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**Apr 24 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY  
Appeal from the Court of Common Pleas  
Honorable Jean Hoefler Toal, Post-Conviction Relief Court Judge

Case No. 2014-CP-40-02479

Chamar D. Scott, SCDC #344297, ..... Respondent,  
v.  
State of South Carolina, ..... Petitioner.

**NOTICE OF APPEAL**

The State of South Carolina appeals the Honorable Jean Hoefler Toal's order granting post-conviction relief filed on March 9, 2026. The State filed a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRPC, which Judge Toal denied by written order filed on March 27, 2026, and received on March 27, 2026. Copies of both orders are attached hereto.

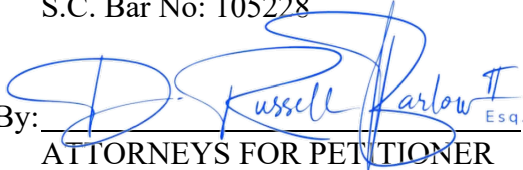
April 24, 2026

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

D. RUSSELL BARLOW, II  
Senior Assistant Deputy Attorney General  
S.C. Bar No: 105228

By:  Esq.

ATTORNEYS FOR PETITIONER  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

Other Counsel of Record:  
Dayne C. Phillips, Esquire  
Price Benowitz LLP  
1614 Taylor Street, Suite D  
Columbia, SC 29201  
Attorney for Respondent

cc: Honorable Jeanette W. McBride, Richland County Clerk of Court  
Honorable Jean Hoefler Toal, Post-Conviction Relief Judge

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
)  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)  
)

CHAMAR D SCOTT,  
Applicant,

) Case No.: 2014-CP-40-02479  
)

v.

STATE OF SOUTH CAROLINA,  
Respondent.

) **ORDER ON REPENDENT'S MOTION**  
) **TO RECONSIDER, ALTER, OR AMEND**  
)  
)

FILED  
RICHLAND COUNTY  
2026 MAR 27 PM 3:30  
JEANETTE W. McBRIDE  
CLERK, G.S., & F.O.

By written Order filed March 9, 2026, this Court granted post-conviction relief to Applicant Chamar D. Scott and remanded this matter to the Richland County Court of General Sessions for new trial, finding that trial court's decision to adopt first trial court's pre-trial rulings was a structural error.

This matter was originally called for trial before Circuit Court Judge G. Thomas Cooper. Judge Cooper conducted an extensive two-day pretrial hearing on a multitude of motions made by defense counsel regarding admissibility of statements of defendant and his co-defendant, admissibility of cell phone records, failure of prosecution to provide adequate discovery, and a myriad of other issues regarding the procedure and admissibility of evidence at the trial over which he was presiding. Judge Cooper then conducted the selection of a jury, but before the jury was sworn Judge Cooper declared a mistrial.

The matter was then called for a new trial before Circuit Court Judge Clifton Newman. Judge Newman announced that he had reviewed the transcript of the first trial and would adopt Judge Cooper's pretrial rulings, but would allow Trial Counsel to present any additional arguments with regards to the rulings made by Judge Cooper. This Court found, under the authority of *State v. Rivera*, 402 S.C. 225, 741 S.E.2d 694 (2013), and *State v. Dennis*, No. 28314, 2026 WL 218221, at \*1-8 (S.C. S.C. Jan. 28, 2026), that Judge Newman's adoption of Judge Cooper's findings was error and that pursuant to *Rivera* this was a structural error, which required a new trial. The Respondent argues that because Judge Newman invited additional arguments, he made independent rulings and therefore there is no structural error. The record does not support this contention by the Respondent.

As the South Carolina Supreme Court in its opinion authored by Chief Justice Kittredge in *State v. Dennis* held “when a mistrial is granted, the parties must relitigate any prior rulings or matters inextricably linked to the matter itself”. *State v. Dennis*, No. 28314, 2026 WL 218221 at \*3 (S.C. S.C. Jan. 28, 2026). That is precisely what happened in this case.

The Respondent further argues that the Supreme Court’s rulings in *State v. Dennis* upholding the propriety of using prior rulings regarding a “stand your ground” defense under the Protection of Persons and Property Act in a subsequent trial after mistrial support Respondent’s contentions that Judge Newman’s adoption of Judge Cooper’s rulings was not a structural error. This Court disagrees with that analysis and believes that the Supreme Court’s *State v. Dennis* opinion makes it clear that the “stand your ground” issue is a freestanding independent proceeding not involved in pretrial rulings regarding substantive evidentiary matters connected with the trial of the charge itself. Thus, Judge Cooper’s pretrial rulings could not be used in any way by Judge Newman at retrial since these rulings were all related to the “mechanics of the trial”. The mistrial nullified in their entirety any rulings of Judge Cooper pretrial or otherwise and “placed [the] parties in the same position as if no trial had occurred at all”. *Id.* Accordingly, this court declines to reconsider its prior rulings and DENIES Respondent’s Motion to Reconsider, Alter or Amend its previous order.

