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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Charles J. McCutchen, Circuit Court Judge

Case No. 2012-CP-04-00542

Troy A. Burkhart,.....Petitioner,

v.

State of South Carolina, ...Respondent.

Notice of Appeal

Troy A. Burkart appeals the order of the Honorable Letitia H. Verdin dated November 8, 2021 (filed November 12, 2021) denying him access to indigent funding for expert and investigative services and the order of the Honorable Charles J. McCutchen, dated January 29, 2026 (filed February 3, 2026) dismissing his Application for Post-Conviction Relief. This appeal is taken from the order of Judge McCutchen dated April 9, 2026 (filed April 13, 2026), denying Mr. Burkhart's Rule 59(e), SCRCP motion.

By s/*E. Charles Grose, Jr.*

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May 7, 2026
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Civil Action No. 2012-CP-04-00542
	)	
Troy Alan Burkhart,	)	
	)	
Applicant,	)	
	)	
vs.	)	**ORDER DENYING MOTION TO ALTER OR AMEND**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court on Applicant's motion to alter or amend the Court's prior Order of Dismissal, filed February 9, 2026. For the foregoing reasons, this motion is **DENIED.**

LEGAL STANDARD

It is clear that the proper procedure for correcting factual errors in an Order is to file a motion to alter or amend pursuant to the Rules of Civil Procedure. *See Doe v. Doe*, 324 S.C. 48, 552 S.E.2d 329 (Ct. App. 1996). The South Carolina Court of Appeals has made clear that a party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to the judgment but did not. *See Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); *See also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

I. Violation of Section 17-27-80 and Separation of Powers

A PCR court "shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." S.C. Code Ann. § 17-27-80. The commentary to Canon 3B(7) of the Code of Judicial Conduct states a court "may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are

given an opportunity to respond to the proposed findings and conclusions." *Lindsey v. State*, 447 S.C. 93, 123, 924 S.E.2d 104, 120 (2025); *See* Commentary to Rule 3B(7), CJC, Rule 501, SCACR. The Supreme Court of South Carolina recently addressed this very issue, finding;

> We hold the PCR court did not err in requesting proposed orders from the parties after remand or in adopting the State's proposed order. PCR courts can, and commonly do, request and adopt proposed orders from parties, even though PCR courts are encouraged to write their own orders in death penalty PCR cases.

Lindsey, 447 S.C. 93, 124, 924 S.E.2d 104, 121 (2025). This practice is proper, as long as: (1) the other parties are aware of the request for a proposed order and are allowed to respond to the proposed order; and (2) the PCR court carefully reviews the order before signing it. *Id.*, *citing Hall*, 360 S.C. at 365, 601 S.E.2d at 341; *Pruitt*, 310 S.C. at 255-56, 423 S.E.2d at 128.

This Court's prior order denying Applicant's PCR application was proper as this Court the request for proposed orders was given to both parties simultaneously, both parties were given opportunity to respond to the proposed orders, and this Court carefully reviewed both orders before eventually making changes to and adopting the State's proposed order. In an email dated October 13, 2025, which was sent to both parties, this Court gave both Applicant and respondent opportunity to submit proposed orders once the transcript of the hearing was received. The Court did receive Applicant's proposed order on December 15, 2025, and Respondent's proposed order on December 23, 2025, with both parties aware of the respective submissions. The Court then filed a modified version of Respondent's order on February 9, 2026. Therefore, this Court complied with the first requirement in making both parties aware of the requests and giving opportunity for each side to respond.

This Court also spent numerous hours reviewing both proposed orders, eventually modifying and adopting Respondent's order, well within the laws of this State. Respondent's proposed order totaled 45 pages. This Court made both grammatical and substantive changes to pages; 1-2, 13-14, 20, 25, 31, 34, 37-39, 41-42, and 45. (Order Denying PCR Application). Therefore, Applicant's assertion that "This Court [singed] the proposed order of dismissal… without making a single change, other than minor formatting, some of which suggest this Court did not review the order prior to signing it" is simply without merit. Besides the grammatical changes, this Court, without an exclusive list, added statutory language, added legal standards, and modified analysis throughout the order. This Court was under no obligation to modify the proposed order, but in the substantial and lengthy review of said order, it found certain portions required modifications, all of which show this Court did, in fact, carefully review the order prior to signing it. Therefore, this Court complied with the standard stated in *Lindsey* in 1) making both parties aware it was requesting proposed orders while giving both parties an opportunity to respond, and 2) carefully reviewing, as well as modifying, Respondent's proposed order prior to signing it.

II. Denial of Expert and Investigative Services

Applicant next asks this Court to withdraw the Order of Dismissal, allow Applicant access to expert and investigative services, and convene a new PCR hearing. As stated in the Order, this Court found that because Judge Verdin had previously ruled on the issue of indigent status, finding that the Applicant was not indigent, this Court was not in a position to overrule that prior order. (Order of Dismissal, p. 43-44); *See Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."); *see also Steele v. Charlotte, Columbia & Augusta R.R.*, 14 S.C. 324, 330 (1880) ("The

judge may sometimes reconsider his own orders, but all the authorities agree as to the general doctrine, that the decision of one judge is not subject to be reviewed by another." (internal quotation marks omitted) (citing 1 Simon Greenleaf, A Treatise on the Law of Evidence 543 (Boston, Charles C. Little & James Brown 1850))). This Court maintains its prior ruling in that it will not overrule the prior Order of Judge Verdin finding that the Applicant is not indigent.

Additionally, Applicant asserts that this Court believed that any indigent status was cured by an unverified statement that Applicant's sister would provide funding through a mortgage on her home. However, this statement was merely noted for the record and was not relied upon in the decision not to disturb Judge Verdin's findings, as indicated in footnote 8 of the Order of Dismissal. (Order of Dismissal, fn. 8, "Notably, Applicant's testimony at the evidentiary hearing indicated that if this Court were not to find him indigent, his sister, who was present in the courtroom and nodding her head, would obtain a mortgage to fund the matter. This Court did not inquire into the veracity of that statement; instead, this Court noted it for the record.")

III. Failure to Investigate and Present Evidence of Self Defense

Finally, Applicant asserts that this Court should withdraw the Order of Dismissal, allow Applicant access to expert and investigative services, and convene a new PCR hearing based upon a failure to investigate, develop and present evidence of self-defense. Additionally, Applicant asserts that he can be granted a new trial based solely on Counsel Nettles' closing argument.

First, as Applicant states, "This claim is inherently tied to the failure to provide expert funding, which is discussed in Section B, above." Similarly, this Court has already addressed any claim to indigent status and expert funding in Section II above. Next, as it relates to any failure to investigate, present evidence of self-defense, or Counsel Nettles' closing argument,

those are addressed in detail within the Order of Dismissal and do Applicant has not raised any different arguments as it relates to those issues.

Applicant has failed to meet either part of the *Strickland* test, yet the Court still analyzed both prongs as it relates to Applicant's arguments. *See Strickland v. Washington*, 466 U.S. 668 (1984). Without reciting a majority of the Order of Dismissal herein, Applicant has failed to prove the first prong of the *Strickland* test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms as it relates to the investigation and presenting of evidence of self-defense. This Court went further to analyze Applicant's failure to prove the second prong of the *Strickland* test – that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors. These failures to meet the *Strickland* standard are discussed at length in the Court's 46 page Order of Dismissal and this Court declines to alter them for the reasons stated above.

CONCLUSION

For the reasons stated above, this Court declines to grant Applicant's motion to alter or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Applicant's PCR application shall remain **DENIED.**

IT IS SO ORDERED.

The Honorable Charles J. McCutchen
Presiding Judge

April 9th, 2026
Orangeburg, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Troy Alan Burkhart,	)	C.A. NO. 2012-CP-04-00542
	)	
Applicant,	)	
	)	
vs.	)	**ORDER**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter was before the Court on October 20, 2021 for Troy Burkhart's ("Burkhart's") Motion for Approval of Funding for Expert and Investigative Services. Burkhart claims that he is entitled to receive funding to procure an expert witness because he is an indigent defendant under the Indigent Defense Act of 2007. The State of South Carolina ("The State") and the South Carolina Commission on Indigent Defense ("SCCID") both oppose Burkhart's motion, claiming that he is not indigent and therefore should not be granted funds.

I. DISCUSSION

A. Burkhart is not an Indigent Defendant

Both the State and the SCCID argue that Burkhart is not an indigent defendant because he has retained a private attorney, Charles Grose, to represent him in his PCR application. Burkhart also retained a different private attorney in his original trial. At oral arguments, Burkhart explained that he had received funding from family members who are now deceased in order to hire his trial attorney. Mr. Grose also stated that he was expecting to be paid through funds that might be obtained through an ongoing fee dispute that Burkhart has with his original trial attorney. Burkhart

further testified that he presently has no access to any funds with which he could retain counsel. The Court has carefully considered the arguments of both parties and has determined that Burkhart is not an indigent defendant as defined by S.C. Code 17-3-5 *et seq.* Burkhart has hired two separate private attorneys in this matter and continues to employ one today. A finding of indigency here would frustrate the purpose of the statute, which is to provide funding for defendants who are unable to hire a private attorney.

Therefore, the Court finds that Burkhart is not an indigent defendant and is therefore not entitled to funds from the Office of Indigent Defense. Burkhart's Motion for Funding is **DENIED.**

IT IS SO ORDERED.

