

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, Jr., PCR Action Judge
2022-CP-32-03918

RECEIVED

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S.C. SUPREME COURT

CHRISTOPHER TILLMAN, #387155,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Christopher Tillman appeals the denial of his post-conviction relief application. The post-conviction relief action was heard by the Honorable Frank Addy, Jr., circuit court judge, on May 15, 2025, who granted Applicant a belated direct appeal, and denied the remaining allegations by written order issued filed on December 22, 2025. Applicant received notice of the judgement on December 22, 2025.

/s Chelsey F. Marto
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FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	FOR THE ELEVENTH JUDICIAL CIRCUIT
Christopher D. Tillman, #387155,)	CASE NO. 2022-CP-32-03918
Applicant,)	
v.)	ORDER OF DISMISSAL AND
)	WHITE v. STATE APPEAL FINDINGS
State of South Carolina,)	
Respondent.)	

2025 DEC 22 AM 11:46

LISA W. GORTON
CLERK OF COURT
LEXINGTON, SC

THIS MATTER INITIALLY CAME BEFORE THE COURT pursuant to a *pro se* post-conviction relief (PCR) action filed by Christopher Dwayne Tillman (Applicant) on November 14, 2022. On July 16, 2024, the Lexington County Clerk of Court appointed Chelsey Marto to represent Applicant. The Respondent made a Return on July 29, 2024. The Applicant, through counsel Marto, made an amended application on March 10, 2025.

On May 13, 2025, the matter was heard by this Court. The Applicant was present and represented by Ms. Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, his counsel, Johnny Watson, Jr. , and Assistant Solicitor Kelly Oppenheimer. On May 28, 2025, this Court filed a Form 4 Order. This Order of Dismissal and Findings pursuant to White v. State follows:

I. Procedural History

Applicant is presently confined to the South Carolina Department of Corrections. On July 13, 2020, the Lexington Court of General Sessions indicted Applicant for Ill Treatment of Animals (2020-GS-32-01032), Burglary 2nd Degree (2020-GS-31-01034), and Arson 2nd Degree (2020-GS-32-01035). Assistant Solicitor Angela Martin and Assistant Solicitor Kelly Oppenheimer prosecuted the case on behalf of the Eleventh Circuit Solicitor’s Office. Applicant was represented

by Johnny E. Watson, Sr.¹. (Counsel). Applicant's trial was held before the Honorable Debra McCaslin and a jury from February 7-9, 2022. On February 9, 2022, a jury found the Applicant guilty as indicted. (R. 265-6:19-13). Judge McCaslin sentenced Applicant to 15 years each for Burglary 2nd Degree and Arson 2nd Degree and imposed a 5-year sentence for Ill Treatment of Animals. The sentences run concurrently. *See* Sentencing Sheet.

A notice of appeal by counsel Watson was served on the Solicitor's Office on February 21, 2022. However, according to the Court of Appeals, it was never filed in the South Carolina Court of Appeals, as required by SCACR Rule 203(d). The notice was received by the Attorney General's Office on February 28, 2022. However, because the notice was never filed in the South Carolina Court of Appeals, there was no appeal before that Court. The State and counsel Watson were advised by email from the Clerk of Court for the Court of Appeals and letter dated May 2, 2022 that no notice of appeal had been filed with the Court.

II. Factual History

On February 28, 2020, the Lexington County Fire Department contacted Timothy and Shelby Dickensheets to report that a fire had occurred at their recycling yard. (R. 200:14-25). Timothy and Shelby were owners of a scrap metal recycling plant. After being certified by the court as an expert in arson investigation, testimony was given by Investigator Phillip Reddick of the Lexington County Fire Marshal's Office. (R. 126:8-13; 128:14-18). Reddick explained how, during his initial investigation, he was unable to determine if the fire was an accident or an arson. (R. 130:6-9). After reviewing security camera footage showing an individual throwing an incendiary device through a window of the structure, Reddick concluded the fire was set

¹ The cover of the Record (trial transcript) reflects Johnny *Watkins* as the attorney for the Applicant. In actuality, the Applicant was represented by Johnny *Watson*, Esq.

deliberately. (R. 130:10-16). The State submitted the same video evidence at trial. (R. 74:3-6). Additionally, Reddick testified that there was no possibility that the fire was an accident. (R. 131:13-18).

Testimony was given by Detective Nicholas Uveges of the Lexington County Sheriff's Department. Detective Uveges was assigned to conduct a follow-up investigation into suspected arson. (R. 146:2-12). Detective Uveges explained that, during his investigation, he gathered security camera video from any available cameras in the surrounding area which might reveal a suspect. (R. 153:6-15). After reviewing camera footage from various roads in the surrounding area, Detective Uveges identified a silver Ford Edge as a suspicious vehicle. (R. 177:8-21). The Ford Edge was seen on various cameras heading towards the incident location and leaving the incident location at roughly the same time the fire occurred. (R. 156:7-10). Additionally, Timothy and Shelby Dickensheets testified that they knew the Applicant drove a silver midsize SUV when he worked for them. (R. 89:3-6; R. 197:20-25)

During his investigation, Detective Uveges asked the Dickensheets if there was anyone with whom they had a problem. (R. 167:11-24). The Dickensheets informed Detective Uveges that they suspected Applicant was responsible because the Dickensheets had recently fired him earlier in the week. (R. 167-8:16-6). In his testimony, Timothy Dickensheets explained that the Applicant was hired to conduct repairs in the office. (R. 88: 9-14). Two days before the fire, Timothy discharged the Applicant because "[m]y wife was uncomfortable with [the Applicant] being around. He would go into locked areas . . . after being told not to." (R. 89:7-13). No other employee had been fired.

The State submitted additional evidence including the checkbook ledger for the Dickensheets' company that was found at the location of the fire. (R. 92:1-3). Timothy explained

that the ledger was missing ten checks, including a check which was made out to the Applicant on the day of the fire. (R. 92-3:12-1). Amongst the remains of the fire, the Dickensheet's discovered the remains of their family dog, Chicken Wing. (R. 93:2-10).

The State submitted photographic evidence of a \$3,800 check written out of the Dickensheets' business account. (R. 87:9-22). The check was cashed on February 28, 2020, the same day as the fire. (R. 87:9-22). The photos of the check showed Applicant as the payee. (R. 88:4-10). The State submitted photographic evidence showing the Applicant cashing the check on the afternoon of the fire. (R. 171:17-24). Timothy explained that he did not owe the Applicant any money after he was fired. (R. 89:19-25). Additionally, Timothy testified that the handwriting on the check did not match the handwriting of anyone with the authority to write checks for the company. (R. 90:1-25).

III. Allegations in the Applications

In his initial PCR application, Applicant alleged he is being held unlawfully based on the following:

- I. "Attorney Misconduct"
 - a. "During the first day of trial, [Counsel] smelled of alcohol. Then on lunch of the second day he offered my friend tequila and beer in the parking lot."
- II. Ineffective Assistance of Trial Counsel
 - a. "After a disagreement to withdraw [Counsel] off my case, he refused my contact with him then on the day of the trial, he did not present my witnesses or evidence."
- III. "Perjury from Witnesses"
 - a. "During questioning of witnesses, the star witness made statements that were easy to verify but never was."

In his November 14, 2022 application, the Applicant states "the appeal was not made by his former attorney after he said he would, then he withdrew himself."



On March 10, 2025, the Applicant, through counsel made the following amendments:

- I. Ineffective assistance of counsel for:
 - a. Failure to communicate effectively.
 - b. Failure to properly cross-examine witnesses.
 - i. Failure to properly impeach detectives based on their supplemental report.
 - c. Failure to object to the admission of stolen checks.
 - d. Failure to review discovery.
 - e. Failure to object to search for the truth language. (Tr. 34, 237).
 - f. Failure to convey to applicant the importance of testifying about the alleged stolen checks, amongst other issues in the case.
 - i. For erroneously telling Applicant that he did not need to testify. (Tr. 238).
 - g. Failure to pursue directed verdict and new trial motions.
 - h. Failure to effectuate the appeal.
 - i. Failure to pursue a third-party defense and investigate other potential suspects.
 - j. Failure to object to pictures of the vehicle for lack of authentication.
 - k. Failure to argue in closing argument that:
 1. The State failed to establish motive.
 2. Work was completed weeks before the incident.
 3. The vehicle was not in Applicant's possession at the time.
 - l. Failure to request limiting instructions concerning checks issue.
 - m. Failure to properly prepare for trial and be knowledgeable of the evidence.
 - n. Failure to object to State's closing argument when they stated that Applicant was in possession of the car. (Tr. 230).
 - o. Failure to investigate the point of entry.
 - p. Failure to enter into evidence:
 1. Police Report implicating a third person.
 2. Facebook messages.



MATTERS BEFORE THE COURT

This Court has the following matters before it for review:

1. Lexington County Clerk of Court records regarding the general sessions proceeding,
2. The Transcript of the trial, February 7-9, 2022. (277 pages),
3. Applicant's records from the South Carolina Department of Corrections,
4. The current and amended applications for post-conviction relief, the transcript of the trial and evidence presented at the hearing, and
5. The opportunity to consider fully all testimony and evidence presented at the PCR hearing.²

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

² In the State's proposed order, roughly twenty-five (25) pages summarized the testimony of the witnesses at the hearing. The Court has deleted that portion of the order in the interest of brevity because the same, relevant testimony is recounted in the portions of this order which specifically address Applicant's grounds.

³ S.C. Code Ann. §§ 17-27-10 to -160.



5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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), SCRCPP; 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 to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 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; 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 "[without 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 analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); see Harrington v. Richter, 562 U.S. 86, 110, 131 S.Ct. 770, 790 (2011) (instructing the proper analysis "calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind"). When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for overcoming that presumption. Butler, 286 S.C. at 442, 334 S.E.2d at 814; see Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, will make every effort "to eliminate the distorting effects of hindsight," and will "evaluate the conduct from counsel's perspective at the time" in light of the then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Thus, counsel's performance will be considered to be deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply "deviated from best practices or most common custom." Richter, 562 U.S. at 105; see State v. Woullard, 813 N.E.2d



964, 971 (Ohio Ct. App. 2004) (“Defense counsel’s strategy must have been outside the realm of legitimate trial strategy so as ‘to make ordinary counsel scoff’ before a conviction will be reversed on the basis of ineffective assistance.” (citations omitted)).