**IT IS SO ORDERED.**

***[JUDGE’S ELECTRONIC SIGNATURE PAGE TO FOLLOW]***



Richland Common Pleas

**Case Caption:** Chamar D. Scott, #344297 vs. State of South Carolina

**Case Number:** 2014CP4002479

**Type:** Order/Other

So Ordered

Jean H. Toal

THE STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 CHAMAR D SCOTT, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

Case No.: 2014-CP-40-02479

**ORDER GRANTING APPLICANT  
 POST-CONVICTION RELIEF**

2026 MAR -9 PM 4: 10  
 JEANNETTE W. NEBRIDE  
 C.C.P., G.S.  
 RICHLAND COUNTY  
 FILED

Initially, this matter came before this Court by way of Chamar D. Scott's (Applicant's) first Application for Post-Conviction Relief (PCR) filed on April 16, 2014. Respondent, the State of South Carolina, filed its Return on December 29, 2014, requesting an evidentiary hearing on the claims of ineffective assistance of counsel. On March 26, 2015, Applicant filed an Amended Application for PCR.

On December 7, 2016, an evidentiary hearing was convened before this Court. Applicant was present and represented by Anna R. Good, Esquire ("Counsel Good"). Assistant Attorney General Jessica E. Kinard, Esquire ("AAG Kinard"), represented Respondent. Following testimony, this Court retained jurisdiction over the case to permit parties to explore Applicant's allegations further.

On February 14, 2022, Dayne C. Phillips, Esquire ("PCR Counsel"), filed a Substitution of Counsel indicating Applicant had retained him for his PCR action. On February 28, 2023, Applicant, through PCR Counsel, filed an Amended Application for Post-Conviction Relief and a Motion for Leave to Obtain Discovery in a PCR Action. On May 10, 2024, Respondent filed its Return to Applicant's Amended Application for Post-Conviction Relief. On July 26, 2024, PCR

Counsel filed a Second Amended Application for Post-Conviction Relief. On September 10, 2024, Respondent filed its Return to Applicant's Second Amended Application for Post-Conviction Relief.

A second evidentiary hearing was convened on October 31, 2024, before this Court at the Richland County Judicial Center. Applicant was present and represented by retained PCR Counsel. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant testified on his behalf at the evidentiary hearing and presented the testimony of Robert M. Dudek, Esquire ("Appellate Counsel") and L'Renz Mikhaal Scott ("L'Renz").

At the close of evidence and arguments of counsel, this Court requested that the parties submit proposed orders for this Court's review and consideration. On January 29, 2025, PCR Counsel submitted a sixty-one-page Proposed Order granting relief for Mr. Scott. On September 2, 2025, the Attorney General submitted a 107-page Proposed Order on behalf of the State denying relief to the applicant. A supplemental hearing was convened before this Court on October 10, 2025.

After reviewing the three volume Record of Appeal of the trial and retrial, Proposed Orders from the parties, and considering the additional evidence presented, briefs, and arguments presented at the several hearings on this matter, this Court grants this PCR Application requesting a new trial based on the findings and analysis set forth below.

### **PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant and Co-Defendant Terrence Greene were each indicted during the April 2010 term of the Richland County Grand Jury for Murder (2010-GS-40-00526). Applicant was represented by Mark E. Schnee ("Trial Counsel").

Fifth Circuit Assistant Solicitors K. Luck Campbell, Joanna McDuffie, and Nicole Simpson prosecuted the case.

Chamar Scott and Terrence Greene proceeded to trial on December 13-15, 2010, before the Honorable G. Thomas Cooper, Jr. After the jury was selected but before the jury was sworn, a mistrial was declared.

Applicant and Co-Defendant Terrence Greene appeared before the Honorable Clifton B. Newman on January 4, 2011, to commence their retrial. At pretrial hearing, on his Motion Terrence Greene was severed and Applicant proceeded to his second trial on January 4–11, 2011, before Judge Newman. The evidence presented by the State upon which this application is based can be summarized as follows.