Letitia H. Verdin
Thirteenth Circuit Court Judge

November 8, 2021

Greenville, South Carolina

Rec 2/9/26

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
Troy A. Burkhart, #323165, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2012–CP–04–00542 **ORDER OF DISMISSAL WITH PREJUDICE**

Presiding Judge:	Hon. Charles J. McCutchen
Applicant's Attorney:	E. Charles Grose, Jr., Esq.
Respondent's Attorney:	D. Russell Barlow II, Esq.
Trial Counsel:	John D. Delgado, Esq. William N. Nettles, Esq.
Date of Hearing:	June 23, 2025
Court Reporter:	Lisa Scott

This matter comes before the Court by way of Troy A. Burkhart's (Applicant) application for post-conviction relief (PCR) filed on February 22, 2012. On August 21, 2013, Respondent filed its Return. On June 6, 2016, Applicant filed his Motion to Designate Case Complex. On June 7, 2016, Respondent filed its Return to Motion to Designate Case Complex. On February 6, 2020, Applicant filed his Motion for Approval of Funding for Expert and Investigative Services and his First Amended Application for Post-Conviction Relief. On September 27, 2021, Respondent filed its Return to Motion for Indigent Funding. On November 1, 2021, Applicant filed his Supplemental Memorandum in Support of Motion for Approval of Funding for Expert and Investigative Services.

On October 20, 2021, a hearing on Applicant's motion for funding was convened before the Honorable Letitia H. Verdin, via Webex. Applicant was present and represented by E. Charles Grose, Jr., Esquire (PCR Counsel). Assistant Attorney Generals Taylor Z. Smith and Lillian L.

Meadows represented Respondent. Following arguments, Judge Verdin took the matter under advisement. On November 12, 2021, Judge Verdin issued an Order finding Applicant not indigent and not entitled to funds from the Office of Indigent Defense.

On February 3, 2025, on consent of both parties, the Honorable Kristi F. Curtis issued a Consent Scheduling Order. On March 7, 2025, Applicant filed his Second Amended Application for Post-Conviction Relief.

Pursuant to Judge Curtis's Consent Scheduling Order, an evidentiary hearing was held on June 23, 2025, before this Court at the Anderson County Courthouse. Applicant was present and represented by PCR Counsel. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. On this same day, Applicant filed his Objection to Convening an Evidentiary Hearing, Motion to Continue, and Second Motion for Approval of Funding for Expert and Investigative Services. This Court denied Applicant's motions, and an evidentiary hearing was held. Applicant proceeded on the allegations contained in his Second Amended Application for Post-Conviction Relief. In support of these claims, Applicant testified on his own behalf. Applicant also presented the testimony of John D. Delgado, Esquire (Counsel Delgado).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the January 1998 term of the Court of General Sessions for Anderson County for three counts of murder (1998–GS–04–0061, –0062, –0063) and three counts of

possession of a firearm or knife during the commission of or the attempt to commit a violent crime (1998–GS–04–0059, –0060, –0067). Applicant was represented by Jonnie Fields, Esquire, Stephen Haigler, Esquire, and Michael Glenn, Esquire, at his first trial.

On March 6, 2000, Applicant proceeded to a jury trial before the Honorable Donald W. Beatty. The jury found Applicant guilty as indicted. On March 18, 2000, the sentencing phase commenced, and Applicant was sentenced to death by Judge Beatty, upon the jury's recommendation.

A timely Notice of Appeal was filed on Applicant's behalf, and an appeal was perfected by Appellate Defender Joseph L. Savitz, III, Esquire. The South Carolina Supreme Court reversed and remanded Applicant's conviction and sentence for a new trial. State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002).

Applicant was retried in March 2004 before the Honorable J.C. "Buddy" Nicholson, Jr., and a jury. Applicant was represented by Counsel Delgado and William N. Nettles, Esquire (Counsel Nettles) (collectively Trial Counsel). The jury found Applicant guilty as indicted. On March 30, 2004, the sentencing phase commenced, and Applicant was sentenced to death by Judge Nicholson, upon the jury's recommendation.

A timely Notice of Appeal was filed on Applicant's behalf, and the appeal was perfected by Appellate Defender Joseph L. Savitz, III, Esquire. The South Carolina Supreme Court affirmed in part and reversed in part based on the following:

> [A]ppellant objected to the State's evidence regarding general prison conditions. Although appellant attempted to counter the testimony of the State's witness with evidence regarding the harshness of prison life, this entire subject matter injected an arbitrary factor into the jury's sentencing considerations. A capital jury may not impose a death sentence under the influence of any arbitrary factor. S.C. Code Ann. § 16-3-25(C)(1) (2003). When the jury is invited to speculate about irrelevant matters upon which a death sentence may be based, § 16-3-25(C)(1) is violated.

> State v. Sloan, 278 S.C. 435, 298 S.E.2d 92 (1982). Accordingly, we reverse appellant's death sentence and remand for resentencing.

State v. Burkhart, 371 S.C. 482, 488–489, 640 S.E.2d 450, 453 (2007).

On July 27, 2007, Applicant went before Judge Nicholson for his resentencing. Applicant was represented by Andrew T. Potter, Esquire. At the resentencing hearing, Applicant was sentenced to three consecutive life sentences.

A timely Notice of Appeal was filed on Applicant's behalf, and an appeal was perfected by Appellate Defender Joseph L. Savitz, III, Esquire. The Court of Appeals affirmed Applicant's convictions and sentences. State v. Burkhart, Op. No. 2010-UP-131 (S.C. Ct. App. filed February 17, 2010). On March 4, 2010, Applicant filed a Petition for Rehearing. On March 18, 2010, the State filed its Return to Petition for Rehearing. On April 26, 2010, the South Carolina Court of Appeals issued its Order Denying Petition for Rehearing.

On July 23, 2010, Applicant filed his Petition for Writ of Certiorari to the Court of Appeals. On October 22, 2010, the State filed its Return to Petition for Writ of Certiorari. On March 2, 2011, the Supreme Court of South Carolina denied Applicant's petition. The Remittitur was returned on March 4, 2011.

STATEMENT OF FACTS

The facts as stated by the South Carolina Supreme Court in State v. Burkhart are as follows:

> On January 13, 1998, the grand jury for Anderson County indicted [Applicant] for the murders of Shane and Stacy Walters, half-brothers, and Sonya Cann. In addition to the three counts of murder, [Applicant] was indicted on three counts of possession of a firearm during the commission of a violent crime. Although [Applicant] admitted to shooting and killing Shane, Stacy, and Sonya, he pled not guilty, claiming he killed them all in self-defense.
>
> After a two week trial beginning on March 6, 2000, the jury convicted [Applicant] on all three counts of murder and all three counts of possession of a firearm during commission of a violent crime. The following day, the jury recommended [Applicant] be sentenced to death, citing the murder of two or more

persons pursuant to one scheme or course of conduct as the statutory aggravator. The trial judge affirmed their recommendation and sentenced [Applicant] to death.

According to the record, [Applicant] met the Walters brothers just a few days before they were killed. It all began when a mutual friend, Paul Zastrow, introduced [Applicant] and the Walters when they met by chance at Zastrow's house on Friday, November 14, 1997. [Applicant] did not know the Walters before that weekend and claims he did not know Sonya Cann at all. [Applicant] owned and managed a bar called Traditions, and the Walters set up mobile homes for a living.

A group of Clemson students had rented [Applicant]'s bar for a private party that weekend, but [Applicant] was having trouble with his septic tank. Zastrow suggested that the Walters might be able to help fix it. [Applicant] accepted the offer and Zastrow and both Walters arrived at Traditions Friday evening, November 14, to work on the septic tank. They built a bonfire and spent the night working on the septic tank, drinking, doing drugs (methamphetamine and marijuana), and talking about deer hunting. An impromptu party developed as several other friends showed up and joined them.

Although [Applicant] often carried a sidearm (because, he testified, "I deal with money and liquor and I'm in a secluded location")[1], he had never been hunting, but had become interested in learning to hunt in the weeks preceding these events. After the party broke up, [Applicant], Shane, Stacy, and another friend drove around in the woods with their guns looking for deer. Apparently, the group saw and startled a deer at some point before deciding to go home. Shane took [Applicant] home and told him he could help him again with the septic tank on Saturday if necessary.

The next day, Saturday, November 15, went much like the previous evening. [Applicant] picked up Shane at Paul Zastrow's house around 9:00 p.m. and they drove to Traditions to work on the septic tank. Many of the same people from the night before returned, and the group drank alcohol and did drugs until the bar closed, just as they had on Friday night. Apparently, Shane and [Applicant] agreed to go hunting the following morning. [Applicant] dropped Shane off and went home to prepare to go hunting. [Applicant] waited on Shane, but he never showed up. [Applicant] drove to Shane's house twice and knocked on the door, but got no answer. Assuming Shane fell asleep, [Applicant] drove to Paul Zastrow's house for coffee and then drove home to go to sleep.

That afternoon, Sunday, November 16, Shane and his wife Vicky had some friends over to watch car races on television. [Applicant] called Shane several times, and he and Paul Zastrow went over to the Walters' trailer around 4:00 p.m. Stacy came in from work a short time later. At some point, Shane, Stacy, and [Applicant] decided to go "four-wheeling" in Shane's truck. [Applicant] had his gun with him in case they went hunting, and Shane had his rifle. The three men were drinking and doing drugs at this time.

