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Aug 19 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No.: 2014-CP-38-01591

Ralph B. Coleman, 344173,

Petitioner,

vs.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Ralph B. Coleman, Petitioner, appeals the Order of Dismissal issued by the Honorable George M. McFaddin on March 3, 2026, which was filed on March 9, 2026.¹ Petitioner, through counsel timely filed a Rule 59, SCRCP, Motion, which was denied by an Order issued on July 6, 2026 and filed on July 9, 2026. Petitioner, through counsel, received notice of the entry of the Order on July 21, 2026.²

Respectfully submitted,



Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

August 19, 2026

¹ Pursuant to the Order issued on July 6, 2026, the court clarified that the date of issuance was March 3, 2026 and the date reflected on the Order of Dismissal (March 3, 2023) was a scrivener's error.

² As was addressed in Petitioner's Rule 59, SCRCP, Motion, the court issued an Order Granting Application for Post Conviction Relief on September 12, 2025, which was filed on September 25, 2025.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Ralph Bernard Coleman, #344173, JUL -9 12:24 Case No. 2014-CP-38-1591

Applicant
CLERK OF COURT
ORANGEBURG, SC

ORDER

v.

State of South Carolina,

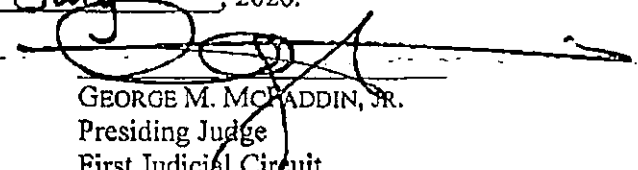
Respondent.

This court has considered the arguments raised by Applicant in its March 30, 2026, motion filed pursuant to Rule 59 (a) and (e), SCRPC, asking this court to reconsider, alter and/ or amend its prior ruling, and by Respondent in its June 16, 2026, return, both of which are before this court. The court agrees the signature date of the original order is a scrivener's error and that order was actually signed on March 3, 2026. After careful consideration, the motion is denied.

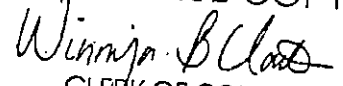
IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 16th day of July, 2026.


GEORGE M. MCFADDIN, JR.
Presiding Judge
First Judicial Circuit

Sunder, South Carolina

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT

RALPH B. COLEMAN #344173

Applicant,

v.

STATE OF SOUTH CAROLINA,

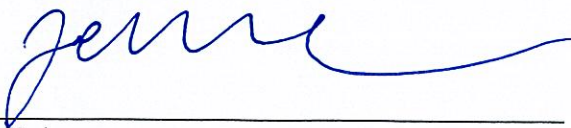
Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the filed Order for Reconsideration of dismissing applicant's PCR with prejudice has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

**Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
PO Box 2147
Leesville, SC 29070**

This 15th day of July, 2026.



J. Helgersen
Legal Assistant Respondent

SWORN to before me this 15th day of July, 2026.

Notary Public for South Carolina.
My Commission Expires:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Ralph Bernard Coleman, #344173,

Applicant,

v.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Case No. 2014-CP-38-1591

ORDER OF DISMISSAL

CLERK OF COURT
ORANGEBURG, SC

2025 MAR -9 P 2:33

FILED FOR RECORD
WINNIE B. CLARK

This matter is before the Court by way of an application for post-conviction relief filed by Ralph Bernard Coleman (Applicant) on December 29, 2014. On September 7-8, 2023, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr.¹ Applicant was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant did not testify at the hearing but called as witnesses appellate counsel LaNelle Canty Durant, trial counsel Jillian D. Ullman, and investigator Peter G. Skidmore. Respondent called former Assistant Solicitor Donald N. Sorenson.

