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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
G.D. Morgan, Jr., PCR Judge

Case No 2021-CP-07-01850

The State, Respondent,

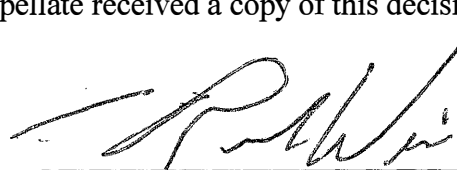
vs.

Jamie Jermine Robinson Appellant.

NOTICE OF INTENT TO APPEAL

Jamie Jermine Robinson appeals the Order of the Honorable G.D. Morgan, Jr. dated January 27, 2024, and filed February 3, 2026. Appellate received a copy of this decision on February 10, 2026.

March 3rd, 2026



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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP0701850

Jamie Jermine Robinson		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ G. D. Morgan, Jr

Circuit Court Judge

2773

Judge Code

1/27/2024

Date

For Clerk of Court Office Use Only

This judgment was entered on **February 3, 2026**, and a copy mailed first class or placed in the appropriate attorney's box on **February 4, 2026**, to attorneys of record or to parties (when appearing pro se) as follows:

Clarence Rauch Wise 305 Main St. Greenwood, SC 29646

Danielle Dixon PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2026 FEB -3 PM 9: 24
Jamie Jermaine Robinson, #377145,)

Case No.: 2021-CP-07-01850

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
Applicant
CLERK OF COURT)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)
_____)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jamie Jermiane Robinson (Applicant). Respondent made its return requesting an evidentiary hearing. An evidentiary hearing convened before the Honorable G.D. Morgan, Jr. Applicant was present and represented by C. Rauch Wise, Esquire. Assistant Attorney General Lauren Mims represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Trasi Campbell, Esquire.¹ Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In March 2017, the Beaufort County Grand Jury indicted Applicant for murder (2016-GS-07-01987) and possession of a weapon during a violent crime

¹ At the conclusion of the hearing, Applicant moved to amend his application to add as an additional allegation that counsel was ineffective for improperly preserving an objection to a comment made during the solicitor’s closing argument. Respondent requested additional time to research this issue, and this Court granted the parties leave to file legal memos addressing that issue. This Court has now had the opportunity to consider the filings of the parties.

(2016-GS-07-01999). On July 16-19, 2018, Applicant proceeded to a jury trial before the Honorable Jennifer B. McCoy. Public Defender Trasi Campbell represented Applicant. Assistant Solicitors Kimberly Smith and Mary Jones prosecuted the case. The jury convicted Applicant of voluntary manslaughter as the lesser-included offense of murder, and possession of a weapon during a violent crime. Judge McCoy sentenced Applicant to concurrent terms of thirty years for voluntary manslaughter and five years for the weapon charge.

Applicant timely filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett through the filing of a brief pursuant to Anders. After review, the Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was sent May 18, 2021.

CURRENT APPLICATION

On October 13, 2021, Applicant timely filed this PCR application alleging the following grounds of ineffective assistance of counsel:

- a. Improper testimony was permitted as to Applicant's credibility: Deputy Jason Malphrus testified he did not believe Applicant when Applicant said it was an accident, Tr. 227-28. Deputy Todd Duncan likewise testified, without objection, that he thought Applicant was lying, Tr. 273, 275. Trial counsel improperly had the deputy testify he thought Applicant was lying, Tr. 236, which allowed the officers to tell they jury they thought Applicant was lying;
- b. Trial counsel failed to properly investigate how easily the gun would fire without a safety, which would have supported Applicant's contention that the shooting was an accident. Counsel also failed to contact a DNA expert to discuss the probability that the DNA indicated the deceased was possessing the weapon;
- c. Trial counsel failed to object to testimony that constituted a prior bad act, specifically, testimony that Applicant possessed a sawed-off shotgun, Tr. 189;
- d. Trial counsel failed to object to improper bolstering of Deputy Todd Duncan, which improperly bolstered Hazel Robinson's testimony, Tr. 274;

e. Trial counsel failed to object to when the solicitor argued, “And the first thing out of his mouth, get me a lawyer. Why do you need a lawyer if it’s an accident?” Tr. 416-17.

