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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable David Caraker, PCR Action Judge
2023-CP-32-02634

JASON LEE, #382834,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jason Lee appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable David Caraker, circuit court judge, on August 29, 2024, and was denied by written order issued filed on August 6, 2026. Applicant received notice of the judgement on August 6, 2026.

/s Chelsey F. Marto
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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2026 AUG -6) AM 10:35 FOR THE ELEVENTH JUDICIAL CIRCUIT

Jason Donn Lee, SCDC #382834, CLERK OF COURT Case No. 2023-CP-32-2634
LEXINGTON, SC

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before this Court by a *pro se* application for post-conviction relief commenced by Jason Donn Lee (Applicant) on July 14, 2023. The Clerk of Court appointed Chelsey Marto to represent the applicant on February 20, 2024. On April 16, 2024, the Respondent made a Return and Motion to Make more Definite and Certain. On August 23, 2024, the Applicant, through counsel Marto, made an amended application in addition to the initial allegations.

On August 29, 2024, the matter came before this Court for an evidentiary hearing. The Applicant was present and represented by counsel Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, his trial counsel James Snell, and former prosecutor D. Shawn Graham. In addition, the Court received exhibits. Subsequent to the hearing this Court indicant its intent to dismiss the application to the parties. This formal order of dismissal follows.

FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on March 17, 2017, following an investigation into the murder of his wife, Lindsey Nicole Lee.

During its July 2019 term, the Lexington County Grand Jury indicted Applicant for murder (2019-GS-32-2533) and first-degree burglary (2019-GS-32-2541).

On November 18, 2019, Applicant proceeded to a jury trial before the Honorable Thomas W. Cooper. James R. Snell, Jr., Esquire, and Vicky D. Koutsogiannis, Esquire (collectively, Counsels) represented Applicant. Eleventh Circuit Solicitor S.R. “Rick” Hubbard, III, and Deputy Solicitor D. Shawn Graham prosecuted the case. At the conclusion of the multi-day trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to concurrent life sentences.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected Applicant’s appeal by filing an *Anders*¹ brief with the Court of Appeals on the following issue:

Whether the trial court erred in refusing to suppress [Applicant]’s electronic records which the police obtained from multiple providers with a search warrant that was invalid for lack of jurisdiction?

On April 15, 2022, the Court of Appeals issued an Order denying the motion to be relieved as counsel and directing the parties to brief the following issue and any other issue of arguable merit in light of *State v. Warner*, Op. No. 28094 (S.C. Sup. Ct. filed Apr. 13, 2022) (Howard Adv. Sh. No. 13 at 37):

Did the trial court err by refusing to suppress Lee’s electronic records which the police obtained from multiple providers with a search warrant that was invalid for lack of jurisdiction?

Order, April 15, 2022. The Applicant through counsel Alexander filed his Brief of Appellant on May 16, 2022. The Brief of Respondent, by Senior Assistant Attorney General Ed Salter was filed on July 22, 2022. On July 5, 2023, the South Carolina Court of Appeals, in an unpublished opinion affirmed the conviction, concluding the search warrants were valid. State v. Jason Donn Lee,

¹ *Anders v. California*, 386 U.S. 738 (1967).

Unpublished Op. No. 2023-UP-257, S.C. Ct. App. (July 5, 2023). The remittitur was issued on July 25, 2023.

In the interim, the Applicant had filed an earlier PCR applicant, *Lee v. State*, 2021-CP-32-0891 on March 11, 2021. The State moved to dismiss the matter due to the pending appeal. On September 20, 2021, the pending PCR was dismissed without prejudice due to the pending appeal by administrative judge Donald B. Hocker. No appeal was taken in the matter. *Jason Donn Lee v. State*, 2021-CP-32-0891, Order of Dismissal Without Prejudice, September 20, 2021 (Hocker, Presiding Judge).

STATEMENT OF FACTS

Viewed in the light most favorable to the prosecution, the direct and circumstantial evidence presented at trial was that Lee murdered his estranged and soon to be ex-wife, Lindsey Lee. Christina West, Lindsey's supervisor in the IT section of the Lexington County Sheriff's Department, testified that Lindsey started working there in 2011. Ms. West and Lindsey were close friends, both at work and socially. Lindsey was always a cheerful person but struggled with her weight. Ms. West estimated that at her peak, she weighed roughly 240 pounds. ***R. 157-61; 167.***

Ms. West and her boyfriend, Lexington County Deputy Shannon Lovell, regularly went on double dates with Lindsey and Lee. Lee was often very critical toward Lindsey and would berate her in front of others, particularly about her weight. She "would just kind of take" these insults. Lindsey began working out at the MUV gym and at the British Bulldog gym in Lexington. ***R. 157-61; 167.***

Lindsey became "very regimented" and dedicated to her weight loss, and Ms. West estimated that she lost approximately 120 pounds between 2016 and 2017.² Her daily routine was

² Lee, however, only went to the gym occasionally. ***R. 164.***

to work out in the morning, run, and then come into the Sheriff's Office, where she would shower and change into her work uniform before 8:00 a.m. Although Lindsey and Ms. West smoked cigarettes before Lindsey began her transformation, she would not afterwards. Also, she became very strict about her diet, and she did not use drugs of any kind. Despite the changes Lindsey made, Lee continued to berate her about her weight and publicly insult her. He also told her that he may leave her if she didn't lose weight. Around this time, the Lees separated. ***R. 161-65; 168-69.***

Although Ms. West had no knowledge of any affairs before the separation, she knew that both Lindsey and Lee began seeing other people after the separation and that Lindsey seemed excited about moving forward with her life. She was also very excited about a planned trip to Scotland in March with Graham Hockley, her trainer at the British Bulldog. Although Ms. West regularly heard the music Lindsey played during her post-workout shower, she did not hear that music on the morning of March 14th, and she did not see Lindsey in the Office. When Lindsey still was not there at 8:00 a.m., Ms. West texted and called her, but did not get a response. Ms. West then reached out to Deputy Shannon Lovell, her boyfriend, and asked him to drive by Lindsey's house to see if she was there. Deputy Lovell soon called her back. He said that the back door to Lindsey's home had been breached and that he would call her back. When she learned that the door had been compromised, she feared that Lee had something to do with it. So, she texted Lee in order to protect Deputy Lovell's safety just in case Lee was in the house. ***R. 165-72.***

Deputy Lovell testified that he met Lee through Ms. West, his girlfriend, and Lindsey. He had also observed Lee yelling at Lindsey and demeaning her in public. She responded to these insults by becoming silent. Lee also made rude comments about her in private conversations with Deputy Lovell. After Lindsey began consistently working out, there was a dramatic and noticeable change in her appearance. Although Lee had been the first to go to the gym and take judo lessons,

he would not work out as often, and he complained that Lindsey was spending too much time at the gym. *R. 176-82.*

At some point, Deputy Lovell received a phone call from Lee in which Lee told him that Lindsey had asked for a divorce. According to Deputy Lovell, she was ready to move on with her life, but Lee was upset that she wanted a divorce and “he always talked about ... trying to get her back.” Eventually, Lee moved to Virginia because “he just couldn’t live in the same town as Lindsey.” He lived there with his sister, until he had an argument with his brother-in-law. He then moved to the Greenville area, which was “near his son,” whom he had with his first wife. One day after the separation, Lee drove Deputy Lovell by Lindsey’s mother’s apartment, where Lindsey was staying at the time of the separation, to see if her car was there because she had told him that was where she was staying. He got angry when her car was not there and apologized for getting Deputy Lovell involved in the matter. He also drove by Hockley’s home to check for her car. Once he realized that her car was not at either location, Lee dropped Deputy Lovell off at his home. *R. 182-86.*

Deputy Lovell had not heard from Lee for roughly a week before Monday, March 13, 2017. However, Lee sent text messages to him on the 13th claiming that he was going to be working overtime at the Michelin plant that night. On March 14th, Deputy Lovell received the call from Ms. West asking him to check on Lindsey because she had not come into work that day. He went to Lindsey’s residence. Because he did not get an answer when he knocked on the front door, he went to the back door. He noticed that there was a splinter on the frame of the back door “where the door was opened just a touch.” There were no footprints on the dirty ground, and it did not appear

that the door had been “kicked in” or that it had been otherwise forced open.³ Deputy Lovell immediately called for backup and then made the call to Ms. West informing her that the door had been breached. *R. 184; 186-88; 192-93.*

As soon as a Deputy Jeffcoat arrived, both officers entered the house. Inside, they could hear water running. They then went into the bathroom, where they found Lindsey in the bathtub. “She was laid in the bathtub almost coffin-style,” and water was running over her. The officers observed a large knife wound to her throat; she did not have a top on, or pants, but she did have on spandex underwear. The knife wound spanned almost her whole neck and was gaping open nearly two to three inches. The officers called EMS and began searching the rest of the house. They observed what appeared to be signs of a struggle in the kitchen, and Lindsey’s cell phone and groceries were strewn across the kitchen floor. *R. 188-91.* On March 15th, Deputy Lovell received a text message from Lee about the Lee’s cat, and he checked on it. *R. 193.*

Agent Melinda Worley, a member of SLED’s crime scene unit, testified that she was among the officers who responded to Lindsey’s West Columbia home. “It appeared that there was forced entry at the back door, the wood [on the door frame] was splintered and the strike plate was

³ Fran Smith testified that she is a realtor and that she showed Lindsey’s house to a prospective buyer on Monday morning, March 13th. Her routine is to pull all of the blinds and lock all of the doors when she leaves a house unless the owner leaves contrary instructions. None were left on the 13th. So, a reasonable inference is that she would have locked the deadbolt on Lindsey’s home. *R. 275-78.*

Kendall Haskett, an employee of AAA Locksmiths and Alarm Company, testified that he has been a locksmith his entire life. He was shown the photographs taken of the door frame and strike plate from Lindsey’s back door lock. (State’s Exhibits 4-7). He opined that the deadbolt had to have been open when the damage to the door occurred. Otherwise, the strike plate for the deadbolt would have also been broken out of the frame. He further testified that it would not have taken “a huge amount of force” to break the lower lock. The company also employed Lee as a locksmith. *R. 296-99; 302-04.*

on the floor.” There was a deadbolt lock on that door. However, there was no damage around the area of the door frame. **R. 205-206; 207-11.**

Inside the house, Agent Worley found Lindsey’s gym bag and groceries spread across the kitchen and foyer area along with a Walmart receipt dated March 13th, at 8:17 p.m. She also found Lindsey’s cell phone. Critical to the case against Lee, Agent Worley also found a piece of a blue latex glove in the foyer area, and two more pieces from a blue latex glove on the living room floor. The washer contained several items of clothing that were still wet. One of those items, a zip-up sweatshirt, contained Lindsey’s wallet. Her driver’s license, credit cards, and membership cards were all in the wallet. **R. 211-16; 240.**

Further, Agent Worley gave this description of the immediate crime scene: Lindsey was in the bathtub with her legs straight out in front of her, her arms were down at her sides, her head was tilted back into the corner of the bathtub, her neck was gashed open, and her left wrist was cut. Also, Lindsey’s fingernails were cut unusually short and the fingernails on her right hand were cut all the way back to the nailbed. A black Fitbit watch band that had been separated from the Fitbit was on the counter of the vanity. **R. 222-25.**

Agent Worley found a \$100.00 bill in the drawer of her nightstand in the bedroom, and there was no indication that jewelry was stolen. **R. 222; 225-26.** Further, Agent Worley processed Lindsey’s Mustang. In the glove compartment, she found a Ziplock baggie containing a green leafy material later determined to be 6.58 grams of marijuana. **R. 218-21; 267.** On March 27th, Agent Worley further processed the residence. Aside from the blood in the bathroom, there was visible blood on the foyer and in the living room, near where she had located the pieces of blue latex. Underneath the kitchen counter were disconnected cables that would otherwise have been

connected to the home security system, but there was not a DVR or any other recording device. **R. 227-37.**

Tiffany Edwards was formerly employed in SLED's latent print unit. In that capacity, she processed the Ziplock bag found in the glove compartment of the victim's car for fingerprints. Her testing revealed two possible areas where there may be a print. She was able to identify one print in the middle of the baggie as belonging to Lindsey. Before she processed the baggie for prints, she also swabbed it for possible touch DNA and sent the swabs to the DNA lab. **R. 251-61.**