At some point after four-wheeling, the threesome drove over to Tammy Steele's house where they continued partying. According to Tammy, [Applicant]'s

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[1] [Applicant] purchased a Colt .45 automatic—the gun he shot Shane, Stacy, and Sonya with—at a pawn shop a few years before this episode.

wife called him on his mobile phone while he was there and, after speaking to her, [Applicant] said he did not want to go home that night. Tammy also testified that [Applicant] mentioned that his business was not doing well and thanked Shane and Stacy profusely for helping him with the septic tank. At some point, Tammy's sister, Danielle, came over. Some time later, Paul Zastrow contacted the group and asked if [Applicant] could bring him some beer from Traditions. [Applicant] agreed to do so, and he, Shane, and Danielle went by Traditions and then onto Zastrow's, where they did more drugs and drank with Zastrow and his girlfriend. While they were gone, Tammy testified that she and Stacy had sex and that the condom Stacy was wearing broke and they could not find it.[2]

Shane, Danielle, and [Applicant] returned to Tammy's house until the party disbursed sometime after 5:00 a.m. Shane, Stacy, and [Applicant] left Tammy's house in Shane's truck. After they left her house, Shane drove them to Sonya Cann's house to pick her up. Sonya sat in the front of the truck between Shane and [Applicant] and Stacy sat on the backseat of the truck, behind [Applicant] on the passenger side. They drove around for a little while, eventually going up to an isolated kudzu field known to everyone in the truck but [Applicant].

From this point on, [Applicant] testified that the atmosphere in the truck changed dramatically. He related the ensuing events as follows:

> When we got to the top, we parked and I believe there was some beer opened and Sonya handed Stacy some, what I believed to have been some more methamphetamine.... Stacy was, was fixing it ... on a CD case. And I said to Shane, I said, "Are there any deer here, where are the deer?" He didn't answer, but Sonya said, "There ain't no deer here, this is a scattering field."... I didn't know what to think of that. I guess I just let it go and didn't think much more about it. And I ... started a conversation about the restaurant. Shane and I had talked about him knowing someone that could help me that wasn't a bank. And I asked him a little more about that. And he told me that he had that worked out and that I didn't have to worry about that.... That's when Stacy handed Shane a cassette case with some what I thought to be methamphetamine on it.... He held it for a moment and passed it to me. When I got it, it still had four lines or four piles of powder on it.... [O]n occasion when we had done drugs before, when I got it, there was only one line left on it. I thought it was strange that there were four and it had been passed through the other three.... As he passed it to me, he asked me if I had ever wronged anyone. And I said, "No, what do you mean by that?" Then he said, "Have you ever wronged your Uncle Ronnie?"

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[2] This testimony is relevant because Stacy's autopsy revealed he was wearing a condom at the time of his death which [Applicant] claims corroborates his story that Stacy threatened him with homosexual rape. The State refuted this evidence by arguing the condom was the same one he used with Tammy earlier in the night.

[Applicant] claims that this question "struck fear into [his] soul." [Applicant] and his father considered Ronnie, who had a reputation for being a somewhat ruthless drug smuggler, an enemy.[3] [Applicant]'s testimony continued:

> [Shane] said that he and Ronnie had this thing worked out, that he had gotten money from drugs in Florida.... [Shane] said all he had to do was take care of me.... Then [Shane] said, "it's time to get this over with." Then he pulled out the gun and told me to get the hell out of the truck.... Stacy had had [sic] me around the neck and had a knife in his hand and said, "we're going to make you squeal like a pig, boy." ... Sonya said, "Yeah, baby, make him squeal like a pig." ... I lunged for the gun and then the gun went off.... I was able to get the gun and I just shot. I just shot.... I couldn't say which direction.... I shot until it wouldn't shoot.... I opened the driver's door and ... I pushed Shane and Sonya out of the truck.... I heard what sounded like another door slamming.... I looked on the seat and saw the other clip for the gun was there, and I put the other clip in the gun.... I couldn't get it to work. I couldn't get the bullet to go in. And I remember trying to get it to work and bullets coming out, and I remember it going off. Then I got out of the truck to see what it was that I may have heard, and I couldn't see anything. I went around and I pulled Stacy out of the truck.... I got in the truck and got the hell out of there.... I thought I was going to be raped and killed.

Shane Walters was shot six times, including one fatal wound to the back of the head. Stacy Walters was shot in the right temple and right cheek, either of which would have been fatal. Sonya Cann was shot three times, including fatal wounds to the right temple and through the left eye.

The State contended, contrary to [Applicant]'s account, that the shots that killed Shane and Sonya were fired after they were already incapacitated, lying on the ground outside the truck, and that [Applicant] had stomped Sonya and Stacy with his boot after he shot them. Still, the State's pathologist who advanced these theories could not rule out self-defense, particularly in view of the amount of drugs and alcohol consumed. A defense pathologist testified that the shootings could have occurred exactly as [Applicant] described.

On cross-examination, [Applicant] unequivocally denied the State's accusations. He testified, "I did not stomp anyone and I did not shoot anyone on the ground." [Applicant] described the episode as a five-second fight for his life against Stacy, Shane, and Sonya. According to [Applicant], he had no choice but to kill them all in self-defense.

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[3] Ronnie Burkhart and his brother, [Applicant]'s father, Warren Burkhart, hated each other so much, according to an attorney with first-hand knowledge of their relationship, that they could not be left alone in a courtroom together without getting into a fist fight. Ronnie seemed determined to ruin his brother financially, and there were several lawsuits between the two brothers. [Applicant]'s relatives referred to Ronnie as "very vicious" and as an "evil person."

> Once he was out of danger, [Applicant] claims he became concerned for the safety of his father and his wife. He left the kudzu field in Shane's truck and called his father from a cell phone. [Applicant] testified that he drove directly to his father's house, that he and his father got into his father's truck, and then drove to his own house to get his wife. [Applicant] told his wife that Ronnie had tried to kill him and that he had shot three people defending his life, describing it as a "scene out of *Deliverance.*"[4] From his house, [Applicant], his father, and his wife, drove to the Seneca Police Department.
>
> [Applicant] claims to have told the police the same story he told at trial when he led them to the bodies later that morning, including the *Deliverance* "squeal like a pig" threat of homosexual rape. This is significant because Stacy Walters' autopsy later revealed he was wearing a condom at the time he was killed which [Applicant] could not have known when he took the police to the scene. The State speculated it was the same condom Stacy wore when he had sex with Tammy Steele earlier in the evening, but the defense argued this was highly unlikely as hours had passed since he had sex with Tammy, and that this fact corroborated [Applicant]'s self-defense claim.

350 S.C. 252, 254–259, 565 S.E.2d 298, 299–302 (2002).

CURRENT APPLICATION

In his original application filed on February 22, 2012, Applicant alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
2. Violation of Due Process
3. Prosecutorial Misconduct.

On February 6, 2020, Applicant filed his First Amended Post-Conviction Relief application, wherein he alleges the following grounds for relief:

> (1) Mr. Burkhart was denied his right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I,§§ 3 and 14 of the South Carolina Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Smalls v. State, 422 S.C. 174,810 S.E.2d 836 (2018).
>
> (a) Trial counsel failed to independently investigate, develop, and present evidence that Mr. Burkhart was acting in self-defense. See, e.g., Ard v.

[4] James Dickey, *Deliverance,* Boston: Houghton Mifflin, 1970. Dickey's best-selling novel, *Deliverance,* set on a white-water river in the Georgia wilderness, has become famous, not only for its masterful prose, but for its vivid account of a sexual assault of a man by a group of rough and brutal men he and his three friends encountered while canoeing the river.

Catoe, 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007) ("counsel's decisions regarding the investigation of, and failure to challenge, the gunshot residue evidence were unreasonable and clearly deficient, especially given the fact that this was a capital case with an arguable defense to the guilt phase"); see also Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014) (trial counsel's failure to interview accused's former girlfriend as a potential alibi witness warranted a new trial); Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008) (Trial counsel's failure to adequately investigate and present mitigating evidence during penalty phase was deficient performance); Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991) (defendant convicted of forgery and burglary was denied effective assistance of counsel due to defense counsel's failure to investigate possible defenses).

(b) Trial counsel failed to present expert testimony that would have refuted the prosecution's case and developed evidence that Mr. Burkhart was acting in self defense. See, e.g., Ard, *supra*; see also McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (trial "counsel was ineffective in failing to investigate medical evidence contradicting the State's experts' testimony); Bagwell v. State, 410 S.C. 259, 266, 763 S.E.2d 630, 634 (Ct. App. 2014) ("trial counsel's failure to conduct DNA testing on the glass prior to trial constituted ineffective assistance of counsel").

(c) Trial counsel failed to cross-examine the witnesses called by the prosecution with their prior, inconsistent testimony from the prior trial. Rule 801 (d)(1), SCRE; see also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (counsel was deficient in failing to object to trial court's ruling disallowing her from cross examining victim about the dismissal of victim's carjacking charge).

(2) The Solicitor committed misconduct in violation of due process clauses of the United States and South Carolina Constitutions. U.S. Const. Am. V. and XIV; S.C. Const. Art. I, §§ 3 and 14; Kyles v. Whitley, 514 U.S. 419, (1995); Brady v. Maryland, 373 U.S. 83, (1963); Roviaro v. US., 353 U.S. 53 (1957); Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006); Rule 5, SCRCrimP.