On September 25, 2025, this Court issued an order granting Applicant post-conviction relief. Thereafter, Respondent timely served and filed a motion to reconsider. Applicant filed a return opposing the motion to reconsider. Following a thorough review of the records before this Court, the testimony and evidence presented at the evidentiary hearing, and the arguments presented in the post-hearing filings, this Court finds Applicant did not meet his burden of proof. Thus, this Court grants Respondent's motion to reconsider, and denies and dismisses this

¹ This hearing was previously continued on March 5, 2018; February 4, 2020, at Applicant's request due to ongoing discovery; February 3, 2022, at Applicant's request due to counsel's insufficient opportunity to consult with Applicant because of a COVID-19 quarantine; June 1, 2022, after Applicant's potential witness Patrick Jerrell Tyler refused transport; June 6, 2022, after Tyler refused to accept service of a subpoena and informed SCDC he would not cooperate with a transport order; and May 9, 2023, at Respondent's request due to the unavailability of three of its subpoenaed witnesses.

application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate forty-five-year sentence. In May 2010, the Orangeburg County Grand Jury indicted Applicant for murder (2010-GS-38-810), armed robbery (-811), and first-degree burglary (-808). On December 10-17, 2010, Applicant proceeded to a jury trial before the Honorable Edgar Dickson. Jill Ullman and Mark Wise, Esquires, represented Applicant. Solicitor David M. Pascoe and Assistant Solicitor Donald N. Sorenson prosecuted the case. The jury convicted Applicant as indicted, and Judge Dickson imposed concurrent sentences of forty-five years each for murder and burglary, and thirty years for armed robbery.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender LaNelle C. Durant. On appeal, Applicant argued the trial court erred in denying his motions to (1) sever the trial from his co-defendants, (2) suppress a witness's identification of him, and (3) suppress a photograph of a rifle. The South Carolina Court of Appeals affirmed on the merits. State v. Coleman, Op. No. 2013-UP-001 (S.C. Ct. App. 2013). Applicant petitioned for a rehearing, which was denied. Applicant then filed a petition for writ of certiorari to the Supreme Court, which was also denied. The remittitur was sent November 24, 2014.

CURRENT APPLICATION

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to object to prosecutor's statements regarding an uncalled witness, which presented the jury with testimony as if the witness had taken the stand himself.



- b. Counsel failed to object to the State's admission of improper corroborative hearsay testimony in violation of the Sixth Amendment.
 - c. Counsel failed to object to prosecutor's comments during closing arguments when prosecutor "improperly vouched for its key witnesses (sic)."
 - d. Counsel failed to adequately preserve Applicant's motion for severance.
 - e. Counsel failed to object to the jury charge on murder which impermissibly shifted the burden of proof for malice from the State to applicant.
2. "Denial of Right to a Fair Trial"
- a. "...Denied a fundamental right to a fair trial by trial judge's plea negotiation with alleged codefendant."
 - b. "[Codefendant] testified that, per his plea agreement, he was testifying against Applicant in exchange for a reduction of his murder charge to voluntary manslaughter."

On January 13, 2022, Applicant filed an amended application. On May 5, 2022, Applicant filed a second amended applicant alleging:

Ineffective Assistance of Counsel:

1. Counsel was ineffective for failing to make complete and effective arguments regarding the Solicitor-controlled docket and severance; counsel was not prepared for a joint trial; counsel failed to effectively continue to argue due process concerns and failed to fully argue the five attorneys were being required to act as one and have a joint trial strategy and defense; counsel failed to make timely argument regarding the loss of last closing argument and failed to argue against the State's failure to close in full and use last close as a reply;
2. Counsel failed to make further argument during the Biggers hearing, to include failing to fully address the lighting issue and utilize demonstrative evidence; counsel failed to timely address demonstrative evidence regarding lighting in order to make such argument to the jury;
3. Counsel failed to object to improper burden-shifting statements by the Court;



4. Counsel was ineffective for the handling of matters related to co-defendant Ronnie Washington;
5. Counsel was ineffective in the handling of matters related to Patrick Tyler; alternately, newly discovered evidence derived from the new information and/or testimony provided by Patrick Tyler;
6. Counsel failed to object to bolstering and vouching during the State's closing argument;
7. Counsel failed to request a proper inferred malice instruction and object to the instruction given to the jury.

Ineffective assistance of appellate counsel:

1. Counsel failed to raise all meritorious issues; and
2. Counsel failed to fully apply facts to the law in the argument for the issue raised on appeal

At the PCR hearing, Applicant proceeded on the allegations in his amended applications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Orangeburg County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, the records of this PCR action, and the post-trial filings. This Court has further had the opportunity to observe the witnesses at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel,

the applicant must show counsel was deficient, and the deficiency prejudiced applicant. Strickland v. Washington, 466 U.S. 668 (1984).

