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**Mar 25 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Horry County  
Court of Common Pleas  
J. Mark Hayes, II, Post-Conviction Relief Judge

\_\_\_\_\_  
Appellate Case No. 2026-000718

\_\_\_\_\_  
Case No. 2019-CP-26-00139

Joshua Blake Griffith, SCDC #358482..... Respondent,

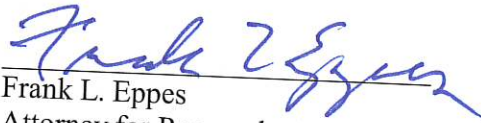
v.

.....  
State of South Carolina,, ..... Petitioner.

\_\_\_\_\_  
**NOTICE OF CROSS APPEAL**

Respondent, Joshua Blake Griffith, hereby files this cross appeal of the Order by the Honorable J. Mark Hayes's granting post-conviction relief which was filed August 11, 2025, as well as the Court's Order denying the State's subsequent motion to reconsider, alter, amend judgment granting PCR pursuant to Rule 59(e) which was denied by written order filed January 8, 2026. Copies of both orders are attached hereto.

Respectfully submitted,



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March 25, 2026  
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ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Joshua Griffith, )  
 )  
 Applicant, )  
 vs. )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-26-00139

**ORDER GRANTING POST-CONVICTION  
 RELIEF**

RENEE M. ELVIS  
 CLERK OF COURT  
 HORRY COUNTY, SC  
 2025 AUG 1 P 2:56  
 HORRY COUNTY  
 FILED

This matter comes before the Court by way of a post-conviction relief application. An evidentiary hearing into the matter was heard on October 30, 2024. Based upon the evidence presented in the hearing, this Court hereby grants applicant a new trial.

**PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

This post-conviction relief (PCR) matter arose from a 2014 trial that resulted in a jury finding the applicant guilty of murder and the imposition of a 30-year sentence (concurrent with two 10-year sentences for ABWIK and a 5-year sentence for criminal conspiracy). Applicant is currently housed in the South Carolina Department of Corrections. He was charged with murder in 2009, approximately four and one-half (4.5) years before his trial. Once he was released from custody, applicant was out on bond with a condition of Home Detention. It was not until September of 2013 that the applicant was indicted for conspiracy. A trial was held from January 6 to 10, 2014. The jury found applicant guilty. A notice of appeal was filed and the matter was fully briefed on multiple issues. Oral argument was held on September 8, 2016. The Court of Appeals ruled against applicant in an unpublished opinion on March 15, 2017. Applicant's petition for Post Conviction Relief was timely filed. In discovery, the prosecutor, Nancy Livesay, was deposed on September 24, 2024. The PCR hearing was conducted in two parts.

1 

Because appellate counsel was unavailable on the trial date, the testimony of appellate counsel was obtained virtually via Webex on October 24, 2024. Thereafter, the in-person proceeding took place on October 30, 2024. In addition to appellate counsel, applicant testified, as did his previous attorneys, his parents, both prosecuting attorneys, and Sgt. Timothy Troxell who had been involved in this matter. The Court was provided with the trial transcript, and a transcript of the recording of a meeting between the prosecutors and the investigating officers, including Officer Troxell, which had taken place prior to the trial of the case. This recording had been provided to trial counsel in discovery. Both sides were well represented by counsel during the PCR proceedings.

#### **Facts Presented at Trial**

In 2009, at the time of these events, the applicant was 17 years of age. The murder charge arose from an altercation at a nightclub/bar – The Afterdeck -- during which the victim (DJ) was fatally stabbed. The applicant and his co-defendant had been visiting the beach from upstate South Carolina, and on this night, they crossed paths with the victim and some of his associates/friends. The record does not indicate the applicant or his co-defendant, knew any of the victims prior to the incident. The victim and his friends were from the coastal area. Shortly after crossing paths, a brief fight/altercation occurred involving multiple participants wherein the victim was fatally stabbed and two of his associates received knife-inflicted wounds. It was undisputed that the first shove was thrown by one of the victim's associates, and there were no witnesses to the fatal knife strikes. After the bar altercation, the applicant ran from the location, crossed the inland waterway behind the bar, and hid until police located him. His co-defendant left the scene and was apprehended elsewhere. Both the applicant and his co-defendant were originally, and only, charged with Murder and Assault and Battery with Intent to Kill (ABWIK).



