VOLUME III OF III

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Daniel McLeod Coble, Circuit Court Judge

PETER L. COFFEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002129

APPENDIX

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order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

"A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998) (findings the solicitor's misstatement of the law concerning parole considerations that were not cured by the judge's instructions were improper); See Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) ("A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony."). "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624–625 (1996).

"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." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); See Randall, 356 S.C. at 643–43, 591 S.E.2d at 610–11 (Finding the solicitor's analogy comparing the defendant to a "dirty cockroach" did not infect the trial to make the resulting conviction a denial of due process, noting the objected argument encompassed ten lines of the transcript and was repeated, but an isolated reference).

Trial

At trial, the prosecutor on rebuttal said the following:

MR. GRAHAM: We'd all like to know why. Why did Peter Coffey kill her that night? I want to know why. You want to know why. Mr. Stitely says he doesn't know why. But we don't have to prove that. We would if we could, but the law does not require us to prove why something happened, just that it did happen. And that's what the Judge will tell you.

(ROA p. 836).

PCR Evidentiary Hearing

On direct examination, Applicant testified that on rebuttal, the prosecutor said they did not have to prove why something happened, just that it did happen. (PCR Tr. p. 17). Applicant testified that with his knowledge of State v. Beaty, the courts were different, and he did not understand. (PCR Tr. pp. 17–18).

On direct examination, Trial Counsel testified that there was no basis to object to the prosecutor's rebuttal because they could put forward their argument. (PCR Tr. p. 47).

On cross-examination, Trial Counsel testified that there are times one can ask for a mistrial if the prosecutor steps over the line, but the prosecutor called him a "murderer" and a "rapist," which was what he was charged with. (PCR Tr. pp. 55–56).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra.* This Court finds there was no legal basis for an objection to the Solicitor's comment. Furthermore, Applicant's reliance on State v. Beaty is misguided as the State's rebuttal Thus, Applicant failed in his burden of proving deficiency or prejudice. See Glover, *supra.*

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

omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

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

Allegation 1i: Failure to examine the contents of phone records of 629-2011.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to examine the contents of the phone records of 629-2011. This Court finds this allegation to be without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he had four phones that were seized, but when it came to court, they lost the phones. (PCR Tr. p. 18). Applicant testified that the phones worked, but he was told they did not work. (PCR Tr. pp. 18–19).

On direct examination, Applicant testified that he could not recall precisely what happened with the cell phones, but his notes reflect that the phones went missing. (PCR Tr. pp. 47–48).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present the phone records or any competent evidence that he now claims Trial Counsel was constitutioually ineffective for not investigating the contents of phone number 629-2011. Thus, Applicant failed in his burden of proving deficiency or prejudice. See Glover, *supra*.

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

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

Allegation 1j: Failure to strike jurors No. [7] Joshua Bailey and No. 210 Brandon Trotter.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to strike jurors No. 7 Joshua Bailey and No. 210 Brandon Trotter. This Court finds this allegation to be without merit.

While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. State v. Stanko, 376 S.C. 571, 577, 658 S.E.2d 94, 96-97 (2008); see also State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009) (a defendant is not entitled to the jury of his or her choice); Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 765 ("a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury"). The Constitution, after all, "does not dictate a catechism for *voir dire*, but only that the defendant be afforded an impartial jury." Stanko at 97, 658 S.E.2d at 576 (citing Morgan v. Illinois, 504 U.S. 719, 729 (1992)).

The process of jury selection inherently falls within the expertise and experience of trial counsel. Magazine at 617, 606 S.E.2d at 764 (citing Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999)). In a PCR proceeding, an applicant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense.

PCR Evidentiary Hearing

On direct examination, Applicant testified that because juror no. 7 knew the Lexington County Sheriff, Trial Counsel should have struck him. (PCR Tr. pp. 19–20). Applicant testified that juror no. 210 should have been struck because he knew the Victim's brother, and that prejudiced him. (PCR Tr. p. 20).

On direct examination, Trial Counsel testified that he did not move to strike juror no. 7 because he told the judge it would not bias him. (PCR Tr. p. 48). Trial Counsel testified that he did not move to strike juror 210 because it was not clear if the juror even knew the individual. (PCR Tr. p. 49).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present any credible evidence that his right to a trial by a competent and impartial jury was violated. Both jurors told the trial court that they could be fair and impartial jurors. (ROA p. 35; p. 37). Applicant further failed to present any credible evidence that Trial Counsel's failure to strike either jury member "for cause" resulted in an unfair or impartial jury. Thus, Applicant failed in his burden of proving deficiency or prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

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

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

Allegation 1l: Failure to meet with Applicant a sufficient number of times.