Kendall Haskett, of the AAA Locksmiths and Alarm Company where Lee worked, testified that most of the company's work is "commercial and electronic security." Lee worked there for about a year or so. Six people worked there at the time, but by March 13, 2017, one (Haskett's father and the company's owner) was out of town. Haskett did not notice anything unusual about Lee's appearance when Lee came into work on the morning of Monday, March 13th. However, the following morning, Tuesday, March 14th, he came into work with very visible scratches on the front of his face. The scratches were so unusual that Haskett asked Lee about them. He claimed that his cat scratched him.⁴ He did not mention that his personal car, a Kia, was missing. **R. 279-83; 289; 310.**

Haskett never met Lindsey. However, Lee talked about her "[f]airly often." Over "the last couple of months" of his employment, Lee also told Haskett about his financial difficulties; specifically, that "he was having issues with behind on his car payment, behind on some rent, behind on maybe a credit card" As a result, he asked for more overtime work. Lee was issued a work phone as well as a company van. On the afternoon of March 14th, Lee called and said that

⁴ Evan McLeod, who was dating Lee in March of 2017, testified that Lee's cat had been declawed. **R. 603, lines 11-13.**

SLED had contacted him and wanted to meet with him. He wanted to know if they could do this at the shop and Haskett said he could. When Haskett asked what was happening, Lee initially did not tell him. Then, he “just kind of jokingly said he may be leaving in handcuffs.” Lee subsequently returned to the shop and two SLED agents met with him for several hours that afternoon. **R. 284-88.**⁵

The agents informed Lee during their conversation that Lindsey was dead. **R. 295.** Towards the end of the officers’ visit, Lee consented to them using a device to download information from his phone. They retrieved the device from the nearby SLED office but were unable to successfully download information from the phone. After that effort failed, the officers took the phone to the SLED office and Lee accompanied them there. **R. 288-89.**

Haskett explained that all of the company’s vans have distinct logos on them and all are equipped with GPS. Law enforcement asked him to pull the GPS information from Lee’s work van. The GPS data showed that at 5:57 p.m. on March 13, 2017, Lee’s work vehicle was stopped at 3500 Grandview Drive in Simpsonville, Lee’s residence at the time. This meant the van was “in the complete[ly] off position ... [and] [the] keys are out of the ignition.” The ignition was not turned on again until 6:06 a.m. The vehicle was driven at that time to the Walmart in Simpsonville. It parked in the lot there at 6:10:08. At 6:14:08, the ignition was turned on, and the van left the parking lot at 6:30:23 a.m. **R. 269-93.** While Lee had planned to work on the 15th, Haskett received a call from SLED informing him of Lee’s arrest. **R. 296.**

Dennis Campbell, Lee’s coworker at AAA Locksmiths, testified that he did not notice anything unusual about Lee’s appearance on Monday, March 13th. Nor was Lee limping or

⁵ Haskett testified that the officers first met with him outside but that they later met in the office’s basement. **R. 287.**

complaining about pain. However, on the 14th, Campbell overheard Haskett ask Lee about what had happened to his face. Lee claimed that “the cat scratched him when his alarm went off.” Lee also did not say that his Kia had been stolen or repossessed **R. 312-13**.

During the time that the men had worked together, Lee had told Campbell that his soon-to-be ex-wife had an affair, that she had lost a lot of weight with a personal trainer and then got romantically involved with this man. Likewise, Lee told Campbell that he needed all of the overtime he could get because “he was having some issue with money.” On another occasion in March, Lee told Campbell that he was going to meet Lindsey to get their taxes done together. “[H]e made a comment when he came back that she was looking fine and wondered if she was wanting to get back together with him.” According to Campbell, “he seemed anxious to pursue that. Yet, in the same conversation, he said that he owed Lindsey nearly \$7,800.00 by April or she was going to have him arrested, and that she was going to receive all of the money from the sale of their home. **R. 313-15**.

Lt. Jeffrey Kindley testified that he was assigned to SLED’s Piedmont Region, which covers Greenville County. On March 14, 2017, he received a telephone call from Capt. Bishop of the Midlands office, who told him that a homicide occurred in the Midlands Region and that Jason Lee, the estranged spouse of the victim, lived and worked as a locksmith in Greenville County. Capt. Bishop said that another agent had already briefly spoken to Lee, and he wanted Lt. Kindley to talk to Lee. So, Lt. Kindley and Lt. Donahue drove to AAA Locksmiths and Lee met them outside of the business. The officers did not know any of the particular details of Lindsey’s death at the time. **R. 321-23**.

Initially, the officers spoke to Lee on a bench outside of the business. When Lt. Kindley told him that his wife was dead, Lee immediately said, “[’]But I still love her,[’]” and he began to

cry.” Lee asked how it happened and Lt. Kindley replied that he did not know. Lee quickly regained his composure, and the men went into the shop’s basement, where they continued their conversation. Lt. Kindley told Lee that they were trying to identify potential suspects. **R. 324-26.**

Instead of identifying suspects,

[Lee] just started talking about that he and Lindsey had been separated for a while and that their divorce was about to be finalized in about a month. He told me about a lady that he was currently dating and said her name was Evan McLeod and he met her on Match.com and he told us that Lindsey’s maiden name was Pilkington and she worked at a bank. He told us they got married in September of 2010 and where they -- where they lived here and that they had problems and broke up in April of 2016. [Also,] he told me that when they split up he initially stayed in the home himself for a while and that Lindsey had left.

R. 327, line 6 – 328, line 6.

Even though the officers had not asked about what he had done on March 13th and they were unaware of when Lindsey was killed, he volunteered that:

He told us that he worked at the Michelin plant, which is in Spartanburg County. He worked there all day and he got home about 6:30 PM that night; that he took some Oxycodone and soaked his foot ... in cold water; that he suspected he had plantar fasciitis and that was having excruciating pain in his right foot from walking and driving all day. He told us that he had a doctor’s appointment on the following Thursday with a Dr. Rowe in Lexington and he also had a dentist appointment.

R. 328, lines 17-25.⁶ See also R. 343-44; 347.

Lee also claimed that he noticed that his blue Kia Rio was missing when he got up that morning and explained that he had removed the license plate about a week earlier, so that it would not be repossessed by the finance company.⁷ Yet, when asked, he admitted that he had not

⁶ Lt. Kindley had noticed that Lee had a limp earlier. **R. 329.**

⁷ Lee stated that a finance company told him that he owed \$1200.00 on the vehicle and that the company would come to repossess the car. **R. 329-30.**

contacted the finance company and did not seem interested in the loss. He even declined Lt. Kindley's offer to contact the Sheriff's Office and "put out a hot sheet on it." **R. 329-31.**

Lee thereafter began discussing the marital problems he and Lindsey had and he mentioned Graham Hockley. While he did not suggest that Hockley was a potential suspect, he used "colorful language" when discussing Hockley.⁸ He said that he and Lindsey had met Hockley when they began exercising together at Gold's Gym. They later started going to the British Bulldog Gym, which Hockley owned. Again, the officers had not asked about Hockley before Lee volunteered his name. Lee stated that it seemed that she became closer to Hockley over time. Lee stated that Lindsey asked him to join her in a charitable event called Walk a Mile in Her Shoes, but that he told her he "wasn't wearing the F-bomb women's shoes like an idiot in public", and that Lindsey decided to go to the event anyway. **R. 331-33.**

Lee subsequently saw pictures on Facebook of Lindsey and Hockley holding hands at the event, which other people had posted. In an effort to reconcile, he had spoken to Lindsey's mother, her sister, his brother-in-law, and a mutual friend, but this did not work supposedly "because he didn't look like Mr. Hockley." **R. 333-34.** Lee's biggest complaint when discussing Hockley was that he felt that Hockley had betrayed him. He had met Hockley first, befriended him first, brought Lindsey there to train with Hockley, and had helped Hockley purchase a mat to put in his gym. Lee stated that he felt like he was closer to Hockley and that they went to UFC fights together, but after he and Lindsey separated, Hockley told Lee that he valued Lindsey's friendship more than Lee's, for purely business reasons. **R. 335-37.**

⁸ Lee described Hockley as "one of those arrogant A-holes who will always pull his shirt off." Lee stated that Hockley was not good looking, but he was a bodybuilder, and Lee obviously disliked Hockley. He got loud, angry, and he used both a British accent and a mocking tone when describing Hockley to the officers. Hockley had a British accent. **R. 332-33.**

In discussing his marital problems, Lee stated that he had taken a week off from work and spent \$3,500.00 to renovate the bathroom in the manner Lindsey wanted but this did not get her back. He expressed concern that Lindsey's family might accuse him of having something to do with her death but, when asked, denied that he had any "anger issues with his wife." He also originally claimed that he had not seen Lindsey in about a month. However, he admitted that they had an argument when they met with their tax preparer earlier in March because he felt that she should pay the tax preparer's bill because she was getting a \$4,000.00 refund. She refused because he already owed her \$1,300.00. **R. 338-40.**

Because Lindsey's family had contacted him that day, the officers asked for his consent for them to download information from his phone and he consented. This was his work iPhone, and the officers were unaware that he had a personal phone. When an agent arrived with a portable device capable of downloading the information, the device did not have enough battery power to work properly, and Lee's office wanted to close. So, the officers asked if they could take the phone to their office and try to download information there. He refused, claiming that he was going on a date that night and needed it to contact his child. **R. 341-43; 366.**

The officers asked Lee about some very visible scratches on his face, which they photographed. Lee claimed that he had gotten the scratches by dry shaving and that he had gone to the Walmart early on the 14th to get groceries and shaving cream. He did not say that the scratches were caused by his cat, as he had claimed to his co-workers. The officers also observed an injury to Lee's right palm, which he asserted happened when he accidentally stabbed a screwdriver into his hand. **R. 344-47.** Lee was not arrested on the 14th. **R. 349.**

Lt. Kindley visited the Simpsonville Walmart on Wednesday, March 15th to see if there was film footage corroborating Lee's story. This Walmart is adjacent to I-385, and he later learned

that Lee lived on Grandview Dr., a frontage road adjacent to the Walmart. The store's video footage showed Lee walking into the store, making a purchase, and then leaving shortly afterwards. Lt. Kindley also found Lee's "missing" Kia Rio vehicle in the Walmart parking lot. He immediately notified the Midlands Region, and he called for local agents to obtain a warrant and search the car. There was no apparent evidence that anyone had broken into the car. **R. 349-54; 358.**

While Lt. Kindley was in the parking lot near Lee's Kia, Lee drove by in the work van. Six or eight other unmarked SLED vehicles were in the area of the Kia. Lee drove past the officers but soon returned on foot. Now, he was angry. He told officers that he wanted his car, that he was on the phone with an attorney, and that the officers could not search his car. Lt. Kindley explained that Lee had thought the car had been stolen, and that the officers wanted to process it without having to make a forced entry. Yet, Lee refused and he angrily paced around. Lt. Kindley noticed that he no longer had a limp. Other agents obtained a search warrant and went to Lee's apartment where they waited on a wrecker to tow his company van. Lee was arrested on the 17th. **R. 354-59.**

Lee's first wife, Lindsey Julian, testified that she lived in Fountain Inn in March 2017, which is roughly a six-minute drive from Lee's Simpsonville apartment. Around 8:00 p.m. on March 14th, Lee told her that the victim was dead, and that he did not know any details since SLED had not told him anything about her death. Although they spoke again later that night, he did not say anything about his Kia being repossessed. **R. 373-74; 378-79.**

On March 15th, Ms. Julian drove past Lee's apartment and saw the work van parked there. Confused, she texted him and he called her back. Lee said that he had found his vehicle, which he thought had been repossessed, and that he was walking to the Walmart to pick it up. He now thought the car had been stolen. Ms. Julian offered to give him a ride. When she picked him up,

he had the Kia's license plate and a screwdriver. In contrast to Agent Kindley, she testified that they saw law enforcement officers surrounding the Kia as soon as they reached the Walmart. Ms. Julian asked if he had done "anything wrong." Because he denied any wrongdoing, she told him he needed to speak to the officers. Lee left the screwdriver and the license plate in Ms. Julian's car when he exited it. **R. 379-83.** Ms. Julian testified that Lee had paid her \$750.00 monthly for child support for the past eight years, but that she offered to accept a reduction, since he was struggling financially. **R. 384-86.**

SLED Agent Nick Sprouse testified that he processed Lee's Kia in the Walmart parking lot on March 15, 2017. The license plate was missing, but the car's VIN number reflected that it belonged to Lee. While Agent Sprouse was photographing the Kia, Lee walked up to him and initiated a conversation. As Agent Sprouse explained his role, he asked Lee about a number of visible linear scratches on Lee's face. Lee claimed that he had cut himself shaving and did not mention being scratched by his cat. **R. 420-24.**

