer he did not hear that this was why or that he had a good case, which is different. The trial stated that he would ask that that not be stated in the testimony, "but what I heard was not offensive as far as the Rules were concerned. Tr.p. 354.

At that point after counsel's objection was denied, the following occurred similar to the earlier proffer:

- Q. Detective Barton, you were the detective that took out the arrest warrants in this matter?
- A. (Affirmative nod).
- Q. Can you please tell the ladies and gentlemen of the jury some of the factors or some of the reasons why you took out the warrants against the defendant for armed robbery, possession of a weapon during the commission of a violent crime, kidnaping and murder?
- A. Yes, sir. Based on Zachery Gantt's statement acknowledging his involvement as well as the codefendants involvement in this incident, and one of the codefendants being Ezra Williams. We were able to substantiate Mr. Gantt's, most all the details of the statement that he gave us. We also spoke with Kizzie Roebuck, who had spoken with Ezra — you heard from her yesterday. We had her statement. We had Jonathon Johnson's statement, who put Ezra at

the scene during the time of the incident. We had Mr. Williams' cell phone records which showed that he was pinging off cell towers in the Homeland Park during the time of the incident. That coupled with the vehicle found a year later, matching the description of the one that was on the video at Kyndra Howell's residence, we had enough evidence to charge Mr. Williams with armed robbery, possession of a weapon during the commission of a violent crime, kidnaping and murder of C.J. Patel.

(Trial Tr. pp. 354-6). The Applicant's counsel objected to this testimony.

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." Rule 602, SCRE. Usually, a lay witness cannot state an opinion, however Rule 701, SCRE, allows a lay witness to offer an opinion if certain criteria are met. See State v. Gibbs, 431 S.C. 313, 847 S.E.2d 495 (Ct. App. 2020), aff'd as modified, 438 S.C. 542, 885 S.E.2d 378 (2023). A lay witness' opinion or inferences which are rationally based on their perception, are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and do not require special knowledge, skill, experience, or training. See Rule 701, SCRE; State v. Ostrowski, 435 S.C. 364, 867 S.E.2d 269 (Ct. App. 2021) (Investigator's testimony about the significance of certain objects found during the search of defendant's residence was admissible lay testimony in prosecution for trafficking methamphetamine, notwithstanding that court declined to qualify investigator as an expert in methamphetamine packaging, distribution, paraphernalia, and valuation, where investigator discussed how the objects he found were sometimes used in drug trafficking based on what he had seen in previous investigations and how it informed his perception of what he saw while investigating defendant.)).

"[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." State v. Brown, 317 S.C. 55, 63, 451

S.E.2d 888, 894 (1994). The evidence was relevant to explain “the process and direction of the investigation.” It is widely recognized there can be a legitimate purpose for explaining events that occurred or did not occur in the course of an investigation. See, e.g., State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (explaining statements were not hearsay because they were offered “to explain why the officers began their surveillance”). When it is important to do this, the evidence will be relevant. In many cases, however, it is not at all important to explain the course of the investigation. See, e.g., State v. King, 422 S.C. 47, 66-68, 810 S.E.2d 18, 28-29 (2017) (explaining that the course of the investigation is not always “relevant and probative” (citing Ruiz v. Commonwealth, 471 S.W.3d 675, 681 (Ky. 2015))). State v. Middleton, 441 S.C. 55, 67, 893 S.E.2d 279, 285 (2023) (Rather than showing an attempt to explain the investigation, we are convinced the detective's only intent in giving even the testimony to which Middleton did object was to show Middleton had engaged in evasive conduct).

However, in State v. King, 422 S.C. 47, 66, 810 S.E.2d 18, 28 (2017) our supreme court “caution[ed] against the use and admission of ‘investigative information’ ” because “it appear[ed] prosecutors were using it as] an attempt to circumvent the rules against hearsay.” The court clarified the question of whether investigative information is admissible “involves a straightforward hearsay analysis.” *Id.* at 37. “While [the testimony] may be couched in terms of explaining an officer's conduct during an investigation, it may not be used to offer the substance of an out-of-court statement that would otherwise violate our state's rules against hearsay.” *Id.* at 39. See State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004) (holding that investigator's statement that “all of the evidence led to” or pointed to defendant did not constitute inadmissible hearsay given the investigator never repeated statements made to him by individuals at the crime scene and the testimony was in response to questions asked on cross-examination), *aff'd* as

modified by 374 S.C. 313, 649 S.E.2d 479 (2007) (affirming but modifying Court of Appeals' analysis that police had probable cause for warrantless search of defendant's vehicle); State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) (Testimony of sheriff's investigator, in prosecution for infliction of great bodily injury on a child, regarding actions he took after hearsay conversations he had with three-year-old victim was not inadmissible hearsay; investigator did not directly relate to jury any statements made by victim, and he testified in detail about his investigative process, and that he made decision to arrest defendant based on all information he collected).