Both applicant and his co-defendant were released on bond and resided in upstate South Carolina. Applicant was at all times on House Arrest with an electronic monitor.

In August of 2013, a few months prior to the trial, the applicant and his co-defendant were also indicted for conspiracy. The State's intent was to go to trial with both the applicant and his co-defendant together. In November of 2013, the State made an offer that the applicant could plea to Voluntary Manslaughter. If the plea offer was not accepted during the November 2013 term, the State would consider the offer rejected and, significantly, the State would not make the offer again.

In late November or early December, the trial judge became directly involved with the offer in an effort to resolve the case. Applicant and his parents were meeting with counsel in his office and two telephone conferences took place between them, the State, and the trial judge. The State was present in the judge's chambers during the two (2) telephone conferences. During the telephone conferences, it was conveyed by the judge that the applicant would receive a 10-year sentence and credit for the time he had been on home detention. The applicant was given only a short time -- approximately 10 to 20 minutes -- to accept the offer. During this ten to twenty-minute period of time, counsel quickly discussed the offer, the evidence, and the weaknesses of the State's case. Following the judge's direction, defense counsel was immediately telephoned back to the judge's chambers and the offer was rejected. At the time the plea offer was discussed, both the applicant and his co-defendant, again, were going to trial together.

As will be discussed herein, applicant and his counsel believed that the evidence overwhelmingly indicated that the co-defendant was the party capable of stabbing DJ. Shortly after the applicant did not accept the plea offer, the State went to the co-defendant and made a



comparable offer. His co-defendant accepted the offer. Thereafter, before the trial, applicant's codefendant pled guilty to Accessory to Murder After the Fact. The co-defendant was not sentenced at the time of his plea. His sentence was not issued until after he testified during the applicant's trial. Immediately after the trial, the co-defendant was sentenced to eight years with credit for time served.

Before the trial, both the State and the defense were attuned to the potential gang issues. The State explored an issue of whether applicant and his co-defendant were members of a gang and involved in some sort of initiation ritual. The State had evidence that the co-defendant (not the applicant) was part of a gang. Any indicators that applicant may have been part of a gang were at best, sparse or speculated. Separate and distinct from the State's gang issue with the co-defendant, the defense became aware that all the stabbing victims, the deceased as well as the other two individuals, were part of a known group in the coastal area that called itself the Get Wrecked Hate Crew (GWHC). The deceased victim actually had a GWHC tattoo. In sum, the gang-related evidence of the co-defendant was separate and distinct from the gang evidence related to the victim. The two gangs were also separate and distinct from each other.

As they prepared for trial, the defense, now including two lawyers, planned to focus on three issues: first that the applicant was not the one who stabbed the victim; second, that, while the applicant was merely involved in the larger group altercation, he was not the aggressor in causing that larger altercation; and, third, that the GWHC was an active gang that engaged with turf fights with other groups around the Grand Strand. A critical focus of applicant's trial strategy involved efforts to introduce evidence of recent gang-related activity by the victim and his associates in order to prove that – all three victims- (1) had the propensity for violence and,



additionally, (2) to show the deceased victim's propensity for violence independent of his gang activity.