**SUMMARY OF THE STATE'S CASE  
AS PRESENTED AT APPLICANT'S RETRIAL**

On a bitterly cold morning in early January 2010, the severely battered and only partially clothed body of twenty-three-year-old Andraed Henry was found on the rocks of a partially abandoned residential construction site in Northeast Richland County. The State's case was that Terrence Greene, age sixteen, and PCR Applicant Chamar Scott, age seventeen, contacted Victim Henry on Scott's mother's cell phone to purchase marijuana. Their plan was to rob Henry. On this Sunday morning, Henry picked up Greene and Scott at Scott's house in his red SUV and drove to a nearby construction site. Scott was in the back seat and Greene was in the front passenger seat. When they arrived, Scott put a gun to Henry's head and the three began to fight. They exited the SUV and continued to fight. The gun was not operable. Greene had a knife and Scott picked up a large rock. They stabbed and beat Henry until he collapsed. Greene took money from Henry's pocket, and he and Scott drove away in Victim Henry's red SUV. They drove to Sumter, SC, and contacted Andrew (Drew) Greene, a cousin of Terrence Greene. Andrew, in his own car, led

Terrence Greene and Scott to a remote site in Sumter County. On the way, the group stopped at a gas station and used Drew Greene's gas can to purchase gasoline. When they arrived at the remote site, they used the gasoline to burn Henry's SUV. Drew Greene then drove Scott and Terrence Greene back to Sumter to a person who drove them back home. Several days later, Henry's body was found by a construction site inspector.

Unsurprisingly, given all the people involved in this matter, the Richland County Sheriff's Department and SLED quickly developed leads which focused on Terrence Greene and Chamar Scott. Law enforcement developed a list of cell phone numbers for Terrence Greene, Scott (who used his own phone and his mother's cell phone), Victim Henry, and other known friends. Law enforcement was able to use cell phone tower pinging data from providers T-Mobile and Verizon towers in Richland and Sumter counties to trace a number of calls to and from Scott, Terrence Greene, Victim Henry, and their associates. Several days after Henry's badly battered body was discovered, Terrence Greene and Chamar Scott were arrested and charged with his murder. Greene and Scott each gave statements to Richland County deputies, waiving their Miranda rights and implicating themselves and each other in the murder of Henry. The jury found applicant guilty of Murder, the only charge upon which he was prosecuted. He was sentenced to forty years imprisonment.

### **POST-TRIAL FILINGS**

Applicant filed a timely Notice of Appeal. Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense perfected Applicant's appeal by filing an *Anders* brief with the following issue:

The court erred by refusing to instruct the jury on the law of voluntary manslaughter where appellant told the police the decedent was apparently killed during a fist fight since this constituted evidence of a heat of passion and sufficient legal provocation entitling appellant to that lesser-included offense instruction.

*Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. *State v. Scott*, Op. No. 2013-UP-398 (S.C. Ct. App. filed October 30, 2013). The Remittitur was returned to the lower court on November 18, 2013.

### CURRENT PCR APPLICATION

On April 16, 2014, Applicant filed an application requesting post-conviction relief, alleging that he is being held in custody unlawfully:

1. Ineffective Assistance of Counsel
  - a. Counsel “failed to fully advance issues at trial or an appeal.”
2. Due Process Violation:
  - a. “The arrest warrant contains false information in violation of the Fourth Amendment.”
  - b. “The conviction was obtained in violation of Sixth [and] Fourteenth Amendment rights.”

On December 19, 2014, Respondent filed its Return.

On March 26, 2015, Applicant filed his first amended PCR application, alleging that he is being held in custody unlawfully:

1. Ineffective Assistance of Counsel
  - a. Trial Counsel failed to review discovery with Applicant prior to trial.
  - b. Trial Counsel failed to investigate and call witnesses on Applicant’s behalf.
  - c. Trial Counsel failed to argue *State v. Belcher* regarding jury charge of malice.

On December 7, 2016, the Applicant first appeared before this Court for an evidentiary hearing and argument on his PCR. PCR I Tr. 1 – 85. Anna R. Good represented Applicant, and Assistant Attorney General Jessica E. Kinard represented Respondent. Applicant requested to relieve PCR Counsel. PCR I Tr. p. 3. This Court proposed that the Applicant proceed with the hearing, and the Court would consider his request after hearing his testimony. PCR I Tr. p. 5. Applicant and Trial Counsel testified at the first PCR hearing.

Applicant testified that PCR Counsel failed to review the matter with him and failed to

share his requested amendments to his application with the Court. PCR I Tr. pp. 35 – 56. This Court ultimately denied his request to relieve Attorney Good as PCR Counsel. PCR I Tr. pp. 77 – 78. At the conclusion of the hearing, this Court outlined the following issues that were concerning: (1) whether Judge Newman, Retrial Judge, erred in adopting mistrial Judge Cooper’s rulings; (2) whether the jury received the unredacted photographic lineup during their deliberation; (3) whether State's Exhibit #129, line up, was available for this Court’s review; (4) the cell phone expert located by Applicant's family to allegedly rebut the State's cell phone expert; and (5) whether it was error for Appellate Counsel to fail to raise the cell phone evidence and photographic lineup issues on direct appeal. PCR I Tr. pp. 75-77.