When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and a PCR applicant must overcome this presumption to obtain relief. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690); Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "A fair assessment of attorney performance requires that 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. Strickland "calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind." Harrington v. Richter, 562 U.S. 86, 109-10 (2011). To prove prejudice, an applicant must prove 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." Id. at 117-18, 386 S.E.2d at 625.

Motion to sever

Applicant first contends counsel was ineffective in her handling of the motion to sever. He specifically contends counsel (1) failed to make complete and effective arguments regarding the solicitor-controlled docket and severance; (2) was not prepared for a joint trial; (3) failed to effectively continue to argue due process concerns or fully argue the five attorneys were being required to act as one and have a joint strategy and defense; and (4) failed to make timely argument

regarding the loss of last closing argument or argue against the State's failure to close in full and use last close as a reply. Applicant did not prove this ground.

"Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right." Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001). "A defendant who alleges he was improperly tried jointly must show prejudice before this Court will reverse his conviction." Id. at 558-59, 552 S.E.2d at 317. "A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt." Id. at 559, 552 S.E.2d at 317.

Prior to trial, counsel moved to sever Applicant's trial from his co-defendants' trial. Following a hearing on November 23, 2010, the motion was denied. At the start of trial, counsel renewed her motion to sever, but the court again denied her motion. (Tr. 33). At the PCR hearing, counsel acknowledged she was not aware during the pretrial hearing that Applicant and the co-defendants would have to pool their jury strikes. She also acknowledged she lost last closing argument when co-defendant Shivers introduced evidence at trial, but she did not argue that in support of her motion to sever. However, she averred those arguments were unlikely to change the outcome of her severance motion because the law on those issues was settled. (PCR 147-48).

This Court finds Applicant did not prove counsel was unprepared for a joint trial or ineffective in arguing the motion to sever. Counsel *did* move to sever, and her arguments regarding severance were reasonable under prevailing professional norms and not deficient. Specifically, counsel argued the joint trial hindered Applicant's right to present a complete defense because she could not show co-defendant Walter Harris provided inconsistent statements and did not implicate Applicant until a later statement. (Nov. Tr. 150-53). When asked whether she would be able to call Harris if they were tried separately, she replied, "[T]he State controls the docket, which is part of



the problem.” (Nov. Tr. 156). At the start of trial, counsel renewed her motion to sever, arguing she had recently received a statement from Ronnie Washington that was inconsistent with statements from other witnesses. She contended that if the trial was severed, she could question Investigator Shumpert about Harris’s statement “to show the inconsistencies.” (Tr. 27-29). Counsel also argued Applicant’s defense was antagonistic to that of his brother and co-defendant Christian Coleman. (Tr. 29-30). Finally, she asserted a weapon was recovered from a search of Harris’s home, and “putting a weapon in a co-defendant’s hand could prejudice” Applicant by introducing bad character evidence that she would have no standing to object to. (Tr. 30-31). Based on the foregoing, this Court finds counsel advanced detailed arguments that showed she had an excellent grasp of both the evidence in this case and the law regarding severance. An objective review of the transcript shows counsel was very prepared, and her representation did not fall below prevailing professional norms. Thus, Applicant did not prove deficiency.

This Court further finds Applicant did not prove prejudice. Applicant has advanced three arguments he believed counsel should have raised to support severance: (1) “an argument regarding the loss of last closing argument and the State’s failure to close in full and not use last close as a reply”; (2) the pooling of jury strikes; and (3) the alleged solicitor-controlled docket. However, Applicant did not prove any of these arguments would have led to a severance.

i. The order of closing argument is not a basis for granting a motion to sever.

Citing State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018),² Applicant argued counsel was ineffective for failing to argue and preserve “an argument regarding the loss of last closing argument and the State’s failure to close in full and not use last close as a reply.” However, in

² Beaty was decided *after* Applicant’s trial and cannot be relied upon in assessing deficiency. See Harden, 360 S.C. at 408, 602 S.E.2d at 49 (“An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction.”).

South Carolina, the potential loss of last-closing argument is not a basis for granting a severance. See Smith, 387 S.C. at 625–26, 693 S.E.2d at 418 (“The fact that, upon a trial of defendants jointly indicted, the introduction of evidence by one defendant may operate to deprive a co-defendant, who offers no evidence, of the right to the closing argument, to which such co-defendant would be entitled if tried separately, affords no ground upon which to order separate trials.”). Thus, Applicant failed to prove prejudice from counsel’s failure to advance this argument as part of the motion to sever.³

ii. The pooling of jury strikes is not a basis for granting a motion to sever.