At the start of the hearing, Applicant withdrew allegation (b), as set forth above, related to counsel’s failure to investigate. At the conclusion of the hearing, Applicant moved to amend the application to also assert counsel was ineffective for not properly preserving an argument to the solicitor’s comment during closing argument. (Tr. 416-17). At the request of Respondent, this Court allowed the parties an opportunity to brief this additional issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, the records of Applicant’s direct appeal, and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.² After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court’s findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its

² This Court will reference PCR testimony where relevant below.

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,” and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to object – improper testimony³

Applicant first contends counsel was ineffective for not objecting to improper testimony about his credibility. Specifically, he avers counsel should have objected when Sergeant Jason Malphrus testified he did not believe Applicant when Applicant said it was an accident (Tr. 227-28), and when Investigator Todd Duncan testified he thought Applicant was lying. (Tr. 273, 275). Applicant did not prove this ground.⁴

At trial, Sergeant Malphrus testified Applicant first told police he and the victim⁵ were

³ This subsection addresses a portion of allegation (a), as set forth above. The remainder of allegation (a) will be addressed in the next section.

⁴ Applicant never told Sergeant Malphrus the shooting was an accident; rather, Applicant told Sergeant Malphrus that an unknown man shot the victim. Thus, in alleging Sergeant Malphrus testified he did not believe Applicant when Applicant said it was an accident, Applicant has improperly framed Sergeant Malphrus's testimony. Applicant has likewise improperly framed Detective Duncan's testimony in alleging that Detective Duncan testified he thought Applicant was lying. Although Detective Duncan *did* testify he did not believe the shooting was an accident, he did not testify that Applicant was lying. In fact, Detective Duncan's only use of the word “lying” referenced Detective Duncan's statement to Applicant: “I want to stay on his good side, keeping him talking. It's just a tactic that we use. I don't want to call it lying *to him*, but I want to say just be friends with him, keep that ball rolling.” (Tr. 274, emphasis added).

⁵ The victim was Applicant's girlfriend.

sitting in a truck in his driveway when

an individual walked up to his driver's side window, he thinks what may have been a black male, but he had a mask on, a dark mask and he couldn't tell. And this unknown individual stuck a gun through his driver's side window, put it to his head and said, give me your stuff, like he wanted to rob him. A few minutes later, he—this suspect points the gun across him towards Ms. Mood and fires a round striking her on the side of the head. [Applicant] says after that shot, he pushes the guy's arm away, this individual flees on foot. Mr. Robinson gets out of the vehicle, I believe he runs up and tells his mom, Eulia has been shot, kind of stresses out and flees the scene on foot.

(App. 225). However, Sergeant Malphrus explained the vehicle's window was up—not down; when Sergeant Malphrus confronted Applicant with this information, Applicant became “a little angry, irate, I guess, confrontational.” (App. 225-26). Sergeant Malphrus also confronted Applicant about his mother's statement, but Applicant disputed the accuracy of it.⁶ (App. 227).

Thereafter, the following exchange occurred:

Q. Officer, after the Defendant's demeanor changes and he gets defensive with you, do you tell him that you thought this was an accident?

A. I did. I did.

Q. Why did you tell him that? Did you believe it was an accident?

A. No, ma'am. The information I had at the time, I didn't believe it to be an accident. **I told him I thought it was an accident to try to**

⁶ At trial, Applicant's mother Hazel Robinson testified she was inside when the shooting occurred, but she went outside after hearing a noise. (Tr. 158-59). She testified that after she went outside, Applicant asked her to call 911. Hazel elaborated:

I said, Jamie, what happened? What did you do? Why do I need to call for 911? And he said, I shot Lee Lee—or no, he didn't say shoot. No, that's not what he said. He said, Call 911, I killed Lee Lee. And I said, What do you mean you killed her? What did you do, you hit her? And he said, No, I shot her.

(Tr. 159).

reestablish some rapport in our interview because he was getting upset. I wanted him to continue to speak with me on it. So I did say I think it was an accident to try to reestablish rapport with him at that point.

Q. At this point, did you believe anything he had to say so far?

A. No, ma'am. I couldn't get over the window being down was kind of my hinge point.

Q. Okay. So is it fair to say that you told him it was an accident to build rapport to get him to, ultimately, tell you the truth?

A. Yes.

Q. Is that a common interrogation technique?

A. It's an interrogation technique. I guess, there's many people develop their own niches, I guess, as they go, but yes, ma'am, **I used it as an interrogation technique to try to get him to continue speaking to me about it.**

(Tr. 227-28, emphasis added). Critically, Applicant did not tell Sergeant Malphrus he shot the victim or the shooting was an accident. (Tr. 229).