After his co-defendant pled, the State's evidence about applicant or his co-defendant being part of a gang was eviscerated. However, the applicant's trial strategy remained to show that applicant was not the one who stabbed the victim, that the co-defendant was the one who stabbed the victim, and that the victim had the propensity for violence, evidenced by his being a member of the GWHC gang. The trial judge, however, conflated the two separate gang issues and ruled to exclude all gang-related evidence from the trial presentations of both the State and the defense under a "what's good for the goose is good for the gander" theory. The basis for the judge's ruling included both his erroneous belief that the victim's only prior act of violence had been done years before the incident at Afterdeck bar and his confusion over the intended purpose of the applicant's proposed gang evidence. This decision was a critical juncture in the case and greatly reduced the potential effectiveness of the applicant's defense presentation.

The State's case at trial was based on circumstantial evidence which included video and testimonial evidence that the applicant and his co-defendant each purchased knives prior to going to the bar. It is critical to note that the knives were different colors. A knife was recovered from the vehicle of the co-defendant which had DNA material that matched the co-defendant and potentially matched the deceased victim. The knife that was recovered was not the same color as the knife purchased by the applicant. The knife described as being purchased by the applicant was never located.

Neither of the surviving knife victims nor any other witness could identify who had stabbed them or the deceased victim.

During its presentation, the defense called three third-party guilt witnesses each of whom testified that the co-defendant had confessed to being the one who fatally stabbed the deceased victim.

To rebut the testimony of the three third-party guilt witnesses, the prosecution chose to call a witness that had remained in the courtroom for the duration of the trial. They called a former friend of the applicant who had been with him the night of this incident. Again, despite the court's prior sequestration order, this witness had remained in the courtroom for the duration of the trial. Over the objection from defense counsel that doing so violated the judge's prior sequestration order, the State was allowed to call this witness. Her brief testimony was primarily based upon conversations with applicant while he was out on bond. Her testimony concluded with the assertion that she did not "want to be friends with a murderer." This statement was made without objection. Both applicant's trial attorneys acknowledged that they should have objected to the statement and that the judge would have rightly excluded it from evidence, likely with an instruction to the jury to disregard it. Both trial attorneys felt her statement referring to applicant as a "murderer" was material to the case.

Applicant appealed his conviction. On appeal several issues were raised, including the judge's decision to allow the reply witness to testify. In an unpublished opinion, the Court of Appeals affirmed the conviction. Appellate counsel did not raise an issue concerning the trial court's factual confusion concerning either:

- a. the distinctive purpose of the State's proposed introduction of gang-related activity as to the co-defendant; or
- b. the use of the evidence concerning the GWHC gang to show the victims', both deceased and living, propensity for violence and gang-related activity, specifically fighting at

bars and nightclubs. Further, the issue of the reply witness calling the applicant a "murderer" was not raised on appeal. This issue was not preserved as an issue for an appeal.

### LEGAL ANALYSIS

In a PCR action, applicant bears the burden of proving the allegations in his/her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland.

First, applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (*quoting* Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (*citing* Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (*citing* Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may

7 

have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight" Yarborough, 540 U.S. at 6; *see also* Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters' only in the rarest case." Harrington, 562 U.S. at 111-12 (*quoting* Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4<sup>th</sup> Cir. 2015) (*quoting* Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)). When performing the Strickland v. Washington analysis, it will be necessary to address the issue of prejudice in the order. In determining whether the applicant was prejudiced when trial counsel has been shown to be deficient, the record of the trial as a whole has to be examined to determine the strengths and weaknesses of the evidence that was presented to convict the applicant.

"In general, the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice. *See Strickland*, 466 U.S. 696, 104 S.Ct. At 269, 80 L.Ed. 2d at 699 (stating 'a verdict



... only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support’).”

State v. Smalls, 422 S.C. 174, 188, 810 S.E. 2d. 836, 843 (2018). In the case at bar, this sliding scale works to the benefit of applicant.

Appellate counsel, who testified credibly, opined that the State’s case was weak for establishing the elements of murder—including malice aforethought. Appellate counsel was unusually candid in his assessment of the weakness of the State’s evidence, and after a review of the transcript and accompanying materials, the Court is in general agreement with his assessment of the State’s evidence. As appellate counsel explained the record in this case is very bothersome and very sad, especially given that the evidence overwhelmingly seemed to indicate that the co-defendant was the killer and, as stated by appellate counsel, the bad guy. The weakness of the case is reinforced by the plea offers given to both defendants prior to this trial.