(a) The Solicitor presented testimony of witnesses that was inconsistent with their testimony at the prior trial, and the Solicitor did not correct the false testimony. See Kyles and Riddle, *supra.*

On March 7, 2025, Applicant filed his Second Amended Application for Post-Conviction Relief, wherein he alleged the following grounds for relief:

(1) Mr. Burkhart was denied his right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Smalls v. State, 422 S.C. 174,810 S.E.2d 836 (2018).

(a) Trial counsel failed to independently investigate, develop, and present evidence that Mr. Burkhart was acting in self-defense. See, e.g., Ard v.

Catoe, 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007) ("counsel's decisions regarding the investigation of, and failure to challenge, the gunshot residue evidence were unreasonable and clearly deficient, especially given the fact that this was a capital case with an arguable defense to the guilt phase"); see also Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014) (trial counsel's failure to interview accused's former girlfriend as a potential alibi witness warranted a new trial); Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008) (Trial counsel's failure to adequately investigate and present mitigating evidence during penalty phase was deficient performance); Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991) (defendant convicted of forgery and burglary was denied effective assistance of counsel due to defense counsel's failure to investigate possible defenses).

Mr. Burkhart has always- and continues to-maintain his innocence of these crimes and wanted his trial counsel to pursue a vigorous guilt phase defense. Trial counsel disregarded these desires and failed to present a vigorous guilt phase in the hopes that not challenging the State's guilt phase evidence would increase the likelihood of a life sentence during the penalty phase. Compare McCoy v. Louisiana, 584 U.S. 414 (2018) with Florida v. Nixon, 543 U.S. 175, 125 S. Ct. 551, 1 60 L. Ed. 2d 565 (2004).

(b) Trial counsel failed to present expert testimony that would have refuted the prosecution's case and developed evidence that Mr. Burkhart was acting in self defense. See, e.g., Ard, *supra*; see also McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (trial "counsel was ineffective in failing to investigate medical evidence contradicting the State's experts' testimony); Bagwell v. State, 410 S.C. 259, 266, 763 S.E.2d 630, 634 (Ct. App. 2014) ("trial counsel's failure to conduct DNA testing on the glass prior to trial constituted ineffective assistance of counsel").

Even though Mr. Burkhart was found to be indigent for the purpose of indigent funding for investigative and expert service during his two jury trials, and even though he was found to be indigent for the purposes of appointed counsel during his third sentencing hearing, the circuit court found Mr. Burkhart not to be indigent for the purposes of this post-conviction action and, therefore, denied him access to indigent funding. If this Court allowed Mr. Burkhart access to indigent funding to retain expert services of an expert in crime scene investigation and reconstruction, then Mr. Burkhart is informed and believes he would be able to produce evidence including but not necessarily limited to the following:

(i) The crime scene and evidence collected is consistent with Mr. Burkhart's statements that he was defending himself;

(ii) The evidence collected in the autopsies is consist with Mr. Burkhart's statements that he was defending himself;

(iii) The crime scene, evidence collected, and the evidence of the autopsies is inconsistent with the theory that any of the victims was shot while lying on the ground;

(iv) The condition of the condom that was collected during the law enforcement investigation is consistent with Mr. Burkhart's statements that he was the intended victim of a sexual assault;

(v) Mr. Burkhart's boots were inconsistent with a pattern of stomping injuries;

(vi) Law enforcement's improper and incomplete processing of the truck for evidence resulted in the loss of evidence that is favorable to Mr. Burkhart that would be consistent with his statements that he was defending himself;

(vii) The evidence collected at the crime scene regarding tire track impressions is consist with Mr. Burkhart's statements that he was defending himself; and

(viii) The thumb print collected from the weapon is consist with Mr. Burkhart's statements that he was defending himself.

Before this Court are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's trial records, Applicant's appellate records, and records from the current PCR action, along with any amendments to his application.

PCR EVIDENTIARY HEARING

John D. Delgado, Esquire

On direct examination, Counsel Delgado testified that he had no access to his file from the 2004 trial but recalled the case as a capital proceeding in which extensive preparation was undertaken. This included filing discovery, interviewing witnesses like the former Anderson County Sheriff Howard Anderson, employing a paralegal, and hiring private investigator Pete Skidmore for both guilt and punishment phases. He also made two trips to Los Angeles to interview a witness sought by the Applicant. (PCR Tr. pp. 18–20). Counsel Delgado described the State's theory as asserting that the claim of self-defense was fabricated by the Applicant, given that the simultaneous killing of three individuals warranted a guilty verdict and the death penalty. The defense was self-defense and was based on Applicant's account of fearing for his life due to

threats made in the truck cab after drug use, involving brothers Shane McCall (Shane) and Stacy McCall (Stacy) and Sonya Cann (Sonya), who were allegedly hired by Applicant's uncle, Ronnie Burkhart (Ronnie), to kill him. (PCR Tr. pp. 21–22).

Counsel Delgado described the remote outdoor scene near a lake, overgrown with kudzu, and the incident that took place over a weekend involving drugs and alcohol. It ended with Applicant grabbing his .45 pistol and shooting inside the cab, with some shots possibly fired outside, although he noted a damaged bullet embedded under Sonya's head. (PCR Tr. pp. 23–28). Counsel Delgado remembered that the .45 gun was kept for bar protection, but also due to fear of Ronnie. Counsel Delgado testified that Sheriff Anderson confirmed Ronnie was an international drug trafficker linked to Pablo Escobar, and explained the defense's reasoning despite its unlikely nature. (PCR Tr. pp. 28–32). Counsel Delgado also described role-playing the events that occurred in the cab's interior during Applicant's testimony to illustrate the confined space and the sequence of seven or more shots, highlighting the forensic importance of the bloodstains and exit holes inside the truck. (PCR Tr. pp. 33–35).

Counsel Delgado noted disputes over ground shots and stomping injuries, which the pathologist attributed to potential post-death actions. Counsel Delgado testified that a condom was found on Stacy's penis, supporting the Applicant's fear of sexual assault based on the "squeal like a pig" threat. Counsel Delgado testified that they called two of the three counsel from Applicant's first trial, who testified to the consistency of the Applicant's pre-incarceration account of the events. (PCR Tr. pp. 43–49). Counsel Delgado acknowledged the client's decisions to testify and to assert a self-defense claim. Counsel Delgado opined that the shootings resulted from drug-induced psychosis, which was unusual for Applicant, who has no prior record. Counsel

Delgado viewed this as mitigation but could not argue it because voluntary intoxication is not a defense, and Applicant insisted on maintaining a not-guilty stance. (PCR Tr. pp. 68–70).

On cross-examination, Counsel Delgado testified to recalling the rifle under the seat being unloaded. Counsel Delgado testified that through defense expert Dr. Reddick's testimony, they were able to refute Sonya's ground shot, and confirmed team efforts to challenge the State's alignment of bodies and markings for the excavated bullet. (PCR Tr. pp. 54–56). Counsel Delgado reiterated the importance of tire tracks for potential vehicle matching but noted that Applicant made no contest as to whether he drove the truck away or was present at the scene. (PCR Tr. pp. 57–58). Counsel Delgado agreed that stomping injuries were addressed through cross-examination of pathologist Dr. Woodard and direct examination of Dr. Reddick, which suggested that the abrasions were not caused by stomping. (PCR Tr. p. 59). Counsel Delgado testified that he had no reason to test the condom independently and did not recall Reddick's cross on a Florida case investigation. (PCR Tr. pp. 60–62).

On redirect examination, Counsel Delgado clarified Applicant's testimony, implying that hearing Ronnie close the door to his truck, which was possibly drug-hazed speculation. Counsel Delgado noted that tire tracks from another vehicle could corroborate but were not necessarily linked, given the area's use for off-roading. (PCR Tr. pp. 63–66). Counsel Delgado affirmed viewing the incident as drug-induced psychosis, defying Applicant's character, discussed as mitigation but unviable as a guilt-phase defense due to voluntary intoxication rules. (PCR Tr. pp. 67–68).

On recross, Counsel Delgado testified that he did not recall Applicant wanting to fire him, nor did he recall Counsel Nettles using profanity at Applicant. (PCR Tr. pp. 137–138).

Applicant

On direct examination, Applicant testified to being born in Miami, Florida, and moving to Westminster, South Carolina, in 1973. Applicant testified that he resided in Oconee County, near Seneca and Townville, and owned a bar known as Traditions. (PCR Tr. pp. 72–74). Applicant described his first trial representation by family attorneys Johnny Fields, Michael Glenn, and Stephen K. Haigler, who were retained with family funds of approximately $100,000, plus indigent funding, resulting in a guilty verdict and a death sentence. Applicant testified that he was represented by Joe Savitz on appeal, which ended in a reversal due to an improper jury charge on the self-defense burden. (PCR Tr. pp. 75–77).

For the second trial, he retained Counsel Delgado and Counsel Nettles after family research on death penalty lawyers. Applicant testified to signing a 2003 indigent affidavit relying on his grandmother, Florence Ryan, who lost her home. Applicant testified that he has remained incarcerated since November 1997 with no employment or assets. (PCR Tr. pp. 78–80).