Deputy Duncan testified about a different interview he conducted a few days later that was audio-recorded and played for the jury; during this interview, Applicant claimed the shooting was an accident. (Tr. 268-70, 276). During Deputy Duncan's testimony, the following exchange occurred:

Q. Okay. Now, after he tells you, gives you this account of the accidental shooting, do you believe him?

A. I do not.

Q. Okay. And I believe you go so far as to say that you didn't—that you know that he didn't have this planned out; is that correct?

A. That's correct.

Q. And do you tell him that you don't think it was murder?

A. I do say that.

Q. Okay. **Why do you say that?**

A. Because, once again, **I want to get him talking. I think we're getting bits and pieces starting to come out. I want to stay on his good side, keeping him talking. It's just a tactic that we use. I don't want to call it lying to him, but I want to say just be friends with him, keep that ball rolling.**

(Tr. 273-74). After discussing the information that investigators received from the 911 call and Applicant's mother, the following exchange occurred:

Q. And then, again, as the case officer, the next thing you're privy to is the story he gives to Investigators Malphrus and Zsamar?

A. Yes, ma'am.

Q. And what is that story?

A. That was the story of the armed robbery coming in, sticking a gun through the window of the truck and then shooting Ms. Moon across his body.

Q. So up until this point, when you're talking to him two days later, has he told the truth?

A. No, ma'am.

Q. Okay. Were you trying to get him to tell the truth?

A. I was.

Q. Were you saying things to encourage him to tell the truth?

A. Yes, ma'am.

Q. **By telling him that you didn't believe it was murder, was that an interrogation technique?**

A. Yes, ma'am.

(Tr. 275).

a. Counsel articulated a valid reason for not objecting.

This Court finds trial counsel articulated a valid reason for not objecting to the foregoing testimony and thus was not deficient. At the PCR hearing, counsel credibly testified about her strategy:

Part of our strategy at the trial was that was always going to be coming in, about [Applicant] lying initially. And we had to create a strategy in order to embrace it. And, in fact, I argued it, I think, in my closing that **we were never going to get around the fact that when it—immediately after it happened, he ran, he fled, he lied repeatedly over what had happened, and then finally came forward with the truth of it.**

So the fact that he—you know, that Todd Duncan said he lied. Okay, fine. I agree with you. He did lie.

(PCR 19, emphasis added). Counsel elaborated that Applicant’s entire statement to law enforcement was going to be entered, and although “[i]t would have been better . . . if that hadn’t been part of the case, . . . we had to deal with what we had.” (PCR 35). Counsel explained her strategy to address Applicant’s initial statement was to argue it was a “[t]rauma-based reaction to what had just happened led to the lie.” (PCR 35).

Counsel also explained she viewed the testimony as an explanation of Deputy Duncan’s investigative technique of rapport building. (PCR 20, 23). Finally, counsel testified part of her strategy was to attack the investigation:

I feel like, with Todd Duncan and other law enforcement officers that testified, that, at the end of the day, at the conclusion of their testimony, whether they believed Jamie or not wouldn’t matter to the jury because I was able, through the cross-examination, to point out all the things that is Duncan did, didn’t do, should have done, failed to do.

And so, to me, that was not something that I concerned myself with as leaving an impression to the jury that Todd Duncan was the be-all and end-all to, you know, whether or not somebody was telling the truth.

(PCR 22). Counsel elaborated:

[T]hat was a decision that I made based on the overall, you know, tactic that we had prepared for the trial. I did not think that Todd Duncan was going to be, you know, again, someone that the jury would look to and say, *Oh well, Todd Duncan thinks this*, no. When I finished with him, they were not viewing him as having done a very good job. So whether or not he thought he was telling the truth or not wouldn't have mattered.

(PCR 24). When asked whether she believed an objection would have been sustained, counsel replied,

If they had—but, again, when you object at trial, that is a very—sometimes it is a tactical decision because, again, jurors can misinterpret a defense attorney objecting as trying to hide something, mask something, keep something from them and say, *Well, I can understand what you are saying*. I did not feel like that was something to risk the jury saying, *Well, you know, what is she trying to keep from me*.