Detective Barton's Testimony at Tr.p. 309

This Court finds the record establishes Detective Barton's testimony at page 309¹³ related to the assertion that Williams and Kyndra had phone contact during the day, but not during the time of the incident was deficient and could have been subject to a hearsay objection or because the evidence goes to the truth of the matter asserted under Rule 801 and possibly a Confrontation Clause objection. It is unclear on the basis of this record of a strategic reason why an objection was not made at that point. This Court will not speculate a strategic reason. However, the record does show that at the outset of his cross-examination of Detective Barton, counsel Robinson got the witness to concede that the records did not show that he was specifically "at the scene." Tr.p. 357, l. 1-8.

¹³ In the Supplemental Application counsel for the Applicant cited to Tr.p. 307. However, on page 307 counsel objected to a comment about by Detective Barton in reference to a question about what evidence he had at that point that suggested that Williams was present and made reference to Jonathan Johnson's earlier trial testimony. Counsel made a vouching objection initially that was overruled by the trial court. Tr.p. 307. As the witness continued, counsel objected on the basis of hearsay to the summary of Johnson's statement and Zachary Gantt's statements, which the trial judge sustained counsel's objection as to hearsay. Tr.p. 308. This Court believes from the PCR testimony that the issue was actually concerning the testimony in Tr.p. 309, which did not show an objection.

This Court, however, finds that counsel's failure to object to this testimony at Tr.p. 309 did not meet the prejudice prong under Strickland. The Applicant cannot show that had counsel Robinson objected to the hearsay testimony about the calls and the lack of calls during the period of the incident and been sustained, that there was a reasonable probability that the result of the proceeding would have been different. The testimony at Trial Tr.p. 309 was very limited and only related to the existence of calls that day allegedly between the Applicant and Kyndra Howell and that the calls stopped around the time of the incident. Det. Barton conceded the records did not conclusively show that he was at the scene. The evidence by Barton was that no calls were made at the time of the incident, however, it remained unclear why he arrived at the time if no calls had been made between those phones. There was testimony in the record by Gantt about Kyndra and that she brought up the plan to rob Patel with Jeremiah Johnson and Gantt and he agreed to it, while Patel was in her place. Trial Tr.p. 127, 167. Gantt testified that when Williams came over to Kyndra's trailer later, he was not aware after several hours into the incident, but that he was not aware of the reason that Williams came over at that point. Tr.p. 132-133. Gantt described when Williams saw the beaten Patel, Williams declared that "we better than him" and the beating then got worse when he started beating up Patel and went into the kitchen and heated up a utensil on the stove and stuck it on Patel's stomach and later used bug spray in his eyes. Tr.p. 135-139. Gantt later described the victim going into the woods with Williams and Johnson while Gantt remained in the car on his phone. Gantt testified he eventually went to the area where Patel was taken and Williams continued to ask Patel for his PIN numbers. At that point Williams told Johnson to step back and he shot Patel, whose hands were still tied behind his back. Tr.p. 145. They then returned to Kyndra's house who was still there and they sat around and smoked marijuana. Tr.p. 148-150. He then described taking Patel's black Honda after it had been cleaned up with Johnson and "Bug"

to another wooden area and leaving it there and returning in Johnson's vehicle.¹⁴ Gantt testified that they returned to Kyndra's home and found Williams had returned. Tr.p. 150-153. There was no testimony about the Applicant making any calls during the incident. The Applicant has failed in his burden of proof to prove prejudice under Strickland related to the limited phone testimony.

Detective Barton's Testimony at Tr.p. 355-356.

As to the testimony related to the reasons for the arrest by Detective Barton, this Court finds that the allegation is without merit because counsel Robinson did object to the testimony in a timely manner. Counsel required a proffer of the testimony and continued to object after the proffer was made. Because the evidence presented at Tr.p. 355-356 was consistent with the testimony presented in the proffer at Tr.p. 351-352 that he had just objected to, there was no requirement to again place the objection on the record because nothing had changed in the testimony. Trial Counsel was not deficient for failing to again object to the above portions of his testimony after the motions during the proffer were denied by the trial judge.

Moreover, however, even if this Court assumed that counsel was somehow deficient in his failing to object differently than he did, Applicant failed to establish how it would to a reasonable probability have changed the result.

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

Allegations 1(d): Trial Counsel failed to request mistrial after hung jury .

¹⁴ Jonathan "Bug" Johnson described going to Kyndra's house that night to get drugs and ended up claiming the Black Honda and took it with Johnson and Gantt. Tr.p. 186-188.

This Court that the Applicant has failed to show deficient performance on the part of counsel in failing to request a mistrial based upon a claim that the jury was hung. This Court finds from a review of the trial record that there is no evidence that the jury was actually hung and unable to reach a verdict, but instead it was evident that it was in the process of deliberating and seeking additional instructions from the trial judge. Applicant has alleged counsel Robinson was deficient for failing to request a mistrial after there was a hung jury, referencing page 458 to 459 of the Trial Transcript.