In determining prejudice, it is proper for a PCR court analysis to include a review of the State’s evidence to determine the reasonable probability of a different result.

**a. Reply Witness Testimony as to Ultimate Fact**

The last witness the jury heard told them that the applicant was a “murderer” without objection from either of applicant’s trial counsel. Here, applicant has carried his burden of proof as to counsel’s ineffective assistance in failing to object to the rebuttal witness’ in court declaration before the jury that that the applicant was a “murderer”. Both of applicant’s trial attorneys acknowledged, without hesitation, during the PCR hearing that an objection should have been made to the witness’s statement before the jury. Both applicant’s counsel acknowledged that this was a critical mistake which likely came about because they were surprised that the judge overruled their objection to allow a non-sequestered witness to testify. The testimony of appellate counsel in describing the testimony is consistent with this Court’s

view of the witness' testimony. In so many words, appellate counsel acknowledged that this testimony was damning. The impact of this statement is not only supported by the record as stated previously and opined by appellate counsel but also by the statements and testimony presented in the PCR hearing. Additionally, if the objection had been made, there is a high probability that the objection would have been sustained, and if not, it would have been raised on appeal and there is a reasonable probability it would have been successful. See e.g. Richmond v. Tecklenberg, 302 S.C. 331, 334, 396 S.E.2d 111, 113 (Ct. App. 1990) ("The general rule is that opinion testimony which is determinative of the ultimate fact in issue should be excluded as an invasion of the province of the factfinder."); cited in Reese v. State, 441 S.C. 392, n. 9 (Ct. App. 2023)(Issue was not addressed because appeal was granted on other grounds). See also, State v. Westmoreland , 421 S.C. 410, 807 S.E. 2d 701 (Ct. App. 2017)(Court reversed because "lay testimony" by coroner as to homicide as manner of death was improper) and State v McConnell, 316 S.C. 272 (Ct. App. 1994)(The question of who was driving at the time of the accident was an ultimate fact for determination by the jury).

**b. Gang Issues and Evidence**

**i. Appeal**

The Court finds that appellate counsel was deficient in not raising the issue of the trial judge's exclusion of evidence related to the victim's propensity for violence and gang membership. Appellate Counsel acknowledged this issue was of the same importance as the four (4) issues he chose to raise before the appellate court. Often in appellate decisions, failure to appeal claims are deemed frivolous. Such is not the case at bar. While appellate counsel acknowledges that he could not say there is "nothing on God's green Earth" in the record that an appellate court could find to support the trial decision to exclude the evidence, the record



supporting the Court decision is arguably insufficient. When appellate counsel's testimony is taken as whole, including his detailed analysis of the case law and facts before the trial judge, his sincere belief that he was wrong in not raising the issue is clear and credible. The reasonable probability of success on appeal with this issue was further supported in the analysis of the trial judge's confusion of the victim involvement in a prior violent activity a couple of months (60-90 days) – not years – before the Afterdeck incident. This evidence goes directly to the issue of the victims' propensity for violence and the victims' gang membership in the Get Wrecked Hate Crew. The analysis for the exclusion of relevant and exculpatory evidence would have been different than that of viewing the record to determine if evidence supports the denial of a directed verdict motion, and the court finds that a properly made appeal on this issue would have had a substantial likelihood for success on the merits.