(PCR 25). Ultimately, she agreed opinions by a layman are inadmissible, and Detective Duncan “was not qualified as an expert in truth detecting.” (PCR 25-26). However, she reiterated that she would have objected had she viewed the testimony as problematic, and she did not object based on a strategic reason. (PCR 35).

This Court finds counsel articulated a valid reason for not objecting. Here, the primary defense was accident, and the defense strategy included (1) acknowledging Applicant initially lied to police when he said an unknown person shot the victim but arguing his initial lie was a trauma-based response to the shooting, and (2) attacking the credibility of police and the investigation. (PCR 35). Because the strategy included acknowledging that Applicant initially lied when he said an unknown man shot the victim, counsel articulated a valid reason for not objecting to testimony that law enforcement did not believe Applicant's account of a third-party shooter. In other words, where Applicant proceeded on an accident defense, it was not material to his defense that Sergeant

Malphrus and Deputy Duncan did not believe his initial story that another person shot the victim.

Likewise, counsel articulated a valid reason for not objecting to testimony about whether the officers believed the shooting was accidental. Specifically, counsel averred the State elicited the testimony for the valid purpose of explaining the interrogation technique. In context, this testimony—which was elicited right before the jury heard the recorded interviews—was not elicited to provide the officers’ opinion of Applicant’s credibility; rather, it served the valid purpose of explaining why Sergeant Malphrus suggested to Applicant this may have been an accident, and why Deputy Duncan suggested to Applicant that he did not believe this was a murder. Counsel’s assessment that this testimony was elicited for the valid purpose of explaining interrogation techniques was reasonable under prevailing professional norms, and her decision to not object was likewise reasonable—especially here where counsel explained that juries can infer attorneys are trying to hide information when they object, and she did not believe the objection was strong enough to justify any negative inference the jury might take from it. As set forth, it was not material to the defense that the officers did not believe Applicant’s initial story of another shooter when Applicant was not claiming that at trial. Additionally, because testimony that the officers did not believe it was an accident was elicited for the valid purpose of explaining why the officers suggested otherwise in the interrogation, an objection was unlikely to be sustained—and counsel properly weighed that in deciding whether to object. Counsel thus articulated a valid strategy for not objecting, and Applicant has not overcome the presumption of effectiveness.

b. The testimony was elicited for the valid purpose of explaining interrogation techniques, and Applicant did not set forth any law that existed at the time of trial that would have led to the exclusion of this testimony.

At the PCR hearing, Applicant asked counsel whether she was familiar with Kromah and its progeny, and she acknowledged familiarity with those cases. (PCR 16-18). Applicant then

asked counsel why she did not object to Deputy Duncan's foregoing testimony. (PCR Tr. 18). Counsel agreed it was a comment upon Applicant's veracity but averred it did not violate Kromah. (PCR 18). Counsel likewise agreed opinions by a layman are inadmissible, and Detective Duncan "was not qualified as an expert in truth detecting." (PCR 25-26). However, she reiterated that she would have objected had she viewed the testimony problematic, and she did not object based on a strategic reason. (PCR 35).

In context, the foregoing testimony was elicited for the valid purpose of explaining why the officers suggested to Applicant during his interrogation that this was an accident and not a murder. See United States v. Parkhurst, 865 F.3d 509, 515 (7th Cir. 2017) (characterizing a detective's testimony about the interpretations he drew from a conversation with a defendant as "classic Rule 701 lay-witness testimony"); Davis v. People, 310 P.3d 58, 63 (Colo. 2013) ("[A] detective may testify about his or her assessments of interviewee credibility when that testimony is offered to provide context for the detective's interrogation tactics and investigative decisions."); cf. State v. Houser, 768 S.E.2d 626, 632 (N.C. Ct. App. 2015) (concluding judge did not err by admitting testimony from investigating officer that defendant's account of the incident was inconsistent with the physical evidence because that testimony was rationally based on the officer's perceptions and helpful in providing a clear understanding to the jury of the officer's investigative process and reasons for undertaking certain actions).