On direct examination in this proceeding, Campbell testified the jury had questions about the law, pointing out that Judge McIntosh gave an Allen¹⁵ charge among the instructions given in response to jury questions. , and the jury returned with a verdict in six hours.

The jury began its deliberations at 11:53 AM. Tr.p. 448, l. 19. At 1:46 PM, the jury sent a note requesting to hear the jail phone calls. Tr.p. 448, l. 22 – p. 450. At 2:15 PM, the jury returned to its deliberations. Tr.p. 450.

The jury sent a second note at 3:39 PM (Court Exhibit 7) asking what to do if they are unable to reach a verdict. Trial Tr.p. 451. The trial court indicated it was reluctant to give an Allen charge at that time to the parties. He stated that if they suggested they were deadlocked, he would give them the instructions. Counsel for the defense and state both agreed with that approach. Tr.p. 452. The jury was brought in at 3:41 related to the question: “Judge McIntosh, we are not unanimous on the charge, what are should we do.” Tr.p. 452, l. 9-15. The forelady opined that they were not making much progress at this point and we have stated how we feel talking among ourselves. When asked if they feel liked they were hopelessly deadlocked, the forelady stated that they did not know. Tr.p. 453, l. 8-13. The jury was sent back at 3:43 PM and the judge had

¹⁵ Solicitor Campbell is referring to the instruction given the jury after the court received its

discussions with counsel. The trial judge indicated an intent to give an Allen charge. The State and defense counsel agreed. Trial Tr.p. 453, l. 18- 24.

The jury was brought back out at 3:45 PM. Tr.p. 454. Judge McIntosh then gave the Allen type instruction. Trial Tr.p. 454-456. The jury went out at 3:49 PM. There were expressly no objections to the instruction by the State or counsel Robinson. Trial Tr.p. 456-457.

Subsequently, the jury sent another question at 5:06 PM. This question indicated to the trial court some confusion in the jury's understanding of some of the charges. The following occurred:

THE COURT: We have another note from the jury, which reads: "We are confused as the jury if it is appropriate to go with our gut feeling, and another explanation on the way that we are to view circumstantial evidence would be helpful." I am not even sure how to interpret that, so I am going to have to question them further and see what they want. Let me get my charge ready.

CAMPBELL: That's the only thing that I can think of.

THE COURT: Sir?

CAMPBELL: About the only thing that I can think of is just to recharge the law.

THE COURT: It sounds like that is what they are asking.

(Trial Tr. p. 457, ll. 8-25).

At that point the jury was brought in at 5:09 PM. Tr.p. 458, l. 6.

THE COURT: Ladies and gentlemen of the jury, Madam Forelady, this is the note that I believe that we received from the jury which says, (reading): 'We would like to be charged on the law again, please. We are confused as to if it is appropriate to go with our gut feeling, and another explanation on the way that we are to view circumstantial evidence would be helpful. Is that the message from the jury?

FORELADY: Yes, sir.

THE COURT: Okay. So that I can understand what you are asking me to do, because I will do whatever you want. Are you asking me to charge you on the entire charge that I gave you before or do you want certain aspects of that clarified for you?

FORELADY: I guess just certain aspects. We're confused when--when we feel evidence is lacking, when can our personal--like you had said, kind of both sides, that he is presumed innocent. We need to decide whether or not they've proven their case otherwise, so we can look at all that evidence and feel one way and then--then you also said things about, like, our life experiences and our personal feelings.

THE COURT: All right.

FORELADY: And the demeanor of people.

THE COURT: I tell you what, let's do this. Do you feel like you understand the substantive aspects of murder, kidnaping, armed robbery, possession of a weapon, and the---

FORELADY: Yes.

THE COURT: --- hand of one is the hand of all?

FORELADY: (Affirmative nod).

THE COURT: Do you feel like you understand that?

FORELADY: Yes.

THE COURT: Okay. Well, let me go back and just go over my general instructions and my final instructions with you. Is there an exception to that by either side in this case?

CAMPBELL: No, Your Honor.

THE COURT: Mr. Robinson?

ROBSINSON: No, sir, Judge.

THE COURT: That's what we will do. Again, please understand that if that is not answering your question, then I will give you the full charge as often and as many times as you'd like. Okay?

FORELADY: Yes, sir.

(Trial Tr. pp. 457-60). Judge McIntosh then charged the jury again on the general rules that control a juror's duties and the considerations a juror can make in their deliberations. (Trial Tr. p. 460-477). The State and counsel Robinson expressly had no objections or additions to the instruction. Trial Tr.p. 477, l. 22-0 p. 478, l. 4. The jury went out at 5:32 PM and reached a verdict at 6:54 PM. Trial Tr.p. 477-478.