**ii. Trial**

At the PCR hearing, Sgt. Tim Troxell testified as to his knowledge that the GWHC had been involved in an altercation within a couple of months of the incident at issue in this case. He was not called as a witness at the original trial or during defense counsel's proffer. While both of applicant's trial attorneys testified they should have called Sgt. Troxell as part of their case to bolster their gang argument. This Court agrees his testimony would have added to their argument related to admissibility of the gang evidence. However, based on a review of the record, this Court does not find an error was committed by his trial attorneys. The Court makes this ruling primarily because, regardless of the information Sgt. Troxell might have provided, the trial court was not going to allow the evidence of gang activity of any kind to be admitted by either side. The trial court viewed the State's gang issues related to the co-defendant and the gang issue related to GWHC as connected from an evidentiary and relevant standpoint. As explained—the



trial judge's confusion included that of how the gang issue related to the co-defendant should be linked to the gang issues related to the victim as a basis for excluding both. Upon consideration of the deposition of the solicitor and the transcript of the taped conversation, the significance of these items is minimal except to validate the pre-trial knowledge of the existence of the Get Wrecked Hate Crew gang, their propensity for violence, and Troxell's knowledge of the gang—all of which seemed to be uncontested by the State at the PCR hearing.

**c. Plea Negotiations**

As to the plea offer, the manner in which the plea offer was made and the time constraints placed on acceptance of the 10-year offer created a situation that, as PCR Counsel stated, was fundamentally unfair. Counsel was placed in a situation which made it virtually impossible to properly analyze, advise, and allow the applicant to reflect on the pros and cons of going forward to trial or accepting a plea agreement. This is a Hobson's Choice that strikes at the heart of the attorney/client relationship and the requirement that a client make a knowing and intelligent decision. While the Attorney General is correct that the State is under no obligation to make a plea offer, the plea offers to manslaughter had already expired—or was soon to expire—when the conference calls took place with the judge. Thus, an analysis that the applicant would have accepted the plea but for counsel's advice cannot be accomplished with any degree of confidence. This was not a plea offer presented in the customary manner that allowed time for reflective discussions of the facts and the law between the lawyer and the client. Further, because of the manner in which this plea offer was communicated, trial counsel and applicant clearly believed that no further negotiation was possible. While the Court is unaware of any objection which counsel could have made to this plea procedure, the availability of an alternative procedure for these discussions may well have produced a material



difference in the resolution of this case. In determining prejudice, it is proper for a PCR court analysis to include a review of the State's evidence to determine the reasonable probability of a different result. There are no witnesses who saw applicant stab anyone. The only knife found did not belong to applicant and it contained the blood of the co-defendant and, arguably, that of a victim. The surviving victims did not know who stabbed them, and one acknowledged that he, not the applicant, started the altercation by pushing someone. The co-defendant had made inculpatory statements to three witnesses, friends who were all willing to testify against him. Even the evidence of any type of conspiracy was virtually non-existent – teenage boys dressed alike at a nightclub.

In assessing a claim of ineffective assistance of counsel, this Court has examined the trial record and finds that the evidence of the applicant's guilt is clearly not overwhelming. See, *Rivers v. State*, S.C. 916 S.Ed 335 (2025). As such, the record before the PCR is significant in determining prejudice, or a lack thereof. The State's rebutting witness' declaration that the applicant was a "murderer" was improper and inflammatory. This witness testified in violation of the sequestration order. Even though trial counsel objected to the witness being allowed to testify, trial counsel did not object after the statement was made. The lack of objection was admitted by the trial attorneys as being clearly an error and was not contested during the hearing. This Court agrees with Appellate's Counsel's analysis of the evidence, or weakness thereof, of applicant's guilt. Thus, there is a reasonable probability of a different result for PCR purposes.

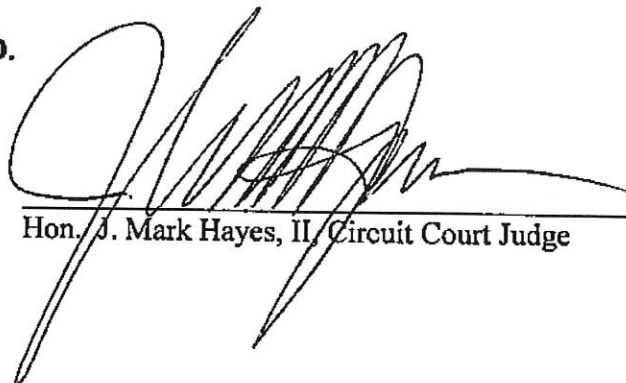
Any one of the failures identified herein create a substantial likelihood of a materially different result both at trial and in the appeal. Taken together, these compounded errors create the overwhelming likelihood of a different result.