Although Applicant argued this testimony was improper testimony about his credibility, he did not set forth any law that existed at the time of trial that would have led to the exclusion of this testimony and thus did not overcome the presumption of effectiveness. At the PCR hearing, Applicant relied on Kromah and its progeny. Those cases, however, are distinguishable because they addressed testimony of forensic interviewers in criminal sexual conduct cases involving

minors—not testimony of law enforcement officers investigating a homicide. Because Strickland requires an assessment of counsel’s conduct under the law that existed at the time of trial, it does not permit a PCR court reviewing counsel’s performance to further develop or expand substantive criminal law. See Strickland, 466 U.S. at 689 (“A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and **to evaluate the conduct from counsel’s perspective at the time.**” (emphasis added)); Briggs v. State, 421 S.C. 316, 322, 806 S.E.2d 713, 717 (2017) (“**[W]e may not judge the reasonableness of counsel’s performance by standards that developed later.**” (emphasis added)). Pantovich v. State, 427 S.C. 555, 562-63, 832 S.E.2d 596, 600 (2019) (“Fundamentally, a collateral review proceeding is ill-suited for announcing a new rule of substantive law pertaining to an underlying trial; appellate courts are to do so only in the rarest of circumstances. This is especially true in a retrospective PCR analysis under Strickland, which seeks to determine whether counsel was ineffective *at the time of the alleged error*. . . . [W]e do not require attorneys to be clairvoyant in anticipating changes to the law” (internal footnote omitted)). Kromah and its progeny are distinguishable and do not support that counsel should have objected, or that an objection would have been sustained.

Likewise, although Applicant argued this was improper lay testimony, he did not submit any cases or law that existed at the time of trial to support the contention that this testimony was inadmissible.⁷ As previously stated, this testimony served a valid purpose: it was elicited to explain to the jury the investigative techniques used in the recorded interviews that were played for the

⁷ To the extent his argument was based on Rule 701—which was not clearly raised—this Court finds the testimony did not violate Rule 701, SCRE. See United States v. Parkhurst, 865 F.3d 509, 515 (7th Cir. 2017) (characterizing a detective’s testimony about the interpretations he drew from a conversation with a defendant as “classic Rule 701 lay-witness testimony”).

jury. Contra Briggs, 421 S.C. at 325, 806 S.E.2d at 718 (“[R]easonably competent trial counsel should know to object—absent a valid trial strategy—when a forensic interviewer gives testimony that indicates the witness believes the victim, **but does not serve some other valid purpose.**” (emphasis added)). Trial counsel herself understood this was the purpose of this testimony, as indicated by her credible testimony at the PCR hearing. Thus, her decision to not object was reasonable under prevailing professional norms. Here, where counsel articulated a valid strategy for not objecting, the testimony served a valid purpose, and Applicant failed to set forth any law that supported his contention that this testimony was inadmissible, Applicant did not prove deficiency. Likewise, Applicant failed to prove a reasonable probability the outcome of trial would have been different had counsel objected.

c. There is no reasonable probability the outcome would be different had the foregoing testimony been excluded.

Finally, because testimony that the officers did not believe another person shot the victim was not contrary to the accident defense, it is not reasonably probable the exclusion of that testimony would have changed the outcome of trial. Likewise, although Applicant proceeded on an accident defense, the State presented ample evidence this was *not* an accident, including evidence that Applicant (a) ran from the scene immediately after telling his mother he shot the victim, (b) attempted to hide the gun and his blood-soaked shirt in the woods, (c) had been drinking and did not handle alcohol well, and (d) had a tumultuous relationship with the victim. Thus, it is not reasonably probable the outcome would have been different had counsel successfully excluded testimony that the officers only suggested in their interview that this was an accident to build rapport. Thus, Applicant did not prove prejudice, and this claim is denied.

Cross-examination of Sergeant Malphrus

Applicant asserts counsel was ineffective for improperly eliciting testimony that Sergeant

Malphrus thought Applicant was lying (Tr. 236), which allowed the officers to tell the jury they thought Applicant was lying. Applicant did not prove this ground.

During Sergeant Malphrus's cross-examination, the following exchange occurred:

Q. All right. The solicitor asked you about this thing about when you say to Jamie, you know, Jamie, I think, I think this was an accident. Do you recall her asking you about that?

A. Yes, ma'am.

Q. Okay. And I know your response was that it's a technique that you use in interrogations, correct?

A. Yes, ma'am.

Q. So you felt like at that point he's lying to me, right?

A. I did. I felt like something—that the facts weren't adding up.

Q. Right, and I've heard you say that. And I think what you were saying was something about, you know the pieces aren't fitting together. It wasn't fitting together for you, right, in your mind?