This Court ultimately decided to retain jurisdiction over the case and leave the record open for both sides to explore the following issues: (1) Cell phone expert for rebuttal; (2) Whether the jury received the unredacted photographic lineup; and (3) the *Belcher* issue regarding the inferred malice jury instruction. PCR I Tr. p. 78. This Court also noted the following issues: “(A) the voluntariness of his statement, (B) the voluntariness of the statement of his Co-Defendant, and (C) the issue of whether [in]voluntary manslaughter should have been charged.” PCR I Tr. pp. 80 – 81.

On February 14, 2022, Dayne Phillips (PCR Counsel) filed a motion for substitution of counsel indicating Applicant had retained him for his PCR action. On February 22, 2023, the Applicant filed an Amended Application for Post-Conviction Relief and a Motion for Leave to Obtain Discovery in a PCR Action.

Trial Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. *See* S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel’s unreasonably deficient performance fell below an objective standard of reasonableness

“under prevailing professional norms” and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel’s errors, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims); *see also Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result”. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

Appellate Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel’s unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel’s errors, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucey*, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

Specifically, Applicant alleged the following acts or omissions of ineffective assistance of

Trial Counsel:

1. Ineffective Assistance of Trial Counsel.

- (1) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant’s defense.
- (2) Trial Counsel failed to interview critical witnesses who could have added to the credibility of Applicant’s case and challenged the credibility of the State’s witnesses when it was reasonable and necessary to do so in preparation for trial.
- (3) Trial Counsel allegedly had a private investigator work on Applicant’s case but never provided Applicant with any documents or affidavits related to any investigation done in this case. Private investigator, Elizabeth Cook, never spoke to Applicant or his brother, L’Renz Scott.
- (4) Trial Counsel failed to adequately investigate the issues related to Rashawn Keno (cell phone video recording and alleged confession).
- (5) Trial Counsel failed to adequately investigate the issue with Brandon King (witness who was an inmate in the Alvin S. Glenn Detention) and the cell phone video recording.
- (6) Trial Counsel failed to reasonably locate Applicant’s alibi witness,

Joseph Williams, who lived at Rice Creek Terrace on Hard Scrabble Road.

- (7) Trial Counsel failed to consult and subpoena a representative and corresponding documents from Verizon Wireless to testify regarding the viability of using GPS or cell site location data from his cell phone (Samsung flip phone).
- (8) Trial Counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding Applicant's good character and reputation when it was reasonable and necessary to present this evidence at trial and request a jury instruction on good character and reputation.
- (9) Trial Counsel failed to file a supplemental motion for discovery or motion to compel disclosure of evidence to ensure all Material and impeachment evidence had been disclosed by the State.
- (10) Trial Counsel failed to properly prepare for trial and provide adequate/accurate advice to Applicant prior to trial.
  - a. Trial Counsel met with Applicant twice prior to trial, was admittedly missing material evidence, and failed to adequately communicate with him.
  - b. Trial Counsel failed to obtain and review all discovery with Applicant in preparation for trial. Counsel failed to review the video recordings with him and cell site location data.
  - c. Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
  - d. Trial Counsel failed to advise and provided erroneous advice regarding the plea negotiations, status of Applicant's case, and nature of the scheduled court proceedings including failing to notify him of the scheduled trial.
- (11) Trial Counsel denied Applicant his right to present a full and complete defense.
- (12) Trial Counsel failed to object and challenge the Trial Court's decision to adopt the first Trial Court's pretrial rulings after a mistrial occurred during the original trial.
- (13) Trial Counsel failed to move to have the letter submitted to the Trial Court as a Court's Exhibit to preserve that document for appellate review.
- (14) Trial Counsel failed to properly raise, argue, and preserve for appellate review whether Applicant voluntarily provided a statement to law enforcement.
- (15) Trial Counsel failed to adequately challenge the critical omitted information from the Arrest Warrant that were used to support probable cause for Applicant's arrest.
- (16) Trial Counsel failed to adequately challenge the Search Warrant during an in-camera suppression hearing where the affiant had provided false or misleading information in reckless disregard for the truth.
- (17) Trial Counsel failed to object and preserve for appellate review the Trial Court's instructions to the jury (i.e., containing the prohibited search for the