Agent Sprouse also processed Lee's work van, in which he located Lee's work issued iPhone (**R. 427-31**) and he was present when Lee was arrested. At that time, he observed and photographed a bruise on the outer biceps of Lee's left arm. Agent Sprouse then executed the search warrant for Lee's apartment, and he found Lee's personal phone in the bedroom. He also found a pack of blue latex gloves inside a black backpack in the hallway closet. Elsewhere, he found a box for a rechargeable Taser. **R. 433-40; 442; 444-45.**

Milon Williams, "an asset protection officer" at the Michelin plant in Spartanburg, testified that he is responsible for "protecting all Michelin's property ... and the building." On March 13, 2017, he called AAA Locksmiths because he had "several jobs I needed done" that day. Lee came and completed the jobs. Lee was at the Michelin plant for roughly two to three hours and left

around 4:30 p.m. Williams did not notice any injuries on Lee, nor did he notice Lee limping. **R. 594-98; 600.**

Evan McLeod testified that she had dated Lee for roughly six weeks by March of 2017. She knew that Lee's divorce was to become final in April. She last saw him on Sunday, March 12, 2017, when she stopped by his apartment, where she had dinner and watched television before going home. On Monday, March 13th, he sent her a text asking whether she was at work. She then called Lee, who told her that "his foot ... was hurting, that he was heading home that night, [that he] was gonna take some pain medication to help him and [that he would] just go to bed early." She sent him a text at 9:00 p.m., but he did not respond. **R. 601-05.**

She found his statement unusual because he had never taken pain medication or cut off contact in that way at any other time in their relationship. Also, Lee had told her that he was behind on his car payments, but he had never said that he thought his car was going to be repossessed until they spoke on the night of March 14th, which was after he had spoken to SLED. He told her on the 15th that his car had been found. Evan testified that Lee was behind on his car payments and had not been able to pay his rent for "the past month or two." Additionally, he owed Lindsey \$3000.00 for credit card debt, which was due by the time their divorce was finalized in April. He thought it was unfair that he had to pay the full amount because the money had been spent "on the home that they shared." He also said that he thought it was unfair that Lindsey stood to collect \$50,000.00 on the house that had previously belonged to them both. After Lindsey's murder, he felt things were beginning to settle down, that the marital home would now be his, and that he wanted to take a trip after squaring away his financial affairs. **R. 606-11.**

Pamela Vinson, a tax consultant at LuFrans Tax Service, testified that Lindsey and Lee came into her office for a tax preparation appointment on February 11, 2017. Lindsey was

“bubbly,” “happy,” and “excited,” while Lee appeared unhappy. “It was just a simple return” and it only took Ms. Vinson “fifteen, [or] twenty minutes” to prepare. The Lees were owed a refund. “The Federal refund was \$2,439. The ... South Carolina state refund was \$1,393, and the Virginia income tax refund was ... \$201.” Lindsey was to receive the full tax refund, and she gave Ms. Vinson a new account number for her direct deposit. **R. 616-19; 621.**

Ms. Vinson overheard Lindsey tell Lee, “you ran up my credit card and you know why I’m getting the refund.” She also overheard Lee tell Lindsey that he would not pay half of Ms. Vinson’s fee because Lindsey was receiving all of the refund. Lee called Ms. Vinson’s office on March 15, 2017, asking if the direct deposit information on the tax returns could be changed, and she explained that it could not. When she learned of Lindsey’s murder, she contacted a 1-800 telephone number and later told SLED what she knew. **R. 619-20; 622-24.**

Jason Van Nest, Lindsey’s brother-in-law, testified that he first met Lee in late 2012 or early 2013. Before Lindsey and Lee separated, Jason and Lee used to go deer and hog hunting. Van Nest testified that Lee always had the book bag found in his apartment whenever he went hunting. Also, he and Lee would use blue latex gloves when they hunted wild hogs to protect themselves from animal-borne diseases. **R. 627-28; 630-31.** Van Nest was aware that the Lee’s divorce would become final in April of 2017, and he and Lee did not associate much after Lee and Lindsey separated. Yet, they texted one another on March 6th and 7th. **R. 628-29; 632-33**

Then, on Tuesday, March 14th, Van Nest received several texts from Lee, beginning at 7:58 a.m. Van Nest thought it was odd because Lee was volunteering information that did not concern him, such as the fact Lee had a new girlfriend. Lee even texted Van Nest a picture of Lee and the new girlfriend, as well as a picture of Lee’s work schedule. Van Nest testified that exchanging work schedules was something he and Lee did a couple of years ago when they were closer and

wanted to go hunting together. However, Lee sharing his work schedule at that time seemed out of place. **633-40.**

Graham Hockley testified that he retired from the British Army in 2013, after twenty-four years of service. For a number of years, he was the judo⁹ specialist for the army. Following his retirement, he moved to Lexington, South Carolina, and began working as a personal trainer at Gold's Gym. Lee was one of his first clients. Hockley worked with Lee as a fitness trainer to help him with his health and fitness goal of becoming a state trooper. However, Lee did not meet the fitness requirements to become one because of a lack of effort. **R. 692-97.**

In February of 2015, Mr. Hockley opened his own gym, Bulldog Fitness, and Lee was one of his first clients. One night, Lee told Hockley that he was not happy about Lindsey's weight and that he wanted to enlist Hockley to train her. Lee brought Lindsey in to meet with Hockley, and she subsequently began judo training with him and exercising in the gym. Hockley also helped her develop a healthier diet, and she became dedicated to becoming fit, as she excelled in the judo program. She originally weighed over 260 pounds, but she lost a great deal of weight over the course of roughly two years and weighed 135 pounds in 2017. Although Lee was still in the judo program with her, he did not excel. This was when Hockley first saw Lee get agitated. **R. 697-704.**

As Lindsey continued to lose weight, "there was something there that just shouldn't have been. She was going one way, he was going the other," to the point of Lee trying to "sabotage" her dietary routine. Hockley attempted to get Lee as motivated as she was. Once, Hockley was invited to dinner at the Lee's house, but he had to intervene after Lee started belittling Lindsey. Lee exhibited this same type of behavior in Hockley's presence on other occasions as well.

⁹ Judo differs from karate in that it "is defense against striking." Punching and kicking are not part of the training. **R. 694.**

Hockley learned that the Lees had separated when Lee did not attend the Walk a Mile in Her Shoes charity function, which he attended. It was his understanding that Lee instigated the split but felt that it was a mutual decision. **R. 704-07.**

Lindsey continued to attend training regularly after the separation. On the other hand, Lee did not go as frequently and eventually stopped going altogether. Lindsey continued gaining confidence as she lost weight. “She was extremely happy with her life,” and “she was really enjoying herself.” She even started recruiting customers to Bulldog Fitness and assisting with the judo training of young girls at the gym. Her work helped Hockley financially. At some point, the client relationship evolved into a friendship. Then, Lindsey and Hockley briefly became romantically involved, but they quickly chose to simply continue their friendship. **R. 708-13; 730-33; 739.**

Hockley testified that they remained very close, that Lindsey was his best friend, and that he had planned to help her train for a possible job with the FBI. He indicated that she always wore her Fitbit. Shortly before Lindsey’s death, he received a phone call notifying him that his second grandchild had just been born. Lindsey accepted his invitation to accompany him on a trip to the U.K. to see his new grandchild, and they had agreed to split the cost of travel. Unfortunately, Lindsey was murdered days before the planned March 24th trip. He last saw her on the night of the 13th. **R. 714-20; 742.** Hockley voluntarily cooperated with SLED. He was interviewed, photographed for possible injuries, and he submitted DNA sample. **R. 721-22.** Finally, he testified that Lindsey never smoked marijuana. Also, she was not seriously involved with anyone romantically and she never mentioned any problems with another person. **R. 736-37.**

Forensic pathologist Dr. Janice Ross testified that she performed an autopsy on Lindsey’s body. Dr. Ross found multiple petechia on the whites of the Lindsey’s eyes, on the inside of her

eyelids, on her face, and on her upper neck. Dr. Ross also found hemorrhage in a strap muscle in the neck and explained that these findings were caused by Lindsey being strangled. The strangulation was potentially fatal, and Lindsey would have “lost consciousness in “[a]bout eight seconds.” Additionally, Dr. Ross observed two linear abrasions on Lindsey’s forehead, a bruise under her left jaw, as well as “some linear abrasions ... on the upper neck behind the ... left ear.”

R. 672-77; 680-81.

Dr. Ross described the most significant findings as follows:

On the front of the neck, there was a six-inch long incised wound or cut from a sharp instrument across the front of the neck, which exposed the airway, the trachea was cut through, and the left carotid artery, ... one of the main arteries going up to the brain was also transected or cut in two. There was some hemorrhage around that area remaining and there was also another very faint, probably sharp incised wound, superficial on the skin above that main wound and mostly on the left side. ... [This wound cut] [f]rom side to side.

R. 678, lines 7-21.

With the carotid artery severed, Lindsey would have lost blood with every heartbeat, and her death would have ensued within “three or four minutes.” ***R. 679.*** Further, Lindsey’s upper extremities were severely bruised, “there was a somewhat horizontal bruise over the left groin area,” bruising “just above the left shoulder blade” that appeared to have been caused by a hand, a small circular bruise on the right thigh, bruising to the middle of the back, and her fingernails had been recently cut to the quick. Dr. Ross opined that the manner of death was a homicide. ***R. 679-88.***¹⁰

¹⁰ SLED toxicologist Lindsey Mitchell testified that Lindsey’s blood and ocular fluid tested negatively for the presence of alcohol. Further, her blood tested negatively for the presence of amphetamines, methamphetamine Buprenorphine, Carisoprodol (a muscle relaxer), cocaine metabolites, Methadone, opiates, Oxycodone, Tramadol, Zolpidem (Ambien), cannabinoids (the “constituents of marijuana”). Based on these results, Agent Mitchell opined that Lindsey had not recently used marijuana. ***R. 265-72.***

Some of the most damning evidence against Lee was the results of DNA testing by SLED. The three pieces of blue latex gloves found at the crime scene were sent to SLED for DNA analysis as were two blue latex gloves seized from the backpack in Lee's apartment, and a number of other items. Verona Herrera, a technician in SLED's serology department examined these items and testified that the glove pieces found at the crime scene were of the same color and thickness as the gloves found in Lee's apartment *See R. 457-63*.

Alysha Breland, formerly a forensic DNA analyst at SLED, testified that she had DNA samples from Lee, Lindsey, and Hockley with which to compare to items submitted for analysis. The DNA profile developed from a "swab from the entire piece of blue latex" found at the scene was "a mixture of at least two individuals." The DNA profile of the major contributor matches the DNA profile of Lindsey Lee." Because of the "inability to calculate a statistic," Ms. Breland did not offer any further interpretation as to the minor contributor. The DNA profile of a swab of a piece of blue latex found at the crime scene was "a mixture of at least two individuals. Lindsey Lee and Jason Lee are included as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 64. Graham Hockley is excluded as a contributor to this mixture." *R. 493-500; 513-14*.

Critically, the DNA profile of "a swab from the entire piece of blue latex ... [found in] the foyer" was a "mixture of at least three individuals. The partial DNA profile of the major contributor matches the DNA profile of Jason Lee. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately

1 in 230 octillions.”¹¹ Because she was unable to calculate a statistic, Ms. Breland did not offer any further interpretation as to interpretation as to the minor contributors. ***R. 514-15.***

Paul Meeh, a scientist in SLED’s forensic DNA department, analyzed a number of items submitted in the case using STRmix software.¹² Importantly, he was able to exclude Hockley from the DNA profiles of swabs taken from fingernail clippers seized from Lee’s apartment, swabs from the interior and exterior front doorknob at Lindsey’s house, a swab from the interior back doorknob, and swabs from the bag of marijuana found in the glove box of Lindsey’s car. However, the DNA profile developed from “the swabs ... taken along the interior and exterior sealing end of the bag above the interlocking plastic portion of the bag” of marijuana found in the glove box of Lindsey’s car was a mixture of three individuals. “The DNA profile is approximately 240 trillion times more likely if Jason Lee and two unidentified unrelated individuals contributed to the mixture than if three unidentified unrelated individuals contributed to the mixture.” In Mr. Meeh’s opinion, Lee “contributed DNA to this mixture.” ***R. 5 ; 529-37; 547-53.***

Testing of the swab of the entire piece of blue latex found in the living room revealed that there was “a mixture originating from two individuals.” The DNA profile developed was “approximately 25,000 times more likely if Jason Lee and an unidentified unrelated individual contributed to the mixture than if two unidentified unrelated individuals contributed to the mixture.” Graham Hockley was excluded. The DNA profile was roughly “30 septillion times more likely if Lindsey Lee and an unidentified unrelated individual contributed than if two unidentified

¹¹ 230 octillion is one in 230,000,000,000,000,000,000,000,000.