A. Yes.

Q. So you felt like he was lying?

A. Yes.

Q. So you responded to him lying by you lying to him?

A. I did.

Q. Okay. So he's lying and you're lying and we don't ever get to the truth, do we?

A. The truth of?

Q. The truth of what happened in this interrogation? You said to the solicitor, you never got to the truth, right?

A. Well, with this here, again, we'll go back when we started this interrogation, we didn't know really what was going on. When I asked him what was going on, he gave me a statement, which we

tried to verify out there, so, I guess, the only truth we could find is the window up or down going on.

(Tr. 235-37).

Critically, Applicant did not tell Sergeant Malphrus he shot the victim or the shooting was an accident. (Tr. 229). Rather, he told Sergeant Malphrus that an unknown individual shot the victim. Thus, the story that counsel questioned Sergeant Malphrus about—i.e., Applicant’s initial account of a third-party shooter—was not the version of events that Applicant proceeded on at trial. Counsel’s foregoing cross-examination is consistent with her aforementioned stated strategy of embracing the fact that Applicant initially lied but arguing it was a trauma-based response to the shooting. (Tr. 437-38; PCR 437). This cross-examination is likewise consistent with her aforementioned strategy of attacking the investigation. (Tr. 427-28, 430, 432-36, 438-41; PCR 22-24). This Court finds the foregoing strategy was reasonable under prevailing professional norms and not deficient. Further, this Court finds that here, where the statement counsel questioned Sergeant Malphrus about was not even the version of events Applicant proceeded on at trial, there is no reasonable probability the outcome would be different had counsel not elicited this testimony. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Bad act evidence

Applicant contends counsel was ineffective for failing to object to prior bad act testimony. Specifically, he contends counsel should have objected when Investigator Brandon Disbrow testified that while searching Applicant and the victim’s home, police found a shotgun “underneath a cushion on the couch. It was a 410 shotgun, kind of rusty. The barrel appeared to have been cut off. It was maybe, 14, 12 to 14-inches long.” (Tr. 189). Applicant did not prove this ground.

At the PCR hearing, Applicant conceded counsel articulated a valid strategy for not objecting to testimony about the sawed-off shotgun, and this Court agrees. (PCR 40). Counsel

testified she did not object to evidence about the sawed-off shotgun

because part of our position was, if [Applicant] had wanted to, you know, if he was acting with malice, if he had planned this, if he was fed up with Eulia, he had, at the ready, a weapon that he could have used to accomplish exactly what the State was accusing him of doing, which was murder.

And we had always taken the position that the handgun situation was a happenstance situation.

And so the shotgun, I wanted it in, because I argued it, that, you know, this is a man who had a shotgun who could have easily accomplished exactly what he was accused of doing had that been his plan.

(Tr. 26-27). This Court finds the foregoing is a valid strategy here where the defense hinged on accident, and the gun used in the shooting was not the shotgun that was found in the apartment.

Further, Applicant did not prove by a reasonable probability that the shotgun would have been excluded based on a prior bad act objection. Here, the officer was simply stating what law enforcement found while executing a search warrant of Applicant and the victims' apartment. Further, the shotgun itself—which was entered into evidence—was probative to the State's case in corroborating testimony by the victims' daughter that Applicant had previously threatened them with a sawed-off shotgun.⁸ This was relevant to the State in disproving the accident theory and did not constitute bad act evidence. Thus, Applicant did not prove deficiency or prejudice based on counsel's failure to object.

Finally, even if counsel had successfully objected and the court had excluded testimony about the shotgun, there is no reasonable probability the outcome would have been different. Here, the State presented ample evidence this was *not* an accident, including evidence that Applicant (a) ran from the scene immediately after telling his mother he shot the victim, (b) attempted to hide

⁸ Counsel *did* move pretrial to exclude that testimony, but her motion was denied.

the gun and his blood-soaked shirt in the woods, (c) had been drinking and did not handle alcohol well, and (d) had a tumultuous relationship with the victim. Based on the foraging, it is not reasonably probable the jury's verdict hinged on a mere passing reference to this shotgun appearing to have been cut off. This claim is thus denied.

Improper bolstering

Applicant avers counsel was ineffective for failing to object to testimony of Investigator Duncan that improperly bolstered Hazel Robinson's testimony. Specifically, he contends counsel should have objected when Deputy Duncan testified, "[Hazel] laid everything out there. Her story has been the same the whole time." (Tr. 274). Applicant did not prove this ground.