Applicant summarized the self-defense claim: on November 17, 1997, after using drugs (methamphetamine, marijuana, and beer) with Shane, Stacy, and Sonya in a remote "scattering field" near a lake, Sonya offered yellow powder in four thick lines on a CD case that he found suspicious so he placed it on the dashboard. Tension then escalated, Shane pointed his gun, Stacy grabbed him from behind with a knife, saying, "make you squeal like a pig," echoed by Sonya, implying rape/murder and that they were hired by Ronnie. Applicant fought for the gun, firing all eight shots inside the truck and then pushing the bodies out of the truck. Applicant heard a door close, believing Ronnie was present, so he reloaded the gun with one accidental ground shot and a stovepipe jam, and then he fled the scene. (PCR Tr. pp. 80–83, 89–92).

Applicant explained there were no ground shootings except for the reload mishap, no stomping because he was wearing tennis shoes. Applicant testified that he offered his boots, but they were not tested. Applicant testified to an unused condom on Stacy's penis that tested negative for fluids, contradicting the prior sex claim with Tammy Steele. Applicant testified that the yellow powder was not meth and was untested for poison. Applicant testified that GSR was on him and Stacy. Applicant testified that his thumbprint was on the gun and was consistent with his grabbing the gun. Applicant testified that the holster was next to Stacy and showed Stacy had the gun. Applicant testified that there were unmatched tire tracks and 180 tested items that support his version of events. (PCR Tr. pp. 82–88, 93–96, 99–103, 106–108).

Applicant testified to an alleged conflict with Judge Nicholson, who presided over his trial, his uncle's $5M forfeiture, and resentencing. Applicant testified that Counsel Nettles' closing contradicted and undermined his testimony that Ronnie hired Shane, Stacy, and Sonya to kill him. Applicant testified that Counsel Nettles dismissed his concerns, cursed at him, and suggested firing Counsel Delgado and Counsel Nettles. Applicant testified that Counsel Delgado failed to question Darrell Smith about his being with Ronnie at the field that night and their leaving once they heard the gunshots. Applicant testified that Darrell told him, his family, and Counsel that he and Ronnie left the field, went to the Dodge dealership, and had the tires changed on Ronnie's brand-new truck. (PCR Tr. pp. 110–114). Post-conviction, Applicant testified that he received 2012-2013 letters from an unnamed Deal & Deal employee alleging improprieties (proffered), and letters from Shane's son, Austin, forgiving him after learning the truth. (PCR Tr. pp. 116–117, 124–125). Applicant maintained his innocence, that there was no psychosis, and he was seeking experts/funds to clear his name. Applicant testified that if the court finds him not indigent, he would ask his sister, who is willing to, to mortgage her home. (PCR Tr. pp. 92, 95–96, 115–116, 126).

On cross-examination, Applicant testified to reviewing the truck once, opening the door, and finding the knife and bullet immediately without "going through" it due to restraints, clarifying that the State failed to do a deep search. Applicant testified that Lieutenant Cremer watched him and took the items. (PCR Tr. pp. 127–130). Applicant confirmed having expert Dr. Reddick testify that Sonya was not shot on the ground per the evidence. Applicant testified that his boots were in his wife's possession at the first trial, but later delivered to Counsel Nettles' trunk and never submitted for testing. (PCR Tr. pp. 131–133). Applicant agreed that the jury heard his story, including his thumbprints on the gun. Applicant testified that the sentencing record noted his uncle's forfeiture was unrelated/unlitigated. (PCR Tr. pp. 133–135).

STANDARD OF REVIEW

The Uniform Post–Conviction Procedure Act[5] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

> (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> (2) That the court was without jurisdiction to impose sentence;
> (3) That the sentence exceeds the maximum authorized by law;
> (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
> (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17–27–20(A).

[5] S.C. Code Ann. §§ 17–27–10 to –160.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post–conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two–part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of

performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then–existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a

reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of Trial Counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S.at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post–trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second–guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such a strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post–conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court also heard the testimony presented at Applicant's evidentiary hearing and observed the witnesses, which enabled the Court to evaluate and assess their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post–trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would warrant this Court's grant of his application for post-conviction relief by a preponderance of the evidence. See Rule 71.1(e), SCRCP (stating that in a post–conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post–conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17–27–80 of the South Carolina Code:

INITIAL FINDINGS

As an initial matter, Applicant proceeded on the allegations contained in his Second Amended Application for Post-Conviction Relief and did not present testimony or evidence on allegations 1(c) and 2(a) from his first Amended Application for Post-Conviction Relief; thus, this Court deems those allegations abandoned and waived. Additionally, as a matter of general impression, this Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant he rendered adequate assistance and exercised reasonable professional judgment in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1a: **Trial counsel failed to independently investigate, develop, and present evidence that Mr. Burkhart was acting in self-defense.**
Mr. Burkhart has always and continues to maintain his innocence of these crimes and wanted his trial counsel to pursue a vigorous guilt phase defense. Trial counsel disregarded these desires and failed to present a vigorous guilt phase in the hopes that not challenging the State's guilt phase evidence would increase the likelihood of a life sentence during the penalty phase.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to independently investigate, develop, and present evidence that Applicant was acting in self-defense. Additionally, Applicant contends Trial Counsel intentionally chose

not to challenge the State's guilt phase evidence to increase the likelihood Applicant would receive a life sentence. This Court finds these allegations to be without merit.

"The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough v. Gentry, 540 U.S. 1, 6 (2003); see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. No single set of detailed rules for counsel's conduct can adequately account for the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Id. at 688– 89; cf. id. at 693 ("Representation is an art and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn v. Reeves, 594 U.S. 731, 739 (quoting Harrington, 562 U.S. at 106– 107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires making every effort to eliminate the distorting effects of hindsight, reconstruct the circumstances of counsel's challenged conduct, and evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689; see Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of

hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial"). The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland's deferential standard.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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)). Furthermore, an applicant must present evidence showing how the discoverable matters or defenses would have resulted in a different

outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

Failure to Investigate, Develop, and Present Evidence of Self-Defense

At the evidentiary hearing, Counsel Delgado credibly testified to extensive preparations for both the guilt and penalty phases of the trial, given that it was a capital case. Counsel Delgado testified that they filed discovery motions, interviewed witnesses, and anticipated the need for mitigation evidence for the sentencing phase if convicted. Counsel Delgado testified to a team of a paralegal, at least one investigator, Pete Skidmore, and various office staff. Notably, Counsel Delgado testified to their reenactment before the jury of the events that took place up to and after the murders. Aside from the testimony at the evidentiary hearing, this Court has the record before it and, after reviewing it, is perplexed by the allegation that Counsel Delgado failed to present evidence that Applicant was acting in self-defense; indeed, the entirety of the defense's presentation to the trial court and jury was that Applicant acted in self-defense.

During the defense's presentation, Dr. Leroy Riddick was called to testify and qualified as an expert in forensic pathology. While he aligned with the State's pathologist on the findings from the autopsies, his interpretations diverged significantly, positing a narrative that suggested fewer bullets and dismissed the notion of post-mortem abuse. Dr. Riddick asserted that Sonya's six wounds resulted from just two bullets, countering the State's claim of a third bullet being fired while she was on the ground. Crucially, he testified that there was no evidence whatsoever of stomping or pistol whipping—highlighting a lack of external blunt force trauma, aside from

potential drag injuries. Dr. Riddick's compelling testimony presented a credible scenario supporting Applicant's version of events. (Second Trial Tr. pp. 2518–2630).

Applicant made the choice to take the stand, presenting his version of events. He openly acknowledged his involvement in the shootings but asserted that they were acts of self-defense, contending that the victims were hired by Ronnie with the malicious intent to rape and kill him. In a detailed account, Applicant recounted that they traveled to a kudzu field off Highway 24 for what they purportedly intended as "hunting"—spotlighting deer from their truck, which is unlawful pursuant to S.C. Code Ann. § 50-11-705. He testified that Shane brandished Applicant's gun and declared that Ronnie had orchestrated their attack, referencing the line "squeal like a pig" from "*Deliverance*." According to Applicant, the situation escalated when he grabbed the gun, and when Stacy ambushed Applicant from the back seat, armed with a knife, and attempted a choke hold, with Sonya quickly joining the fray for control of the weapon.

In the ensuing chaos, which Applicant testified unfolded in a mere two seconds, Applicant managed to wrestle the gun away, firing approximately eight shots in a desperate bid for self-preservation without aiming. Applicant categorically denied any actions such as stomping on bodies or tampering with the scene, such as placing a condom on Stacy. According to Applicant, immediately after he pushed the bodies out to clear the truck and thought he heard a door close, he reloaded his gun and accidentally fired it. Applicant immediately drove away, called his father, picked up his father and his wife, Michelle, and went to the Seneca Police Department to turn himself in. Applicant testified that he told police he acted in self-defense because of Ronnie's contract, and requested protection for his family. Applicant's version framed a life-and-death struggle he faced, highlighted by the looming threat and violence instigated by those he considered attackers. (Second Trial Tr. pp. 2459–2516; 2633–2758).

Lieutenant George S. Cremer was called by the defense and testified to certain items found during the investigation. Primarily, Cremer's testimony was used to highlight evidence of illegal drugs and drug paraphernalia that were found on or around the victims, while also highlighting that none of the drugs found were tested. (Second Trial Tr. pp. 2759–2766).