¹² Several items tested by Ms. Breland found DNA profiles suitable for YSTR testing, which she did not do before she went on maternity leave. See. R. 505-07. YSTR testing only tests for the presence of the Y chromosome, or male lineage. ***R. 505-06; 528-29.***

morning of the 14th. Verizon phone records showed that Hockley's cell phone used a tower the area of Bulldog Fitness at 7:41 p.m. on the 13th. At 7:53 a.m. on the 14th, it used a tower near his residence. **R. 756-64.**

Lee's work cell phone records showed that at 6:01 p.m. on March 13, 2017, Lee's work phone used a tower near his apartment on Grandview Dr. in Simpsonville, South Carolina. However, after 5:30 p.m. on March 13, 2017, Lee's work phone becomes untraceable until 6:49 a.m. on the 14th, at which time the cell used the tower near his apartment. He also received a call in this time period that was not answered and went to voicemail, even though he told people at work that he needed to work as much overtime as possible. **R. 768-71.**

The call records for Lee's personal cell phone for March 13th showed that his personal phone was last used at 5:30:42 p.m. This call used cell towers near the Michelin plant and his apartment. He next used this phone at 12:04 p.m. on the 14th. The phone again used a tower near his apartment. He did not make any calls from it again until he placed an outgoing call from his apartment at 6:49 a.m. on March 14th. **R. 764-68.**

Jon Van Houten testified that although he is employed by the Columbia Police Department, he has been "on loan full-time with the United States Secret Service" since 2010. He is a task force agent and a digital forensic examiner with the Secret Service's electronic crimes special agent program. He testified as to the extracted contents of both Lee's Samsung Galaxy personal cell phone and his Apple iPhone work cell phone. He was "only able to do a logical extraction on both phones." This permitted him to gather the data that a person sees when navigating through a phone or computer, but nothing else. **R. 778-82.**

Agent Van Houten testified that Lee had entered Lindsey under contacts as "Hungry Money" on his personal phone. On March 10th, he sent himself two text messages on his personal

phone, which comprised “a short bill list.”¹⁶ Additionally, he had deleted the call logs for all calls made between January 14, 2017 and March 14, 2017, and he removed his entire web search history before 8:15 a.m. on March 15th. This was “an entry of a search for how to reset your password on Credit Karma.” **R. 782-87; 790-91.**

Also on March 15th, he attempted to access his Fitbit login password at 8:41 a.m. He searched for criminal defense attorneys in Greenville at 9:59 a.m. At 10:13 a.m. and, again, at 1:59 p.m., he looked up how to find his tax refund on the IRS website, and he checked his IRS tax refund results at 2:06 p.m. At 8:19 p.m., he searched Zillow.com for a listing of Lindsey’s home online, and he read articles about her murder at 9:42 p.m. and, again, at 11:42 p.m. On March 16th, he searched online for local obituaries at 5:22 p.m., and he called the customer support line of USAA, a banking and insurance company. **R. 782-90.**

SLED Agent April Sykes testified that she went to the crime scene on March 14, 2017. She later met with Lindsey’s entire family. When she interviewed Jason Van Nest, he was cooperative and did not have any visible scratches or injuries. She also interviewed Kyle Perry, a man with whom Lindsey had a brief relationship. Perry was “visibly shaken” and “upset” when he heard of the victim’s death. He also lacked any visible marks or injuries. Agent Sykes’ investigation did not uncover any other men with whom Lindsey was involved, apart from Lee. **R. 795-97.**

Agent Sykes also reviewed Lee’s finances and found that he was barely able to cover his bills with his salary. After bills, he would have just \$57.00 left over from his paycheck. He only had \$101.08 in his checking account; he had exceeded his maximum credit card limit of \$9,500.00 by \$5.52; he was in the process of being evicted by his apartment complex, which had twice filed

¹⁶ Specifically, the text read “rent, \$780; child support, \$750; electric, \$85; gas -- or heat, \$35; cable is \$40; gym is \$45; car is \$320; insurance, \$108; cell phone, \$80, and it gives a total \$2,243 and below that it has a salary \$2,300, which shows a small excess of \$57. **R. 785.**

a rule to vacate in summary court; and he was behind on his car loan payments. In fact, the bank had already begun the internal process of repossessing his car.¹⁷ Worse, he owed the victim \$1300.00, which was due to be paid by April 1, 2017. **R. 798-99; 801-05.**

Agent Sykes attempted to establish the timeline of Lindsey's movements on the night of March 13th. At roughly 7:30 p.m., she finished her workout with Hockley. As reflected by the receipt found at the crime scene, she then went to Walmart on Old Barnwell Road. Surveillance video from that Walmart showed her there and corroborated that she bought items at 8:17 p.m.¹⁸ All communication with her ended after she left Walmart. **R. 806-12.**

Agent Sykes likewise developed a timeline of Lee's movements on March 13th and 14th, by reviewing his call detail logs for his phone, his Fitbit records, surveillance video from the Simpsonville Walmart and surrounding businesses, as well as text messages between him and Evan McLeod on March 13th. He texted Evan on the 13th, asking if she was still at work. The GPS from his work van reflected that he was at his apartment. The last reading from his Fitbit on March 13th was at 6:10 p.m. He received a 9:03 p.m. text from Evan telling him goodnight, to which he did not respond, and a March 14th call to his work phone at 1:29 a.m. was unanswered and went to voicemail. On the 14th, video surveillance from a Days Inn showed his Kia pulled into an adjacent parking lot that was on the very side edge of the Simpsonville Walmart at 5:17 a.m. He got out of

¹⁷ Despite efforts to locate him, the bank last had a Virginia address. Lee had called the bank on March 16th and asked what minimum he could pay to keep the car from being repossessed. He was told \$611.00. At that time, he told the bank that he had a new address, but he hung up without disclosing it. **R. 804-05.**

¹⁸ She sent a text at 8:15 related to the sale of an entertainment center. **R. 810.** The pants and shoes she is seen wearing in the video surveillance are consistent with the shoes and pants at the murder scene and the hooded sweatshirt in the video is consistent with the one found in the washing machine in her home. **R. 812.**

the car and walked through the Days Inn and Walgreens parking lots. The Walgreens video shows that he walked through the parking lot at 5:27 a.m. *R. 812-23; 828-29; 833; 835-36.*

His Fitbit was activated at 6:03 a.m.¹⁹ The GPS from his work van activated at the same time. The Days Inn video shows that he parked the van beside his Kia at 6:10 a.m., and it stayed there for roughly four minutes. When he drove the van in, he came from a different direction than when he drove the Kia there earlier, which was from the direction of I-385. He then pulled out and headed in the opposite direction from which he had come.²⁰ Finally, the Walmart video shows that he pulled the van up to the front of the store, got out, and entered the store. After buying some items, he returned to the van and drove off. *R. 823-28; 834-39.*

MATTERS BEFORE THE COURT

This Court has before it for its consideration, in addition to the exhibits from this hearing the following materials:

1. Direct Appeal Matters:
 - a. Anders Brief of Appellant.
 - b. Record on Appeal, Three volumes (1037 pages).
 - c. Court of Appeals Order, April 15, 2022 (directing briefing and denying motion to be relieved.
 - d. Brief of Appellant.
 - e. Amended Brief of Respondent.
 - f. State v. Jason Donn Lee, Unpublished Op. No. 2023-UP-257, S.C. Ct. App. (July 5, 2023).
 - g. Remittitur Letter, July 25, 2023.
2. Prior Post Conviction Relief Matters.
 - a. Jason Donn Lee v. State, 2021-CP-32- 0891, Order of Dismissal Without Prejudice, September 20, 2021 (Hocker, Presiding Judge).
3. Records of the Clerk of Court related to the trial and conviction.

¹⁹ In reviewing his Fitbit records from February 17 through March 17, 2017, Agent Sykes discovered that the average time the Fitbit was not recording “was 7.24 hours. However, on the night of the murder between 6:10 PM and 6:03 AM, almost twelve hours, it was never recording whatsoever.” *R. 829-31.*

²⁰ A still shot of the video (State’s Ex. 172) reflects that he had an unknown white object in his hand. *R. 826.*

4. Records of the South Carolina Department of Corrections.

ALLEGATIONS BEFORE THIS COURT

In the initial *pro se* application for post-conviction relief, the Applicant made the following allegations:

- I. Ineffective Assistance of Counsel;
 - a. Facts to be developed in amended petition. I desire a review by the public defender to determine meritorious issues.
 - b.

In his amended application dated August 23, 2026, the Applicant made the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to enter text of impeachment value when questioning Jason Van Nest (R. 649-50).
 - b. Failure to investigate Jason Van Nest as a potential suspect.
 - c. Failure to object to:
 - i. Testimony regarding the way Applicant treated the alleged victim in public.
 - ii. The Walmart video of the alleged victim.
 - iii. The Walmart video featuring Applicant.
 - iv. The State's statement that the DNA evidence on the bag of weed when the report showed otherwise.
 - v. The entry of the knife on 403 and relevance grounds.
 - vi. failure to object to STRmix DNA.
 - d. Failure to argue that:
 - i. There was scant evidence in the house.
 - ii. Applicant ensure the alleged victim was set up well financially after their separation.
 - iii. The alleged victim's DNA was not in his car.

- iv. Applicant did not take cash out of the alleged victim's dresser.
 - v. Mr. Hockley's evidence was on her Fitbit and shoes.
 - vi. The timeline given by the State.
- e. Failure to request a change of venue.
- f. The prolonged indictment process.
- g. Failure to file a motion for a speedy trial.
- h. Failure to bring to the Court's attention that a woman with access to the jury had a conflict in the case.
- i. Failure to cross-examine
 - i. Investigators showing that Applicant was not featured on all pieces of the latex glove.
 - ii. Officers regarding their claim that Applicant hid his phone.
 - iii. About the allegedly competing reasons why Applicant's face was scratched.
 - iv. DNA experts as to why they retested the same evidence four times.
 - v. Failure to cross-examine Expert Witnesses concerning Applicant's DNA being absent from the bag of weed.
- j. Failure to establish a defense.
- k. Failure to enter the DNA reports.
- l. Erroneously telling Applicant not to testify when he could have offered testimony on the following grounds:
 - i. Applicant could have testified as to why his face was scratched.
 - ii. Applicant could have testified to how his Hulu was manually turned off at the time of the murder.
 - iii. Applicant could have testified as to the fact that the GPS in his car showed that his car never left Greenville.
 - iv. Applicant could have testified regarding his typical practice concerning taking off his Fitbit at night.

m. Failure to establish an alibi defense.

SUMMARY OF PCR TESTIMONY

TESTIMONY OF JASON DONN LEE

The Applicant, Jason Donn Lee testified at the PCR hearing. He stated that he was represented by James Snell on his charges of murder and burglary in the first degree. He indicated that he met with counsel Snell a few times. He stated that he worked with Snell's assistant, Vicky, and met her 15 to 20 times over a three-year period. Lee alleged that counsel allowed the prosecutor to lie. He further contended that the defense rested and put up no defense in his case. He contended that his counsel indicated: "trust me, there's reasonable doubt." He contended that the state's theories were that the victim had lost weight and that the Applicant thought that she was horrible and claimed that he needed money and his car was repossessed because he failed to make payments, and he felt that he was just an easy target and had no clue who killed her.

The Applicant complained that counsel did not put up any evidence at trial. He claimed that he was at his apartment in Simpsonville. He claimed that he got home at 6:30 and was at home watching Hulu. He claimed he went to bed and got up at 6:30. He asserted that this is what he told the police.

Lee testified that counsel Snell recommended that he should not testify. He stated that Snell told him that the prosecutor would tear him up if he testified.

The Applicant stated that there was an issue at trial concerning the marks he had on his face. He stated that the marks on his face were not defensive wounds were from his cat paw. He indicated that his cat had been declawed. He also contended that another mark that he had on his face was from dry shaving. He suggested that the bruises that he had on his arms were from his

job. The Applicant introduced a photograph of his face taken one day after the murder as Applicant's Exhibit One (A and B).