At the PCR hearing, counsel testified she was unaware of the statute addressing jury strikes for codefendants. Even if this constitutes deficiency (which this Court does not specifically find), Applicant did not prove prejudice. As trial counsel admitted, any argument related to the pooling of jury strikes would not have supported a motion to sever. (PCR 147). Peremptory strikes are a statutory—not constitutional—right, and the statute itself provides codefendants are not entitled to more than twenty strikes collectively. See Green v. Maynard, 349 S.C. 535, 542, 564 S.E.2d 83, 86 (2002) (“[P]eremptory strikes implicate no constitutional right.”); Rowell, 444 S.C. 109, 113,

³ To the extent Applicant asserts a due process violation based on the *order* of closing argument, Applicant did not allege in his application or at the PCR hearing specific facts to show that the order of closing argument violated due process. Beaty does not stand for the proposition that it violates due process if the State doesn’t open fully on the law and facts or provide its theories of the case before the defense argues. See Beaty, 423 S.C. at 43-46, 813 S.E.2d at 511-12 (concluding defendant did not establish due process violation from State’s argument or procedure employed by the judge for closing argument); *id.* at 45, 813 S.E.2d at 512 (“While the State perhaps did not restrict its reply argument to matters raised by Appellant, and while Appellant was not allowed to respond to the foregoing three points, we conclude Appellant did not suffer prejudice as a result.”). Rather, Beaty directs courts to look at the *content* of the closing argument, not only the order, and each case must be examined individually to determine whether the procedure employed for closing argument violated due process. Strickland places the burden of establishing prejudice on Applicant. Thus, under Beaty and Strickland, Applicant had to argue something specific about the closing argument itself—other than the basic fact that he lost the right to final argument when his codefendant entered evidence—that violated due process. Although Applicant repeatedly argued due process concerns related to the joint trial (which lack merit here where the Court of Appeals found the joint trial did not violate due process), he did not explain *how* the procedure for closing argument violated due process and thus did not meet his burden.

906 S.E.2d 554, 556 (2024) (“The right to peremptory strikes is not constitutionally guaranteed but is granted by statute.”); § 14-7-1110 (“[I]n no case where there is more than one defendant jointly tried are more than twenty peremptory challenges allowed in all to the defendants.”). Thus, the pooling of jury strikes—something the codefendants chose to do rather than being allotted four each (Tr. 122)—did not constitute a basis for a severance, and there is no reasonable probability any argument about the strikes would have led to severance.

Further, Applicant cannot demonstrate prejudice because he did not exercise all of the strikes. Here, the codefendants were offered the option of pooling their strikes or each taking four, and they elected to pool their strikes. (Tr. 122). Trial counsel acted for all the codefendants in exercising the strikes. The codefendants exercised only thirteen of the twenty strikes—three more than Applicant would have been entitled to had he been tried individually. (Tr. 126-32).⁴ Applicant cannot show was prejudice from the pooling of the strikes when he was able to strike three more jurors than if he had been tried individually, and he did not even exercise all the strikes. See State v. Hardee, 279 S.C. 409, 413, 308 S.E.2d 521, 524 (1983) (holding defendant who “used only four of his five peremptory challenges” was “in no position to complain”). Thus, Applicant did not prove this ground.

iii. Langford does not support granting a motion to sever.

Relying on State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012),⁵ Applicant argued counsel should have made additional arguments against the alleged⁶ solicitor-controlled docket. Although he did not clarify what those arguments should have been (other than to generally cite Langford) or how the alleged solicitor-controlled docket prejudiced him (as required by Langford),

⁴ Counsel also exercised one strike as to the alternates. (Tr. 132-34).

⁵ Langford was decided *after* Applicant’s trial and cannot be relied upon in assessing deficiency.