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.”⁴ Strickland, 466 U.S. at 691. In order for that burden to be met, 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 v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989); 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; see Strickland, 466 U.S. at 694 (“A reasonable probability is a probability sufficient to undermine confidence in the outcome.”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO THE MERITS

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these

⁴ Notably, “a court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.” Strickland, 466 U.S. at 697. In fact, a reviewing court ordinarily should dispose of an ineffective assistance of counsel claim on the grounds of lack of sufficient prejudice “[i]f it is easier” to do so. Id.



claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief with the exception of the belated appeal claim. 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 § 17-27-80 of the South Carolina Code:

FAILURE TO COMMUNICATE

In his first allegation, Applicant contends that his counsel failed to adequately communicate with him prior to and during the trial. Federal case law holds that there is no



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

South Carolina case law has established that, even if trial counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id. See Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to



post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial).

The Applicant maintains that counsel was deficient in his alleged failure to communicate. The Applicant contends that his counsel failed to meet with him prior to trial other than at periodic roll calls. He further contended that counsel failed to review the discovery with him. He asserts that he went to counsel's office on a number of occasions prior to trial, but counsel was not available, so they did not meet. The Applicant claimed that counsel never discussed the facts of his case or possible defenses with him.

The Court notes that Applicant bonded out shortly after his arrest and paid counsel an initial \$500 retainer on his fee of \$10,000. Counsel testified that Applicant refused to come in to his office to discuss the case or to pay counsel the rest of the retainer.

The Court finds trial counsel's testimony more credible than the Applicant's testimony. Based upon counsel's credible testimony, this Court finds that counsel discussed strategy with the Applicant at the time of the trial. This Court further finds credible that counsel met with the Applicant at the roll calls around six times. This Court rejects the Applicant's assertion that he went to counsel's office around ten times to visit him. This finding is supported by the fact that counsel had moved to be relieved because his client had refused to cooperate with him prior to the trial.

This Court finds that the lack of communication was likely due to the fact that Applicant knew he owed counsel more money and did not consult with his attorney for that reason. However, Applicant did acknowledge that he received discovery from counsel roughly four (4) to six (6) weeks after his arrest when counsel dropped the discovery packet off in Applicant's



mailbox. This Court further finds that counsel reviewed the discovery he received from the State. The Court finds that this ground is without merit because any breakdown in communication was due to Applicant's actions, not counsel's.

The Court further finds that the Applicant's refusal to communicate with counsel other than during the roll calls did not create 6th Amendment prejudice. This Court, within its findings below, notes that Applicant's claims are denied for failing to prove that there was a reasonable probability that the result at trial would have been different had more meetings taken place.

FAILURE TO ADEQUATELY CROSS-EXAMINE WITNESSES

This Court finds that the Applicant failed to prove either deficient performance or 6th Amendment prejudice related to the cross examination of the Dickensheets, Investigator Uveges, and Christy Carrington. "In hindsight, there are a few, if any, cross-examinations that could not be improved upon. If that were the standard of constitutional ineffectiveness, few would be the counsel whose performance would pas[s] muster." Willis v. United States, 87 F.3d 1004, 1006 (8th Cir. 1996); see also United States v. Munoz, 605 F.3d 359, 381 (6th Cir. 2010)[finding counsel not ineffective for not impeaching witness]. Impeachment strategy is a matter of trial tactics, and tactical decisions are not ineffective assistance of counsel simply because, in retrospect, better tactics may have been available. Millender v. Adams, 187 F.Supp.2d 852, 872 (E.D. Mich. 2002), aff'd, 376 F.3d 520 (6th Cir. 2004); cf. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000)["[C]ounsel's tactical decisions at trial, such as refraining from cross-examining a particular witness or from asking a particular line of questions, are given great deference and must similarly meet only objectively reasonable standards."](citing Strickland v. Washington, supra).



Tim and Shelby Dickensheets

Applicant maintains that the cross-examination of the victims, the Dickensheets, was lacking. The record reflects that Tim Dickensheets was cross-examined by counsel Watson. R.p. 95-116. Counsel Watson focused his examination at trial initially on the number of other employees, between 50 to 60 on any given day, and the 12 security cameras. R.p. 95-96. Counsel pointed out that, when Tim Dickensheets initially reviewed the videos, he told the fire marshal that he could not trust anyone except his brother-in-law. R.p. 96. Tim denied Watson's suggestion that he had disgruntled employees and customers. Tim also rejected counsel's suggestion that he could not distinguish anyone from the video and asserted that he could after watching hours of the video by closely examining the facial structure and movement of the persons in the video. However, Tim admitted that he was not an expert in either regard. R.p. 97.

Counsel had Tim acknowledge that he had an employee named Keyshawn Johnson. However, he did not recall if he told the investigator that he wore headwear or drove the same type of vehicle, although he did know that Johnson did not have a license or a vehicle. R.p. 98.

On cross-examination, Watson had Tim describe the Applicant as someone who was seeking long-term work with them, continued to ask for more work, and whether he was a contractor or an employee was uncertain. R.p. 99-100. Tim testified that Tillman was paid by check and denied Tim made any deductions from the check. R.p. 100. Counsel sought to show that the Applicant was not a "disgruntled employee" by having Tim deny that he gave Tillman additional work or hired him permanently. R.p. 101. Counsel had Tim deny that he gave the Applicant a 1099 form. He had Tim assert that the Applicant charged around \$5000 and that Tim had paid Applicant in full. R.p. 102. However, Tim asserted that the Applicant was disgruntled because he was let go and was unable to finish the job. R.p. 102.

Counsel had Tim deny that he had break-ins often and asserted that this was the first break-in at the office. R.p. 102-103. Tim indicated that there were one or two fires previously. R.p. 103. Counsel developed that Tim had owned the business for seven years. Counsel inquired about how long it took to develop the Applicant as a suspect, and Tim indicated it was within days.

Similarly, counsel developed that Tim became aware that checks were missing within days. R.p. 103. Counsel had Tim confirm that 10 consecutive checks were missing and that the Applicant's stolen check was among the 10 missing checks. R.p. 104.

Concerning the Russian style hat, Tim could not recall if he told the investigator that "Foster" wore such a hat. R.p. 104. Counsel developed through Tim that some cameras were visible and others were hidden. R.p. 105.

Tim confirmed that he had hired Tillman to renovate his office and to fix a window but acknowledged that Tillman had not yet fixed the broken window when he was terminated. When asked why he was terminated, Tim stated his wife and family were uncomfortable because Applicant was going into locked areas numerous times while she was sleeping in the office despite being told not to go into those areas when his wife was there. R.p. 105. Tim clarified that he was unsure how Applicant got into locked areas, particularly his wife's inner office. Tim stated that inner office was never renovated because Applicant was terminated before he got to that part of the project. Tim clarified that the broken window was not in the locked area where Tim's wife would have been. R.p. 106-107.

Counsel also inquired about the relationship between the dog, "Chicken Wing," and the Applicant. R.p. 107. Tim confirmed that the dog did not like Applicant but never bothered



anyone else when he was out in the yard with the other employees. Tim indicated that the dog bothered Applicant when Applicant was in his wife's office where he was not supposed to be. R.p. 108.

Counsel also questioned why Tim had referred in his direct examination to the person in the video as the "arsonist." Tim indicated that it was because he saw the person ignite something and then throw it through the window. Although he could not tell if it was a match or a lighter, he did clearly see a flame. R.p. 109. Tim clarified that the arsonist went into the office, threw the flame, and then left. Tim also stated the person went into the office, came out, and went back into the office through the window and not the door so as to avoid the cameras. R.p. 110. Concerning the bank account, Tim indicated that he reviewed it every day but did say that any fraudulent activity would not have been noticed immediately. However, it would have been noticed within hours or by the next day. R.p. 110-111. Counsel inquired about the potential entry area and indicated that a cinderblock was not there prior to the night of the fire. R.p. 111. Tim stated that he set the cinderblock in the area himself. Id. Counsel challenged Tim on how a person could enter through that gap which was roughly two feet deep. R.p. 112. Tim claimed that the hole was not there before the incident based upon his own walking around the perimeter. R.p. 112. He stated the photograph was an accurate depiction of the hole. Tim also rejected the assertion that he told the investigator that the person was a heavy-set person with a beard and a Russian hat. R.p. 112-113. Tim also confirmed that Keeon Jones was another person who attempted to cash one of the stolen checks. R.p. 113. Tim claimed that he did not know Jones. R.p. 113. Tim rejected an assertion by counsel that Jones, rather than Tillman, had broken in and stole the checks. R.p. 114. Tim indicated that his identification was based upon the video, being familiar with Tillman, and seeing the video which indicated it was Tillman. R.p. 114. Tim further



denied that he had any discussion with law enforcement about fingerprints or other evidence linking Applicant to the crime. R.p. 115. Tim claimed that only two checks were cashed, one by the Applicant and the other by Keeon Jones. R.p. 115.⁵ Tim was unaware whether the Applicant brought others to assist in the renovation, but he did not see anyone else. As to Keyshawn Johnson, Tim did not remember saying that Johnson wore the hat and entered the business. R.p. 116.⁶

On cross-examination of Shelby Dickensheets, counsel Watson noted that he was sorry for the loss of their dog as he was also a dog lover. R.p. 217. On questioning, Shelby indicated that she did the hiring for the business and was responsible for hiring Keyshawn Johnson. R.p. 217. She indicated that Johnson was initially there the day of the fire, but he then disappeared for

⁵ On redirect, Keeon Jones stood up, and Tim denied that he had ever employed Jones. R.p. 116.

⁶ On re-direct, Tim denied that Keyshawn Johnson had been an employee of theirs. Tim indicated that Johnson had not cashed one of the checks and did not drive a Silver SUV. R.p. 117. Tim also reaffirmed that he had paid Tillman in full, but he did not complete the work. Tim claimed that he was owed money from Tillman based upon the \$3800 check that Tillman cashed. R.p. 118. Further, part of the unfinished work was the broken window which the arsonist crawled through. R.p. 118. Tim indicated that the door to the office would not have been locked at 3 am with the dog having access to the whole office and yard until the door was closed. Tim indicated that the checks were kept in the second desk drawer of his wife. R.p. 119-120. He also indicated that the dog had not bitten any other employee, and its only problem was with the Applicant. R.p. 120. Tim indicated that his identification of the Applicant was not based solely on the video, but other factors as well. Tim indicated that it was based upon the video, the firing, the check, and the neighbors' cameras capturing images of the silver SUV. R.p. 121. Tim indicated that he was very distraught and stressed the day he initially spoke with the fire marshal and investigators because his wife was pregnant, they had a car accident that day, his wife had to be rushed to the hospital, and they were looking for their dog. He stated that that it was within days, not instantaneously, that he learned who set the fire, who stole the checks, who killed their dog, and that it was arson. R.p. 122. Tim stated that the prior fires they had were based upon machinery malfunctions. R.p. 123. Also, when the fire marshals had asked about a hat, Tim indicated that he did not know exactly who had the hat or whether it was an employee or someone else he knew. R.p. 123-124.



a few hours and ultimately came back. R.p. 217-218.⁷ She claimed none of the other 60 employees ever had a reason to come into her office. She indicated that the employees would usually just speak to her in the yard. However, at that time she was 5 months pregnant, and her husband could address any employee's concerns. She recalled the day she met the fire marshal and looked at the videos. She stated that she did not recall saying to the fire marshal that they could not trust anyone except her brother. R.p. 218-219. She asserted that she paid Tillman in full and did not owe him any money. R.p. 219.⁸

Concerning the Dickensheets, Applicant stated that they should have been impeached with Facebook messages showing that Applicant's work at the business had been completed by February 5th, therefore termination could not have been motive for the arson if he had completed the job prior to the fire, was terminated on February 5th, and did not have access to the property after that date. Counsel testified that he had reviewed the discovery which included Facebook posts prior to the trial. This issue only related to when the Applicant was fired. The testimony at trial was that he was terminated two days before, that Applicant was desiring additional work, and that he had not completed the project by fixing the broken window. That the broken window had not been fixed was undisputed, as was the fact that the same window was the entry point of the perpetrator during the fire and theft.