The Applicant asserted that evidence from Hulu assisted his defense. The Applicant suggested under the State's timeline that the victim was murdered at 8 pm on March 13, 2017. He claimed that there was sleet and ice that night. He contended that he was home watching Hulu and fell asleep. He contended that his autoplay was not on and the active account had been manually turned off. The Applicant contended that if the autoplay had been engaged, it would have played the entire season of the show he was watching. Lee contended that he would have to have been at his home to manually turn it off, suggesting that he was home at that time. He stated that he wanted counsel to put up this information to show that he could not have been present to turn off the DVR when the murder occurred. The Applicant introduced the SLED Report related to the Hulu inquiry as Applicant's Exhibit 2.²¹ He claimed the defense started acting upon this

²¹ In Applicant's Exhibit 2, the SLED memorandum revealed a conference call in regard to the Applicant's Hulu account with a Hulu director and legal counsel. The records had been retrieved pursuant to a search warrant on the account. In the memorandum the Hulu representatives reported the following information. The Hulu representatives indicated that it could not definitively determine whether Lee's home device had "auto play" enabled on the night of March 13, 2017, that based upon a 26 minute period between the start time of the episode "Pilot" and the episode titled "The Grandparents", it appeared that "The Grandparents" may have been started automatically through the "auto-play" feature.

According to the Hulu representatives, the length of the episodes "Pilot", "The Grandparent", and "The Buffer" appeared to have been between 22 and 23 minutes long, not including commercials and with commercials, the total runtime for episodes would have been approximately 26 minutes. They advised that if autoplay was active, the program would have kept playing beyond episode 3 (The Buffer). Given that the playback stopped at episode 3, it was likely that someone manually stopped it. They advise that Hulu's autoplay function could either be turned on or off by the user. Autoplay is currently turned on by default and would have been on by default in March 2017. If autoplay is on, at the end of 1 episode, the next episode automatically started. In March 2017, autoplay would continue automatically playing episodes for a period of six hours. The user would not have been able to change the six-hour playback or any other auto play setting (aside from turning the feature on or off).

They reported that if six hours passed without the user interact thing with the unit or television, and idle timer would inquire if the user was still watching the program. If an individual had the Hulu application on a smartphone (Android or Apple iPhone) and was logged in both on the home device on smartphone, the individual could remotely control the home device by using the Hulu application on the smartphone. The devices do not have to be on the same network for this action to occur. According to Lee's records, the account registered to Lee was used to stream a program on an Android smartphone in January 2017. If Hulu is open on an individual smartphone and the

late in discovery.

Concerning his car repossession, the Applicant claimed it was used against him at trial. He asserted that the State claimed that he murdered her and then purposely ditched the car. The Applicant asserted that he did not pay his bills on time. The Applicant indicated that his previous car had been repossessed and the company had damaged it. The Applicant stated that he purposely left his car at Walmart on a camera to see if the repo company would damage this car like it had done to the prior vehicle as well. The Applicant asserted that he knew the car was at that parking lot and that he had told SLED the car was there. He contended that SLED lied about the car. The Applicant stated that the car had Sirius XM with tracking ability. He claimed that his counsel spoke with SiriusXM and a GPS report was generated that he claimed showed the vehicle was not in Lexington County. However, He stated that there was an objection to admitting the evidence based upon authentication.

The Applicant testified that other suspects were not adequately investigated. He stated that they looked briefly at Graham Hockley and also at Jason Van Nest (who both testified at trial). He stated that there was alleged eyewitness testimony that someone was seen in the neighborhood with a description of dark hair, a beard, and approximately 5'6" and around 200 pounds.²² The Applicant further stated that there was a quarter million dollar life insurance

home device at the same time, an individual can control and prompt a program to play on the home device. The Lee records would show the home device as the device on which the program was watched, even though it was controlled by a smartphone on a different network. The smartphone could be used to control playback on the home device as long as an Internet connection was available. The smartphone would only be shown as a playback device on the Lee records if the program was watched on the smartphone. Autoplay will stop if the user stops playback. Autoplay can also sometimes stop if some type of error occurred within the program. Per the Lee records, it was reported the episode titled "Pilot" was selected and played by the user.

²² The Applicant introduced as Applicant's Exhibit 3, two statements made to SLED Agent Shawn Grant on March 30, 2017. In one, James Kennedy stated either the last week of February or first week in March 2017 that he saw a white male 203 times within the same week walking back and forth on Lake Dogwood Drive about 5'7" tall wearing a black hoodie and keeping his hands in his pockets. When he saw him after dark, he indicated that it was between 8:00pm and 10PM. In the second statement, Deryk Talor indicated that around February 26-28 he saw a

policy taken out on the victim that left money to Jason Van Nest's wife and indicated that there was a text message about getting to keep the money.²³ The Applicant testified that Van Nest had access to blue latex gloves and indicated that they both used them for hunting.

The Applicant also complained that there was no questioning of Christina West, the victim's friend or Graham Hockley.²⁴

He complained that there was a video of the victim walking around the Walmart and showing her going to the car the evening of the incident. He complained that it made him appear to be a liar.²⁵ Lee claimed the video was not relevant and wanted counsel to object. He noted

white male mid 30's early 40's walking in a black jacket head down and that he saw him again the first or mid-second week in March and then again around the 13th wearing the black jacket with his hands in his pockets and head down around 12 to 1 am that night. Taylor described him 5'7" to 5'9" and weighing 160-180 pounds with mid-length shaggy brown-blackish hair and half-grown beard.

²³ During the cross-examination of Jason Van Nest by co-counsel Koutsogiannis, it was developed about the existence of a conversation between Van Nest and his wife (the victim's sister) about a life insurance policy on the victim. R. 643-644. Van Nest indicated that he was aware there were policies but indicated he was not aware who it was left to, whether it was her mother, Debbie, Karista or the Applicant. R.p. 644. Defense counsel developed that on a text time stamped on March 21, 2017, almost a week after her death had a conversation by text about the existence of a life insurance policy that benefited his wife. "You have personal knowledge of this. Not yet, but I did find out some good news. I am the beneficiary of Linz's whole life insurance policy, not Jason. Whoop. Whoop." R.p. 649, l. 8-11. Van Nest recalled it because they had a "concerns where it was gonna go and it wouldn't be to where it would benefit us or him or whoever. Honestly, I didn't want it to over there." R.p. 649, l. 15-18. Van Nest claimed that it was the first he learned about the policy was on the 21st. R. p. 650. Counsel Koutsogiannis also developed that the Van Nest was not asked for his fingerprints or a buccal swab. R.p. 656-657. Van Nest indicated that he was initially not aware of how much the life insurance was but initially found out. R.p. 657. However, Van Nest had agreed to voluntarily submit his cellphone for extraction. Van Nest acknowledged that he used blue latex gloves when he was hunting and that it was not uncommon for him to give some to Jason and vice versa. This inquiry about life insurance caused the State on re-direct to inquire whether Jason knew whether or not he was a beneficiary on the life insurance policies, which Van Nest stated that he had no idea or whether the victim's estate was still open. R.p. 660.

²⁴ Christina West testified at trial as a State witness. Counsel Snell cross-examined her concerning the last time she saw the Applicant was at a Christmas Party in December 2016 and the fact that they used to double date shortly after December 2011 to 2015. R.p. 174-175. The Court's review of Graham Hockley testimony at trial reveals cross-examination from R.p. 728-736, 741-742.

²⁵ The video, State Exhibit 174 is described at R.p. 173-174 and aided in showing for purpose of a timeline the victim's movements that evening. The video showed her arrival into the Walmart parking lot, shopping in the store with a receipt for the purchased items at 8:17 PM, through her return and departure in her vehicle. It also showed the clothes that she was wearing at that time.

that the victim was fully clothed at Walmart but almost fully unclothed when the victim was found. The Applicant contended that if he had testified, he could have addressed it.

The Applicant complained about a knife that was introduced.²⁶ He asserted that it was introduced without objection, but that counsel should have objected to it because it had nothing to do with the murder. He claimed that it was a giant knife.

Concerning DNA evidence, the Applicant complained that this testing was supposed to be the king of all things. He claimed it showed that matters were tested four times and repeatedly until they got as result. He complained that SLED used STRmix which was extremely confusing to the jury. He stated that it was not explained well and probably caused jury confusion. The Applicant complained that he was not allowed to admit the DNA reports into evidence at the trial, but the trial judge allowed the expert to testify about the contents of the report.²⁷ The Applicant also testified that the victim's clothes were put into a washing machine and that his

²⁶ The Court is unclear what knife the Applicant is describing. If he was describing State Exhibit 63, the knife from the kitchen. R.p. 234. No objection was made to its introduction by defense counsel. The knife was swabbed. R.p. 470. State Exhibit 128. The victim suffered a knife wound to the neck. R.p. 190-191. The knife (State Exhibit 63) was located in the butcher block in the kitchen. R.p. 212, State Exhibit 10. Also R.p. 234. This knife became SLED item which was found to be positive for a presumptive test blood on the handle, but negative for the presumptive test on the blade. R.p. 468-469. It was reported that SLED did not do a confirmatory test for human blood which the defense developed on cross-examination. R.p. 486. However, a swab from the blade handle developed a mixture of at least two individuals, including the victim as a main contributor. R.p. 510.

Other knives were also seized from the house. State Exhibits ID 106,107,108,109. State Exhibit 107 was a machete style knife. State Exh.108 is a hook-shaped steak or stock knife. R.p. 440-441. As to this set of knives, counsel Snell objected as being not relevant to the case or murder and their prejudicial value outweighed anything probative. R.p. 441. The solicitor argued that the relevance of this set of knives was to show the evidence tech at the scene was doing his job. The Solicitor confirmed that there was nothing to connect those knives to the crime. R.p. 442. At that point Judge Cooper sustained the objection. R.p. 442.

²⁷ During the deliberations, the jury foreman sent a note "are we allowed to review the DNA profiling. The foreman clarified that they wanted the reports from which SLED Agent Breland and Agent Meeh testified. The trial judge noted that the reports were not in evidence, but their testimony was in evidence. R.p. 950. The trial judge noted that it was willing to replay parts of any of that testimony. The foreperson indicated that they did not need the parts replayed. R.p. 951.

DNA was not on the machine.

Concerning his interrogation, the Applicant testified the police lied to him for him to either talk or be arrested.²⁸ He claimed that he had nothing to hide so he spoke with them. He stated that it was small room for questioning, and he claimed that it was not recorded by SLED or they “lost their notes” of his interview. He claimed that they forced him to speak with them in that room, which he was not willing to do. He claimed that during the interrogation, his girlfriend texted him and that he replied to her that he was speaking with the authorities. He claimed that he showed them the text message from her.

The Applicant complained about the way the evidence was presented against him. He stated that there was a small bag of weed found in the car and the State asserted that his DNA was found on the bag, but Applicant claimed his DNA was not on the bag. He asserted that the prosecutor lied to the jury about this. Concerning blue latex gloves, he indicated that he and Jason Van Nest used these gloves for hog hunting. He claimed that he had given a box of the gloves to Van Nest because he claimed that he was no longer hunting. He stated that there were three pieces. He indicated that Applicant’s DNA should be on all the pieces, but his DNA was only of two of the three pieces and that there was unidentified DNA on the other piece. He claimed he did not place it there. He claimed that the glove was placed at the scene in the middle of the floor to incriminate him. He said the pieces of the glove were placed on the floor where anyone could see them. He contends that the unidentified DNA probably belonged to Hockley

²⁸ A *Jackson v. Denno* hearing was held prior to trial concerning the suppression of the victim’s statement. An initial meeting with the Applicant occurred on March 14, 2017 at the Applicant’s business when SLED Lt. Jeff Kindley advised him of his wife’s death while on a bench outside. R.p. 67. Because L. Kindley did not have information, he did not reveal the circumstances when he was asked by the Applicant how she died, including that her neck had been slashed. R.p. 67. Lt. Kindley, other agents present and the Applicant then went inside the Applicant’s business and led them to an office in the basement. During the Denno proceeding, Lt. Kindley was referring to his notes.

who was in a romantic relationship with the victim.

He stated that the state's theory against him was based upon a need for money that was at risk from the separation and the pending divorce. However, the Applicant asserted that this was not a valid theory because he had told the victim that she could have everything. He claimed that he had signed the house over to her.

He claimed that his family retained counsel and paid counsel Snell \$30,000.

The Applicant wanted counsel to question Hockley more about the relationship with the victim.²⁹ He asserted SLED only took the DNA sample from him rather than drilling in on him.

The Applicant questioned why not take the cash from the drawers. Similarly, he said he could have taken the cash and jewelry.