⁶ As testified to by Solicitor Sorenson, the trial judge had the final decision-making authority in the docket because it could decide whether to sever the trial and/or continue it. (PCR 163).

he raised this in the context of his allegation that counsel's motion to sever was ineffective. To the extent Applicant contends that counsel should have further argued the solicitor-controlled docket in support of the motion to sever,⁷ Langford does not support the contention that a motion to sever should be granted based on an alleged solicitor-controlled docket.⁸ Langford was not a joint trial,⁹ and the Langford Court concluded that Langford did not prove a due process violation. Nothing about Langford supports the proposition that a trial should be severed if a solicitor controls the docket. Further, the Langford Court *affirmed* the conviction, holding the defendant had to show actual prejudice from the "solicitor-controlled" docket. *See* 400 S.C. at 436, 735 S.E.2d at 479 ("To warrant reversal, Langford must demonstrate that he sustained prejudice as a result of the solicitor setting when his case was called for trial."). The Langford Court found Langford did not show a due process violation from the solicitor's control of the docket under the facts of that case.

Here, Applicant has not set forth with clarity any constitutional violation that occurred from the alleged solicitor-controlled docket other than his general assertion that the joint trial violated due process, which was refuted by the Court of Appeals. Because the alleged solicitor-controlled docket does not provide a basis for severing a trial, and because Applicant did not specify any prejudice from the alleged solicitor-controlled docket, he did not prove prejudice in this regard.

Demonstrative evidence – dimming the lights

Applicant contends trial counsel was ineffective for not making further argument during the Biggers hearing, to include failing to fully address the lighting issue and utilize demonstrative

⁷ During the pretrial motion to sever, counsel *did* argue that the solicitor's alleged control of the docket was "part of the problem." (Nov. Tr. 156).

⁸ Logically, this doesn't make sense as a basis for granting a severance motion. Assuming the solicitor controlled the docket, the solicitor would control the order the cases were called as well. In other words, if the solicitor controlled the docket and such control violated one of Applicant's trial rights, severing the trial would not solve that problem.

⁹ The State initially planned to call Langford's case with a codefendant, but the codefendant pled guilty prior to Langford's trial.



evidence. Applicant specifically contends counsel was ineffective for failing to timely address demonstrative evidence regarding lighting in order to make such argument to the jury. This Court finds Applicant did not prove this ground.

Initially, this Court finds counsel's argument during the Biggers hearing was reasonable under prevailing professional norms and not deficient. Applicant has not set forth what additional legal argument counsel should have made that would have reasonably led to the suppression of surviving victim Ashley Parsley's identification and thus did not prove deficiency or prejudice.

Applicant's argument at the PCR hearing centered on his assertion that counsel should have sought to dim the lights during the Biggers hearing. This type of demonstration, however, is not within prevailing professional norms, and counsel's failure to attempt to dim the lights at the pretrial hearing was not deficient. Further, this Court finds it is not reasonably probable the outcome would have been different had counsel sought to dim the lights during the pretrial hearing. When counsel *did* attempt to dim the lights during trial, the court refused that request due to security concerns. Those concerns were equally present pretrial, and this Court finds it is not reasonably probable the Court would have allowed the dimming of the lights had counsel requested it earlier. Further, even if the court had allowed dim lights at the pretrial hearing, it is not reasonably probable the identification would have been suppressed based on such a demonstration. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to object – Court's preliminary comments

Applicant argues trial counsel was ineffective for not objecting to the trial court's improper opening comments to the jury that improperly shifted the burden of proof.¹⁰ Applicant contends this language improperly shifted the burden of proof. Applicant did not prove this ground.

¹⁰ During its preliminary remarks, the trial court stated, "After doing that you will render a verdict, a true and just verdict under the solemn oath that you just took as jurors." (Tr. 152). The Court also stated, "After

Initially, at the time of Applicant's December 2010 trial, the prevailing case addressing truth-seeking language was State v. Aleksey, 343 S.C. 20, 28-29, 538 S.E.2d 248, 252-53 (2000).¹¹ There, the Supreme Court of South Carolina found that although truth-seek language in a *jury charge* was inappropriate, it did not shift the burden of proof when it was not given in conjunction with the charge on the State's burden of proof or circumstantial evidence. See id. ("There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses. The remarks were prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof." (footnote omitted)). Aleksey did not address pretrial comments. Further—and critically—the comments by the trial court here were not linked to a jury charge on the State's burden of proof or circumstantial evidence, as condemned in Aleksey. Finally, as noted in Beaty, the general sessions benchbook contained virtually similar language. 423 S.C. at 34 n. 2, 813 S.E.2d at 506 n.2. Thus, counsel's failure to object was reasonable under prevailing professional norms and not deficient.