⁷ The trial transcript is unclear who this section referred to as disappearing. However, in context with the direct examination, this reference was to Johnson and not the Applicant. See R.p. 214-215.

⁸ On re-direct, the State pointed out that Keyshawn Johnson had not been fired and showed up to work the day after the fire. R.p. 219. She stated that Johnson had no reason to hold a grudge against her or the dog. R.p. 219-220.



Mrs. Dickensheets testified that \$5,000 was paid up front for the work, representing payment in full. R.p. 197. However, she also testified that Applicant had not completed the work prior to the Applicant's termination because the broken window had not been fixed. R.p. 196.⁹ Tim testified that Tillman was fired two days before the fire and that they did not owe him anything. R.p. 89.

The Applicant wanted counsel to point out a message which stated that Applicant can get the rest of his money when he gets the rest of his tools. He asserts that this message indicated more money was owed to him. He claimed that counsel should have asked the Dickensheets what additional money was owed, but in his PCR proceeding, he did not assert what additional money was owed. Instead, Applicant maintained that all the work had been completed. The message can be read two different ways – that money was still owed him by the Dickensheets or that he was still welcomed on their property. Watson credibly testified that he discussed strategy with the Applicant during the trial and that he had reviewed the discovery, including Facebook messages. Counsel stated that he felt he did not need to introduce everything he could have and that he did not see how it would have helped Applicant's case. Counsel stated that his focus was on the lack of proof that Applicant committed the crime. Implicitly, the central focus was not whether Applicant remained employed or specifically when he was terminated. Counsel

⁹ Shelby testified on direct examination that she hired the Applicant based upon a FACEBOOK ad and he was the first to apply. R.p. 194-195. She stated that he was paid. R.p. 195. She testified that he was supposed to paint the ceiling tiles, put up drywall, change the door locks, fix the broken window, and worked for them for roughly 4-5 weeks. R.p. 196. She also stated that the Applicant approached her during that period requesting a loan to help him pay for his personal bills, including electricity. R.p. 197. She described the end of their employment relationship; she was uncomfortable with Tillman coming into her private office while she was resting when he had no business being there. R.p. 198-199. She asked her husband to terminate him, which he did. She stated that Tillman was advised that they would be taking a break but would let Tillman know if they had anything else for him to do in the future. R.p. 199.



testified that the primary trial strategy was to focus on another employee of the Dickensheets, Keyshawn Johnson, as possibly being the arsonist. Watson's cross-examination and closing argument supports his testimony that this was his strategy.

Upon a review of the transcript, counsel attempted to cross Mrs. Dickensheets on this point and tacitly argued third-party guilt during his closing.¹⁰ Specifically, any cross-examination concerning the Facebook post would have been collateral to the central issue in this case, namely, the identity of the arsonist, which was the focus of counsel's questioning. Accordingly, counsel was not deficient in his cross of the Dickensheets. The Applicant has failed to overcome the presumption that Counsel performed reasonably in his examination.

This Court further finds that any failure to cross the Dickensheets concerning the Facebook post did not prejudice Applicant. This Court finds that, had counsel sought to impeach the Dickensheets about the timing of and reason for Applicant's termination and whether the Applicant was owed money, there is no reasonable probability the result of the proceeding would have been different. The evidence was essentially: (1) Applicant was employed by the business to do work in the building and, unlike other employees, was aware of the area where the checkbook was kept. (2) Applicant was in financial stress and unable to pay his bills. (3) He sought financial assistance from Dickensheets who were skeptical and requested proof of his

¹⁰ In his closing argument, Watson argued that the State had not met its burden of proof. He stressed that the State was unable to prove that the car was the vehicle that Tillman possessed, focusing on the State's failure to prove the license tag or VIN number. R.p. 238-240. Counsel also tried to assert that Keeon Jones was a possible perpetrator and blamed the State, who had him appear at trial, for not calling him as a witness, asking him obvious questions about how he got the check, whether he broke into the building, and why he left the court room after the show-up during the testimony. R.p. 241-243. He claimed that Applicant and Keeon Jones were physically of similar build. R.p. 243-245. He further asserted that Keyshawn Johnson was identified early on but was not pursued as a suspect. R.p. 245.



monetary problems. (4) The fact that there was evidence that Applicant drove a similar car to the car seen on the video. (5) The fact that the perpetrator was aware of the business security and cameras as revealed by his actions in the video of crawling and crouching down to avoid the camera and avoiding entry and exit through the front door. (6) In addition, the Applicant had a similar body and facial structure as the perpetrator in the video. (7) Importantly, the Applicant possessed the stolen and forged check that had been cashed on the day of the fire with one of the checks stolen dated February 28th. (8) The Applicant is the only person who fits all these evidentiary points. (9) He was also a Facebook friend with Keeon Jones who possessed another stolen check but had never been employed by the Dickensheets. The Applicant failed to prove 6th Amendment prejudice related to the cross-examination of the Dickensheets.

Lexington County Fire Service Investigator Nicholas Uveges

The Applicant also asserts that counsel was ineffective in his cross-examination of Lexington County Fire Service Investigator Nicholas Uveges. The Applicant maintains that the cross-examination of Investigator Nicholas Uveges should have included questions about the supplemental report and the manner by which the gap under the fence, the supposed means of entry to the property by the arsonist, was created. In the supplemental report of Detective Uveges, at page 21 of the discovery packet, Det. Uveges stated, “the ground appeared to have been dug out large enough for medium sized adult to get through to enter property to commit the crime.” Applicant claimed that the detective’s statement on the stand was a dug out or lower washed out area. Tr.p. 148, l. 4-8. The Applicant pointed out that, when the detective was questioned further about the area, the solicitor asked, “do you believe the area was large enough for a small framed man to crawl under” and Detective Uveges said he thought so. Tr.p. 149. The Applicant claimed when the detective was asked for an explanation as to why there was no dirt



around that area, he indicated he did not know, but suggested it was a washed-out area. See Tr.p. 149.¹¹

The report stated that the washed-out area where the suspect allegedly entered the property was dug out sufficiently for someone to fit through. During Detective Uveges examination, he was questioned about whether he saw evidence of digging, and he stated he saw “scrape marks.” Tr.p. 180. The Applicant claimed that if he had spoken with Watson about the evidence, counsel would have known there was a dog that lived on that property 24/7 so there was a chance the scrape marks were from the dog.

The Applicant contended that how entry to the property was accomplished made a difference in the case. He asserts that, because there was no evidence of recent digging, the assertions that it was done recently by Tim Dickensheets must be in error.

The Court finds this to be a distinction without a difference. How the gap under the fence was specifically created is wholly immaterial to any issue in this case; therefore, counsel was not deficient in further cross-examination of the investigator as his testimony essentially stated the same thing. The investigator testified on cross-examination that he did not see fresh digging but saw scrape marks. R.p. 180-181. Although Investigator Uveges testified that he did not think someone with his own frame could fit under the fence at the spot without bending the fence, R.p. 180-181, he admitted on direct examination that someone with a smaller frame could have gotten

¹¹ At trial, counsel Watson cross-examined Tim Dickensheets about the potential entry area and indicated that the cinderblock was not there prior to the night of the fire. R.p. 111. Tim stated that he set the cinderblock in the area himself. Id. Counsel challenged Tim on how a person could enter through that area which was about two feet deep. R.p. 112. Tim claimed that the hole was not there before the incident based upon his own walking around the perimeter. R.p. 112.



under the fence. R.p. 149. This Court finds that counsel reasonably furthered Applicant's defense by his examination. The Applicant has failed to prove deficiency.

This Court finds that 6th Amendment prejudice has not been shown. Applicant has failed to prove that there is a reasonable probability that, had counsel sought to impeach or use the supplemental report, the result of the proceeding would have been different. The assertion is denied.

Witness Christy Carrington

This Court finds that the Applicant failed to prove deficient performance or 6th Amendment prejudice in the cross-examination of Christy Carrington, the individual who was selling her car to Applicant. Applicant suggested that counsel should have presented the entries in Facebook which indicated that the vehicle he had been driving was in her name and that he was making payments to her. He claimed that the messages would have indicated that the vehicle had been given back to her around February 5th which would have supported his contention that he did not possess it on February 28th. This Court finds that deficiency has not been shown.

In Carrington's direct examination, she testified that she had known the Applicant since college and that she owned a silver Ford Edge, a mid-size SUV in 2019-2020. R.p. 140-141. She identified State Exhibits 24-26 as photos of her car, but the backdrop of the photos was not her house, and she claimed that she did not know who lived in the area depicted in the photos. R.p. 140. In February 2020, she allowed Tillman to possess that car, and she stated that she owned two cars. Because she was having financial difficulties, she and Tillman agreed that he would make the payments on the Ford Edge, and he was supposed to send her the payments directly so she could pay the lienholder. R.p. 141. Carrington claimed that she did not drive the Edge when



Applicant had possession of it. She stated she got the vehicle back after she got married in February or after her reception on March 14th and that the Applicant still had the vehicle at that time. R.p. 141-142. She denied that she or her husband had driven the vehicle between February and March 14th. She stated that she had the Applicant return the vehicle to her because he had stopped making payments, and the lienholder was calling her about the payments. R.p. 142-143.

On cross-examination counsel Watson developed that Tillman was making the payments directly to her and not the lienholder. Counsel developed that, when he was not making the payments and the lienholder was calling her for the money, she got the car back. However, Carrington denied that she had been communicating about the car in text messages. R.p. 144.

The Applicant claims that his Facebook messages would have contradicted this information and suggested that she had gotten the vehicle back and given it to a family member. However, counsel Watson testified credibly that this was a witness who Applicant had named and that he interviewed her prior to the trial. Counsel stated that Carrington assured counsel that she did not have the car the date of the incident and that the Applicant possessed it at that time.