The Applicant also contended that he thought counsel should have moved for a change of venue. He stated that the victim was working in the courthouse based upon her job in IT with the sheriff's department. He also stated that he learned a personal friend of the victim had access to the jury. He stated that counsel Snell questioned whether they could prove it. He indicated that

²⁹ In Hockley's direct examination he spoke about that fact that he was planning to go to back to England in March 2017. This was because his daughter giving birth and actually had given birth on March 13 which was the last time he saw the victim. Hockley testified that he did not have a girlfriend at the time and asked the victim earlier if wanted to go to England. She had bought the flight tickets and he had paid for the hotels and the car. He stated that they planned to leave March 24. R.p. 719-720. The record shows that during Hockley's cross-examination counsel Snell immediately started questioning him about his contact with the victim including receiving texts from her throughout the day, go to her house once or twice and was aware that she was in the process of selling the house. R.p. 728-729. Hockley confirmed that he had told law enforcement that after the victim had separated in 2015 that he had slept with her after the split in May of 2015. He declared that after a while the relationship had become platonic, including in 2017. R.p. 732. Hockley opined that it was intended to be a platonic trip to England, but acknowledged that they were very close like best friends in the sharing of information. R.p. 733-734. In the statement he had given law enforcement, he indicated that he understood that she had left her husband in April 2015 and indicted that the date he had sexual relations was corrected to be in May 2016. R.p. 738-739. Hockley clarified that he did not have a sexual relationship until after they had separated. R.p. 739.

since they could not prove it, venue would not be changed by the trial judge.

The Applicant along claimed that they had a prolonged indictment. He stated that it was delayed for three years which he spent in county jail.

He testified that the jury had requested to see the written DNA reports but were denied.

They discussed viewing the crime scene. However, he stated that the prosecution pushed back. The Applicant contended once they were allowed to visit the crime with SLED, there was nothing in the home.

The Applicant claimed that the DNA matched Hockley on the shoes and the FitBit. He also complained that the car had no evidence regarding her death.

The Applicant stated that he wanted a fair trial. He stated that counsel Snell told the Applicant to testify and that he did not trust Hubbard. He further claimed that he was not dishonorably discharged from the military.

On cross-examination, the Applicant indicated that he shared all of his information with counsel Snell. Lee confirmed that he chose not to testify based upon counsel's advice. He said that he was forced to not testify and did not consider it a recommendation. He indicated that counsel Snell told him the Applicant could not possibly beat the prosecutor on cross-examination if Lee were to testify. Lee claimed that solicitor Shawn Graham was a liar and manipulator.

Concerning the Applicant's divorce, he claimed that he tried to help her out and gave her everything. However, he acknowledged that the proceedings were ongoing during the time of the crime.

Concerning a change of venue, he thought it was appropriate because the victim had strong ties to employees in the Lexington County Courthouse and law enforcement. The Applicant claimed that there were over 40 uniformed officers present in the courtroom, along with the victim's family and friends.³⁰

When inquired about a lack of investigation by his counsel, the Applicant stated that Van Nest claimed to say to people "I'm a professional killer." The Applicant claimed that Van Nest was near the victim that night and matched the description of eyewitness identification. He claimed that Van Nest had \$250,000 life insurance policy on victim. He also claimed that Hockley was not thoroughly investigated. He claimed that counsel did not hire investigators.

The Applicant re-affirmed that there was evidence presented that counsel should have objected to. One was his assertion that counsel should have objected to evidence concerning Applicant's treatment of the victim in public. The Applicant claimed that he never mistreated victim and never belittled her in public. He stated that the witnesses claiming the verbal abuse towards the victim were biased because they were the victim's best friend Christina West and her friend's boyfriend, Shannon Lowell.³¹ The Applicant indicated that he never cared about the victim's weight. A second that he contends that counsel should have objected to was that his DNA was on the bag of marijuana found in the victim's Mustang. R.p. 219-220.³² The

³⁰ As noted within the Order, this number of officers present at trial was disputed by his counsel in this proceeding. This Court finds counsel Snell credible.

³¹ West and Lowell's testimony is summarized in this Order in the Statement of Facts, pages 3-6, referencing R.p. 157-193. This is incorporated herein by reference.

³² According to one of the DNA Reports, the swab of the bag the marijuana, SLED Item 18.1 indicates "the partial DNA profile developed was a mixture of two individuals. Due to the inability to calculate a statistic, no further interpretation will be offered." Applicant's Exhibit #4, Report, p. 5. The testimony of SLED DNA Analyst Alysha Breland was consistent with the report. R.p. 512, I. 8-16. See also, R.p. 521, I. 7-19 (cross-examination by defense on same matter about the number of individuals DNA). However, in Paul Meeh's examination of 18.1 using enhanced STRmix testing, indicated a mixture from three individuals. R.p. 547-548. The DNA profile is 240 trillion times more likely if Jason Lee and two unidentified unrelated individuals contributed to the mixture than if three unidentified unrelated individuals contributed. R.p. 548, I. 1- p. 549, I. 3. Meeh found that in comparing Graham

Applicant contended that it was a “bold face lie.”

Concerning the admission of the Walmart surveillance videos, the Applicant claimed the video of the victim is irrelevant to the timeline. He indicated that the Walmart video of him was only used to make something stick and claimed that it only showed that he knew where his car was. He asserted that he had told in his interview the location of his car. He claimed that the video in its entirety would have shown that he had parked his car there for the weekend. \

Concerning the knife, the Applicant re-affirmed that his complaint was that it had nothing to do with the crime.

On re-direct, the Applicant contended that it was just a circumstantial evidence case. The Applicant claimed that counsel Snell told him not to testify and told Lee’s mother to not let him testify. The Applicant also clarified that the officers were likely in the courtroom during the trial because the victim worked for law enforcement. He indicated that they had both gone to Sheriff Koon’s election party.

The Applicant further contended that he caught the victim at Hockley business and was “embracing him.” The Applicant stated that he was upset and had a gun in the car and could have killed them right there, but he left.

TESTIMONY OF COUNSEL JAMES SNELL

James Snell testified that he was counsel representing the Applicant on the murder charge. He indicated over course of his representation he met with Lee approximately 12-15

Hockley was determined that he did not contribute to the mixture and that Lindsey Lee was no more than a random chance. If placing the Applicant and Lindsey and one unidentified individual is in the calculus, whether Jason Lee is there is much more than random and in Paul Meeh’s opinion: “he contributed DNA to the mixture.” R.p. 553, l. 17-19.

times. He indicated that his assistant met with Lee approximately 20-25 times. He stated that Vicky was admitted in 2014 and had less trial experience. He indicated that he was always first chair.

Counsel stated that he met with the Applicant initially in Greenville, then in Richland County and then he was transferred to Aiken County.³³ At the time of his initial meeting, he had not yet been charged with the Lexington crimes but was a person of interest. Snell stated that at that time Lee had already been interviewed by law enforcement. Snell said Lee was very cooperative with the process.

Concerning their theory of defense, Snell indicated that it was someone else who had committed the crime. He claimed that there was some evidence pointing to either Hockley or Van Nest. On investigative matters, Snell stated they had investigators in the matter to try to find out information about the other suspects and to meet with the victim's family. Snell claimed it was very difficult to get the victim's relatives to cooperate.

Counsel further testified that he investigated the DNA evidence matters. Snell investigated the DNA report and retained an expert to review it. He claimed that the evidence was presented was that Applicant's DNA possibly was found on two pieces of the glove at the scene that the expert determined he was either a major contributor or a likely contributor.³⁴ He

³³ It is apparent that he was transferred out of Lexington because the victim was a Lexington County Sheriff's Department employee.

³⁴ The swabs from the blue latex gloves were SLED Items 2.1, 3.1, and 4.1. Item 2.1 was initially determined by Forensic Analyst Alysha Breland to be a mixture of at least three individuals with a partial DNA profile of a major contributor matching the DNA profile of Jason Lee, but unable to identify minor contributors. Item 3.1 was a mixture of at least two individuals with the Applicant and victim as possible contributors to the mixture but eliminated Graham Hockley. Item 4.1 developed a mixture of at least two individuals and determined a profile of the victim as a major contributor but was unable to make a further interpretation. See testimony of SLED Analyst Alysha Breland. R.p. 513- 515. Paul Meeh testified concerning these same items after use of STRmix. R.p. 556, I. 12-559, I. 13 (4.1 – Jason Lee and Lindsey contributed to the profile); R.p. 559, I. 14- (3.1 – Jason Lee is a

noted that Hockley was eliminated from one of the items. Snell indicated that Hockley's DNA was present on some items, but it did not have much weight because they were having an affair.

Concerning video surveillance of the parking lot of Lee's vehicle, Snell said the video showed Lee returning the car to the Walmart parking lot at approximately 5 AM. He stated that this Walmart was the closest to his residence. Concerning the video of victim shopping at Walmart, Snell testified received this in discovery and reviewed it with his client. Lee claimed to him that he had no idea where his car was at the time of the video. See e.g. R.p. 824 -825, l. 11-21. (video of the Applicant parking his work car in the Walmart parking lot exiting it, buying some items and then driving off at approximately 5:17 AM).

Concerning the alleged failure to investigate the other suspect claims, Snell testified that the attempts to contact Van Nest were unsuccessful. Further, Snell was unable to find anything to indicate that Van Nest was involved in the crime. Snell recalled that the text about keeping the insurance money was introduced at trial.

Concerning the explanation about the scratches that Applicant had the time of the incident, Snell recalled him being told by the Applicant that he had a shaving accident that caused the injury to his face. Snell also recalled a discussion about his cat's claws but could not recall at this time whether the Applicant indicated that his cat scratched him.³⁵

contributor, Hockney's DNA is not present), R.p. 561, l. 23- p. 565, l. 18 (2.1 – Jason Lee present, Lindsey Lee present – Hockley is random). See R.p. 588-590 (defense cross-examination about the latex items).

³⁵ Testimony from Shannon Lowell indicated that he received a text message on March 15 from Applicant asking about the cat that the victim had after she had died. R.p. 193, l. 10-15. Kendall Haskett who worked with the Applicant testified on the morning of March 15 he noticed scratches on Applicant's face that he did not have the day before. R.p. 281 -282. Haskett testified that when he asked him about the scratches, Applicant indicated that he claimed that his cat had scratched him when they were sleeping and his alarm went off. Haskett also stated that Applicant did not mention anything about his Kia missing. R.p. 283. Also R.p. 310 (cross-examination of Haskett by Snell about the cat). See also R.p. 313, 317 (Dennis Campbell testimony about cat scratching Applicant's face when alarm went off while he was sleeping). SLED Lt. Kindley testified that during his interview with Applicant on March

Concerning the Hulu account issues, Snell indicated investigative notes were taken. He stated that Hulu's attorney spoke with Snell a few times. Snell stated that the defense did not put up evidence related to the Hulu account. Snell testified that Hulu likely could have sent witnesses or provided certified copies of relevant timeframes, etc. but this was not brought up in trial . Snell testified that he learned that Hulu can be opened or controlled remotely and externally. He learned that this manner of controlling would not show on that specific device report if the device opened on another external device and that the devices did not mirror each other. Snell stated based upon this information from Hulu, Lee could have manipulated this. Snell concluded this information about Hulu and his claim that he was home watching it and was not strong enough to be considered a conclusive alibi.

Counsel stated that he had no recollections about discussions concerning Fitbit bracelet activity.³⁶ Similarly, he did not recall any discussion about Sirius XM radio activity. Snell also did not recall seeing the graph or picture shown him which he speculated was tower data from SLED, but he was not sure.

Snell was asked about his failure to object to certain evidence. Concerning the testimony regarding Lee's treatment of the victim, counsel did not recall if he objected to testimony about Lee's comment about his wife. Concerning Lee's DNA found on the bag that contained marijuana in his wife's car, counsel stated that he did not object.

Concerning the failure to object to the admission of the knife from the butcher block in the

14, he saw the scratches on Applicant's face and Applicant indicated to him that it was from dry shaving. R.p. 346. Lt. Kindley stated that Applicant did not mention to him that they were from being scratched by a cat. 346, I. 18-21.

³⁶ FitBit is a health tracking device. According to Solicitor Graham It can monitor things like sleep, steps, heart rate, and some have the ability, I believe, to do GPS location. In this case, the only information that we got from Fitbit had to do with steps and heart rate for both the Defendant and the victim in this case. R.p. 405.

victim's home, counsel Snell believed it showed that the prosecutors had a case with no evidence. Counsel believed that nothing was shown inculpatory from the testing of the knife related to blood and other matter.³⁷

Concerning Applicant's complaint that he failed to request a change of venue, Snell testified that he saw no need to request a venue change. Snell also contested the Applicant's assertion about the spectators at the trial. He indicated there was no significant law enforcement crowd in the courtroom during the Lee trial.

Concerning Applicant's assertion that he failed to request a speedy trial, Snell testified that he filed a motion for a speedy trial. [The motion was filed March 13, 2019, and dated February 25, 2019 in the Clerk records provided to this Court].