Further it is not reasonably probable an objection would have changed the outcome. Importantly, during the jury charge, the trial court properly instructed the jury on the presumption

I charge you with the law you will then be in a position to determine what the true facts are and to apply the law to those facts and thus render a true and just verdict in this case." (Tr. 156).

¹¹ The Supreme Court of South Carolina subsequently addressed truth-seeking language in two opinions issued *after* Applicant's trial: State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) (instructing trial courts "to remove any suggestion from [its] general sessions charges that a criminal jury's duty is to return a verdict that is 'just' or 'fair' to all parties"); and State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (finding court's pretrial comments that jury's role was to "search for the truth," determine "true facts," and render a "just verdict" were improper, but the comments did not warrant reversal when "they were a mere statement to the jury and not a charge on the law," and they "were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in Aleksey"). However, counsel is not required to anticipate changes in the law. Further, the comments here would not warrant reversal under Daniels or Beaty.



of innocence, the State's burden of proof, and reasonable doubt, and these charges did not include any truth-seeking language. (Tr. 1039, 1041-043, 1048). Likewise, the trial court properly instructed the jury on circumstantial evidence, and the circumstantial evidence charge did not include any truth-seeking language. (Tr. 1045-46). Thus, it is not reasonably probable the pre-trial comments shifted the burden of proof and made the jury believe Applicant had to disprove the State's case. Cf. Beatty, 423 S.C. at 32-34, 813 S.E.2d at 505-06 (finding defendant not prejudiced by court's pretrial comments that trial is search for the truth and the jury's role is to render true and just verdict and determine true facts when the comments "were a mere statement to the jury and not a charge on the law" and "were not linked to either the reasonable doubt or the circumstantial evidence charges"). This claim is thus denied.

Ronnie Washington

Applicant contends counsel was ineffective "for the handling of matters related to" Ronnie Washington.¹² More specifically, in post-hearing filings, Applicant averred counsel was ineffective for not requesting a continuance and/or further investigating a newly-obtained statement of Washington; not interviewing Washington; not properly addressing the State interjecting Washington into the trial via argument and witnesses, to include investigative hearsay; and not calling Washington as a witness to impeach testifying co-defendant Patrick Tyler.

However, this Court finds the way counsel dealt with the matters related to Washington was reasonable under prevailing professional norms and not deficient. Initially, it would have been patently *unreasonable* for counsel to call Washington as a witness here where Washington, in his

¹² Washington was the getaway driver; he provided a statement to law enforcement shortly before trial identifying Applicant as one of the people he drove the night of the home invasion and murder. However, Washington told police he did not know the men were going to commit a robbery. According to Washington's statement, he remained in the vehicle while the others went inside. The State identified Washington as a potential witness but did not call him at trial. (Tr. 22, 25, 27-30).

statement to police, identified Applicant as one of the people he drove to the victim's home the night of the robbery. This Court further finds (1) counsel provided a strategic reason for how she handled references to Washington; (2) the only hearsay entered from Washington's statement (i.e., he was the driver of the vehicle and knew codefendant Christopher Coleman from school and work) was not material to Applicant's guilt or innocence; and (3) the impeachment value of Washington's self-serving statement that no one discussed a robbery and he did not see guns was very low in light of the extensive impeachment and cross-examination the five defense attorneys conducted of Tyler. Viewed objectively, counsel's performance was reasonable under prevailing professional norms. Further, Applicant did not introduce credible evidence of what Washington would have testified to that would have reasonably changed the outcome of trial.

i. Because Washington identified Applicant as one of the people in the vehicle, it would have been patently unreasonable for counsel to call him as a witness.

An objective review of the transcript shows counsel's performance related to Washington was reasonable under prevailing professional norms and not deficient. Critically, it would have been patently unreasonable to call Washington as a witness when he identified Applicant as being with the codefendants when Washington drove them to and from the victim's home. Had Applicant called Washington, it is highly probable the solicitors (both very seasoned trial attorneys) would have cross-examined him about his statement that Applicant was in the vehicle (and impeached him through Rule 613(b), SCRE, if necessary). Counsel herself acknowledged at the PCR hearing that she expected Washington to identify Applicant as being in the vehicle. (PCR 152). In light of this, it would have been objectively unreasonable for her to call Washington as a witness. Applicant's defense centered on attacking Tyler's credibility, attacking the credibility of the surviving victim who identified Applicant as the shooter, and arguing the State did not meet its burden, and it would have damaged his defense tremendously to have an additional witness



identify Applicant as one of the men in the vehicle. In light of Washington's statement to police—which made him a problematic witness for the defense—Applicant has not shown how further investigation into this statement and/or further interviewing Washington would have changed the outcome. Applicant thus did not prove deficiency or prejudice in this regard.

b. Counsel articulated a valid strategic reason for the way she handled Washington and thus was not deficient.