"In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998); see also State v. Galbreath, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct.App.2004) (requiring the defendant to show a prejudicial abuse of discretion (citing State v. Covington, 343 S.C. 157, 163, 539 S.E.2d 67, 69-70 (Ct.App.2000))). A mistrial is only proper where there is "manifest necessity", and whether a mistrial is manifestly necessary is a fact specific inquiry. State v. Rowlands, 343 S.C. 454, 539 S.E.2d 717 (Ct. App. 2000). "It is universally recognized that a genuine inability of the jury to reach a unanimous verdict constitutes a manifest necessity for the declaration of a mistrial." State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004); See United States v. Perez, 22 U.S. 579, 6 L. Ed. 165 (1824). A trial court should declare a mistrial as a last resort, when all other alternatives have been exhausted. A mistrial is a drastic step, "an extreme measure which should be taken only where an incident is so grievous that the prejudicial effect can be removed in no other way." State v. Herring, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009). See State v. Taylor, 427 S.C. 208, 214, 829 S.E.2d 723, 727 (Ct. App. 2019) ("A trial judge has a duty to urge jurors

to reach a verdict, but must do so in a way that does not coerce them, eroding their independence and impartiality.”).¹⁶

The Applicant does not contest the language of the instructions given to the jury. The only assertion is that counsel Robinson should have moved to have the trial court declare a mistrial. The Applicant has failed to show that counsel was deficient in failing to make that request based upon the record. The Court similarly holds that the Applicant has failed to prove prejudice under Strickland.

The circumstances in Applicant’s case clearly do not constitute a deadlocked jury. The Forelady never indicated the jury was unable to come to a decision, but asked for clarification concerning what a juror could consider in deliberations.

This Court finds, based on the record, the jury in Applicant’s case was not deadlocked when the question was asked at 5:06 PM when they asked for further instructions. The Applicant is unable to show a manifest necessity that required Trial Counsel to request a mistrial at that time. Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 3: Applicant’s due process was violated when the State vacated the murder charge against a key witness, Gantt, after allowing him to tell jury he plead to murder.

¹⁶ In detecting coercion, the Court would consider four factors:

- (1) whether the charge speaks “specifically to minority jurors”;
- (2) whether the charge includes “you must return a verdict” type language;
- (3) whether there was an “inquiry into the jury’s numerical division,” which is generally coercive; and
- (4) whether the time between when the charge was given and when the jury returned a verdict demonstrates coercion.

Id. at 214–15, 829 S.E.2d at 727 (quoting Tucker v. Catoe, 346 S.C. 483, 492–95, 552 S.E.2d 712, 717–18 (2001) (per curiam)).

The Court finds that the Applicant has failed to show a Due Process violation concerning the post-trial treatment of Zachary Gantt's conviction and sentence. Applicant alleges his due process was violated when the State vacated Gantt's murder charge after he testified against Applicant at his trial and told the jury he was charged with murder. Based upon a reasonable reading of the record and this Court's determination that former Assistant Solicitor Rame Campbell's testimony about the reasons for their action was credible, the Court must deny relief.

During his trial testimony, Zachary Gantt testified that he had pled guilty in November 2014 to murder, possession of a weapons during the commission of a violent crime, armed robbery and kidnapping. Trial Tr.p. 117. He testified that he had not been sentenced up to then and would be sentenced at a later date. Trial Tr.p. 118, l. 2-6. He declared that when he pled he had not had any charges reduced. Trial Tr.p. 118, l. 7-9. He further acknowledged his role and participation in the death of the victim. Trial Tr.p. 118, l. 10-20. On cross-examination, counsel Robinson reiterated that Gantt had already pled guilty to murder and that sentencing had been deferred. Trial Tr.p. 163-164. Counsel pressed the witness that he was hoping for a reduced sentence with his testimony which the witness admitted and hoped that it would help. Trial Tr.p. 164-165. Gantt admitted that after initially telling law enforcement that the Applicant was not there, his mother came to him and told him to assist the State to help him. Trial Tr.p. 171.

The Applicant is correct that the State subsequently vacated Zachary Gantt's plea to murder subsequent to his testimony that he had pleaded guilty to murder. Tr.p. 117, 156. On September 17, 2015, Gantt appeared before Judge McIntosh subsequent to the August 10-12, 2015 trial. In that proceeding, the State reduced the original murder charge to voluntary manslaughter with a recommendation of 22 years. State v Gantt, September 17, 2015, Tr.p. 3, l. 19-22. Judge McIntosh sentenced him to 22 years concurrent on voluntary manslaughter, kidnapping and armed robbery.

This Court finds under these discrete circumstances that this is not a due process violation. At the time of the trial, Gantt had pled to murder and sentencing had been deferred. After the trial and the not guilty verdict of the Applicant on murder, the entry of the revised plea was made before the same trial judge. This Court finds on the basis of Campbell's credible testimony that there was no intent during the trial to reduce the charges for the witness. This decision came after the trial as a result of the acquittal on murder.