Concerning a complaint that counsel failed to cross-examine the officers about Lee hiding his phone, counsel Snell indicated that he had no recollection about this matter and would defer to the transcript.³⁸

Concerning the Applicant's failure to testify and his decision to testify, counsel Snell recalled Lee being nervous and unsure about testifying. Snell stated that there was no set plan either way. He stated that they were reviewing potential direct examination questions in

³⁷ Testimony was that testing on the knife indicated on swab item 22.2 that the victim was a major contributor to a mixture of at least two individuals. R.p. 510-511. In his closing argument, counsel Snell stressed his strategy that they presented the knife into evidence that had nothing to do with this case, and it was not what killed her. R.p. 918, l. 7-23.

³⁸ The transcript does not support that Applicant's characterization about him hiding his phone from law enforcement. Testimony showed that the Applicant was agreeable to have his phone download and gave it to Lt. Kindley. R.p. 83, 341-342. During the interview the Applicant received texts and calls. R.p. 98-99. However, Lt. Kindley stated that he was not aware that the Applicant had a separate phone and did not ask about that. R.p. 342. However, when they were unable to get the equipment to download the phone that night, the Applicant took the phone with him. R.p. 343. See R.p. 364-365. (cross-examination about making the phone available to do an extraction.

preparation for trial. Counsel Snell confirmed that he advised Lee not to take the stand because of cross-examination but claims that he tells all clients to do what's important to them because "it's ultimately the client's choice." Snell denied that there was any arm twisting involved. Snell stated that he advises the client properly and allows them to choose what they want to do on whether to testify or not.

On cross-examination, Snell testified that he had a clear recollection of some things with Lee's trial, but cannot recall some of the details. He stated again that he met with Lee prior to his arrest for the crimes charged.

In hindsight, Snell admits that he could have requested to admit the DNA report, but opted not to at the time of the trial. Counsel did not recall if Van Nest's DNA was tested.³⁹

Regarding the negative character witnesses, Snell claims this is normal and common. Snell indicated that the comments were not overly prejudicial. He contended that any objection would have likely been overruled as to these comments about her weight, etc. He declared that it was limited testimony that did not go on and on.

Snell clarified that part of his discussion with the Applicant about his right to testify included that testifying is the only opportunity to talk to the jury himself, but also relayed the huge risk of testifying with cross-examination from the prosecutor.

In hindsight, Snell maintained that the outcome of the case would have been either the same (or better) with a different strategy.

On re-direct, Snell opined that he was adequately and reasonably prepared in every

³⁹ During the trial, Van Nest testified on cross-examination that he was never asked for a buccal swab. R.p. 657

aspect of trial. He noted that he gave a very long closing argument at Lee's trial. Jhe stated that he had an incident with Deputy Solicitor Graham when Snell felt Graham was giving inaccurate information which was resolved.

Snell was concerned about the Applicant being impeached if he testified. Snell noted Snell said he received the order to allow them to view the crime scene with SLED, but the family of the victim had not been cooperative with this. He stated that eventually were authorized to go view the home that it had been cleaned at this point so there was virtually no evidence left.

Snell thought that Lee had a fair trial overall and that he adequately represented him.

TESTIMONY OF SHAWN GRAHAM

The former prosecutor, Shawn Graham, was called to testify. He was a Deputy Solicitor at the time of the trial and prosecuted it with Solicitor Hubbard. He indicated that he handled all the discovery and shared it with the defense.

He testified about the investigation into the Hulu evidence. Graham stated that he sought information on Hulu's capabilities and the relationship with other devices and applications from the IT department. He learned that on March 13th, the night of killing, his account showed 3 videos. Graham had learned from the investigation that Applicant allegedly had started dating a new girlfriend and watching a show with her early February. The information that he had suggested that all the episodes had played already in January. He stated that the last episode was watched February 25th. Graham oddly noted that the three videos were replayed on March 13. He claimed that his information was that none were watched in between time frame from Feb. 25 through March 13.

Graham also addressed some other evidence at trial. He stated that there was a critical period when Lee's phone did not move on the tracker. This indicated that it was either turned off or had died. Graham was not aware of Sirius XM info at the time. He stated that SLED looked at vehicle for other trackers, and none were found.

Graham also indicated that he wished that the Applicant had testified in his trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the trial and appellate records and had the opportunity to assess the testimony of the Applicant and his trial counsel. The Court makes the following findings of fact and conclusions of law pursuant to S.C. Code §17-27-80. Based upon its review, the Court must deny post-conviction relief in its entirety.

This Court finds that counsel James Snell testified credibly in this proceeding, which was also consistent and supported from evidence in the trial record. This Court further finds that former Deputy Solicitor Shawn Graham also testified very credibly. However, this Court also concludes that the Applicant in his testimony was not accurate and speculative in his responses which was not supported by the record in many significant respects.

In summary, Snell is an experienced attorney and had strategic reasons for making the decisions that he did during the trial of this case. These decisions should not be called into question at his point. Lee did not testify, and it appears it was his choice not to do so. That also appears to have been a wise decision. He may have been able to give his side to some issues, but would have been subject to rigorous cross examination, which would have led to more damning evidence against him. He was aware of this risk when he decided to waive his right to testify. Lee cannot show that Snell's performance fell below the standard for attorneys, and he certainly cannot show

prejudice. Snell had valid reasons for his decision. Therefore, Lees application is respectfully denied. The specific allegations will be also addressed below.

STANDARD OF REVIEW

In his application, Applicant raises, among others, ineffective assistance of trial counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). 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), SCRPC; *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* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong

presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). 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. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an 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; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth

Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler v. State*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, at 118, 386 S.E.2d 624, at 625 (1989).

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

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 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and

interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An 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." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result

is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Text of Impeachment Value Not Introduced.

In his first allegation (1(a)), Applicant contends that his counsel failed to introduce a text of value when questioning Jason Van Nest. This allegation is frivolous because the text was introduced through the testimony as noted previously in this Order. During the cross-examination of Jason Van Nest by co-counsel Koutsogiannis, it was developed about the existence of a text conversation between Van Nest and his wife (the victim’s sister) about a life insurance policy on the victim. R. 643-644. Van Nest indicated that he was aware there were policies but indicated he was not aware who it was left to, whether it was her mother, Debbie, Karista or the Applicant. R.p. 644. Defense counsel developed that on a text time stamped on March 21, 2017, almost a week after her death had a conversation by text about the existence of a life insurance policy that benefited his wife. “You have personal knowledge of this. Not yet, but I did find out some good news. I am the beneficiary of Linz’s whole life insurance policy, not Jason. Whoop. Whoop.” R.p. 649, l. 8-11. Van Nest recalled it because they had a “concerns where it was gonna go and it wouldn’t be to where it would benefit us or him or whoever. Honestly, I didn’t want it to over there.” R.p. 649, l. 15-18. Van Nest claimed that it was the first he learned about the policy was on the 21st. R. p. 650. Counsel Koutsogiannis also developed

that the Van Nest was not asked for his fingerprints or a buccal swab. R.p. 656-657. Van Nest indicated that he was initially not aware of how much the life insurance was but initially found out. R.p. 657. However, Van Nest had agreed to voluntarily submit his cellphone for extraction. Van Nest acknowledged that he used blue latex gloves when he was hunting and that it was not uncommon for him to give some to Jason and vice versa.

In additions, this inquiry about life insurance caused the State on re-direct to inquire whether Jason knew whether or not he was a beneficiary on the life insurance policies, which Van Nest stated that he had no idea or whether the victim's estate was still open. R.p. 660.

This Court finds that counsel failed in his burden of proof to show deficient performance since the substance of the text was introduced. Additionally, the Applicant had failed to show that had this evidence been presented differently that there is a reasonable probability that the result of the proceeding would have been different.

Failure to Investigate Jason Van Nest as a suspect

In allegation 1(b), the Applicant asserts that counsel failed to investigate Jason Van Nest as a suspect. This Court finds credible counsel Snell's testimony on this issue concerning his investigation. The Applicant failed to show any substantive issue pointing to Van Nest as a suspect. This Court recognizes that counsel has a duty to reasonably investigate the case but must conclude that the Applicant failed to prove that counsel failed to act as a reasonable counsel within the mandates required of defense lawyers practicing criminal law.

The *Strickland* Court recognized that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691, 104 S.Ct. 2052. "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.* "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation," but "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Id.* at 690–91, 104 S.Ct. 2052.

Under *Strickland*, "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." 466 U.S. at 691, 104 S.Ct. 2052. With respect to the duty to investigate,

what investigation decisions are reasonable depends critically on [information supplied by the defendant]. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Id. Thus, "inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions."

As pointed out previously, counsel Snell sought to investigate Van Nest with investigators and was aware of the communications concerning the information about the life insurance and the blue latex gloves. The Applicant's speculation that Van Nest may have looked similar to an individual that was in the area was part of the discovery known to counsel. The Applicant has failed to show credible evidence of how the investigation was deficient. Counsel stated that there was nothing that he could locate indicated that Van Nest was involved in the crime. The Applicant speculation is insufficient to prove deficient performance. He failed in his

burden of proof in either deficient performance or prejudice.

Failure to Object to Matters in Evidence

In Applicant's allegation 1(c), the Applicant makes a series of assertions concerning evidence that he claims counsel should have objected to. This Court finds that there was either a strategic reason for not objecting or the evidence was relevant and admissible. He failed in his burden of proof to show that if he had objected that there was a reasonable probability that the result of the proceeding would have been different.

"[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness could be cross-examined.'" *Abney v. State*, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (citing *Sexton v. French*, 163 F.3d 874, 885 (4th Cir. 1998)). "Ineffective assistance of counsel complaints sometimes allege the failure to adequately follow-up cross-examination answers with more detailed questions further examining those answers. But a successful ineffective assistance complaint requires more than speculation that additional information would have had an impact on the outcome of the case." *Moze v. United States*, 963 A.2d 151, 165 (D.C. 2009).

The Applicant initially contends that counsel should have objected to evidence presented concerning the way the Applicant treated his wife in public by making comments about her weight to Christina West and Deputy Lowell and other insults such as to Pamela Vinson, the tax consultant when Applicant described that she ran up their credit card and that was the reason why he was entitled to the full refund. R.p. 157-161, 176-82, 619-620. Counsel Snell credibly

indicated that he did not recall if he objected, but considered these comments which were not overly prejudicial and would have likely be overruled by the Court. This Court finds that this type of evidence was part of the *res gestae* of the development of their relationship and provided a basis for the development of many motives, including the connection to others an extensive weight loss program, the development and understanding of the relationship with Graham Hockley as her trainer and its evolution to understand that she was leaving with him to England shortly after the period she had died. It also developed that money was an issue between them. This Court initially finds that evidence was relevant and counsel was not deficient in failing to object. However, even if this Court would have concluded that the comments should have been excluded, the Court finds, as counsel Snell anticipated in his testimony that had counsel objected, there is a reasonable probability that the result of the proceeding would not have been different. These comments were not unduly prejudicial and did not impact the case. As noted above, the Applicant's guilt was proven by the misleading statements to law enforcement, inconsistent statements to his co-workers, DNA evidence linking him to the crime scene and well as his financial motive in his impending divorce.

The Applicant also contends that counsel should have objected to the Walmart video of the victim shopping the evening of the incident (ii) and the Walmart video of the Applicant going to Walmart and driving that vehicle inconsistent with his stated versions (iii). The Applicant questioned the relevancy of these videos in these videos. However, he has failed to show an appropriate objection to support their exclusion. Counsel Snell testified credibly about the relevance and admissibility of the videos which is incorporated by reference that it presented each of their movement on the evening in development of the timeline and the inconsistency of the Applicant's versions. His bare assertions otherwise are not supported. He failed to prove

deficiency or prejudice.

The Applicant further indicated that the State's evidence about the Applicant's DNA being located on the bag of weed when the report showed otherwise should have been objected. 1(iv). This Court addressed the development of this factual issue previously on page 38-39 in footnote 32. The Applicant was partially correct but ignores the more probative result from STRmix. According to one of the DNA Reports, the swab of the bag the marijuana, SLED Item 18.1 indicates "the partial DNA profile developed was a mixture of two individuals. Due to the inability to calculate a statistic, no further interpretation will be offered." Applicant's Exhibit #4, Report, p. 5. The testimony of SLED DNA Analyst Alysha Breland was consistent with the report. R.p. 512, l. 8-16. See also, R.p. 521, l. 7-19 (cross-examination by defense on same matter about the number of individuals DNA). However, in SLED Analyst Paul Meeh's examination of 18.1 using enhanced STRmix testing, indicated a mixture from three individuals. R.p. 547-548. The DNA profile is 240 trillion times more likely if Jason Lee and two unidentified unrelated individuals contributed to the mixture than if three unidentified unrelated individuals contributed. R.p. 548, l. 1- p. 549, l. 3. Meeh found that in comparing Graham Hockley was determined that he did not contribute to the mixture and that Lindsey Lee was no more than a random chance. If placing the Applicant and Lindsey and one unidentified individual is in the calculus, whether Jason Lee is there is much more than random and in Paul Meeh's opinion: "he contributed DNA to the mixture." R.p. 553, l. 17-19.