- truth language) that improperly shifted the burden of proof and misstated the law in violation of Applicant's Due Process right to a fair trial.
- (18) Trial Counsel failed to properly object and argue against the admission of a photo-lineup presented by the State that should have been properly redacted to ensure Applicant's right to a fair trial removing hearsay and unduly prejudicial statements.
  - (19) Trial Counsel failed to properly challenge the admissibility of the cell phone diagram presented by the State and adequately confront the witness who testified regarding the diagram.
  - (20) Trial Counsel failed to object and preserve for appellate review the Trial Court's jury instruction for the jury to infer malice from the use of a deadly weapon as an unconstitutional comment on the facts.
  - (21) Trial Counsel's failed to object and preserve for appellate review inadmissible and unduly prejudicial evidence during Applicant's trial.
  - (22) Trial Counsel failed to contemporaneously object to inadmissible evidence and move to strike prejudicial testimony during Applicant's trial.
  - (23) Trial Counsel failed to object, move for a mistrial, and preserve for appellate review the State's improper closing argument that was a misstatement of the evidence and unduly prejudicial. Additionally, the Prosecutor's comments were calculated to arouse the jurors' passions or prejudices and vouched and bolstered the credibility of the State's witnesses.
  - (24) Trial Counsel failed to properly raise and preserve for appellate review the issue of whether the State unconstitutionally called his case for trial.
  - (25) Trial Counsel failed to present a reasonable trial strategy in Applicant's defense.
  - (26) Trial Counsel failed to subject the prosecution's case to meaningful adversarial testing by not adequately preparing for trial and having an unreasonable trial strategy.
  - (27) All allegations raised by Applicant in the prior pleadings filed in this action are thereby incorporated by reference as if fully set forth verbatim.

2. Ineffective Assistance of Appellate Counsel:

- (28) Appellate Counsel failed to raise and argue the issue of whether [Applicant's] statements involuntarily provided to the police.
- (29) Appellate Counsel provided ineffective assistance in the event Trial Counsel properly preserved other meritorious issues for appellate review.

Applicant requested relief in the form of vacation of his convictions and sentences and "remanding the indictments for a new trial based on ineffective assistance of counsel."

On July 16, 2024, Applicant filed a Second Amended PCR Application, adding the following additional allegations that he is being held in custody unlawfully:

- (30) Trial Counsel failed to move for a *Franks* hearing to challenge the

affidavit supporting the arrest warrant that contained omissions of exculpatory material and did not contain sufficient information to establish probable cause.

- (31) Trial Counsel failed to properly argue for a continuance to preserve the issue for appellate review.
- (32) Trial Counsel failed to properly challenge the unduly prejudicial photo lineup and to move for a mistrial after the jury received the improperly redacted photo-lineup for their deliberations.

## **SECOND PCR HEARING**

On October 31, 2024, Applicant appeared before this Court for a second hearing on the above-captioned PCR action. PCR II Tr. 1 – 233. PCR Counsel also added the allegation, a thirty third citation of error, that Trial Counsel provided ineffective assistance by failing to request jury instruction for mutual combat.

## **WITNESSES PRESENTED**

### **Robert Dudek**

At the hearing, Applicant called Chief Appellate Defender Robert Dudek (CAD Dudek) as his first witness. CAD Dudek testified that he was working as Chief Appellate Defender in 2011 and explained that he assigned Applicant's case to himself. CAD Dudek testified that he filed an *Anders* brief on Applicant's behalf because he did not believe any meritorious issues were preserved for appellate review. CAD Dudek explained that Trial Counsel could have objected to Judge Newman adopting the pretrial rulings from the mistrial.

CAD Dudek testified that the Trial Counsel did not move for a *Franks* hearing to preserve that issue for appellate review. CAD Dudek also testified that Trial Counsel's failure to object to the "search for the truth" language did not preserve that issue for appellate review. CAD Dudek further testified that if there was any evidence lessening the probability of murder, then the inferred malice jury instruction should not be given under *Belcher*, and that Trial Counsel did not object to

this jury charge.

CAD Dudek explained that it was Trial Counsel's duty to object to the photographic lineup to preserve that issue for appellate review. CAD Dudek testified that allowing the unredacted photo lineup with the notary on it put undue emphasis on this one piece of evidence. CAD Dudek stated that demonstrative evidence should not have been sent to the jury room. CAD Dudek also testified that Trial Counsel had a duty to inform the prosecution of an alibi defense.

On cross examination, CAD Dudek explained that in an *Anders* brief, the Appellate Court reviews the entire record. CAD Dudek also testified that the issue of misstatements during Miranda warnings are very difficult to win on appeal because of the often-conflicting testimony of law enforcement and the defendant.

#### **L'Renz Scott**

L'Renz Scott, an alibi witness who was not offered at trial, testified that he is Applicant's brother, and he was eleven at the time of his brother's arrest. L'Renz also testified that he remembers the day that Applicant was arrested, and that he was never contacted by Trial Counsel or the private investigator, Elizabeth Cook. L'Renz further testified that the original PCR Counsel, Anna Good, never contacted him.

L'Renz testified that he was with the Applicant on the day of the incident. L'Renz said that Applicant left their home for no more than fifteen minutes, sometime between noon and 1:00 PM, and returned with someone named "Joe". L'Renz testified that he later learned that this person's name was Joseph Williams. L'Renz explained that they played video games and watched television until around 8:00 PM that night when Joe and Applicant. L'Renz noted that Applicant came back home shortly thereafter.