This Court further finds that it was not prosecutorial misconduct or a violation of either under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) or Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (holding that, where a witness's testimony is material to a case, the prosecution's failure to disclose a promise not to prosecute made to that witness in exchange for his testimony violates the Due Process Clause of the United States Constitution).

On direct examination in this proceeding, Zachary Gantt referenced his testimony at Applicant's trial, stating he testified before the jury he had pled guilty to murder and his charges were not reduced in exchange for his plea. (Trial Tr. p. 117, ll. 18-23; p. 118, ll. 7-9). Gantt testified he does not know why his murder charge was reduced to voluntary manslaughter, but he was not offered a reduction at the time of his testimony at Applicant's trial. Gantt testified he was offered the reduction only after Applicant had been found not guilty of murder.

On direct examination, former assistant solicitor Campbell testified the decision to reduce Gantt's plea came about as a result of Applicant's trial and acquittal of murder, and there were no promises made to Gantt of reduction in exchange for his testimony. The State's position was that Gantt, although a participant was not the triggerman. Campbell testified it would have been unfair

for Gantt to have pled to murder considering he cooperated and was not the “trigger man”, when Applicant and other co-defendants were found not guilty of murder.

The Due Process Clause guarantees a criminal defendant's right to a fair trial. U.S. Const. Amend. 14. “Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather, it is a flexible concept that calls for such procedural protections as the situation demands.” State v. Legg, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (citing Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). Further, if a defendant is convicted with false evidence, known to be false by representatives of the State, then the conviction “must fall under the Fourteenth Amendment.” Napue v. People of State of Ill., 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.E.2d 1217 (1959).

This Court finds the State did not falsely represent Gantt pled to murder in an attempt to influence the jury in Applicant’s case, and finds Applicant failed to show how Gantt’s later reduction which had not been a condition or agreement with Gantt prior to or during the trial denied Applicant his right to a fair trial. Accordingly, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2(a)-(d): Trial Counsel failed to appeal Applicant’s conviction and sentence, denying Applicant his one and only right to direct appeal.

Applicant alleged Trial Counsel was ineffective for failing to appeal his sentence and conviction. Specifically, Applicant alleged his family retained Trial Counsel to perfect his appeal, but Trial Counsel failed to do so because he failed to obtain Applicant’s Trial Transcript. Applicant avers Trial Counsel’s failure to obtain his Trial Transcript denied him counsel at a critical stage of his appeal.

On cross-examination, Applicant testified he cannot recall any communication with Trial Counsel about his inability to obtain Applicant’s Trial Transcript for the appeal because of

insufficient funds, and he only learned about Trial Counsel's failure to obtain his transcript when he received the remittitur after the appeal had been dismissed. (App. Ex. 1). Applicant testified he wished to appeal his conviction, and never indicated to Trial Counsel he did not wish to appeal. Applicant testified had he received Trial Counsel's letter before the remittitur he would have continued with his appeal.

On direct examination in this proceeding, Daniel Tally testified he retained Trial Counsel on Applicant's behalf to handle Applicant's appeal. Tally testified he paid Trial Counsel ten-thousand dollars for Applicant's trial, and paid Trial Counsel five-thousand dollars for Applicant's appeal on the same week Applicant's trial concluded. Tally testified Trial Counsel did nothing after Tally paid him.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010); see also Turner v. State, 384 S.C. 451, 456, 682 S.E.2d 792, 794 (2009) (finding counsel must inform criminal defendant found guilty of a crime after a trial about the possibility of an appeal). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)." Turner v. State, 380 S.C. 223, 670 S.E.2d 373 (2008) (citation omitted).

Applicant alleges Trial Counsel was ineffective for failing to perfect a direct appeal of his conviction after his trial. The record before the Court indicates that Applicant asked Trial Counsel to appeal the conviction, and Trial Counsel filed a timely notice of intent to appeal with the Solicitor's Office. However, trial counsel failed to perfect the appeal due to his inability to secure funding for the trial transcript and provide proof of service that the transcript had been delivered pursuant to SCACR Rule 207. The appeal was dismissed on October 14, 2016 and the remittitur

was issued on March 7, 2017. Although funding for the transcript had not been secured by retained counsel, the Applicant indicated he never abandoned his desire to appeal his conviction. This Court finds Applicant did not knowingly and voluntarily waive his right to appellate review of his conviction, and grants him a belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974) (holding that where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court may grant a belated review of direct appeal issues).