**CONCLUSION**

For the reasons stated herein, Griffith's Petition for Post Conviction Relief is granted and this matter is remanded to the Court of General Sessions.

**AND IT IS SO ORDERED.**



Hon. J. Mark Hayes, II, Circuit Court Judge

Spartanburg, South Carolina  
Date:

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home detention, in the local detention center, or in the South Carolina Department of Corrections. Because his time incarcerated has exceeded all of the sentences except the sentence for murder, the focus of this Court's review related solely to the murder conviction.

### ANALYSIS

As an initial matter, the Court notes that its prior factual determinations and conclusions of law remain the same and are not altered. While the State contended that substantial evidence of the Applicant's guilt of murder exists in the record before the Court, the Court strongly disagrees. The State's case was based on circumstantial evidence, when examined, that reflects the weakness of the State's evidence as to guilt and mens rea – especially as to the malice aforethought element. The underlying event that led to the tragic death of the victim was a bar fight amongst strangers. Key evidence upon which the State relied included that the Applicant and his co-defendant had purchased knives; however, the Applicant's knife was never recovered, and his co-defendant's knife may have had the victim's blood on it. Further, no one who testified could tell who struck the fatal blow to the victim in this matter.

The State's most compelling testimony against Applicant is at the crux of this Court's decision. After the defense called three third-party guilt witnesses each of whom testified that the co-defendant had confessed to being the one who fatally stabbed the deceased victim, the State called Kayla Houk, a potential witness who had not been sequestered, presumably because the State had no intention of calling her as a witness. As noted in the Court's Order, over the strenuous objection of defense counsel, the State was allowed to call this witness. Her testimony concluded with the statement that she did not "want to be friends with a murderer," and counsel did not object. Further, both of Applicant's trial attorneys acknowledged in testimony that they should have objected to the statement, and that the judge would have rightly excluded it from evidence.

My ruling as to the testimony of Kayla Houck will not be altered. The Court finds that counsels' failure to object was not a strategic decision. Counsel for Applicant rightly suggested that the trial court's decision to allow the testimony of an un-sequestered witness so surprised trial counsel that they simply were not effective during Ms. Houk's testimony. This Court agrees. The State contends that this mistake was encompassed in the Court of Appeals denial of Applicant's appeal. See State v. Griffith, Unpublished Opinion No. 2017-UP-119 (S.C. Ct App. dated March 15, 2017)(No precedential value). That ruling, however, merely stated that it is within the trial court's discretion to exempt or allow testimony from an un-sequestered witness. Id. at p.3 (Numbered Paragraph 3). The knowledge that the issue of Ms. Houk testifying was within the trial court's discretion gives further credence to trial counsels' explanation of why they did not object. Thus, when both counsel admit the error in not objecting to Kayla Houk's statement as to the ultimate fact before the jury, that the Applicant "was a murderer", this Court finds that it is not simply a fabrication to benefit the Applicant. Whether any remedy, including either a curative instruction or new trial, would have been granted is unknown and unknowable, and, moreover, this Court does not believe that Houk's actual testimony constituted harmless error. This Court finds that there is a reasonable probability that the outcome of the trial would have been different had either counsel made a proper objection. This Court's assessment of the weakness of the State's case and the significance of the witness' testimony is likewise supported by the testimony of appellate counsel.