Counsel was not ineffective in his examination of the witness because she assured counsel that Applicant still had the car at the time of this incident during his investigation prior to trial. Applicant did not question that he drove a silver midsize SUV, but he now claims he had returned it to Carrington prior to the fire.¹² Counsel was not deficient in failing to present the

¹² As to the vehicle, Tim Dickensheets testified that, while the Applicant was working at his business, he drove a silver midsize SUV. R.p. 89. He also testified that he never saw Keyshaun Johnson drive a silver mid-size SUV. R.p. 117. A silver SUV identified as a Ford Edge is seen in the video of the business the night of the fire. R.p. 166. Shelby Dickensheets confirmed that Applicant drove a silver mid-size SUV. R.p. 197. On March 5, 2020, Det. Uveges went to the Applicant's known residence and took photographs of the silver Ford Edge which were entered as Exhibits 24, 25, 26. R.p. 175-176. The license tag on the vehicle belonged to Christy Carrington. R.p. 176.



text messages suggested by Applicant in light of counsel's reasonable investigation.

Furthermore, the Court finds that Carrington's trial testimony is clearly credible in that she got married in February, an event which she certainly recalls vividly, and she stated that she did not get the car back until March. Significantly, the vehicle that belonged to her was identified and independently verified as being at Applicant's home on March 5, 2020. Counsel's testimony that Carrington also assured him that the car had not been returned until after the incident is also very credible. Counsel was not deficient in his cross of Carrington.

Further, in light of the independent evidence of the vehicle being located at Applicant's home on March 5th, the other evidence of a similar car being at the workplace when the Applicant was doing work, and the admission in this proceeding that he did possess the vehicle while he was working there, this Court finds that the Applicant has failed to prove 6th Amendment prejudice concerning the messages from Carrington. Applicant has failed to prove a reasonable probability that, had the messages been used for impeachment, the result of the proceeding would have been different. This assertion must be denied.

FAILURE TO OBJECT TO THE STOLEN CHECKS EVIDENCE

This Court finds that the Applicant has failed to prove either deficient performance or prejudice related to Counsel's failure to object to the introduction of the stolen checks from the business at trial. During this proceeding, Applicant claimed that this evidence was improperly introduced for various reasons. He initially claimed that the evidence of the checks and his cashing of them was not relevant to his trial because he was charged in Richland County and those charges were still pending. Therefore, he felt this was objectionable because he was in possession of the check in Richland County, not Lexington County. He felt the trial testimony mistakenly suggested that he was additionally charged in Lexington County for the checks. He



also claimed the check was post-dated. The Court notes that, at trial, both Tim and Shelby Dickensheets denied that they had written the checks. Counsel Watson testified that he did not object to the admission of the stolen checks because he did not have a basis to object. He stated that the checks were stolen, and he thought the state was able to prove and introduce evidence of same.

At the start of the trial, the transcript reflects shows a discussion on the admissibility of the evidence of the stolen checks. R.p. 26- 30. The solicitor asserted that the evidence of the pending check charges should be introduced as part of the *res gestae*. R.p. 26. She contended that the evidence of the stolen check allowed for a full and complete presentation of the events related to the burglary, arson, and ill treatment of animal charges. She stated that one of the crimes he committed was stealing the checks from the business and later cashing one of them in Richland County a few hours after the arson. R.p. 27. Solicitor Martin contended that this evidence fits *res gestae* because it helps prove motive, identity, scheme, and intent and that it was probative in a circumstantial evidence case such as this. She opined that there was clear and convincing evidence in Richland Country to support admission; the checks were stolen and, within hours, were cashed which supports motive and identity. R.p. 28. The trial court inquired on counsel Watson's position concerning the admission of the Richland Couty charges under Rule 404(b) and *res gestae*. Counsel Watson stated that he did not object to admission of the evidence. R.p. 29, l. 22-23. Judge McCaslin granted the State's motion to allow the evidence based upon consent of the parties, and the evidence was introduced during trial without objection. R.p. 29-30, 87-93, 103-104,110-121, 168-175, 177, 193, 199, 211-216.

Evidence of bad acts or other crimes may be admitted under the *res gestae* theory:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘*res gestae*’” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...’ [and is thus] part of the *res gestae* of the crime charged.” And where evidence is admissible to provide this “full presentation” of the offense, “[t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “*res gestae*.”

State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370–71 (1996) (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980)). The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct.App.2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct.App.2003). Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime. State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997). Even if the evidence is relevant under this theory, prior to admission the trial judge should determine whether its probative value clearly outweighs any unfair prejudice. Rule 403, SCRE; State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990); State v. Wood, 362 S.C. 520, 527–28, 608 S.E.2d 435, 439 (Ct. App. 2004).

Further, evidence of bad acts can potentially come in under Rule 404(b) under limited circumstance, including motive and identity. “All relevant evidence is admissible.” Rule 402, SCRE. Relevant evidence may be excluded, however, “as otherwise provided” by the South Carolina Rules of Evidence. *Id.* Evidence is relevant if it has “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. Under Rule 404(b) of the South Carolina Rules of Evidence, “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith” but may be admitted for a legitimate purpose, specifically “to show *motive, identity*, existence of a common scheme or plan, the absence of mistake or accident, or intent.” (emphasis added). The evidence “must logically relate to the crime with which the defendant has been charged.” State v. Beck, 342 S.C. 129, 135, 536 S.E.2d 679, 682–83 (2000). There must be a logical relevancy between the evidence and the purpose for which it is being introduced. State v. Lyle, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923). “If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime.” *Id.* When the defendant was not convicted of the crime sought to be introduced, the evidence must be clear and convincing. Stokes, 381 S.C. at 404, 673 S.E.2d at 441. Furthermore, even if the defendant is tied to the bad act by clear and convincing evidence, there is a logical connection, and it is being introduced for a permissible purpose, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *Id.*; Rule 403, SCRE. “Unfair prejudice means an undue tendency to suggest decision on an improper basis.” State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000).

This Court must find that counsel was not deficient in consenting to admission or failing to object. This Court finds that the evidence related to the stolen and forged check was relevant and admissible at the trial. This Court finds that reasonable counsel would not have objected since the evidence related to the check was part of the *res gestae* and relevant to motive and identity, was proven by clear and convincing evidence, and no grounds existed to object to their admission.



6th Amendment prejudice has not been shown. The objections, if made, would not have been sustained and, therefore, would not have changed the outcome at trial.

FAILURE TO REVIEW DISCOVERY

In this allegation, the Applicant claims his counsel did not review the discovery with him. This claim is essentially raised above in the portion of this Order concerning the “failure to communicate.” In his testimony, the Applicant admitted that he received the discovery from counsel. Similarly, counsel stated that he reviewed the discovery personally. In addition, the Applicant testified that they did discuss portions of the discovery with counsel because counsel used some of the portions he discussed with him in his examination of some of the witnesses. The Applicant also acknowledges that he reviewed the discovery and videos prior to the trial.

The Court incorporates by reference the analysis as set out in the discussion on “failure to communicate.” The Applicant has failed to show deficient performance related to the discovery which was provided to the Applicant. Other than particularized matters set forth in his testimony and addressed in other portions of this Order, the Applicant has failed to show what he wanted counsel to present, other than the matters previously presented related to the impeachment of witnesses above which is also incorporated herein by reference. The Applicant has failed to prove deficient performance or prejudice.

FAILURE TO OBJECT TO “SEARCH FOR THE TRUTH” LANGUAGE

Our Supreme Court has urged judges to avoid suggesting to jurors at any point during a trial that they should embark on a search for truth rather than basing their decision solely on the evidence and the inferences which may properly be gathered from that evidence.



[A] trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.... We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt.

State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (footnote omitted). See also State v. Aleksey, 343 S.C. 20, 26–27, 538 S.E.2d 248, 251 (2000) (“Jury instructions on reasonable doubt which charge the jury to ‘seek the truth’ are disfavored because they ‘[run] the risk of unconstitutionally shifting the burden of proof to a defendant.’ ” (quoting State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998))).

The appellate courts have previously interpreted Beaty as “echo[ing]” Needs. See State v. Pradubsri, 420 S.C. 629, 640–41, 803 S.E.2d 724, 729–30 (Ct. App. 2017). In Needs, the supreme court “upheld the conviction because the circuit court reiterated the ‘beyond a reasonable doubt’ standard twenty-six times and the rest of the charge did not contain other disfavored language[.]” *Id.* (citing Needs, 333 S.C. at 154–55, 508 S.E.2d at 867–68). In Pradubsri, this court likewise upheld a verdict when the court repeated the standard “at least twenty times.” *Id.*

In this case the Applicant takes issue with the following portions related to the “search for truth language.” In the opening instruction to the jury, Judge McCaslin stated:

While sometimes these things may be true, this trial is not for entertainment. It is a fundamental part of our democracy; a ***search for the truth*** in an effort to make sure that justice is done between the parties before the Court.

Searching for the truth and making sure that justice is done is often slow, deliberate, and repetitive, the opposite of what you may have seen on TV or read or watched in movies. This courtroom is a place of honor dedicated to the protection and preservation of citizens' rights through what many have called the greatest justice system ever created.

R.p. 34, l. 16- 35, l. 3 (emphasis added).



The Applicant also refers to the following at the conclusion of the State's closing argument:

We know, without question, Christopher Tillman cashed that check. We know when, where, and what he got. Chicken Wing. The anger. Mr. Tillman must have had and the -- he took. All of this evidence put together gives you proof beyond any reasonable doubt.

It's the complete headlines. And Christopher Tillman is guilty of all three of these offenses, and your verdict should reflect that. A *verdict that speaks the truth*, and he must be held accountable for what he has done. Thank you.

R.p. 237, l. 11-21 (emphasis added).

In addition, in its final instructions, the trial judge stated the following:

THE COURT: All right. Members of the jury, it is now my duty as the trial judge to instruct you on the law applicable to this case. And in that regard, it is your duty as jurors to accept and apply the law as I now state it to you. Furthermore, it is your exclusive duty to decide all issues of fact in the case and to determine the effect, value, weight, and *truth* of this evidence.

R.p. 246, l. 17-24 (*emphasis added*). Further, the trial judge stated:

As jurors, it is your duty alone to determine the effect, value, weight, and truth of the evidence presented during the course of this trial. Furthermore, it is your job as jurors to determine the credibility or believability of the witnesses who have testified in this case. You must evaluate the evidence and determine which evidence convinces you of its *truth*.

R.p. 248, l. 13-20 (*emphasis added*). There were no objections to these instructions or comments.