On cross-examination, L'Renz testified that Applicant only left the home for a maximum

of fifteen minutes. L'Renz also said that Terrence Greene was not with Applicant that day.

On redirect examination, L'Renz clarified that Applicant left the home between 12:00 PM and 1:00 PM for no more than fifteen minutes and returned with Joe. L'Renz said that Applicant later left with Joe, briefly between 8:00 and 9:00 PM, before returning home.

### **Chamar Scott**

Applicant testified that he met with Trial Counsel no more than one or two times. Applicant testified that Trial Counsel never reviewed the evidence with him. Applicant said that Trial Counsel never advised him of his rights or discussed a trial strategy with him. Applicant explained that Trial Counsel did not prepare him for his pretrial testimony. Applicant testified that he signed the Advisement of Rights at the police station but did not know what he was signing because it was not explained to him.

Applicant testified that he sent a letter to Judge Newman requesting to relieve Trial Counsel due to Counsel not meeting with him to prepare for trial. Applicant said that he sent this letter to his mother, who then typed it out and submitted it to Trial Counsel. Applicant stated that the letter was with the case file provided to him by his original PCR Counsel. Applicant testified that he later found out that Trial Counsel had been disbarred.

Applicant stated that he never met with or spoke to the private investigator. Applicant testified that Trial Counsel informed him that she would meet with him but never did. Applicant said that he informed Trial Counsel of his alibi witnesses and explained where Joseph Williams lived near his residence. Applicant testified that there was no effort to locate his alibi witness Joseph Williams.

Applicant testified that Trial Counsel advised him that it would not be a good idea for his brother to testify due to his age and him being a relative. Applicant also testified that he talked to

Trial Counsel about Brandon King informing him that Rashawn Keno confessed to the murder. Applicant noted that Trial Counsel did not present those witnesses.

Applicant testified that, on the date of the incident, he left his house and met up with Joseph Williams. Applicant stated that he was gone for no more than twenty minutes that day. Applicant explained that they returned to his home and played video games with his brother. Applicant testified that he left again that night to walk Joe to his house, smoked cigarettes, and then went back home. Applicant stated that he was gone for no more than thirty minutes before returning home.

Applicant testified that there was no conversation with Trial Counsel about trial strategy between the first and second trial. Applicant also testified that he believes Trial Counsel should have moved for a *Franks* hearing and challenged the finding of probable cause in the arrest warrant. Applicant further testified that the police coerced the Co-Defendant's statement because of his age and by placing a gun on the table in the interrogation room. Applicant maintained that Trial Counsel should have objected to the implied malice jury instruction and during the Solicitor's closing argument. Applicant stated that Trial Counsel had acknowledged his mistake not to object at the first PCR hearing.

Applicant explained that he had not seen the redacted photographic lineups until the original PCR Counsel sent it to him, and that Trial Counsel never discussed the photographic lineup with him. Applicant testified that it was possible that the photo lineup bearing the word "murder" went to the jury because there is no mention of the redacted lineup in the transcript. Applicant testified that Trial Counsel should have addressed this issue and should have objected that to the redacted photographic lineup.

Applicant testified that Trial Counsel wanted to move for a continuance based on waiting

for GPS tracking on Applicant's cell phone, but it was ultimately determined that the flip phone he had at the time was unable to be tracked with GPS. Applicant contended that Trial Counsel should have gotten expert to testify that the tracking was not GPS, but cell tower tracking, which was not 100% accurate. Applicant also stated that if he had been called to testify at trial, he would have provided the same testimony.

On cross-examination, Applicant said that Joseph Williams only lived a few minutes away, not about a mile away like he said at his first PCR hearing. Applicant also testified to knowing Joe's full name as Joseph Williams. Application stated that he was unsure if Trial Counsel looked for Joe but is convinced that he did not. Applicant testified that Trial Counsel did not view the cell phone video of someone claiming to have committed the murder. Applicant admitted that Trial Counsel did ask for a voluntary manslaughter charge.

On redirect examination, Applicant clarified that he provided Trial Counsel with Joe's full name during his first meeting with Counsel. Applicant also testified that Appellate Counsel raised the *Belcher* issue in the *Anders* brief because there was evidence to support a voluntary manslaughter instruction.