Initially, at the PCR hearing, Applicant conceded counsel provided "a very, very good explanation as to trial strategy to not object to the bolstering testimony of Miss Robinson," and this Court agrees. (PCR 40). At the PCR hearing, counsel agreed that in a textbook situation, Investigator Duncan's comment would be improper bolstering. However, she explained,

[I]t was important to me and to our case that Hazel be completely reliable, completely believable throughout this entire situation, and I argued that in my closing. It was critical that her testimony be taken as believable.

So, of course, if he wants to vouch for her and say she was believable, then I appreciate it.

(PCR 30). Counsel explained that Hazel's testimony was important to the defense

[b]ecause as soon as the gun fires, he hollers into the house to mama, you know, *I've just killed Lili, call 911.*

And mama comes out of the house and, you know, she, kind of, beats on Jamie, *What's going on?* You know, *What's going on?* And so I think that what she brought to the table was the timing—and, you know, again, his state of mind, how he looks, the shock of being overwhelmed, it was all important to us.

Q. A statement made without having time to think about it.

A. I mean, right. It was traumatic, like it just happened.

(PCR 30-31). She further averred Hazel presented as an honest and truthful witness to the jury.

(PCR 37).

This court finds counsel's testimony about her strategy credible. This court further finds counsel's strategy of using Hazel's testimony to illustrate Applicant's state of mind immediately after the shooting was a valid, reasonable strategy here where the primary defense was accident. This strategy was likewise reasonable in light of the fact Applicant had to confront evidence that he initially lied to police, and his mother told police that he said he shot the victim. In furthering this strategy, counsel commented on Hazel's veracity during closing argument:

Hazel, yeah, she didn't lie. She didn't lie when she testified here, she didn't lie when she talked to the police. I firmly believe that she did her very best. This steward woman, this woman who—you know, her only child. She tells the police immediately, he said he killed her, he said he shot her. And she came in here—and I know the solicitor had to play back this portion of that statement or that portion, I firmly believe that Hazel did her very best to be calm and to give you as much as she could remember in her aged health and condition about what happened so that she could give you as much as she could remember. And I believe she did that. And then, when she finished, she stepped down and she walked into this courtroom and where she's seated now, she's been there seated, alone, with her son.

(Tr. 431). Counsel later relied on Hazel's testimony to emphasize Applicant's state of mind immediately after the shooting:

[H]e owns the lie. I mean, he owns it completely. He's already told his mother that he shot and killed her. **And whatever insanity and intoxication and fear and trauma, he owns that lie.** I don't know, had he honestly forgetting, again that he had told his mother that he had killed her? But a lie? He's not indicted for lying.

Jamie screams when the gun discharges and his mother says that scream, she knew something terrible had happened. That is not the scream of a man who intentionally puts a gun to your

head and shoots and kills you, that's the scream of a man who had no idea the gun was going to fire. The scream, you can imagine. And that's what woke her up. Hazel comes out. Call 911, I just shot, I just killed Lee Lee, get some help.

But then Hazel told you what she had. That's—you know, the relationship between this mother and son, this only child and the relationship that sometimes an only child may carry with a mother, she beat on him. She told you, I beat on him to the point where my hands were injured. **And I think that's when he snapped. When his mother and all of that came crashing down on him, that's when he ran.**

(Tr. 437, emphasis added). Because counsel articulated a reasonable strategy in using Hazel's testimony to highlight Applicant's state of mind after the shooting, her decision to not object to Investigator Duncan's testimony was reasonable under prevailing professional norms and not deficient. Likewise, because counsel highlighted Hazel's veracity as part of her trial strategy, there is no reasonable probability an improper bolstering objection to Investigator Duncan's testimony would have changed the outcome, and this claim is denied.

Failed to object to closing argument

Applicant argues counsel was ineffective for not properly objecting when the solicitor argued, 'And the first thing out of his mouth, get me a lawyer. Why do you need a lawyer if it's an accident.' (Tr. 416-17). At the hearing, Applicant amended this allegation to allege counsel was ineffective for not preserving an argument to this comment. Applicant did not prove this ground.

"Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record,

including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." In Darden v. Wainwright, 477 U.S. 168 (1986), the United States Supreme Court considered whether the solicitor's improper statements, including statements such as "He shouldn't be out of his cell unless he has a leash on him" and "I wish that I could see him sitting here with no face, blown away by a shotgun," violated due process. Ultimately, the Court concluded these improper statements did not "so infect the trial with unfairness as to make the resulting conviction a denial of due process."