Thus, this allegation must be **GRANTED under the limited provisions of White v. State procedures.**

ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING

**Allegation: Trial Counsel failed to hire an expert to counter
Detective Barton's testimony**

On direct examination, during the evidentiary hearing, Applicant alleged Trial Counsel failed to hire an expert witness to counter Detective Barton's testimony concerning Applicant's cell phone pinging off a tower in Homeland Park, near Howell's residence. During this proceeding, the Applicant introduced a report Tom Slovenski, a certified digital forensic examiner related to cell towers. In his report, Slovenski indicated that he had reviewed the underlying reports that Detective Barton relied upon and found the charts the Det. Barton relied upon, but were not introduced at trial to include errors which could have been seen by a jury as confusing and misleading and in his opinion not best practice. In his conclusion, he "cautions the use of these maps in a court of law and in this case." Slovenski, Review of 864- 202-**** MAPS. Applicant's PCR Exhibit. The maps that the Applicant's expert refers and criticizes were not used at the trial. Former Solicitor Campbell indicated that they decided not to present the materials related to cell towers before the Court. However, a review of the report by Slovenski does not specifically opine

or indicate that Det. Barton's testimony that the records indicated that the calls were pinging off of the indicated towers was incorrect. Instead, the Applicant's expert's report indicated the presentation in the use of the charts would have been misleading and confusing and therefore not the best practice.

Former Solicitor Campbell testified he went over the State's theory of case, including cell sites and pinging evidence, as it was part of theory of case. Campbell stated that it was in line with technology in 2012. Campbell testified the law enforcement investigation pulled phone records, and the evidence reflected that Applicant's phone pinged off cell tower in Homeland Park, at the time he was alleged to be at Cici's Pizza which was not in Homeland Park. Campbell testified the technology in 2012 could not pinpoint Applicant, so Campbell did not use it in trial because it could not pinpoint; Detective Barton merely testified briefly to the records. Campbell testified he did not see a reason to clarify pinging as he did not ask questions about cellphone, and he did not want to draw unnecessary attention to it. See Tr.p. 253, l. 5-6, p. 336, l. 6-8; p. 352, l. 12-14 (proffer), p. 355, l. 18-21, and p. 360, l. 11-13 (cross).

This Court does not find that every reasonable lawyer practicing criminal law when cell site material is used must retain a digital forensic expert in cell site location. However, reasonable counsel should review and investigate the cell site materials produced and make an assessment whether an expert is needed to either assist or present cell site information from phone records.. See Collins v. State, 172 So. 3d 724, 743 (Miss. 2015) (en banc) (recognizing "testimony that simply describes the information in a cell phone record ... [or] merely informs the jury as to the location of cell phone towers" is proper lay testimony but "agree[ing] with the Maryland Court of Appeals that the better approach is to require 'expert testimony to explain the functions of cell phone towers, derivative tracking, and the techniques of locating and/or plotting the origins of cell

phone calls using cell phone records’ ”); State v. Boothby, 951 N.W.2d 859, 875 (Iowa 2020), as amended (Dec. 14, 2020) (“echo the Second Circuit’s “caution that the line between testimony on how cell phone towers operate, which must be offered by an expert witness, and any other testimony on cell phone towers, will frequently be difficult to draw,” citing U.S. v. Natal, 849 F.3d 530, at 536 (2nd Cir. 2017). In Boothby, the Iowa court concluded that counsel was not ineffective for failing to challenge the phone records or the officer’s testimony because the challenges would ultimately be unsuccessful. Additionally, in Boothby, the Iowa court surveyed the different approaches in other states on whether lay witnesses (police officers) may testify related to the material or if expert testimony is required or preferred.

This Court finds that the Applicant has failed to prove Sixth Amendment prejudice related to the failure to retain or use a digital forensic expert related to historical cell site data. This Court finds that based upon the credible testimony of Rame Campbell counsel Robinson was aware before trial of the existence of historical cell site information in the case and its relationship to the State’s theory against his client. This testimony related to the pinging off towers in Homeland Park was very limited. Assuming the testimony would have been similar to Slovenski’s report about charts that were not used, the Applicant failed to meet his burden to show a reasonable probability that the result of the proceeding would have been different. It is telling that the Applicant’s presentation by the expert did not take issue with the substance of Detective Barton’s limited testimony about his cell phone, instead questioning the manner the unused charts were presented and finding them to be confusing. This does not undermine confidence in the verdict where the maps were not introduced at trial. This does not satisfy his burden of showing prejudice under Strickland. Accordingly, this Court finds Applicant has failed to establish any prejudice assuming that counsel failed to employ an expert. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: After-discovered evidence in form of recanted testimony of Applicant's co-defendant, Gantt.

This Court finds that the Applicant has failed to satisfy his burden in showing credible after discovered evidence related to the recent recantation by Zachary Gantt of his trial testimony. At the evidentiary hearing, Applicant called and elicited testimony from Gantt, one of his co-defendants. Gantt testified he sent a letter to counsel stating his testimony implicating Applicant in the crime was false.