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

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to 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 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) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity 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 Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel met with him about three times. (PCR Tr. p. 21).

On direct examination, Trial Counsel testified that their system did not log meetings with clients when he represented Applicant, but he recalled meetings with Applicant, calls with Applicant, and dozens of letters exchanged with Applicant. (PCR Tr. p. 49).

On cross-examination, Trial Counsel testified that he met with Applicant, reviewed discovery with Applicant, met with his mother and possibly his brother, and they had numerous correspondences between each other. (PCR Tr. p. 55).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that

Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present any credible evidence that Trial Counsel did not meet with him a sufficient number of times. This Court finds Trial Counsel's testimony credible that he met with Applicant on multiple occasions. Additionally, the record before this Court shows that Trial Counsel was prepared for the trial, made competent objections, and presented a competent defense. Thus, Applicant failed in his burden of proving deficiency or prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

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

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

Allegation 1m: Failure to object to buccal swab DNA evidence collected from Applicant (pp. 403–404).

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the buccal swab DNA evidence collected from Applicant (pp. 403–404). This Court finds this allegation to be without merit.

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

admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate hoth deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportahle argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgmeut of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarhorough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what

questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel should have objected to the buccal swab collection during trial because he did not understand why it was needed when it would simply sit in evidence. (PCR Tr. p. 22).

On cross-examination, Applicant testified that he did not recall signing a consent form for the collection of his DNA. (PCR Tr. p. 39).

On direct examination, Trial Counsel testified that they likely consented to the buccal swab because it was never contested that Applicant's DNA would be found at the scene. (PCR Tr. p. 49). Trial Counsel testified that Applicant's DNA was already in the system, but there was no good reason to object even if they did not consent to it. (PCR Tr. p. 49).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present any credible evidence that there was any legal basis to object to the buccal swab evidence. Notably, from the testimony at the evidentiary hearing, Applicant appeared to complain

about the buccal swab being taken and then placed into an evidence bag for trial.[4] Nevertheless, Applicant failed in his burden of proving deficiency or prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

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

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

Allegation 1n: Failure to object to the jury charge regarding inferred malice and the use of a deadly weapon (p. 849, line 14-16).

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the jury charge regarding inferred malice and the use of a deadly weapon (p. 849, line 14-16). This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable'

[4] Seemingly, Applicant complains that the buccal swab was taken and never used; however, the buccal swab was tested and then returned to the evidence bag for trial, as is the standard procedure with buccal swab evidence. (ROA pp. 402–404; p. 410; p. 471; pp. 532–533; p. 585).

action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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

"In reviewing jury charges for error, [the reviewing court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)). "[A] charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990) (citing State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)). If the charge "is substantially correct and

covers the law [it] does not require reversal." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)). "Moreover, '[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011)). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he read State v. Belcher and State v. Cottrell, in which the trial counsel failed to object to the malice charge, arguing that it violated his 6th and 14th Amendment rights. (PCR Tr. p. 23).

On direct examination, Trial Counsel testified that "[i]t was probably before they change[d] the inferred malice case law and I'm not quite the trailblazer to have made that objection ahead of time I suppose." (PCR Tr. p. 50).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds the jury charge as given was a correct statement of the law at the time of Applicant's trial. Thus, Applicant failed in his burden of proving deficiency or prejudice.

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

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

Allegation 1o: Failure to object to the statements by the solicitor that introduced improper character evidence (p. 825, lines 12).

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the statements by the solicitor that introduced improper character evidence (p. 825, lines 12). This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir.

1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

"A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record

and reasonable inferences to it." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998) (findings the solicitor's misstatement of the law concerning parole considerations that were not cured by the judge's instructions were improper); See Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) ("A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony."). "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624–625 (1996).

"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." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); See Randall, 356 S.C. at 643–43, 591 S.E.2d at 610–11 (Finding the solicitor's analogy comparing the defendant to a "dirty cockroach" did not infect the trial to make the resulting conviction a denial of due process, noting the objected argument encompassed ten lines of the transcript and was repeated, but an isolated reference).