The Applicant contended that counsel should have objected to the above referenced truth language. Counsel Watson stated that that it was common language as it related to the opening comment at R.34 and thought is was not improper. Counsel stated that he was not aware that such language had been declared as burden shifting. It was counsel's opinion that language regarding a verdict speaking the truth was fine.



Assuming arguendo that counsel should have objected to the use of the word “truth” in its instructions and the State’s closing argument, the Court finds that prejudice under Strickland has not been proven by the Applicant after a review of the instructions.

In the introductory statement by the trial court, the search for the truth comment was neither linked to a reasonable doubt instruction, nor did it suggest a lesser burden of proof. R.p. 34. There is no reasonable probability that the result of the proceeding would have been different had an objection been made. See State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (holding the trial court's search for the truth comment during its opening remarks not to be reversible error where it was a “mere statement to the jury and not a charge on the law... [and] the remarks were not linked to either the reasonable doubt or circumstantial evidence charges”). Cf. State v. Patterson, 425 S.C. 500, 512, 823 S.E.2d 217, 224 (Ct. App. 2019) (holding the trial court's search for the truth remark was not reversible error because the “comments came at the beginning of trial rather than the charge on the State's burden of proof at the end”); id. at 512, 823 S.E.2d at 224 (“Furthermore, ... we note the trial court gave an accurate definition of reasonable doubt later during its opening statement and again in the jury charge.”).¹³ A review of the introductory instructions did not dilute the State’s burden of proof when read in the context it was given to the jury.

¹³ A jury charge which is substantially correct and covers the law does not require reversal. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). Jury instructions should be considered as a whole, and if they are largely free from error, any isolated portions which may be misleading do not constitute reversible error. State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution. Id.



This Court finds that the conclusion to the State's closing argument which asked the jury for a verdict that speaks the truth (R.p. 237) similarly does meet Applicant's burden of showing prejudice because, when considered in the context in which it was made, the statement did not serve to dilute the State's burden of proof beyond a reasonable doubt. In fact, Solicitor Martin stressed the State's burden of proof on two occasions during her argument in which she explained reasonable doubt. R.p. 228 – 230. The conclusory comment in her closing statement does not give rise to a reasonable probability which undermines confidence in the verdict.

This Court further finds that the Applicant failed to prove 6th Amendment prejudice as it relates to the trial judge's instructions at R.p. 246 and R.p. 248. The record shows that the trial judge stressed the importance of reasonable doubt fifteen times in her jury instructions. R.p. 249 (2), 250 (5), 251, 252 (4), 253, 254, 255. This reasonable doubt instruction was not linked with the seeking truth language but was more directed to evaluating the credibility of the evidence presented. In State v. Aleksey, the court held jury instructions on reasonable doubt given at the end of the trial (that charged the jury to "seek for the truth" or "search for the truth") ran the risk of unconstitutionally shifting the burden of proof to the defendant because the jury was more likely to have applied the phrases in a manner that prejudicially affected him. 343 S.C. 20, 27–29 (2000), 538 S.E.2d at 251–52. However, even though the Aleksey court found the phrase was error when used at the end of the trial, it analyzed the entire record and found the error to be harmless. Id. Although the phrase was used during the charge on the law, it was not given in conjunction with either the reasonable doubt or circumstantial evidence instruction, and thus the defense did not prove beyond a reasonable doubt that the language affected the result of the trial. Id. at 27–29, 538 S.E.2d at 251–52. This situation is similar to Aleksey.



This Court concludes that Applicant has failed to prove prejudice under Strickland and denies relief related to the “truth” language in the instructions and argument.

ADVICE TO NOT TESTIFY

The Applicant alleged in his amended application that counsel failed to convey to Tillman the importance of testifying about the alleged stolen checks and also telling the Applicant that he did not need to testify. During the PCR hearing, Applicant stated that counsel emphasized that it was not their job to prove the State’s case. Applicant indicated that, had he testified, he felt that he could have let the jury know that the State’s evidence was not factually correct, pointed out discrepancies in the Dickensheets testimony, and made the case clearer. The Applicant acknowledged that he did not have an alibi because he lived alone. He thought he could have pointed out information about the vehicle, that the traffic cameras did not record the tags, and explained the text messages.

Counsel Watson indicated that he talked with Tillman about testifying and informed him that he could testify. However, counsel admitted he told Applicant that he did not think he needed to testify because he thought that the State had not proven its case, which he argued in his closing statement. R.p. 238. ¹⁴

During the trial, Judge McCaslin addressed the Applicant under oath about his right to testify in the following manner:

¹⁴ “They have not met their burden of proof. It’s a tough call, but it’s my call. My client wants to testify. I told him he doesn’t need to because they’ve not met their burden of proof. They have to prove that my client committed all three of these crimes or any one of them beyond a reasonable doubt. And it’s not that you’re firmly convinced. The standard is and the judge will tell you, it’s beyond a reasonable doubt.” R.p. 238, l. 22-p. 239, l. 7). Counsel then emphasized that the state had not proved the Applicant’s car was the car at the business. R.p. 239-241.



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

You have the right to testify on your own behalf; however, no one can make you testify. This is a personal right, and no one can waive this right except you. If you decide to testify, you will be subject to the same rules that govern all the other witnesses and you may be examined and cross-examined on any relevant issues in this case.

In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility. If you decide to testify, this decision on your part must be freely, voluntarily, and intelligently made, with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your attorney, your family, friends, or anyone else, but the final decision will be left entirely up to you. Do you understand what I've explained to you?

THE DEFENDANT: Yes, I do.

THE COURT: Do you have any questions about what I've explained to you?

THE DEFENDANT: No, I do not.

THE COURT: Have you discussed with your lawyer about testifying?

THE DEFENDANT: Yes.

THE COURT: Would you like to talk with him more?

THE DEFENDANT: No. I do not.

THE COURT: Do you wish to testify?

THE DEFENDANT: No, I do not.

THE COURT: All right. Mr. Watson, let me ask, are y'all going to --is the defendant going to present a defense?

MR. WATSON: Defense rests, Your Honor.

R.p. 221, l. 17-p. 223, l. 20.

The right to testify in one's defense “is not designed to protect the defendant from erroneous conviction” but rather is “based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.” Weaver v. Massachusetts, 582 U.S. 286, at 295, 137 S. Ct. 1899, 198 L. Ed. 2d 420 (2017); see also McCoy v. Louisiana, 584 U.S. 414, 427-28, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018) (finding “counsel's admission of a client's guilt over the client's express objection” was a structural error falling under the first and second Weaver categories because it impacted “the defendant's right to make the fundamental choices about his own defense”); Yannai, 346 F. Supp. 3d at 346 (“[T]he right to testify falls within the first category of structural rights laid out in Weaver because it ‘is not designed to protect the defendant from erroneous conviction but instead protects some other interest,’—namely, the defendant's right to choose how best to protect his liberty.” (quoting Weaver, 582 U.S. at 295, 137 S.Ct. 1899)); Boyd v. United States, 586 A.2d 670, 673 (D.C. Ct. App.1991) (“Although a defendant who chooses to testify may actually decrease his or her chance of acquittal, nonetheless, ‘the wisdom or unwisdom of the defendant's choice does not diminish his right to make it.’ ” (quoting People v. Curtis, 681 P.2d 504, 513 (Colo. 1984))); Rock v. Arkansas, 483 U.S. 44, 52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (stating “an accused's right to present his own version of events in his own words” is “fundamental to a personal defense” (emphasis added)). Thus, the improper denial of a defendant's right to testify falls under the first Weaver category. See 582 U.S. at 295, 137 S.Ct. 1899 (explaining the first category encompasses structural errors involving rights that are “not designed to protect the defendant from erroneous conviction but instead protect[] some other interest”). See Wright v. State, 446 S.C. 475, 495, 920 S.E.2d 17, 27 (Ct. App. 2025), reh'g denied (Aug. 20, 2025).



The Court finds counsel's explanation valid as to why he advised against Applicant testifying. The stolen check in question was dated the same day as the fire, and subjecting Applicant to cross-examination would have likely worsened Applicant's chances at trial had he testified in that he would have been exposed to cross. This Court acknowledges the Applicant's claim in this PCR proceeding that the check was post-dated at an earlier date which, by coincidence, was the same day as the fire. However, this Court finds that this testimony is simply not credible. Further, Applicant attempting to explain that his vehicle was not the vehicle at the scene and that it had already been returned at the time of the incident is confusing and wholly inconsistent with clear, unequivocal evidence; the vehicle was later located at Applicant's home when law enforcement arrived and photographed the car. Additionally, Applicant was advised by the trial court concerning his right to testify or remain silent, and Applicant clearly and unequivocally indicated that he desired to assert his 5th Amendment rights. (Tr. 221-223).

This Court acknowledges that trial counsel told the jury his client wanted to testify, but counsel advised him not to because the state had not met its burden of proof. Counsel's argument to the jury did not undermine the Applicant's decision to waive his right to testify just prior to the closing argument. The Applicant reliance on counsel's reasons and recommendation to waive his right is fully supported by the record. Counsel also noted that support for his and Applicant's strategic decision is evidenced by the jury initially reporting that it was not unanimous which resulted in an Allen charge. R.p. 262-265.

This Court finds that the situation in Wright is distinguishable. In Wright, the Applicant changed his mind and desired to testify before the case concluded. Here, this Court finds that the Applicant made his decision after discussing his right to testify with his counsel, who advised



him not to testify. However, the trial judge stressed that it was the Applicant's personal decision and that "it was up to him."

This Court finds Applicant has failed to show deficiency. As noted above, counsel discussed with the Applicant his right to testify, and counsel made his recommendation based upon his understanding of the State's case and his review of the discovery. The Applicant was free to accept or reject that recommendation based upon the trial judge's inquiry. Applicant has shown neither deficiency nor prejudice on this ground.

FAILURE TO MOVE FOR A DIRECTED VERDICT OF ACQUITTAL

In his amended application, the Applicant, through counsel, also asserted that counsel was ineffective in failing to move for a directed verdict of acquittal and move for a new trial. The record reflects at the close of the State's case counsel was asked by the trial judge if there were any motions. Counsel Watson declared that there were no motions. R.p. 220, l. 7-21. Similarly, no motions were made after the verdict was announced. In the testimony of counsel before this Court, he contended that a motion for directed verdict would have been frivolous. Applicant has not raised any argument that the evidence was insufficient to support a directed verdict motion.

It appears that the Applicant is more concerned about the weight of the evidence rather than the existence of evidence which is not the appropriate standard for a directed verdict. See State v. Fennell, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000) ("In considering a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not with its weight."); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged."); Fennell, 340 S.C. at 270, 531 S.E.2d at 514 ("The case should be submitted



to the jury if there is any direct evidence or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly or logically deduced.”); Weston, 367 S.C. at 292, 625 S.E.2d at 648 (“When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate.”).