On direct examination, Gantt testified he was forced and tricked into implicating Applicant in this crime, stating he was simultaneously coerced by law enforcement and bribed by William Jefferies to testify Applicant was involved in the crime. Gantt testified Applicant was at Howell's residence, but Applicant merely came to pick up Gantt and was not involved in the crime. Gantt testified the man who shot Patel is dead now and he does not have his name. Gantt testified Jeffrey was involved in the kidnapping and paid him five-thousand dollars to implicate Applicant, and that Jeffrey is now dead. However, on re-cross, Gantt testified he received the bribe before his testimony, and he could have said anything on the stand. Gantt testified law enforcement did not know he was being bribed by Jeffrey, and law enforcement forged his written statement implicating Applicant.

As noted above, this recantation defeats the claimed alibi by the Applicant with the evidence that supports he was at Kyndra Howell's rather than elsewhere with his girlfriend as had been claimed at trial. It is inconsistent with Martha Everett's testimony before this Court.

On direct examination, Campbell testified Gantt gave three statements, the first being self-serving, and Applicant's second statement mentioned Applicant. Campbell testified Gantt gave his third statement after speaking with his aunt. Campbell testified Gantt's statements were

consistent throughout the investigation, and they made sure to corroborate Gantt's statements. Additionally, Campbell testified multiple people placed Applicant at the scene, not just Gantt.

At trial, Gantt was not the only one that was an eyewitness placing Applicant at the scene.

A person may institute a PCR action if "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice[.]" S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C). To prevail, Applicant must show the newly-discovered evidence:

1. is such as would probably change the result if a new trial was had;
2. has been discovered since the trial;
3. could not by the exercise of due diligence have been discovered before the trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

As an initial matter, this Court finds the testimony of Gantt **not credible**. The determination of whether new evidence is credible for the purposes of a new trial rests with the trial court. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In particular, "our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing Porter, 269 S.C. at 621, 239 S.E.2d at 643). "When testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence." State v.

Deese, 266 S.C. 534, 538 225 S.E.2d 175, 176 (1976) (citing State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)).

The granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). Moreover, "[w]here a motion for a new trial is based upon recantation of testimony given at the trial, such recantation is looked upon with the utmost suspicion." United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir. 1973) (internal quotation omitted); see also Porter, 269 S.C. 618, 239 S.E.2d 641 (1977) ("Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.") (internal quotation omitted).

This Court finds Applicant is not entitled to a new trial based on newly discovered evidence. As stated above, Gantt's testimony is **not credible**. This Court finds that it is not satisfied that it is such as would probably change the result if a new trial was had. Gantt had cooperated in prior trials and with law enforcement after his first statement when he asserted that the Applicant was not involved. Suspiciously, Gantt avers he was monetarily incentivized to implicate Applicant in the crime and yet also forced to implicate Applicant by law enforcement—an incredible tale that lacks sense. Gantt then avers the bribe was paid before his testimony was given, and he could have said anything he wanted at trial. However, at trial when he denied Chill Will's involvement in the crime, he acknowledged that he was already dead at that time. Trial Tr.p. 157. Even without Gantt's farfetched assertions, Gantt is unable to corroborate any of his testimony, as the man who supposedly bribed him is dead and he does not know his name, and the supposed trigger man is also dead, yet he also implicates William "Chill Will" Jeffries. At trial, Gantt maintained that Jeffries was not involved at all in the murder of Patal and was dead at that time. Trial Tr.p. 157-158. Moreover, Gantt's original testimony implicating Applicant was

corroborated by Johnson, another eyewitness, and DVR recordings tying him to the scene of the crime. Important to note is the inconsistencies between Applicant's and Gantt's testimony at the PCR evidentiary hearing are also compelling. Gantt testified Applicant merely came to pick him up from Howell's residence and Applicant did not stay. However, Applicant testified Gantt called him and invited him over, and he went inside Howell's residence—somehow avoiding a beaten and bloodied Patel—and spent the rest of the night with Howell. Gantt's recantation falls flat under close scrutiny and is clearly unreliable. See Hayden v. State, 278 S.C. 610, 612, 299 S.E.2d 854, 855 (1983) (the court found the condition precedent was not met based upon corroborating evidence of the defendant's involvement in the crime and the lack of credibility of the witness).

Further, the witness now claimed that he was coerced by law enforcement and his signature was forged by law enforcement on his statement. In light of the witnesses basis for cooperation from his family member Kizzie Roebuck, these new protestations do not bear an indicia of truth. The Applicant's mother told her son to turn himself in and tell the truth. Trial Tr. p. 174-176. She later encouraged him to testify. Trial Tr.p. 174. In fact, Gantt gave a written statement to Det. Barton and then took them out to where the body was located. He stated at trial that no promises of leniency were made to get him to show them where the body was located. Trial Tr.p. 156.

This Court must conclude that the elements of after-discovered evidence has not been met because Gantt is not credible and the circumstances surrounding his testimony support that it is not credible. These addition factors related to Gantt's mother's involvement in the encouragement for his son to cooperate with the officer and tell then truth and testify at trial. It is telling that when he testified at trial that Chill Will was not involved and was already dead, that now a basis in his recantation is the Chill Will gave him \$5000 to implicate the Applicant. If the Chill Will was involved in the case and was already dead at the time of the trial, nothing prevented him from

suggesting his involvement at that time. This inconsistency destroys any sense of credibility for the incredible version Gantt for whatever reason has now put forth.