Although counsel averred she should have done more, she did, in fact, articulate a valid strategy for the handling evidence related to of Washington. Specifically, she explained that what she “was trying to show the jury was that for some reason they were playing favoritism to this Ronnie Washington guy; that he wasn’t being charged.” (PCR 98). This strategy is evident from her cross-examination of Investigator Shumpert and her closing argument.¹³ Further, this was a

¹³ Counsel cross-examined Investigator Shumpert as follows:

Q. Lieutenant, Mr. Lackey asked you if you arrested Ronnie Washington, and you said you hadn’t?

A. Correct.

Q. But you would agree with me, wouldn’t you, that if you believed everything Patrick Tyler said, he was guilty of this crime, he was a part of this whole crime?

A. Yes.

Q. If you believed Patrick Tyler?

A. Correct.

Q. Okay. When you spoke to Patrick Tyler initially, did he tell you the things about Ronnie Washington that he testified to in this trial? Did he tell you that information?

A. I’m not sure what you’re asking, but—

Q. Okay.

A. —if it’s the way you’re asking me, he didn’t tell me nothing about Ronnie Washington because he said he didn’t know the driver.

Q. Okay. But let me be more specific.

A. Okay.

Q. If you—he obviously, then, it’s your testimony that he didn’t tell you that when they were in the car that they were talking about the robbery, he didn’t tell you that, did he?

A. No, he didn’t.

Q. Okay. He didn’t tell you that Ronnie Washington drove them there?

A. He said an unknown driver drove them there.

....

Q. Okay. Alright. So, if you believed that what [Tyler] said is true, wouldn’t you arrest Ronnie Washington?

reasonable strategy under prevailing professional norms—especially given the risk involved in actually calling Washington as a witness when he had identified Applicant as being in the vehicle. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (“Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.”). Because counsel articulated a reasonable strategy for using information from Washington to attempt to undermine the State’s case, she was not deficient.

c. Because the hearsay evidence entered from Washington’s statement was immaterial to Applicant’s defense, counsel’s failure to object was reasonable and did not prejudice Applicant.

The hearsay testimony entered at trial about Washington’s statement was immaterial to Applicant’s defense. Specifically, the State elicited testimony that Washington (1) owned the Ford Explorer driven the night of the murder and (2) admitted to being the driver; and codefendant

A. Not at this time. Like I stated earlier, when I learned of Mr. Washington I showed him a photo lineup of him, and he wasn’t able to pick him out. And so, nobody else really have came forward and said, yeah, this is the guy that was with us. So, like I said, it’s a further investigation still going on at this time.

(Tr. 798-801). During closing argument, counsel argued,

They also promised they were going to produce Ronnie Washington. Ronnie Washington has admitted he was the driver in this incident. They did not produce him. They did not produce the person who was allegedly in his car who admitted to being in his car, who supposedly drove all these people, including Patrick Tyler, to this residence. They didn’t produce him. He did not get on that stand and name Ralph Coleman as ever being in that car. As a matter of fact, during opening statements the State actually promised you that Ronnie Washington would come in here and corroborate all six people were in that car, and when I say, six, I’m including Patrick Tyler. He didn’t say anything, he did not come in here. Ronnie Washington was supposed to tell you that he took all six of those people to the Kings Road apartment, and they were going there to buy weed is what he knew, but he didn’t come in and tell you that. The State has not produced that. So, they have not corroborated Patrick Tyler’s story. Nobody has corroborated Patrick Tyler’s story except for where he was around, I think, five o’clock, and where he was around maybe ten:thirty or eleven o’clock. That does not corroborate his story.

(Tr. 972-73).