As pointed out previously, there was sufficient evidence presented, in the light most favorable to the State, that the Applicant was guilty of each of the crimes for which he was convicted. Although it was a circumstantial evidence case, the evidence reveals that Applicant had a motive to commit the crimes due to his termination of continuing employment, that he had insider knowledge of the business and the location of the checks, that he possessed a similar car to the vehicle seen in the surveillance video, that he possessed a check stolen at the time of the incident, and that the check was forged by Applicant. In addition, there was circumstantial information that the Applicant had a financial motive due to his monetary issues and his inability to meet his debts, including the money he owed to Christy Carrington for his use of her vehicle. Further, a person with a silhouette similar to the Applicant was seen on the video inside the business where the dog was secured and the fire was set.

This Court finds that reasonable counsel is not under a constitutional duty to make frivolous motions. Admittedly, such motions are routinely made as a matter of course. However, had they been made in this case, Applicant would not have likely prevailed in light of the testimony and evidence presented in the State’s case in chief. Direct and circumstantial evidence was presented, as was evidence of motive. Strickland does not require counsel to make a frivolous objection or motion. See Moody v. Polk, 408 F.3d 141, 151 (4th Cir. 2005) (holding counsel is not required to file frivolous or futile motions); Mangal v. Warden, Perry Corr. Inst.,



No. CV 6:18-106-RBH-KFM, 2019 WL 1522518, at *15 (D.S.C. Jan. 23, 2019), report and recommendation adopted in part, rejected in part, No. 6:18-CV-00106-RBH, 2019 WL 1517141 (D.S.C. Apr. 8, 2019) . Nevertheless, there is no deficiency where even a brilliantly researched motion would have lost so no prejudice. U.S. v. Booker, 981 F.2d 289, 294 (7th Cir. 1992). Accordingly, there was no legitimate ground upon which counsel could base a motion for a directed verdict, and the petitioner failed to prove either deficient performance or resulting prejudice under Strickland because Strickland does not impose a duty upon counsel to make a frivolous motion. See, e.g., Almon v. United States, 302 F.Supp.2d 575, 586 (D.S.C.2004) (“There can be no ineffective assistance of counsel for failing to raise a claim which is not legally viable.”); and cf. Smith v. Padula, 444 F.Supp.2d 531, 539 (D.S.C.2006) (“In short, trial counsel cannot be ineffective for failing to make a meritless futile objection. Neither Strickland prong was satisfied, and no habeas relief should issue.”); United States v. Wilkes, 20 F.3d 651, 653 (5th Cir.1994). The claim is denied.

FAILURE TO EFFECUIATE AN APPEAL

This Court concludes that the Applicant is entitled to White v State review of his conviction. Applicant initially alleged in ground #9 of his *pro se* PCR Application that he did not file a direct appeal because “The appeal was not made by my former attorney after he said he would, then he withdrew himself.” In the amended application filed by appointed counsel, the Applicant alleged that counsel was ineffective because he failed “to effectuate the appeal.” Amended Application, p. 1, § I (h).

An applicant who meets the burden of showing that he did not knowingly and voluntarily waive his right to a direct appeal of his trial conviction is entitled to a belated appeal. Wilson v.



State, 348 S.C. 215, 559 S.E.2d 581 (2002); Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Applicant testified in this proceeding that he wanted an appeal in his case. He claimed that counsel sent a notice of appeal to the solicitor's office but never filed it with the proper court. Applicant testified that a family member had approached counsel Watson about the cost of an appeal and was told it would be another \$10,000.¹⁵ The Applicant stated that he did not pay for an appeal because he did not have the money but that he still wanted an appeal. The Applicant also denied that Watson had ever told him that, if he was determined to be indigent, someone else would handle the appeal.

Counsel Watson stated his client made it crystal clear to him that he did not want him to represent him and had not paid him. Counsel stated at the end of the trial he just filed the notice of appeal as a matter of courtesy after the Applicant's mother called him.

Although the evidence supports that the notice of appeal was served on the Solicitor's Office on February 22, 2022 pursuant to SCACR Rule 203(b)(2), it was never filed within 10 days after service in the Court of Appeals as required by SCACR Rule 203. Therefore, due to counsel failure to file the notice of appeal, the appeal was neither docketed nor perfected in the Court of Appeals. Applicant has demonstrated that counsel was deficient in failing to perfect the appeal. Admittedly, from a review of the record, no grounds for an appeal appear to exist in this case. Despite not being prejudiced, however, counsel should have properly filed notice of intent and then forwarded the file to the office of appellate defense since counsel was obliged to follow

¹⁵ This Court notes that, according to counsel, Tillman still owes him \$9,500 from the trial.



Applicant's instructions. Therefore, the Court grants Applicant a belated appeal which may be consolidated with the appeal of Applicant's PCR.

FAILURE TO INVESTIGATE OR PRESENT EVIDENCE OF THIRD-PARTY GUILT

In his amended application, Applicant alleges that counsel was ineffective in failing to investigate third party guilt. The Applicant has failed to present any evidence supporting third-party guilt. In his testimony, he makes speculative reference to an employee of the business, Keyshawn Johnson, with whom counsel was acquainted, and Keeon Jones, who was a Facebook friend with the Applicant. Jones appeared in court for Applicant's trial and also had been arrested for cashing a forged check from the Dickensheets' business. As to Keyshawn Johnson, the only evidence of his possible involvement was that, on the workday after the fire, he briefly left the business and then returned to work. Counsel Watson indicated that he knew Johnson well. The Applicant has presented no evidence connecting him to the crimes that night so as to suggest third-party guilt.

As to Keeon Jones, counsel pointed out during the trial that Jones also cashed a forged check and that the State was remiss in failing to call him; counsel emphasized this fact in his closing argument. However, Jones was present when the Dickensheets testified and was identified by them as never having been employed with their business and, therefore, not a person to whom they would have written a check. In addition, the State also asserted that Jones's size and appearance were inconsistent with the person seen in the surveillance video.

The Applicant has failed to identify other potential evidence or perpetrators to support this alleged failure to present evidence of third-party guilt.



In State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941), the supreme court adopted the following rule regarding third-party guilt:

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... “But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.”

Id. at 104–05, 16 S.E.2d at 534–535 (quoting 16 C.J., Criminal Law § 1085 (1918) and 20 Am. Jur., Evidence § 265 (1939)). State v. Brown, 437 S.C. 550, 566–67, 878 S.E.2d 364, 373 (Ct. App. 2022). See Miller v. State, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008) (concluding similar descriptions were not enough to raise a reasonable inference of innocence). In State v. Mansfield, 343 S.C. 66, 85, 538 S.E.2d 257, 267 (Ct. App. 2000), the defendant attempted to show a third party, who matched the physical description of the perpetrator, lived in close proximity to the Victim and was found at home on the day in question. In Mansfield, the court rejected such proximity evidence as casting “a mere ‘bare suspicion’ ” on the third party, finding “[t]he fact that [the third party] generally fit the description of the perpetrator and lived in the apartment complex does not show his guilt, nor is it inconsistent with [the defendant's] guilt. Because the evidence was not inconsistent with [the defendant's] own guilt, the trial court exercised sound discretion in excluding it.” Id. at 85–86, 538 S.E.2d at 267.

“[E]vidence of third-party guilt that only tends to raise a conjectural inference that the third party, rather than the defendant, committed the crime should be excluded.” State v. Cope,



405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) (citing State v. Gregory, 198 S.C. 98, 105, 16 S.E.2d 532, 534 (1941)). “[T]o be admissible, evidence of third-party guilt must be ‘limited to such facts as are inconsistent with [the defendant’s] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence.’ ” Id. (second alteration in original) (quoting Gregory, 198 S.C. at 104, 16 S.E.2d at 534). None of the information excludes Tillman from the crime. State v. Singleton, 438 S.C. 629, 637, 885 S.E.2d 415, 419 (Ct. App. 2023) (Instruction on third-party guilt was not warranted in defendant’s prosecution for criminal sexual conduct with a minor; evidence that others had sexual intercourse with ten-year-old victim was not inconsistent with defendant’s guilt and did not raise inference or presumption as to his innocence).

This Court finds that that his ground is without merit. The Court acknowledges the substantial legal requirements to present a third-party guilt defense, and in this case, those requirements were not met. Despite not being entitled to such an instruction on third-party guilt, counsel Watson very capably attempted to shift the jury’s focus to another individual who was employed by the victim, Keyshawn Johnson – without any factual support or even mere suspicion. Counsel was, therefore, not deficient in his representation on this ground. Since no credible evidence was presented to support a third-party guilt instruction to the exclusion of the Applicant, 6th Amendment prejudice has not been proven.

FAILURE TO OBJECT TO PICTURES OF THE VEHICLE FOR LACK OF AUTHENTICATION

In allegation I(j) of the amended application, Applicant contends that counsel should have objected to the photographs of the vehicle due to a lack of authentication. This Court finds that the Applicant failed to prove either deficient performance or prejudice. The record shows that the photographs of the vehicle were taken by Investigator Uveges at the Applicant’s



residence on March 5th. R.p. 174-176. Investigator Uveges identified each of the photographs and noted that the tag on the vehicle belonged to Christy Carrington. R.p. 176. As noted above, Carrington identified the vehicle in the photograph as her vehicle that she had shared with the Applicant and which he possessed on the day of the incident.

“All evidence must be authenticated.” State v. Green, 427 S.C. 223, 229, 830 S.E.2d 711, 714 (Ct. App. 2019), aff’d as modified, 432 S.C. 97, 851 S.E.2d 440 (2020) (“For the reasons set forth by the court of appeals, we affirm the trial court’s authentication determination and admission of the social media posts without further comment.”). “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. at 230, 830 S.E.2d at 714; see also Rule 901(a), SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”). “[T]he burden to authenticate ... is not high.” Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (alterations in original) (quoting United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)). “Lawyers can always argue case-specific facts ... and attempt to convince the jury the writing is not genuine.” Green. at 234, 830 S.E.2d at 716. See State v. Hall, 437 S.C. 107, 120, 876 S.E.2d 328, 335 (Ct. App. 2022)

This Court finds counsel was not deficient in failing to assert that the photographs were not properly authenticated. The proponent of the photographs actually took the photographs and described the location where they were taken. Therefore, Investigator Uveges had personal knowledge to support their authentication. Further, Carrington had sufficient knowledge to identify her vehicle. Similarly, prejudice has not been shown.



CLOSING ARGUMENT BY COUNSEL

In amended allegation I(k), Applicant complains that counsel erred in his closing argument in failing to argue that the State had failed to establish motive, failed to assert that work was completed before the incident, and that the vehicle was not in the Applicant's possession at the time. Having reviewed the record, this Court must conclude that the Applicant has failed to prove deficient performance or prejudice related to counsel's closing argument.