Here, during the State's closing argument, the following occurred:

The first time he talks to his mother, after he's been arrested, he's in the detention center. You heard the jail call. And the first thing out of his mouth, get me a lawyer. Why do you need a lawyer if it's an accident? The fact that he locked her in the car shows that it was not an accident—

[Trial counsel]: Objection, again, Your honor. May we approach?

(Off-the-record discussion held.)

(Tr. 416-17). Thereafter, the solicitor continued her argument. At the PCR hearing, counsel testified that based on her notes, her objection at the bench was to the solicitor commenting on Applicant "having a lawyer, getting a lawyer." (PCR 28). She further averred it was a comment on his right to remain silent and to choose counsel. (PCR 29).

Initially, trial counsel *did* object to this improper statement. (Tr. 417). In context, it is clear that counsel was objecting to the statement, "And the first thing out of his mouth, get me a lawyer. Why do you need a lawyer if it's an accident?" (Tr. 417). The foregoing statement is obviously objectionable, whereas the statement that followed—"The fact that he locked her in the car shows that it was not an accident—" was not objectionable. Because counsel *did* object and the basis for the objection was clear from the record, Applicant did not prove deficiency. See State v. New, 338

S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999) (“Rule 103(a)(1), SCRE, however, only requires specificity where the ground for objection is not apparent from the context of the discussion contained in the record.”).

Assuming arguendo that counsel did not properly preserve an argument for appeal, this singular, mere passing statement near the beginning of the State’s closing argument did not so infect the trial with unfairness as to violate due process, and Applicant thus cannot prove prejudice. In context, the solicitor was commenting on a statement Applicant made to his mother *in a jail call*. In other words, Applicant was in jail when he made the statement, and the jury could have easily inferred he wanted a lawyer because he was in jail—not because he was guilty. In context, Applicant’s statement was not an admission of guilt, and the solicitor’s singular, mere passing statement did not so infect the trial with unfairness as to violate due process. See Darden, 477 U.S. 168 (finding solicitor’s repeated, improper statements—including “He shouldn’t be out of his cell unless he has a leash on him” and “I wish that I could see him sitting here with no face, blown away by a shotgun”—did not “so infect the trial with unfairness as to make the resulting conviction a denial of due process”).

Further, the Court charged the jury that Applicant had a constitutional right to an attorney, and Applicant’s assertion of a constitutional right “cannot and must not be considered by you in your deliberation.” (Tr. 446, 452). Thus, to the extent the jury even considered the solicitor’s remark adversely to Applicant (as opposed to viewing it as a detained man asking his mother for help in getting him released from jail), the trial court’s charge adequately cured any possible prejudice the statement theoretically could have caused. See State v. Hill, 382 S.C. 360, 369, 675 S.E.2d 764, 769 (Ct. App. 2009) (“[A] curative instruction emphasizing the jury cannot consider the defendant's failure to testify will cure any potential error.”); Vasquez, 388 S.C. at 458, 698

S.E.2d at 566 (“On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt.”).

Finally, although Applicant proceeded on an accident defense, the State presented ample evidence this was *not* an accident, including evidence that Applicant (a) ran from the scene immediately after telling his mother he shot the victim, (b) attempted to hide the gun and his blood-soaked shirt in the woods, (c) had been drinking and did not handle alcohol well, and (d) had a tumultuous relationship with the victim. Because this was a singular, mere passing statement that was cured by the trial court's charge, and because the State presented ample other evidence to rebut the accident defense, this statement did not so infect the trial with unfairness as to violate due process. Thus, Applicant did not prove prejudice, and this claim is denied.

CONCLUSION

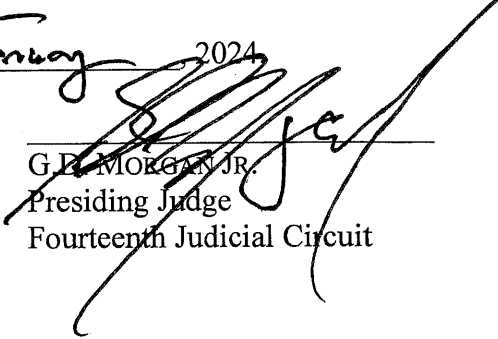
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 27th day of January 2024



G.E. MORGAN JR.
Presiding Judge
Fourteenth Judicial Circuit

Greenville, South Carolina