Trial

In closing, the prosecutor ended his closing argument with the following:

> Peter Coffey's blood in the house, her blood on his shorts. Probably for the first time in your life, ladies and gentlemen, you're in the presence of someone who's evil, who's a killer, who's a murderer, who's a rapist, and that's Peter Coffey. Thank you.

(ROA p. 825).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel should have objected to the prosecutor's statements in closing that Applicant was a "killer, a murderer, a rapist," because that went to his character and he did not take the stand. (PCR Tr. pp. 23–24).

On direct examination, Trial Counsel testified that "I'm sure that Mr. Graham was being very dramatic there, but I don't see where I could have specifically objected to that." (PCR Tr. p. 50).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. While the prosecutor used inflammatory language, this Court does not find that the statement infected the trial with unfairness as to violate Applicant's constitutional rights.[5] Furthermore, this Court agrees with Trial Counsel that the comments were reasonably drawn from the evidence presented at Applicant's trial. See Jackson v. United States, 638 F. Supp. 2d 514, 595 (W.D.N.C. 2009) (finding counsel not constitutionally ineffective for failing to object to the prosecutor referring to defendant as "evil"); United States v. Allen, 247 F.3d 741, 776–77 (8th Cir. 2001) (reference to defendant as murderous dog did not deprive defendant of fair sentencing), rev'd and vacated on other grounds, 536 U.S. 953 (2002); Oken v. State, 327 Md. 628, 676, 612 A.2d 258, 281 (1992) ("the mere fact that a remark made by the prosecutor to the jury was improper does not necessarily require a conviction to be set aside. Reversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.") (quoting Jones v. State, 310 Md. 569, 530 A.2d 743 (1987), judgment

[5] While the allegation was raised to this Court as improper character evidence, and it is not improper character evidence, out of an abundance of caution this Court addresses this allegation as one of inflammatory remarks made by the prosecutor.

vacated and remanded on other grounds, 486 U.S. 1050, sentence vacated on other grounds, 314 Md. 111, 549 A.2d 17 (1988); Drew v. Collins, 964 F.2d 411, 419 (5th Cir.1992) (references to the defendant as a "sadistic killer" and referring to defendant's trip from Louisiana to Texas as a "rolling torture chamber" not prejudicial because supported by evidence). Thus, Applicant failed in his burden of proving deficiency or prejudice.

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

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

Allegation 1p: **Failure to object to testimony regarding Applicant's DNA on item 8.3 from the waistband of a pair of shorts (p. 543) and on item 13.1 taken from a cucumber recovered from the autopsy of the victim (p. 546–547).**

Allegation 1q: **Failure to object to the State's evidence, Exh. 136, p. 532, an enlarged report regarding DNA testing.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to testimony regarding Applicant's DNA on item 8.3 from the waistband of a pair of shorts (p. 543) and on item 13.1 taken from a cucumber recovered from the autopsy of the victim (p. 546–547). Applicant further alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the State's Exhibit 136. This Court finds these allegations to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than

sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Trial

On direct examination of Gray Amick, the following colloquy occurred:

Q. 8.3 is a scraping of the waistband. Sometimes I think that's used to talk about ownership, I believe; is that correct?
A. That's correct.
Q. Was there any serology testing done on that scraping?
A. No, it was just scraped for ownership.
Q. So when you're scraping as opposed to doing serology testing, what may you see?
A. You may see, like, white dandruff-looking material that you would scrape off the brim of a hat or the collar of a shirt. But there's no visible stain that you're swabbing.
Q. So you were trying to avoid visible stains you could see?
A. Correct . I'm checking for, like I said, ownership for somebody who might have worn that item.
Q. What did you find?
A. 8.3 was a mixture. Matched between a contributor to 8.3 and Peter Coffey is an average of approximately 276 trillion times more probable than a coincidental match. And the other contributor was 2.3 quadrillion times more probable that it matched [Victim] than a coincidental match.
Q. So is it fair to say the scrapings of the waistband showed a mixture of Mr. Coffey and the decedent ?
A. That's correct.

(ROA pp. 542–543).