### **PCR STANDARD OF REVIEW**

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. To establish ineffective assistance of counsel, a Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). "First, [a Petitioner] must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). "The second prong of the *Strickland* test requires a showing that the deficient

performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, a Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result” when seeking relief based on ineffective assistance of counsel. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

In a PCR action, “[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). “Decisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). “Ordinarily, the existence of ‘overwhelming evidence’ does not automatically preclude a finding of prejudice.” *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, “for the evidence to be ‘overwhelming’ such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of ‘a reasonable probability . . . the factfinder would have had a reasonable doubt’ cannot possibly be met.” *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

As set forth above, Applicant’s second PCR Counsel cites over thirty-three errors which PCR Counsel contends support the Applicant’s petition for a new trial. In each case, the contention is either Trial or Appellate Counsel was ineffective in failing to perform certain duties and that these failures so prejudiced the applicant as to require the granting of a new trial. There is, however, an overarching issue which I believe, in and of itself, supports the granting of a new trial, and that

is the decision of Trial Judge Clifton B. Newman in the second trial to adopt the pretrial rulings in the first trial made by Judge G. Thomas Cooper Jr. before the original trial ended in a mistrial. For the reasons set forth below, I find that this Court cannot consider any of the PCR grounds submitted by the Applicant except for his twelfth citation of error pertaining to the adoption on retrial by Judge Newman of the rulings of Judge Cooper in the first trial.

### **TRIAL COURT'S DECISION TO ADOPT FIRST TRIAL COURT'S PRETRIAL RULINGS IS A STRUCTURAL ERROR**

This matter has focused for many years on a plethora of issues that Applicant and his PCR Counsel have pursued related to procedural and evidentiary matters. During this PCR process, Applicant has been allowed to pursue additional discovery and has raised many new PCR issues over the course of the several hearings this Court has conducted. Even the issue regarding the propriety of Trial Judge Clifton B. Newman adopting as his rulings the rulings of the first Trial Judge have been characterized as a failure on the part of trial counsel to properly object to Judge Newman's decision to adopt the rulings of Judge Cooper. At the commencement of the trial, Judge Newman made the following statement:

“As I have stated, I have reviewed the transcript with respect to the arguments made before Judge Cooper. My rulings as the same as Judge Cooper's rulings, other than the rulings regarding severance”. If there is anything else he did not rule on, to which Mr. Schnee responds “Judge there were a few”.

R. on Appeal vol. 1 at 405. Then, as Judge Newman continued to discuss pretrial rulings, Trial Counsel for the applicant stated as follows:

“I would like to raise to the Court's attention the case of *State v. Otis Smith*, 336 S.C. 39, a case where a mistrial occurred, a second trial was held in front of the same trial judge, and there was an issue for a *Biggers* hearing.

In that particular case, the same Judge was rehearing the pretrial, and he refused to hear the actual testimony from the witnesses, and just made the same ruling that he had made in the prior trial.

The Court of Appeals held that that was error, specifically holding that a proceeding ending in a mistrial has no binding adjudication upon the parties, essentially that no trial had ever

taken place, it is a complete nullity.

In particular, Your Honor, any of the motions regarding witness testimony, I believe that Your Honor should rehear in their entirety.”

R. on Appeal vol. 1 at 410-11. I believe that it is clear from the record that trial counsel did attempt to preserve the issue of the error in Trial Court’s decision to adopt the first Trial Court’s pretrial rulings. It may have been error by Appellate Counsel not to raise this issue, but this ruling by Judge Newman was a structural error, and thus no “harmless error analysis” or finding that “but for counsel’s error, the result would have been different” can be used as a standard of review. In *State v. Rivera*, 402 S.C. 225, 741 S.E.2d 694 (2013), Justice Kittredge, writing for the Court, examined the question of whether the Trial Court’s error in refusing to allow Rivera to testify during the guilt phase of his trial was subject to harmless error analysis. Justice Kittredge wrote:

The [U.S.] Supreme Court has not directly addressed whether a trial court’s improper refusal to permit a defendant to testify in his own defense is a structural error or one that is subject to harmless error analysis. We find this error is not amenable to harmless error analysis and requires reversal without a particularized harmless error inquiry. *Rivera*, 402 at 247, 741 S.E.2d at 694.

Then, writing for the Court recently in *State v. Dennis*, Op. No. 28314 (S.C. S.C. filed January 28, 2026), Chief Justice Kittredge stated:

This Court has repeatedly emphasized that, when a mistrial is granted, the parties must relitigate any prior rulings or matters inextricably linked to the ruling itself. *See Floyd v. Page*, 124 S.C. 400, 402, 117 S.E. 409, 409 (1923) (noting a mistrial leaves the parties in the same position as if no trial existed at all, with “[t]he rulings of the trial judge in the court below having eventuated in no binding adjudication of the rights of the parties”). This includes, for instance, motions to suppress evidence, motions to change venue, and anything similarly related to how the parties may or may not conduct themselves at trial. *See State v. Smith*, 336 S.C. 39, 43–44, 518 S.E.2d 294, 296–97 (Ct. App. 1999) (holding a trial judge could not rely on evidentiary rulings from a prior mistrial and, therefore, had to conduct a new in-camera hearing on an in-court identification at the defendant’s subsequent trial); see also *Grooms*, 246 S.C. at 515, 144 S.E.2d at 910 (“The motion for a directed verdict could not be granted after the termination of the trial for the obvious reason that there was no jury to which an instruction for the defendant could have been given. Therefore, the request the defendant’s rights under the motion be preserved was nugatory.”).