This Court finds that counsel was not deficient in failing to object to the evidence of STRmix connecting Applicant to the marijuana bag or any comments by the State related to it. It is without merit because the characterization was correct based upon the testimony. The Applicant has not credibly proven otherwise. Counsel stated that he retained a DNA expert to

review the report and as a result of the review did not object. The Applicant failed in his burden of proof to show either deficient performance or prejudice. Although the Applicant did not like the result of the STRmix test, that alone does not make it objectionable. His suggestion otherwise is without merit.

In his next specification, 1(iv), concerning a failure to object, he complains that counsel should have objected to the knife from the kitchen being introduced because it was not relevant to the case. This has been discussed previously. This Court finds credible counsel Snell's strategic reason for not objecting and defeats this claim. Counsel Snell believed it showed that the prosecutors had a case with no evidence. Counsel believed that nothing was shown inculpatory from the testing of the knife related to blood and other matter. In his closing argument, counsel Snell stressed his strategy that they presented the knife into evidence that had nothing to do with this case, and it was not what killed her . R.p. 918, 1. 7-23. The Court finds that this was a sound and reasonable strategy for not objecting. Further, Sixth Amendment prejudice cannot be shown because even if the knife was excluded there is no reasonable probability that the result would have been different.

In his next specification, 1(vi), the Applicant asserts that counsel should have objected to the STRmix evidence. However, the Applicant fails to present any basis for objecting to STRmix. This Court finds that counsel was credible related to his investigation and retention of an expert in reviewed the reports. The Applicant has failed in his burden of proof to show that counsel was deficient related to its investigation of the DNA, its admissibility and the extent of its related cross-examination of both DNA analysts. It similarly failed to prove Sixth Amendment prejudice.

Failure of Counsel to Argue

In section 1(d), the Applicant contends that counsel failed to argue certain matters before the jury. These issues are apparently issues that he contends should have been argued to the jury. This Court has reviewed the closing statement and finds that counsel was not deficient in his argument and acted reasonably in light of the evidence presented.

The Applicant initially contends that counsel failed to argue that there was scant evidence in the house. This assertion is not supported by the record because it is evident from the review of the closing statement that this alleged lack of evidence was a focus of his argument. R.p. 900-927. Counsel asserted the blue latex gloves at the scene was a significant piece of evidence, the marijuana bag in the victim's car were the only pieces of evidence that had the Applicant's DNA which he tried to explain and challenge but noted other items that should have had his DNA if he was the perpetrator. R.p. 910 – 917.

The Applicant also asserted that he wanted counsel to argue that he ensured the victim was set up well financially after their separation. Contrary to the allegation, the evidence in the record was not supportive of that argument. The evidence presented was that Applicant was having financial issues, behind on his car payments, behind on his rent and behind on his credit card. R.p. 284. The Applicant told Lt. Kindley that is their separation the only assts that they had argued about was the movies each of them got. R.p. 338. The separation agreement was introduced as Defense Exhibit 6. The record showed evidence that the victim was preparing to sell the house. The defense brought out that he was getting all the tax money and that she was going to get to keep the house and that he owed her \$7,800 by the end of the month or she was going to have him locked up. R.p. 315. This Court finds that the Applicant's claim that he set up the victim well financially was not supported by the evidence. Counsel was not deficient in focusing on that during the argument in light of the evidence that was before the jury. Further, in

light of that evidence, prejudice is not proven because there is no reasonable probability the result would have been different had he utilized that strategy.

He also claims that counsel should have argued that his DNA was not in the victim's car. In his closing argument, counsel sought to mitigate the impact related to the DNA found on the Mustang. R.p. 912. He tried to explain why it would have been in the vehicle unrelated to the murder. R.p. 912-913. This Court finds that was a reasonable strategy in seeking the distance that item from the crime with alternate theories. He did not prove deficiency or prejudice.

He also claims that counsel should have pointed out that the Applicant did not take money out of her drawer during the crime. Counsel did not focus on that item but did seek to challenge the state theory that the Applicant was money hungry throughout his argument to challenge one of the State theories on motive. See R.p. 904, 906-907, 925. This Court finds that counsel was not deficient focusing on the fact that money was not stolen from the dresser. Similar, Sixth Amendment prejudice has not been shown based upon the failure to assert that fact.

The Applicant also asserts that he wanted counsel to focus on the fact that Hockley's DNA was found on the victim's Fitbit and her shoes. Counsel did raise the issue in his closing about the victim's Fitbit. R.p. 914, which he noted had DNA on it that excluded the Applicant. Similar, with her shoes counsel argued that her shoes were taken off and the DNA excluded the Applicant. 914-915. This Court finds that counsel was reasonable in showing and focusing that these items excluded the Applicant. Sixth Amendment prejudice was not shown.

In his final assertion, he contends that counsel should have argued against the timeline created in the State's case. Counsel did refer to the timeline and how it is deficient in

conclusively showing guilt. R.p. 904. Counsel has just finished cross-examining SLED Agent Sykes about the timeline and what it showed and did not show. Counsel is not deficient in the manner he addressed it in his closing.

Failure to Change Venue

The Applicant claims in 1(e) the alleged failure of the Applicant to seek a change of venue. This Court finds that based upon the credible testimony of counsel Snell that there was insufficient evidence to support a change of venue to another county merely because the victim had worked for law enforcement. The Applicant also contended that he thought counsel should have moved for a change of venue. He stated that the victim was working in the courthouse based upon her job in IT with the sheriff's department. He also stated that he learned a personal friend of the victim had access to the jury. He stated that counsel Snell questioned whether they could prove it. He indicated that since they could not prove it, venue would not be changed by the trial judge. Counsel Snell credibly testified that he saw no need to request a venue change. Snell also contested the Applicant's assertion about the spectators at the trial. He also credibly indicated there was no significant law enforcement crowd in the courtroom during the Lee trial. This Court finds that Applicant has failed in his burden of proof for either deficient performance or prejudice.

Failure to Move for A Speedy trial and the prolonged indictment process.

This Court finds that these issues are without merit for relief. Counsel made a speedy trial motion. Further, the trial court had jurisdiction due to the indictment. This Court finds that the Applicant failed to prove either prong of *Strickland* in these assertions.

Failure to bring attention to the court a woman with access to the jury had a conflict of interest.

This Court finds that the Applicant failed to prove this assertion by any evidence in this proceeding other than the Applicant's speculation. This claim is dismissed for lack of credible evidence.

Failure to Cross-examine

The Applicant contends that counsel failed to adequately cross-examine certain matters during the trial. As stated above, the extent of cross-examination is a matter of strategy that trial counsel are given deference. The Applicant has failed to show that counsel was not deficient in his cross-examination.

This Court rejects this assertion related to the fact that the evidence clearly showed that Applicant's DNA was only found on two of the three pieces of the latex gloves as set for previously in this Order. He failed to show how emphasizing it again in the examination would have further aided his defense. This Court has previously addressed the evidence in the Order of whether the Applicant hid his other phone from law enforcement. counsel Snell indicated that he had no recollection about this matter and would defer to the transcript. The Court finds that the trial record does not necessarily support his characterization. Testimony showed that the Applicant was agreeable to have his phone download and gave it to Lt. Kindley. R.p. 83, 341-342, During the interview the Applicant received texts and calls . R.p. 98-99. However, Lt. Kindley stated that he was not aware that the Applicant had a separate phone and did not ask about that. R.p. 342. However, when they were unable to get the equipment to download the phone that night, the Applicant took the phone with him. R.p. 343. See R.p. 364-365. (cross-examination about making the phone available to do an extraction. The Jury had this information and the fact was that the Applicant did have another phone. The Applicant has not shown deficient performance or prejudice.

The Applicant claims that he should have presented cross-examination about the different reasons for the scratches on his face. In this proceeding he claimed it was his cat. In questioning with law enforcement, he claimed it was a shaving accident. See above, Order, p. 41, n. 35. He claimed to his co-workers it was a cat. The Applicant is not credible on this issue. Counsel cannot be deficient in pursuing a line of inquiry that was inconsistent with what he was told. He has failed to show deficient performance and prejudice.

The Applicant claims counsel should have inquired of the DNA experts why they had to test the items four times. This assertion is frivolous because the reasons for the various steps by the experts and then the new STRmix protocol was evident in the record. He failed to show how counsel was deficient or that Sixth Amendment prejudice was shown by failing to make the repetitive inquiry on the role of the various experts.

Failure to Present a Defense

The Applicant claims that presented no defense. This Court disagrees and sees that strategy by counsel was to challenge the state's circumstantial case as suggesting a lack of proof that the Applicant committed the crimes. This strategy flowed through the entire case and closing argument. This broad assertion must be denied for reasons stated throughout this order, including the credible testimony of James Snell.

Failed to enter DNA Report

The Applicant contends that counsel should have entered the DNA reports. The record show that neither the State nor defense sought to put the written reports into evidence. As stated previously in this Order, during the deliberations, the jury requested the DNA reports which the trial court denied but offered to replay the testimony. The foreman did not require that and

returned to deliberations. Although counsel, in hindsight, asserted that he could have put them into evidence, he also indicated that he decided not to do so. This Court finds that the decision was reasonable in light of the nature of full DNA reports, particularly involving STRmix. More importantly the jury had the information from the expert witnesses. The Applicant failed to prove Sixth Amendment prejudice.

Counsel erroneously told Applicant to not testify and suggested that he could have offered testimony.

This Court finds that that Applicant has failed to prove that counsel was deficient in his advice to the Applicant. Counsel testimony about his advice was credible and is incorporated herein by reference. The Applicant further was subjected at trial to inquiry by the trial court about waiving his right to testify. R.p. 862-867. This Court continues to find that his waiver of his right to testify was freely and voluntarily made.

This Court further finds that counsel advice fell within the reasonable standards of competence demanded of lawyers practicing criminal law. Deficient performance is not proven. A basis of his advice was that he would face cross-examination on his testimony. The Applicant contends in hindsight various matters that were evident before he made his decision not to testify.

He first contends that he could testify why his face was scratched. Presumably, it would be by a cat, his current version in the PCR proceeding. However, he would be impeached by what he told others that it was from shaving. Further, he might also have been impeached with where the cat was located on that day based upon his later text about the cat.

He next contends that he would have testified about how his Hulu was manually turned off. However, he would have been impeached on that by the expert information that State had

about the manner certain programs can be started which was at odds with his assertion.

He asserts that he claimed he could have testified that his GPS in his car showed that it never left Greenville. However, he would have been impeached by the videos in the timeline about his travel that evening.

He asserts that he could have testified about how he takes his Fitbit off at night. However, the evidence did not support whether the Fitbit would have added any defense he had to show location of the Applicant and not the Fitbit.

His hindsight fails to show that the counsel's advice fell below the standards of competence demanded by defense lawyers. He failed in his burden of proof in showing prejudice under the Sixth Amendment. It must be dismissed.

Failed to Establish an Alibi Defense

The Court finds that counsel was not deficient in his investigation based upon review of the records in discovery and his client's communication with him. As stated, he investigated Hulu and he was aware of the nature of the state's timeline and his client's version of his events on that day. The Applicant's version of what he did that day had been provided in his statement to law enforcement. Counsel was faced with significant odds in light of those factors. This Court finds that the Applicant has failed to show in this proceeding that he neglected to present any witness that would have created the alibi, independent of the Applicant's own decision to testify that he waived. "An 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." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance

with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

This Court must find that prejudice was not shown.

CONCLUSION

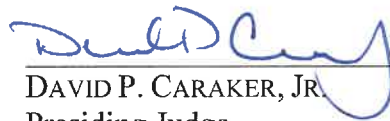
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application and vacate his conviction. Therefore, this application for post-conviction relief must be denied and dismissed 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), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant is returned to the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3rd day of August, 2026.


DAVID P. CARAKER, JR.
Presiding Judge
Eleventh Judicial Circuit

LEXINGTON, South Carolina