Q. Item 13 would be the cucumber that was taken from the autopsy, put in the bag, and brought to you. Ashley Dixon testified previously about that and stated that she had taken a swab from 13.1 or created 13.1, the swab of the

> cucumber itself that was taken from the abdominal cavity, and prepared it for DNA for you. When you analyzed it, what, if anything, did you find?
>
> A. 13.1, DNA was a mixture. Peter Coffey and [Victim] could not be excluded in that mixture. And based on the population data available at the time, a match between the DNA result and Peter Coffey was approximately 227 quadrillion times more likely than a coincidence to an unrelated person and approximately 8 million times more likely [Victim] than a coincidence for an unrelated person.

(ROA pp. 546–547).

PCR Evidentiary Hearing

On direct examination, Applicant testified that it went to ownership, and the Victim wore the boxers, and that is why her DNA was on them. (PCR Tr. p. 24). Applicant testified that Trial Counsel should have also objected to testimony on the DNA found on the cucumber. (PCR Tr. p. 27). Applicant testified that the enlargement of Exhibit 136 did not have everything that should have been on it, and Trial Counsel should have objected. (PCR Tr. p. 28). Applicant testified that Trial Counsel should have also objected to testimony on the DNA found on the cucumber. (PCR Tr. p. 27).

On direct examination, Trial Counsel testified to the following:

> There wouldn't have heen a legal basis to object specifically outside the -- there was actually -- this case actually had some pretty weird -- it's just kind of a funny thing. So the blanket that was used to collect the body had all kinds of other DNA on it. Like it was -- and I think I actually went after the coroner and the coroner's people about how poorly they did preserving the DNA, but the DNA from his shorts and the DNA from the decedent's body was going to come in, so I don't know how we would have objected to that.

(PCR Tr. p. 51). Trial Counsel testified that the DNA report enlargement was standard and one you see in every case. (PCR Tr. p. 51).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all

significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that there was no legal basis for an objection to the testimony of Gray Amick regarding Items 8.3 and 13.1. Additionally, this Court finds there was no legal basis for an objection to Exhibit 136. Thus, Applicant failed in his burden of proving deficiency or prejudice.

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

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

Allegation 1r: **Failure to properly cross-examine the State's witnesses regarding the DNA evidence and to address this evidence sufficiently at trial.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to properly cross-examine the State's witnesses regarding the DNA evidence and to address this evidence sufficiently at trial. This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the

Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

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

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types

of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

PCR Evidentiary Hearing

On direct examination, Applicant testified that the judge would not allow Trial Counsel to fully cross-examine a witness, and there was nothing Trial Counsel could do about it. (PCR Tr. p. 29).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Notably, Applicant's testimony seemingly refers to the trial judge not permitting Trial Counsel to cross-examine the drug dealer about his illegal drug transactions with the Victim. The allegation presented to this Court closely parallels the issue raised in the direct appeal. This Court firmly concludes that the matter concerning the cross-examination of the drug dealer is indeed a direct appeal issue, and as such, the PCR process is not the proper avenue for this claim. Even if this issue were deemed appropriate for consideration in the Applicant's PCR application, it is important to note that Trial Counsel's representation cannot be regarded as deficient simply because the trial court ruled against the Applicant.

Furthermore, Applicant's claims that Trial Counsel failed to adequately address the DNA evidence during the trial are thoroughly contradicted by the record. Throughout the entirety of the proceedings, Trial Counsel robustly challenged the State's investigation and the DNA findings through incisive cross-examination of witnesses. Notably, much of the Applicant's testimony to this Court revolves around a belief that Trial Counsel could have— or should have— taken further action; however, this perception lacks the necessary foundation to substantiate a claim of ineffective assistance of counsel. Consequently, the Applicant has not fulfilled the burden of proving that Trial Counsel's representation was deficient, nor has he demonstrated any resultant prejudice from the alleged shortcomings. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

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

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

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

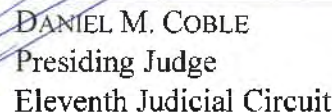
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),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

IT IS THEREFORE ORDERED:

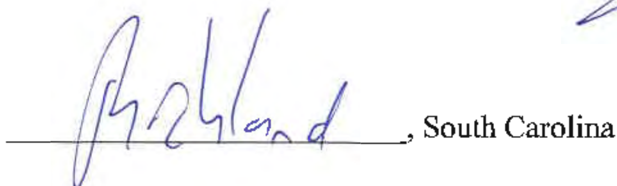
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

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

AND IT IS SO ORDERED this 24 **day of** Sep**, 2025.**



DANIEL M. COBLE
Presiding Judge
Eleventh Judicial Circuit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