*State v. Dennis*, Op. No. 28314 (2026).

The decisions of *State v. Rivera* and *State v. Dennis* make it clear that “[a] mistrial is the equivalent of no trial and leaves the cause pending in the circuit court.” *State v. Woods*, 382 S.C. 153, 158, 676 S.E.2d 128, 131 (2009). When a case ends in a mistrial, it is considered a nullity and begins “anew when called again for trial.” *Id.*; *State v. Mills*, 281 S.C. 60, 62, 314 S.E.2d 324, 326 (1984), *cert. denied*, 469 U.S. 930, 105 S.Ct. 324 (1984) (“When a mistrial occurs because of the inability of a jury to agree on a verdict, it is the same as if no trial took place.”); *Grooms v. Zander*, 246 S.C. 512, 514, 144 S.E.2d 909, 910 (1965) (finding that rulings of a trial judge in a proceeding ending in mistrial represent no binding adjudication upon the parties as the mistrial leaves the parties in status quo ante). After a mistrial, “rulings made with reference to the admissibility and competency of the testimony result[ ] in no binding adjudication of the rights of the parties.” *Keels v. Powell*, 213 S.C. 570, 572, 50 S.E.2d 704, 705 (1948).

Prior to the mistrial, Judge Cooper heard pretrial testimony regarding the voluntariness of Defendant’s and other witness statements from James Stanton Smith, Kevin Isenhoward, Holly Wagner, Joshua Mauldin, Brian Gwyn, Scott McDonald, David Linfert, Robert Martin, private investigator Elizabeth Cook, and Applicant. Trial Counsel argued that Applicant involuntarily provided statements to police. Mistrial Tr. 255, line 15 – 258, line 9. Judge Cooper found that Applicant’s statements were voluntarily provided to the police and admissible at trial. Mistrial Tr. 266, line 20 – 269, line 20. Judge Cooper also made extensive rulings regarding the admissibility of other evidence, including cell phone pinging records.

At the second trial, the Trial Court held, “Upon reconsideration, the Court will allow counsel to present any additional information that wasn’t presented before Judge Cooper to supplement it in any way that you might want to supplement it.” Trial Tr. 39, lines 2-6. Trial

Counsel did not move to proffer or present any additional testimony or arguments for suppression of Applicant's statements to police. The Trial Court held:

And I want to restate for the record, I have reviewed and given Mr. Schnee an opportunity to to supplement the transcript with anything additional to what Judge Cooper had to consider and make any additional arguments.

I have reviewed the transcript and considered those matters, along with additional matters presented here today, and I agree with all of those rulings by Judge Cooper except the severance ruling. [Judge Newman granted severance.] And I make those ruling my rulings based on my individual review that has been presented.

Trial Tr. 56, lines 2-12.

### CONCLUSION

If this were simply a post-conviction review of Applicant's substantive trial before Judge Newman without any issue about Judge Newman's adoption of Judge Cooper's rulings in the first trial, the normal *Strickland* standards would fully support the denial of this Post Conviction Relief Application. That is because the evidence in this case was overwhelming. Even if the alibi evidence of L'Renz Scott, Applicant's brother, had been admitted into evidence, the overwhelming nature of the rest of the evidence, most particularly the cell phone pinging evidence, which placed Applicant and Terrence Greene at the location where the body of the victim was found, together with cell phone pinging evidence which tracked Applicant and Terrence Greene's travel to Sumter County, tracked the meet up with Andrew Greene, tracked travel to a gas station to obtain gasoline, and tracked travel to and presence at the location where the burned vehicle of the victim was found, would fully support a ruling that any errors in the trial of the case or deficiencies of counsel were harmless and that the jury would have found Applicant guilty. But this normal standard of review on PCR cannot be used to evaluate the propriety of Trial Court Judge Newman's adoption of the rulings of Judge Cooper in the original trial, which ended in mistrial. As the authorities above

demonstrate, particularly the two opinions authored by Chief Justice Kittredge, a proceeding which ends in a mistrial cannot be a binding adjudication as to any issues on retrial. Therefore, I find that Judge Newman committed a structural error in adopting Judge Cooper's rulings from the mistrial for his use in the second trial. Therefore I find that Applicant is entitled to Post Conviction Relief in the form of vacation of his conviction and sentence and the remand of his indictment for a new trial. Therefore, I grant the relief.

***[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]***



Richland Common Pleas

**Case Caption:** Chamar D. Scott, #344297 vs. State of South Carolina  
**Case Number:** 2014CP4002479  
**Type:** Order/Other

So Ordered

Jean H. Toal