Defense called Darrell Smith, Ronnie's stepson, who testified and highlighted the "bad blood" and tension between Ronnie and Applicant. According to Darrell, Ronnie viewed Applicant as a "snot-nosed brat" who was handed everything by his father (Warren Burkhart), refused to work hard, and led a poor lifestyle. Darrell testified that Ronnie felt Warren "bailed [Applicant] out" of trouble repeatedly. Darrell testified that Ronnie expressed wishes for Applicant to be "straightened out," including violent sentiments like wanting Applicant's "ass whipped" or suggesting Darrell should have "taken a shovel and broke[n] [Applicant's] knees" during a period of bad blood that extended to Darrell. (Second Trial Tr. pp. 2787–2799).

Counsel Delgado read into the record testimony from Ina Davis, who was unavailable for trial due to medical reasons, who knew and worked with Sonya prior to her death. Approximately a week before the murders, Sonya spoke to Ina and told her she was leaving her job at Anchor Lounge for a better-paying position at a bar in Townville. Sonya told Ina she would be working for her boyfriend, but Ina did not know the boyfriend's name or the name of the bar. After that conversation, Ina saw Shane and Sonya playing pool at the Anchor Lounge. (Second Trial Tr. pp. 2800–2807).

Defense called Doris N. Lafontaine, the sister of Ronnie Burkart and Aunt of Applicant, to testify. Lafontaine's testimony primarily focused on the family dynamics within the Burkhart family, particularly a contentious estate dispute following their father's death, and the character of Lafontaine's deceased brother, Ronnie, whom she portrayed as violent, threatening, and involved

in illegal activities. Notably, Lafontaine testified to the direct threats Ronnie made against her son and how Ronnie had a "very bad temper" and would use force, intimidation, and other means to achieve his goals. Lafontaine testified that her children knew more about Ronnie's activities than she did, and they were afraid for her safety during the trial (even the first trial), advising her not to attend due to potential risks. Lafontaine testified to her own concerns about "anything going wrong" when coming to South Carolina, even after Ronnie's death four years prior, fearing associates might act on his behalf. Lafontaine's testimony highlighted Ronnie's dislike for Applicant, illegal activities and Ronnie's use of proxies for violence. (Second Trial Tr. pp. 2808–2820).

Defense counsel called Charles Aldridge, who is married to June, Ronnie's sister, who is involved in a will dispute with the Burkhart family. Aldridge testified that he saw Ronnie on Woolbright Circle[6] shortly before Monday, November 17, 1997, although the exact date was uncertain due to his poor memory. Aldridge testified that while driving north on Highway 24 toward I-85, Aldridge spotted Ronnie in his green pickup truck parked near the Walters' house. Aldridge testified that Ronnie was talking to "some folks" in the front yard, right by the road. Aldridge testified that he did not stop or report it immediately; instead, he mentioned it later to Warren Burkhart after "all this other stuff happened." Aldridge's testimony emphasized Ronnie's criminal background, confirming knowledge of his drug involvement via personal awareness and DEA information. Aldridge expressed ongoing fear of Ronnie's associates, even though Ronnie had died four years earlier, and suggested possible retaliation by others involved in Ronnie's operations. Aldridge's testimony suggested a direct link to the crime scene just before the murders and highlighted Ronnie as a dangerous criminal. (Second Trial Tr. pp. 2820–2828).

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[6] Woolbright Circle is very close to the crime scene.

Applicant waived privilege with his attorneys from his first trial, and two of them were called to testify. Steven K. Haigler, Esquire, was called and testified that, during his first four-way meeting, Applicant stated that he feared for his personal safety on the morning of November 17, 1997. Haigler testified that Applicant claimed he had been threatened by one of the Walters boys, who mentioned whether Applicant had "done his uncle wrong" and threatened to "make him squeal like a pig." Haigler interpreted this as an apparent reference to a rape scene in the movie *Deliverance*, describing it as "chilling" and "frightening." Haigler testified that Applicant did not mention the word "*Deliverance*" or anything about a condom during this meeting. Haigler testified that a month later, when they started receiving discovery, Haigler was reviewing the autopsy report at his desk and discovered that Stacy Walters had a condom on his penis at the time of death. Haigler testified that he was shocked, immediately informed Mike Glenn (co-counsel), and then visited Applicant at the jail to tell him. Haigler emphasized that neither he nor his co-counsel had heard about the condom from Applicant beforehand. Haigler's testimony supported the defense's narrative that Applicant genuinely feared rape before knowing about the condom, which was only revealed in discovery materials. (Second Trial Tr. pp. 2846–2858).

Next, defense called John W. Fields, Esquire, who also represented Applicant in his first trial. Fields testified that during the first four-way meeting, Applicant described the incident, stating that "they" (referring to individuals involved) said they were going to "make him squeal like a pig." Fields testified that Applicant added that someone said, "do it now," after which something was placed around his neck. Fields testified that he interpreted "squeal like a pig" as a reference to a threatened sexual assault. Fields testified that the key revelation was a report indicating a condom on Stacy Walters' penis. Fields testified that this detail surprised the entire defense team. Fields testified that Applicant had never mentioned a condom to them before this

discovery. Fields indicated that they connected it to Applicant's earlier "squeal like a pig" statement, reinforcing their theory of a sexual threat or assault. Fields' testimony supported Applicant's self-defense claim by highlighting his early, consistent account of a sexual threat and the surprise discovery of corroborating physical evidence. (Second Trial Tr. pp. 2859–2867).

Defense called Jeffrey Ward, an employee of Ronnie's. Ward testified that he knew Shane Walters was employed by Ronnie. Ward testified to his knowledge of three separate occasions, on which Ronnie expressed a desire to have Applicant killed, stemming from an "incident" where Applicant allegedly pulled a gun on Ronnie. Ward testified that he did not believe Ronnie was joking, citing the repetition and Ronnie's angry demeanor. Ward testified that he had heard "word on the street" that Ronnie was a big-time drug dealer, though Ward never bought drugs from him. Notably, Ward's testimony portrayed Ronnie as harboring a serious grudge against Applicant, which could support a self-defense defense. (Second Trial Tr. pp. 2868–2877).

Lastly, defense called Sheriff Gordon E. Taylor of Anderson, South Carolina. Sheriff Taylor testified that Ronnie was involved in large-scale smuggling of marijuana and cocaine from Colombia through the Medellín Cartel via the Bahamas to South Florida, starting around 1975 and continuing until at least 1991. Sheriff Taylor detailed operations involving boatloads, like shrimp trawlers carrying more than 40,000 pounds. Sheriff Taylor testified to connections to key cartel figures, including Carlos Lehder, Pablo Escobar, the Gacha family, the Ochoa family, and Pepe Cabrera. Sheriff Taylor testified that Ronnie was a high-level player who communicated directly with Lehder and Cabrera. Sheriff Taylor testified that Ronnie's organization paid bribes, via attorney Nigel Bowe, to Bahamian officials for safe passage. Sheriff Taylor testified that imports were estimated at hundreds of millions (possibly billions) in value.

Sheriff Taylor testified that Ronnie shifted to cocaine around 1985 and was involved in 17 documented loads with associate Argenti. Sheriff Taylor testified that Ronnie used real estate developments and racecar construction as a means to launder his money. Sheriff Taylor testified that the IRS found Ronnie had under-reported income by $2 million on taxes, with reported earnings rising from ~$15,000 in the 1970s to ~$500,000 later. Sheriff Taylor testified that law enforcement seized approximately $5 million in assets from Ronnie across Oconee, Pickens, and Anderson Counties, as well as Georgia. Sheriff Taylor testified that Ronnie used antiques, jukeboxes, cars, and real estate as covers to launder money.

Sheriff Taylor testified that witnesses described Ronnie as "roughneck," "mean," "ruthless," and intimidating. Sheriff Taylor testified that there was no direct evidence of physical harm by Ronnie, but he threatened family members. Sheriff Taylor testified that Ronnie was involved with the Medellín Cartel, which was violent. Sheriff Taylor testified that Ronnie was a buyer/smuggler, not a core leader, but dealt directly with Lehder and Cabrera. Sheriff Taylor testified that he learned of Applicant's arrest on November 17, 1997, and inquired with the Burkhart family about Ronnie's possible involvement. Sheriff Taylor testified that the family previously expressed fears that Ronnie might have tried to kill them. Sheriff Taylor testified that he regretted not interviewing Ronnie directly about the murders, though he was rational that it might not yield admissions. Sheriff Taylor testified that no witnesses tied Ronnie to the killings. (Second Trial Tr. pp. 2880–2933).

This Court finds the combination of the record and Trial Counsel's credible testimony 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*. The record is replete with defense counsel's presentation of evidence supporting Applicant's version of events,

namely that he acted in self-defense. See Mazzell, *supra*. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

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, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.

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**.

Counsel Nettles's Closing Argument

At the evidentiary hearing, Applicant testified that Counsel Nettles erred in his closing argument when he impermissibly told the jurors that "Ronnie Burkhart did not hire these individuals" to kill Applicant, which "nullified [Applicant's] entire defense." (PCR Tr. p. 117). In support of this assertion, Applicant cites to McCoy v. Louisiana, 584 U.S. 414 (2018) and Florida v. Nixon, 543 U.S. 175 (2004). This Court is not persuaded and finds McCoy and Nixon inapplicable to Applicant's argument.