Accordingly, this Court finds Applicant has failed to establish he is entitled to a new trial based on after-discovered evidence. Thus, this allegation must be **DENIED** and **DISMISSED**.

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 for post-conviction relief with a finding under White v. State for belated appellate review. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

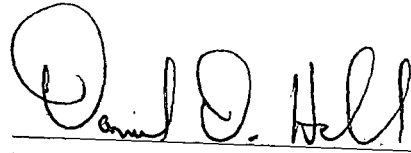
IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations except the appeal issue addressed below. Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by PCR 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.
2. That the Applicant is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
1. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this ____ day of _____, 2025.

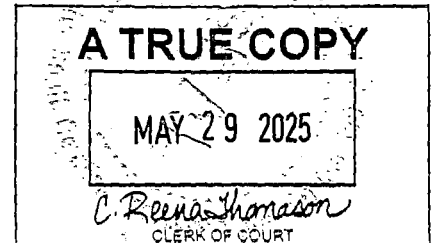
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25 MAY 28 PM 12:10:07
Anderson, SC COC, CP/GS



THE HONORABLE DANIEL D. HALL
Tenth Judicial Circuit
Presiding Judge

York, South Carolina



DOCKET NO. 2012GS04 02473

WITNESSES

D Barton, Anderson Co. Sheriff's Office

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

NOV 27 2012

Term

ARREST WARRANT NUMBER

J925280

THE STATE

vs.

Ezra Rysunn Williams

ACTION OF GRAND JURY

NOV 27 2012

Foreperson of Grand Jury

Date:

VERDICT

guilty

Foreperson of Petit Jury

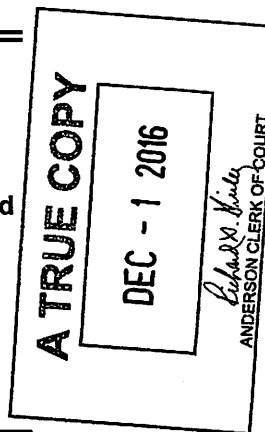
Date: 8-12-13

RLC

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly armed

SC Code: 16-11-0330(A)
CDR Code: 0139



STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on NOV 27 2012, the Grand Jurors of Anderson County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That Ezra Rysunn Williams did in Anderson County, on or about July 1, 2012, while armed with a deadly weapon, to wit: a firearm and/or a knife, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: credit cards and cash from the person or presence of Chandrakant Patel. This is in violation of §16-11-330(A) of the *South Carolina Code of Laws (1976)*, as amended.

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

Rome L Campbell

ASSISTANT SOLICITOR

WITNESSES

D Barton, Anderson Co. Sheriff's Office

DOCKET NO. 2012GS04 02474

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

15.12.12

Term

ARREST WARRANT NUMBER

J925281

THE STATE

vs.

Ezra Rysunn Williams

ACTION OF GRAND JURY

TRUE BILL

NOV 27 2012

Foreperson of Grand Jury

Date:

VERDICT

guilty

XO [Signature]
Foreperson of Petit Jury
Date: 8-12-13

RLC

Indictment for

**Weapons / Poss. weapon during violent crime,
if not also sen**

SC Code: 16-23-0490
CDR Code: 0549

A TRUE COPY

DEC - 1 2016

[Signature]
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on NOV 27 2012, the Grand Jurors of Anderson County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sen

That Ezra Rysunn Williams did in Anderson County, on or about July 1, 2012, while committing the crimes of Murder, Armed Robbery and Kidnapping, crimes of violence, have in his possession a firearm and/or a knife, all in violation of Section 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.

Rome L Campbell

ASSISTANT SOLICITOR

WITNESSES

D Barton, Anderson Co. Sheriff's Office

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

DEC 1 1 2012

Term

ARREST WARRANT NUMBER

J925272

THE STATE

vs.

Ezra Rysunn Williams

ACTION OF GRAND JURY

TRUE BILL

DEC 1 1 2012

Foreperson of Grand Jury
Date:

VERDICT

guilty

Foreperson of Petit Jury
Date: 8-12-15

RLC

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code: 0095

A TRUE COPY

DEC - 1 2016

Richard M. Hiley
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on DEC 11 2012, the Grand Jurors of Anderson County present upon their oath:

Kidnapping / Kidnapping

That Ezra Rysunn Williams did in Anderson County, on or about July 1, 2012, unlawfully seize, abduct, confine, inveigle, decoy, kidnap, abduct, or carry away Chandrakant Patel, without the authority of law. This is in violation of §16-3-0910 of the *South Carolina Code of Laws (1976)*, as amended.

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



ASSISTANT SOLICITOR