Further, the issues related to appellate counsel have been reconsidered and this Court affirms its prior ruling. The State asserts that the gang issue sought to be introduced by the Applicant was tied to the State's trial presentation of the gang issue. This is an erroneous statement. The State's gang evidence at trial was different than the gang evidence attempted to be

produced by the defense. The two were not related. The State sought to place the Applicant and his co-defendant in a gang, and there was no evidence in support of this contention. Applicant's counsel sought to show that there was evidence that the deceased and his friends were in a gang. It is clear that the trial court did not understand the Applicant's Trial Counsel's position that prior violent gang evidence of the victim occurred shortly before the incident that led to the instant conviction. Specifically, Sergeant Troxell made it clear that the time frame for gang violence related to the victim prior to his death was weeks, not years. The State's contention that the judge was not confused is simply not supported by the record. The Court holds that Appellate counsel's statement of error is not based on simple hindsight, and there is a reasonable probability of a different result had Appellate Counsel pursued that issue on appeal.

As to the issues concerning the eleventh hour plea offer, the Court reiterates its previous finding of no error by plea counsel. The actions of trial/plea counsel during the plea negotiations appear reasonable under the circumstances as presented. Of course, Applicant is free to argue on appeal that this Court is mistaken; however, plea counsel's<sup>1</sup> advice to go forward with a trial was not error. While the State argues for a broad definition of "plea offer" in this case, the plea offer at issue was solely the offer that was presented during the colloquy with the trial judge during two phone calls. The State's original plea offer had expired and is not an issue in this case. It is very likely that the lack of time to discuss the case did affect counsel's advice, and with different advice and more time, the Applicant may very likely have accepted the new offer. Nonetheless, it remains far better for the Applicant to have received such an offer clarifying that the likely sentence to a Voluntary Manslaughter plea would have been 10 years with credit for service of five (5) years on

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<sup>1</sup> For clarity the Court notes that, at the plea negotiations at issue herein, only one of Applicant's two lawyers was present for the colloquy with the Court.

house arrest than to have never received such an offer. Notwithstanding the foregoing, this Court does not alter the findings concerning the last plea offer and colloquy with the Court as explained in the prior order.

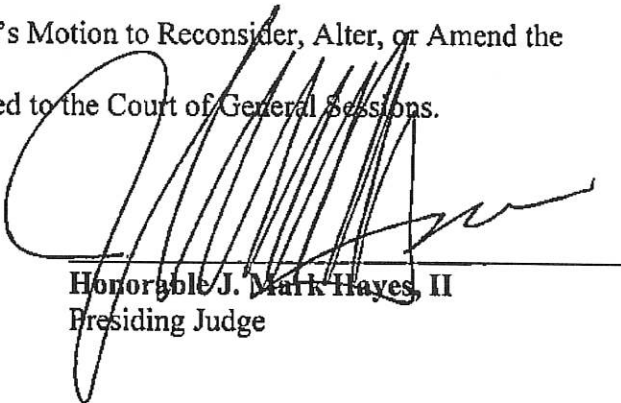
In sum, the Court finds that the evidence against the Applicant at trial was weak and not compelling. For that reason, any error by counsel at either the trial or appellate stage must be examined to determine if, but for the error(s), there is a reasonable probability of a different result. The failure to object to Ms. Houk's characterization of Applicant as a murderer left that statement as the last thing the jury heard in the trial. It undoubtedly had an effect on the consideration the jury gave of (1) the co-defendant's confessions to three third parties; and (2) the lack of testimony as to who stabbed the decedent. Further, appellate counsel was clear that he should have focused on the issue concerning the trial court's confusion as to the gang issue. In addition, this Court's review of the issue in the record reinforces the finding that this was an error that reasonably could have altered the outcome of the appeal.

#### CONCLUSION

For the reasons stated herein, the State's Motion to Reconsider, Alter, or Amend the Judgement is denied and this matter is remanded to the Court of General Sessions.

**AND IT IS SO ORDERED.**

December 29, 2025  
Spartanburg, South Carolina



Honorable J. Mark Hayes, II  
Presiding Judge