In McCoy, the defense attorney, over the defendant's objection, admitted his client's guilt multiple times to the jury. The McCoy Court found the following:

> Trial management is the lawyer's province: Counsel provides his or her assistance by making decisions such as "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence." Gonzalez v. United States, 553 U.S. 242, 248, 128 S.Ct. 1765, 170 L.Ed.2d 616 (2008) (internal quotation marks and citations omitted). Some decisions, however, are reserved for the client—notably, whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal. See Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983).
>
> Autonomy to decide that the objective of the defense is to assert innocence belongs in this latter category. Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant's own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial. These are not strategic choices about how best to achieve a client's objectives; they are choices about what the client's objectives in fact are.

584 U.S. at 422. In short, a defendant has the right to dictate certain objectives at trial, such as Applicant's right to assert it was self-defense, and Counsel was required to assist in that objective. Here, this Court finds, as was also found in McCoy, that trial management, such as what arguments to pursue, is well within the province of trial counsel. McCoy, 543 U.S. at 1508.

Contrary to Applicant's testimony, this Court finds that Counsel Nettles's strategic choices during the closing argument did not undermine the Applicant's defense; instead, they represent a considered trial-management decision. A thorough analysis of the record reveals that the State's closing argument depicted the crime as a calculated and ruthless execution: the Applicant shot the victims inside the truck, dragged them out, shot them again while they lay on the ground, violently stomped on them, and Applicant lingered to savor the aftermath. The State attempted to dismantle the self-defense claim by exposing the implausibility of the notion that Ronnie orchestrated a hit on the Applicant through Shane and Stacy, particularly noting the absence of any evidence linking Shane and Stacy to firearms or a history of violence. Furthermore, the State portrayed the Applicant as a deceitful individual who meticulously crafted his narrative over the course of seven

years. The State's arguments advocated for a charge of murder with malice, categorically dismissing the self-defense claim due to critical evidentiary deficiencies.

In Counsel Nettles's closing argument, he portrayed Applicant as a victim of self-defense rather than a murderer, emphasizing that Ronnie, an international drug dealer who openly expressed hatred for Applicant and wished him harm, employed victims Shane, Stacy, and Sonya, who sought to curry favor with Ronnie by luring Applicant into a dangerous prank involving drugs, alcohol, and threats of sexual assault inspired by the movie *Deliverance*. Counsel Nettles argued that Shane pulled a gun on Applicant, threatening to make him "squeal like a pig," while Stacy restrained him with an arm around his neck and possibly a metal object like a utility knife, prompting Applicant to wrestle the gun away and shoot in fear for his life, acting on appearances as allowed by law. Counsel Nettles attempted to dismantle the prosecution's theory of malice—claiming Applicant shot the victims because they mocked his inability to kill a deer—by highlighting inconsistencies in forensic evidence, such as inconclusive gunshot residue, mismatched shoe prints for alleged stomping, uncertain bullet trajectories (including debates over whether Sonya was shot on the ground or if her head fell onto a bullet), ambiguous bullet counts that do not definitively prove reloading, and directional wounds consistent with a dynamic struggle rather than execution-style killings.

Counsel Nettles criticized the government's reliance on speculation, derogatory labeling of the Applicant as a "spoiled brat," and sarcastic remarks. Counsel Nettles emphasized that the physical evidence does not lie, but their interpretations create reasonable doubt, as experts could only say findings were "consistent with" malice, not proven beyond a reasonable doubt. Counsel Nettles pointed to Applicant's cooperative actions post-incident—turning himself in, providing locations of the gun, truck, and bodies, not cleaning gunshot residue from his hands, and giving

statements—as inconsistent with a murderer's behavior, urging the jury to acquit on murder charges due to self-defense or, alternatively, convict on lesser charges like voluntary manslaughter for Shane and Stacy, provoked as they were by words and actions. Counsel Nettles also posed involuntary manslaughter as a potential verdict, given the group's drug use and reckless conduct.

Notably, this Court finds Counsel Nettles's closing argument was crafted to provide a reasoned, evidence-based narrative that not only defended Applicant but also challenged the prosecution's case. To be clear, Counsel Nettles's closing argument was plausible and profoundly reasonable given the evidence that had been presented to the jury, and this Court finds Counsel Nettles's representation was objectively reasonable. Thus, Applicant has failed in his burden of proving any deficiency of Trial Counsel and failed to prove any resulting prejudice from the alleged deficiency.

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, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.

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 1b: **Trial counsel failed to present expert testimony that would have refuted the prosecution's case and developed evidence that Mr. Burkhart was acting in self-defense.**

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to present expert testimony that would have refuted the prosecution's case and developed evidence that Applicant was acting in self-defense. This Court finds this allegation to be without merit.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Accordingly, Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such a strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

"[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). This duty includes the duty to investigate the prosecution's medical evidence and present expert testimony refuting the State's expert. McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008). However, when counsel vigorously cross-examines the State's witnesses

and attacks the accuracy of the evidence, his representation is not rendered deficient. Frasier v. State, 306 S.C. 158, 160–61, 410 S.E.2d 572, 573 (1991). "[W]hile the Constitution requires that a criminal defendant receive effective assistance of counsel, the presentation of expert testimony is not necessarily an essential ingredient of a reasonably competent defense." Bonin v. Calderon, 59 F.3d 815, 834 (9th Cir. 1995).

Moreover, Applicant must present the expert witness or otherwise present evidence to this effect to prove prejudice. See Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial).

Findings

As an initial matter, Applicant failed to present the testimony of any expert to this Court, asserting that he is indigent and should have been granted access to the indigent defense fund. Applicant outlined seven grounds in which he asserts that had Trial Counsel gotten expert witnesses, then the outcome of the trial would have been different. This Court will address each in turn:

(i) The crime scene and evidence collected is consistent with Mr. Burkhart's statements that he was defending himself.

(ii) The evidence collected in the autopsies is consistent with Mr. Burkhart's statements that he was defending himself.

(iii) The crime scene, evidence collected, and the evidence of the autopsies are inconsistent with the theory that any of the victims was shot while lying on the ground.

As an initial matter, this Court finds that Trial Counsel had an expert, Dr. Riddick, who testified to the very issues he now claims would have made the outcome of his trial different had he had an expert. Dr. Riddick testified that he reviewed the autopsy reports by Dr. Woodard on victims Stacy, Shane, and Sonya; depositions of Dr. Woodard and Dr. Robert Pruitt; scene and

autopsy photos; and South Carolina Law Enforcement Division (SLED) reports. While Dr. Riddick agreed with Dr. Woodard's autopsies, he offered interpretations supporting fewer bullets and no post-mortem abuse. Dr. Riddick's testimony directly supported Applicant's version of the events. Additionally, this Court finds that Trial Counsel vigorously cross-examined the State's witnesses on these matters. See Frasier v. State, 306 S.C. 158, 160–61, 410 S.E.2d 572, 573 (1991) (finding trial counsel was not deficient in failing to procure an expert witness to challenge DNA evidence presented at trial where the record established that counsel vigorously cross-examined the State's DNA experts and attacked the accuracy of the evidence). Thus, this Court finds Applicant has failed in his burden of proving any deficiency by Trial Counsel.

Furthermore, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

(iv) The condition of the condom that was collected during the law enforcement investigation is consistent with Mr. Burkhart's statements that he was the intended victim of a sexual assault.

The condition of the condom was thoroughly examined by the State's expert, Dr. Woodard. Notably, Applicant adeptly leveraged this testimony during trial, as his Trial Counsel successfully introduced testimony from his two previous attorneys from the first trial that bolstered Applicant's claim of intended sexual assault against him. Additionally, the record indicates that Trial Counsel rigorously cross-examined Dr. Woodard regarding the condom, strategically highlighting discrepancies between his earlier testimony and his statements in the second trial to impeach his credibility. (Second Trial Tr. p. 2260); see Frasier v. State, 306 S.C. 158, 160–61, 410 S.E.2d 572,

573 (1991) (finding trial counsel was not deficient in failing to procure an expert witness to challenge DNA evidence presented at trial where the record established that counsel vigorously cross-examined the State's DNA experts and attacked the accuracy of the evidence). Thus, this Court finds Applicant has failed in his burden of proving any deficiency by Trial Counsel.

Furthermore, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

(v) Mr. Burkhart's boots were inconsistent with a pattern of stomping injuries.

This Court is unsure how Applicant or any expert could demonstrate that his boots were inconsistent with a pattern of stomping injuries, given that, according to Applicant's testimony, the boots are unavailable and not in Applicant's possession.[7] Notably, Applicant testified that his wife gave his boots to Counsel Nettles; however, his wife did not testify at the evidentiary hearing. Nevertheless, this was highly contested at trial, and Applicant had an expert, Dr. Riddick, who testified that there was no evidence of stomping or pistol whipping. Additionally, there was an extensive in-camera hearing on the testimony regarding whether it was a kick/stomp injury. Furthermore, Trial Counsel vigorously cross-examined the State's witness on this issue and presented an expert to counter the State's expert. See Frasier v. State, 306 S.C. 158, 160–61, 410 S.E.2d 572, 573 (1991) (finding trial counsel was not deficient in failing to procure an expert

[7] Notably, Applicant testified that his wife gave his boots to Counsel Nettles; however, Applicant's wife was not called to corroborate Applicant's testimony. Applicant has a duty to present witnesses or statements from the witnesses that conform to the Rules of Evidence. Applicant has not done so here.

witness to challenge DNA evidence presented at trial where the record established that counsel vigorously cross-examined the State's DNA experts and attacked the accuracy of the evidence). Thus, this Court finds Applicant has failed in his burden of proving any deficiency by Trial Counsel.