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 8, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). The right to effective assistance extends to closing arguments, but counsel is allowed wide latitude with regard to “which issues to sharpen and how best to clarify them.” Yarborough, 540 U.S. at 5, 124 S.Ct. 1. The Supreme Court has made it clear that:

counsel has wide latitude in deciding how best to represent a client, and deference to counsel's tactical decisions in his closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage. Closing arguments should sharpen and clarify the issues for resolution by the trier of fact, but which issues to sharpen and how best to clarify them are questions with many reasonable answers.

Id. (internal quotations and citations omitted). Courts are thus hesitant to find that an attorney's decision to leave out reference to particular aspects of the case in closing argument constitutes ineffective assistance. *Id.* The closing must also be viewed in the context of the entire proceeding. See, e.g.; Bell v. Cone, 535 U.S. 685, 699–702, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002) (analyzing attorney's decision not to make a summation in relation to nature and timing of the expert witnesses' testimony). “Counsel’s decision not to list for the jury every possible



inconsistency in the testimony cannot be said to be ineffective assistance.” Barkell v. Crouse, 468 F.3d 684, 692 (10th Cir. 2006).

Applicant’s initial ground is that counsel should have argued that the State failed to establish motive.¹⁶ However, in his PCR testimony, counsel Watson recognized the dangers inherent such an emphasis. When asked in the PCR proceeding whether the State had proven motive, counsel responded proof of motive is not necessary, but if they needed it, they had the fact that the dog hated him, and he hated the dog. Similarly, Applicant claimed counsel should have emphasized that the work had been completed weeks before. However, the evidence presented at trial was markedly different. The Dickensheets emphasized that the work had not been completed, particularly the broken window. This would have amplified the fact that the work not completed by Tillman, namely, the broken window, played a pivotal part in the commission of the crime.

Similarly, Applicant asserts that counsel should have emphasized that the vehicle was not in Applicant’s possession at that time. A review of the record shows that defense counsel emphasized that the State had not proven that the vehicle at the scene was the vehicle that Applicant possessed. R.p. 239-241. Applicant ignores the fact that, since he did not testify, his factual assertion at the PCR hearing - that he did not possess the vehicle - was not presented at trial. In fact, it was contradicted by Christy Carrington testimony and Investigator Uveges’

¹⁶ In the State’s opening statement, Assistant Solicitor Oppenheimer argued the importance of the Applicant’s motive based upon Applicant being the only person with a grudge against the Dickensheets who also possessed knowledge of their business practices. R.p. 44, 47. Shelby Dickensheets also testified that Applicant harbored resentment against them because he had been fired by them. R.p. 216. In the State’s closing argument, Assistant Solicitor Martin spoke about the Applicant being the only one with motive for the arson, burglary, and killing of the dog. R.p. 229-230. She opined that he had a revenge motive and financial motive against the Dickensheets. R.p. 231-232, 234.



photographs. Such an argument would have been likely objected to as arguing facts outside not in the record. Cf. R.p. 245, l. 20-21 (State objecting to defense argument that the argued fact was not in the record). The defense counsel’s approach in closing was reasonable. R.p. 242-245.

This Court finds that Applicant has failed to prove deficient performance related to closing argument or prejudice under Strickland and Yarborough. The ground is denied and dismissed.

FAILURE TO REQUEST LIMITING INSTRUCTION ON THE CHECKS

In his amended application in allegation I (l), the Applicant contends that his counsel erred in failing to request a specific limiting instruction related to the stolen checks. During the PCR testimony, the Applicant testified that he wanted a limiting instruction that the jury must focus only on that evidence from Lexington Country, not Richland County. The evidence of the checks and the Applicant’s cashing of the forged and stolen checks, as noted above, was part of the *res gestae* of the burglary. The Applicant was not entitled to the instruction, so counsel was not deficient, and 6th Amendment prejudice was not shown by counsel’s failure to make the request.

“The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred.” State v. Johnson, 439 S.C. 331, 341, 887 S.E.2d 127, 132 (2023). Under our caselaw, Tillman was not entitled to a limiting instruction. State v. Johnson, 439 S.C. 331, 343, 887 S.E.2d 127, 133 (2023) (citing State v. Johnson, 306 S.C. 119, 122, 410 S.E.2d 547, 550 (1991)). In Johnson, the Court relied upon the following from its 1991 opinion:



The general rule is that when evidence of other crimes is admitted for a specific purpose, the judge is required to instruct the jury to limit their consideration of this evidence for the particular purpose for which it is offered. The reasoning behind this rule is to protect against a jury convicting a defendant just because he has committed other crimes and not because it has been proven that he is guilty of the crime for which he is accused.

An exception to this general rule is.... that a limiting instruction is unnecessary where “evidence of the other crime is admissible on the main issue or where the evidence admitted to show motive or intent is of acts which may well be supposed to have been done in furtherance of such motive or intent.” “Evidence which has a direct bearing on, or relation to the commission of, the crime itself, so as to form part of the *res gestae*, is admissible without limiting instructions.”

Id. at 126, 410 S.E.2d at 552 (cleaned up) (quoting *State v. Nix*, 288 S.C. 492, 498, 343 S.E.2d 627, 630 (Ct. App. 1986)). The Court therein held the trial court did not err in denying Johnson's request for a limiting instruction. *State v. Johnson*, 439 S.C. 331, 343–44, 887 S.E.2d 127, 133 (2023).¹⁷

The Applicant's claim is without merit. He has failed to prove 6th Amendment prejudice by counsel's failure to request such an instruction. Therefore, this claim is dismissed.

FAILURE TO PROPERLY PREPARE FOR TRIAL AND BE KNOWLEDGEABLE OF THE EVIDENCE

In amended allegation I(m), the Applicant contends that counsel failed to prepare for trial and be knowledgeable of the evidence. This Court finds that this ground was essentially raised within the allegations above related to the failure to communicate and review discovery. This

¹⁷ The Applicant may be relying upon Justice Few's dissent where the Justice asserted that it was error because he believed it was necessary for the trial judge to tell the jury it could convict Johnson only for the Marion County crimes. He contended that the Marion County jury must not have been permitted to convict Johnson for crimes he committed in Dillon or Marlboro Counties. He contended the one purpose for which the jury could not use Johnson's actions in the other counties was to find him guilty of domestic violence for those actions. The trial court refused to tell the jury this because it erroneously concluded “each county has concurrent jurisdiction.” In other words, the trial court erroneously ruled that Johnson may be convicted in Marion County for stabbing the victim in Marlboro County with a “long metal stick.” For this error, Justice Few concluded Johnson is entitled to a new trial. However, this is not the case in the Applicant's trial since he was not convicted of the check matters which had occurred in Richland County. Additionally, in Applicant's case, his arrest on the Richland charges was clearly *res gestae* evidence appropriately admissible in his Lexington County trial.



Court finds that the Applicant was reasonably prepared for the reasons previously set forth. Deficient performance and prejudice have not been proven.

**FAILURE TO OBJECT TO THE STATE'S CLOSING ARGUMENT
WHEN THEY STATED THAT APPLICANT WAS IN POSSESSION OF
THE CAR, CITING TR. 230**

In amended allegation I(n), the Applicant contends that counsel was deficient in failing to object to the State's closing argument when it stated that the Applicant was in possession of the car. This Court finds that the Applicant has failed to prove deficient performance or prejudice under Strickland.

In State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975), the Supreme Court set forth the parameters of permissible prosecutorial argument. So long as the prosecutor stays within the record and its reasonable inferences, he may legitimately appeal to the jury to do their full duty. *Id.* at 92, 212 S.E.2d at 590. A solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony. State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976). A review of the closing argument is based upon the standard of "whether the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hawkins, 292 S.C. 418, 421, 357 S.E.2d 10, 12 (1987). State v. Caldwell, 300 S.C. 494, 504, 388 S.E.2d 816, 822 (1990). The Solicitor may argue the evidence in the record and the reasonable inferences from that evidence, especially in a circumstantial evidence case. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999); State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). As the Fourth Circuit explains, "Closing arguments ... are prone to exaggeration [and] we rely on juries and the adversarial process to place them in perspective." United States v. Sutherland, 921 F.3d 421, 429 (2019).



During the State's closing argument, the following occurred:

The law that applies says that if you are firmly convinced that Mr. Tillman is an arsonist, a burglar, and a dog killer, you have to find him guilty. He's the only one with motive to do these things; he's the only one with inside knowledge of the business to do these things. *He had the matching car from the night surveillance, the traffic cams; the same color, the same make, the same model. . . .*

R.p. 229, l. 23 – 230, l. 6. (emphasis added).

The Applicant asserts that counsel should have objected because this statement was not true. During the testimony in this proceeding, counsel stated that he may have missed that, but noted that the witness who Applicant relied upon, Ms. Carrington, had said that the Applicant had possession of the car when the crimes were committed.

This Court finds that counsel was not deficient in failing to object to this comment by the State in its closing. Counsel acknowledged that there was evidence in the record to support the State's comment. As previously explained, Christy Carrington testified that the Applicant possessed her Ford Edge at the time of the fire. R.p. 140-142. In addition, Investigator Uveges testified that Carrington's Ford Edge was located at the Applicant's residence on March 5th after the fire. R.p. 174-176. Investigator Uveges also testified about the videos indicating a similar vehicle on the night of the fire at the business (R.p. 161-161) and on traffic cams that evening. (R.p. 162-167).

Similarly, since there was evidence in the record supporting the inference made in the State's closing, the Applicant has failed to prove prejudice since the suggested objection would not have been sustained. The Applicant has failed to prove a reasonable probability that, had the objection been made, the result of his trial likely would have been different. This allegation is denied.



FAILURE TO INVESTIGATE THE POINT OF ENTRY

In amended allegation I(o), the Applicant asserted that the Applicant's counsel failed to investigate the point of entry. As noted above, counsel Watson stated that he did investigate the point of entry when he visited the scene of the fire and reviewed the discovery. He stated that he drove around the building, and he located an area where someone could have entered the area. This claim echoes previous claims as set forth above dealing with the point of entry evidence which is incorporated herein by reference. This Court finds counsel's testimony about his visit to the arson scene credible in addition to his review of the photographs in discovery and those introduced at trial. The Applicant has failed to prove deficient performance or prejudice.

FAILURE TO INTRODUCE INTO EVIDENCE A POLICE REPORT IMPLICATING A THIRD PERSON AND FACEBOOK MESSAGES

In amended allegation I(p), the Applicant alleges that counsel was deficient in failing to introduce a police report implicating a third person and Facebook messages. Both of these matters were addressed previously within this Order, and the Court's findings are incorporated herein by reference.

The Applicant contends that the counsel should have introduced a police report which indicated that Keyshawn Johnson had left work the day after the fire. This same information was developed during the testimony at trial without the introduction of the police report. On cross-examination, Investigator Uveges indicated that Johnson was not developed as a suspect, but Johnson was noted in the report prepared by the initial reporting officer. R.p. 183-184. Counsel attempted to question Tim Dickensheets about officer Williams' report mentioning similar headwear and vehicle, but Dickensheets could not recall telling Officer Williams about Keyshawn Johnson and testified that he knew Johnson did not own a vehicle or have a driver's



license. R.p. 98, 115, 117. Shelby Dickensheets testified that Keyshawn Johnson was an employee at that time. She stated that Johnson initially showed up for work on the 28th, but she noted that he left for 2 hours and then returned. R.p. 214-215.

This Court finds that counsel was not deficient in failing to introduce Officer Williams' initial report. Applicant's Exhibit 4. Counsel attempted to use the report to cross-examine the Dickensheets. However, they each rejected a substantial portion of the assertions in the report. Tim Dickensheets did not recall the assertion about headwear although it was in the exhibit. Nevertheless, even if counsel erred, 6th Amendment prejudice has not been shown where similar testimony was given to the jury. The Applicant failed to show that there was a reasonable probability that, had the report been introduced, the result of the proceeding would have been different. Confidence in the verdict has not been undermined. This allegation is denied.

This Court also finds that the Applicant has failed to show that counsel was ineffective in failing to introduce Facebook messages between the Applicant and Shelby Dickensheets. This ground was addressed above concerning the cross-examination of Shelby which is incorporated herein by reference. Similarly, the Facebook messages with Christy Carrington were addressed above in the portion dealing with her cross-examination. The allegation is similarly dismissed.

FAILING TO HAVE A PRELIMINARY HEARING

During his PCR testimony, the Applicant complained that counsel failed to request a preliminary hearing on his charges. Applicant testified that he had requested that counsel fill out the paperwork and request a preliminary hearing. Applicant claimed it was important because he claimed that it would have informed him of the probable cause to arrest him and revealed that

information given to the magistrate was false. He also opined that the charges would have been dismissed. During the hearing, counsel could not recall if he had requested a preliminary hearing.

Rule 2(a), SCRCrimP states “In all cases, the request for a preliminary hearing shall be made within ten days after [notice of his right to a preliminary hearing].” The record shows that the Applicant was arrested on March 12, 2020 and bail was set on March 16, 2020. Counsel Watson entered a notice of appearance on March 18, 2020. No request for a preliminary hearing was made prior to March 28, 2020. The indictments were true-billed on July 13, 2020.

The Court finds the Applicant has failed to prove prejudice, assuming *arguendo* that the Applicant requested counsel to request a preliminary hearing within the 10 day timeframe. The Applicant’s indictments were true-billed on July 13, 2020; therefore, trial court had jurisdiction to try the case on February 7-10, 2022. As noted above, there was sufficient evidence presented at trial by which a rational trier of fact could convict the Applicant of each of the charges. The Applicant has failed to prove that, had a preliminary hearing been requested, the result of the proceeding would have been different.

ALLEGATION OF ATTORNEY MISCONDUCT DURING TRIAL

In the original *pro se* application, Applicant alleged that counsel Watson was intoxicated or appeared to be intoxicated throughout the trial. In support of the allegation, he makes an assertion in the application that, on the second day of trial, counsel Watson offered Applicant’s unnamed friend alcohol (tequila and beer) in the parking lot and that he smelled alcohol on counsel. In the *pro se* application, the Applicant claimed that on the first day of trial, counsel had a lingering odor of alcohol and stumbled during the opening. He claimed that counsel had to be reminded to



lower his mask while making his opening statement¹⁸ which Applicant attributed to his attempt to cover up his alcohol consumption, and Applicant alleged that counsel had to take multiple bathroom breaks due to his consumption of alcohol. On the second day of the trial, Applicant claimed counsel was initially sober but then contended that, after the lunch break, Applicant's unnamed friend told him that he drank beer and tequila in the parking lot with counsel, that counsel continued to take frequent bathroom breaks, and had issues with his mask as he did the first day.

This allegation was not reasserted in the amended application by appointed PCR counsel. In fact, no evidence was presented at the PCR hearing to support this claim. No evidence was presented by the unnamed friend about his alleged interactions with counsel.

This Court must find, absent any evidence, that the Applicant failed in his burden of proof in showing that counsel was deficient due to any alleged impairment at the time of the trial. There has been no showing that counsel was under the influence of alcohol during the trial. This allegation is dismissed. *See Frye v. Lee*, 235 F.3d 897, 907 (4th Cir. 2000) (explaining that “in order for an attorney's alcohol addiction to make his assistance constitutionally ineffective, there must be specific instances of deficient performance attributable to alcohol.”).

INITIAL ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

In his *pro se* application, he also contended that counsel was ineffective when he allegedly failed to present witnesses and evidence. He claimed after a disagreement to withdraw from the case, counsel refused contact with him; subsequently, on the day of trial, counsel did not present

¹⁸ Opening statement by Mr. Watson at R. 48-51. The record does not reference any directions from the Court about his mask, although a bathroom break was requested. He later stated that, because he was up in age, he needed to take frequent bathroom breaks. R. 94, See also R. 178. As to the masks, Judge McCaslin stated that the lawyers did not have to wear their masks when examining witnesses. R. 55. As to Mr. Watson's mask, he was asked by the court to lower his mask during the trial so the jury could hear him better. R. 94-95.



his unnamed witnesses or evidence. In the initial application, he also claimed that, while he was out on bail for two years, counsel and Applicant had access to all the discovery files and time to review every aspect of the case, but Applicant claimed they only met at court hearings and even then there would hardly any communication would take place.¹⁹ He claimed that he gave counsel the names of 6 witnesses, including alibi and character witnesses. The Applicant also claimed he made notes in the discovery files concerning conflicting evidence and offered them to Mr. Watson which he refused to use. Applicant claimed that there was evidence to prove his innocence within the discovery itself, but counsel did not take it into account at trial. He asserted that he had character witnesses proving that this was out of his character. He also claimed that there was evidence which showed his phone location, his possession of a different vehicle than the one involved in the crime, and evidence that State's witnesses had changed their story.

This Court finds that these grounds were essentially raised during the PCR proceeding. The findings and conclusion of this Court above are incorporated herein by reference.

However, in the original application he asserted that he informed counsel of his alibi witnesses. He also claims that there is phone evidence to support an alibi claim. No witnesses were presented on this particular matter.²⁰ In particular, no alibi witnesses were presented in the PCR

¹⁹ While defense counsel has a duty to investigate, "this duty is limited to a reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597; see also Strickland, 466 U.S. at 691. "At a minimum, counsel has a duty to interview potential witnesses and make an independent assessment of the facts []". Ard, 372 S.C. at 332. However, counsel may not be required to interview and call all alleged alibi witnesses. See Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (explaining that trial council's decision not to contact a potential alibi witness did not constitute ineffective assistance of counsel when the witness is unable to establish an alibi defense).

²⁰ Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503



proceeding before this Court. In fact, the Applicant testified under oath in the PCR proceeding that he had no alibi because he lived alone. This Court finds that the Applicant failed to meet his burden of proof that counsel should have presented evidence of alibi.

The Applicant also claims that he had character witnesses who would have testified that his character was inconsistent with the crimes for which he was charged.²¹ However, Applicant failed to present any credible witnesses to support this assertion in his original application. Again, Applicant did not meet his burden of proof. The Court does note that, after the verdict, Applicant's friend, Joshua Tyree Roach made a statement on the Applicant's behalf. R.p. 272-273. However, this ground lacks credible proof sufficient to prove prejudice under the Strickland analysis. Therefore, it is denied.

GENERAL PERJURY ALLEGATIONS

In his original application, the Applicant alleged unnamed witnesses committed perjury and lied under oath. Applicant alleged that "during questioning of witnesses, the state witness made statements that were easy to verify but never was."

S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 560, 495 S.E.2d 20 (1992)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. Id. (citing Glover, 318 S.C. at 498-99, 458 S.E.2d at 540). See Edwards v. State, 392 S.C. at 457, 710 S.E.2d at 65 ("So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient."); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

²¹ In sentencing, the State pointed out that the Applicant had a prior conviction for receiving stolen goods and the pending bank fraud and check charges, as well as a pending Assault and Battery of a High and Aggravated Nature charge in Richland County from 2020. R.p. 267.



Applicant failed to specify what unverified statements were allegedly made by what witnesses. A conviction obtained by the knowing use of perjured testimony by the State is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. U.S. v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The knowing use of perjured testimony is subject to the materiality standard of review: "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 682, 105 S.Ct. 3375. Simpson v. Moore, 367 S.C. 587, 601, 627 S.E.2d 701, 708 (2006), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). "[U]nder [the Supreme Court's decision in Napue v. Illinois], the government 'may not knowingly use false evidence, including false testimony, to obtain a tainted conviction' or 'allow[] it to go uncorrected when it appears.'" United States v. Chavez, 894 F.3d 593, 599 (4th Cir. 2018) (quoting Napue, 360 U.S. at 269, 79 S.Ct. 1173). False testimony includes both perjury and evidence that, "though not itself factually inaccurate, ... creates a false impression of facts which are known not to be true." Hamric v. Bailey, 386 F.2d 390, 394 (4th Cir. 1967).

The Applicant failed to prove any knowing use of perjured testimony in this proceeding. He has failed in his burden of proof. The *pro se* allegation in the initial application must be denied.

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, save the White v. State allegation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

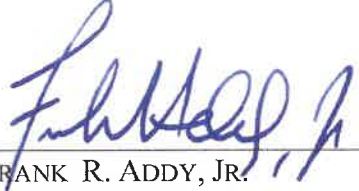


This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an 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(i) for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice with regard to all allegations except the belated appeal allegation,
2. That the Applicant is granted a belated 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, and
3. Applicant shall be remanded to the custody of Respondent.

IT IS SO ORDERED this 16th day of December, 2025


FRANK R. ADDY, JR.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina



State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Frank R. Addy, Jr.
Judge

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faddyj@sccourts.org

December 16, 2025

Lexington County Clerk of Court
Attn: PCR Division
205 East Main Street
Lexington, South Carolina 29072

Re: Christopher Tillman v. State of South Carolina
2022-CP-32-3918

Dear Madam Clerk,

Enclosed is the final order in the above case for filing. By copy of this letter, a copy of the order is being forwarded to counsel listed below.

Thank you for your attention and assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank R. Addy, Jr.", written over a printed name.

Frank R. Addy, Jr.

Enclosure

Cc: The Hon. Don Zelenka
Chelsey Marto, Esq.