Furthermore, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

(vi) Law enforcement's improper and incomplete processing of the truck for evidence resulted in the loss of evidence that is favorable to Mr. Burkhart that would be consistent with his statements that he was defending himself.

This Court is unable to ascertain how an expert could testify that evidence that was lost was favorable to Applicant if the evidence is lost. The record contains testimony that one of the wheel castings was lost due to the failure to use a barrier. (Second Trial Tr. p. 1585). There was in-camera testimony that shell casings could have been lost at the scene. (Second Trial Tr. pp. 1612; 1616–1617). At the evidentiary hearing, Applicant gave conflicting testimony regarding the discovery of evidence in the truck after it had been processed, and Applicant alleged that the State lost it. (PCR Tr. pp. 102–105).

A review of the record indicates that Applicant's testimony regarding the processing of the truck evidence at his second trial and at the evidentiary hearing is inconsistent. On cross-examination at his second trial, Applicant describes actively engaging with the truck, where he testified to the following:

> I'm standing there and I look down in the seat. And the first thing I see is a live bullet for the rifle -- I believe it was Mr. Cremer that was there -- for the rifle.

> It was laying right there in the seat in plain view. I picked it up and I asked Mr. Cremer -- I said, what's this? And he said, where did you get that. And I said, well, it was laying right here in the seat. I said, do you want it? He said, yeah, let me have it. So I threw it over there to him.
>
> I was looking around in the truck trying to figure out what was going on and what was happening. And I noticed – I noticed a, cut in the seatbelt in the -- on the post behind the door. And I was -- I kept looking at it because I thought, you know, that might have been a bullet. You know, and that might show what I said happened in the truck. So I kept staring at it. And Mr. Cremer looked at what I was looking at. And then I think shortly after I left, he and his team took the truck apart and found a bullet actually in there where I was looking at it and sent that off.
>
> So there's several things that that were in the truck that were never gotten .. I don't know what could have been in there that wasn't -- that could have made the marks.

(Second Trial Tr. pp. 2731–2732). However, just after this testimony, Applicant testified and denied actively engaging in the search of the truck, saying, "No, ma'am, I never went through the truck once. I went out there one time and stood at the door. I was in restraints. So I wasn't able to go through it. I just stood there and tried to help the attorneys and show them what had happened in the truck." (Second Trial Tr. p. 2733).

At the evidentiary hearing on direct examination, Applicant testified to his active engagement in the search of the truck:

> "I went to the passenger's side of the truck and I was restrained like I am now looking in the truck. As soon as I opened the truck, I looked in the seat... I picked it up... So I'm looking around in the truck and trying to figure it out... I got up in the truck. The lieutenant was there watching me. And I lifted it, the console of the seat, and there was live round there."

(PCR Tr. pp. 31–33). In this account, Applicant is no longer standing outside the truck; he is actively inside the truck, lifting the console. This contradicts his previous testimony of either just standing outside and looking through it, or never being able to go through it at all because of restraints.

Applicant's testimony is also inconsistent with what he found in the truck. At trial, he found a live bullet and no knife. (Second Trial Tr. p. 2733). At the evidentiary hearing, Applicant

testified that he found the "knife that was being held around my neck in plain sight... laying right there in the seat. I picked it up . . . .I got up in the truck... lifted the console... and there was live round there to the rifle." (PCR Tr. p. 58).

This Court finds Applicant's testimony on this matter not credible. Furthermore, a review of the record and Lt. Cremer's cross-examination indicates that Trial Counsel vigorously cross-examined him regarding the fact that they had never completed an inventory of the truck. See Frasier v. State, 306 S.C. 158, 160–61, 410 S.E.2d 572, 573 (1991) (finding trial counsel was not deficient in failing to procure an expert witness to challenge DNA evidence presented at trial where the record established that counsel vigorously cross-examined the State's DNA experts and attacked the accuracy of the evidence). Thus, this Court finds Applicant has failed in his burden of proving any deficiency by Trial Counsel.

Furthermore, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors. Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

(vii) The evidence collected at the crime scene regarding tire track impressions is consistent with Mr. Burkhart's statements that he was defending himself.

This Court finds that this very issue was before the jury, that the castings did not match the truck, which implied that another vehicle or vehicles could have been present. Applicant speculates that it would prove that Ronnie was present; however, this Court is not persuaded. Trial Counsel credibly testified that the area where the murders occurred was heavily traveled and used for four-wheeling. According to Applicant's testimony, Ronnie and Garrell left after hearing gunshots, went to the dealership, and had the tires replaced. Any speculation by Applicant that

the tire track impressions would support Applicant's version is unsupported by the record. Furthermore, assuming *arguendo* that Applicant's testimony is credible, it is lost on this Court how any expert could locate tires from Ronnie's truck after more than twenty-eight years have passed.

This Court finds that Applicant has failed to meet his burden to prove that Trial Counsel was deficient. Applicant did not present any expert testimony at the PCR evidentiary hearing. Thus, any assertion that he was prejudiced is speculative and does not warrant relief. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding any allegation of prejudice for failure to present expert witness was speculative in light of applicant's failure to present an expert at PCR evidentiary hearing); see also Glover v. State, 318 S.C. at 498–99, 458 S.E.2d at 540 (Applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.) Furthermore, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.

Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

(viii) The thumbprint collected from the weapon is consistent with Mr. Burkhart's statements that he was defending himself.

During the evidentiary hearing, Applicant acknowledged that his thumbprint was found on the gun, and SLED provided testimony at trial confirming that this evidence was consistent with Applicant having grabbed the gun. (PCR Tr. pp. 107–108). This critical information was presented directly to the jury and even visually demonstrated during the proceedings. Consequently, this Court is unable to identify any deficiencies in Trial Counsel's performance, as the Applicant's concerns were clearly articulated to both the trial court and the jury. Therefore,

this Court concludes that the Applicant has not met the burden of proving any deficiency. Furthermore, assuming, arguendo, that Applicant met his burden in proving Trial Counsel was deficient, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the prejudice prong of Strickland—that there is a reasonable probability the result of the proceeding would have been different but for Counsel's alleged errors.

Thus, this allegation must be **DENIED and DISMISSED with PREJUDICE**.

APPLICANT'S SECOND MOTION FOR FUNDING

Allegation: **Applicant is indigent and should be afforded access to the Indigent Fund.**

Applicant contends that the Honorable Letitia H. Verdin and this Court erred in failing to find Applicant indigent and granting his access to the indigent funds. This Court disagrees.

On October 20, 2021, a hearing on Applicant's motion for funding was convened before Judge Verdin, via Webex. Applicant was present and represented by PCR Counsel. Assistant Attorney Generals Taylor Z. Smith and Lillian L. Meadows represented Respondent. Following arguments, Judge Verdin took the matter under advisement. On November 12, 2021, Judge Verdin issued an Order finding Applicant not indigent and not entitled to funds from the Office of Indigent Defense.

At the outset of the evidentiary hearing, Applicant informed this Court that he had filed his Objection to Convening and Evidentiary Hearing, Motion to Continue, and Second Motion for Approval of Funding for Expert and Investigative Services. This Court heard arguments from the parties and denied Applicant's motion for a continuance and denied Applicant's second motion for indigent funding. Specifically, this Court found that because Judge Verdin had already ruled on this issue, this Court was not in a position to overrule Judge Verdin's order absent a change in

circumstances.[8] See Enoree Baptist Church v. Fletcher, 287 S.C. 602, 340 S.E.2d 546 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."); see also Steele v. Charlotte, Columbia & Augusta R.R., 14 S.C. 324, 330 (1880) ("The judge may sometimes reconsider his own orders, but all the authorities agree as to the general doctrine, that the decision of one judge is not subject to be reviewed by another." (internal quotation marks omitted) (citing 1 Simon Greenleaf, A Treatise on the Law of Evidence 543 (Boston, Charles C. Little & James Brown 1850))).

Accordingly, this Court denied Applicant's second motion for indigent funding as this Court does not sit to review another circuit court judge's order absent a change in circumstances.

ALLEGATIONS ABANDONED

Allegation 1c: **Trial counsel failed to cross-examine the witnesses called by the prosecution with their prior, inconsistent testimony from the prior trial. Rule 801 (d)(1), SCRE; see also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (counsel was deficient in failing to object to trial court's ruling disallowing her from cross examining victim about the dismissal of victim's carjacking charge).**

Allegation 2a. **The Solicitor presented testimony of witnesses that was inconsistent with their testimony at the prior trial, and the Solicitor did not correct the false testimony. See Kyles and Riddle, *supra*.**

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v.

[8] Notably, Applicant's testimony at the evidentiary hearing indicated that if this Court were not to find him indigent, his sister, who was present in the courtroom and nodding her head, would obtain a mortgage to fund the matter. This Court did not inquire into the veracity of that statement; instead, this Court noted it for the record.

Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, the Court deems these allegations abandoned.

|CONCLUSION & SIGNATURE 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 22nd day of January, 2026.

CHARLES J. MCCUTCHEN
Presiding Judge

Orangeburg, South Carolina

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C. Reena Thomason
CLERK OF COURT

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Anderson, SC COC, CP/GS