Christian Coleman elicited testimony that Washington knew *Christian* from work and school and had run errands for him. (Tr. 724-25, 774-77, 798-801). No other specific information from Washington's statement was elicited.¹⁴ The foregoing, without more, was immaterial to Applicant's guilt or innocence—especially when no information was elicited at trial that indicated Washington identified Applicant as being in the vehicle. Counsel's failure to object to this immaterial testimony was reasonable under prevailing professional norms. Further, counsel *did* successfully object to later hearsay about Washington's statement and successfully excluded additional portions of the statement from the jury's consideration. (Tr. 774-77). Finally, there is no reasonable probability the outcome would be different had the jury *not* heard the name of the driver and owner of the Explorer, or that Washington knew *Christian* from work and school.

d. The impeachment value of Washington's self-serving statement that no one discussed a robbery was very low in light of the extensive impeachment the five defense attorneys conducted of Tyler.

Tyler was extensively cross-examined by five defense attorneys (Tr. 343-425), and he admitted three times that he was untruthful and/or that he lied in his statement to police. (Tr. 345, 349, 433). He likewise acknowledged inconsistencies in his statements and his testimony (Tr. 397, 400). Tyler admitted he used marijuana—including on the day of the murder—even though it is illegal (Tr. 348, 407); he was afraid of Investigator Shumpert (Tr. 364); and he was not friends with Applicant (Tr. 365). Finally, he was extensively questioned about whether he was testifying because he wanted a better deal for his own involvement, and he acknowledged he was going to plead guilty to the lesser-included offense of voluntary manslaughter rather than murder. (Tr. 348,

¹⁴ Although Investigator Shumpert was extensively cross-examined about why Washington had not been arrested, his testimony was limited to stating Tyler could not identify Washington from a lineup (Tr. 777, 800-801) and he did not believe he had probable cause to arrest Washington. Investigator Shumpert did not provide any further specifics of Washington's statement, and there was nothing objectionable about the testimony related to why Washington had not been arrested—much of which was elicited by the various defense attorneys to aid their strategy in closing argument. (Tr. 775-76).

351, 352, 384, 418-19, 431). In light of this extensive cross-examination, it is not reasonably probable that testimony about an inconsistency between Washington's self-serving statement (that the robbery was not discussed in the vehicle) and Tyler's testimony (that the robbery was discussed in the vehicle) would have changed the outcome. Counsel also cross-examined Lieutenant Shumpert about why police had not arrested Washington when Tyler had implicated Washington; in doing so, counsel undermined Tyler's credibility and set up a valid argument for closing. (Tr. 798-801, 972-73). Counsel's performance was reasonable under prevailing professional norms, and Applicant has not shown he was prejudiced by counsel's "handling of matters related to Washington." This claim is thus denied.

e. Applicant did not introduce any additional credible evidence about what Washington would have testified to that would have reasonably changed the outcome.

Initially, at the PCR hearing, this Court sustained the State's objections to Skidmore's testimony about what Washington told him. Even if Skidmore's testimony had been admitted, however, this Court finds Skidmore did not provide additional evidence to prove prejudice from counsel's failure to call Washington as a witness. The only additional information Skidmore testified to about what Washington allegedly would have said is that he did not see any guns in the vehicle. Assuming *arguendo* Washington would have testified he did not see any guns, this does not contradict Tyler's testimony because Tyler stated the guns were "in the hatch back." (Tr. 312). In other words, it is not unreasonable to believe that if the guns were in the hatchback (as Tyler testified), then Washington would not have seen them. The very limited value of this so-called impeachment evidence must be weighed against the very real possibility (as acknowledged by counsel) that Washington would testify Applicant was in the vehicle—as Washington stated in his statement to law enforcement. This would have been so damaging that counsel likely would have

been ineffective had she called Washington as a witness knowing he would place Applicant in the vehicle. Applicant did not produce any credible evidence of anything Washington said that would have reasonably changed the outcome and thus did not prove this ground.¹⁵

Patrick Tyler

Applicant next contends counsel was ineffective in the handling of matters related to Patrick Tyler, a co-defendant who testified for the State. Alternately, he asserts newly-discovered evidence in the form of a recanting affidavit from Tyler. Applicant did not prove this ground.

i. "Handling of matters" related to Tyler

Initially, this Court finds counsel's "handling of matters" related to Tyler was reasonable under prevailing professional norms and not deficient. At the PCR hearing, Mark Wise (who assisted Ulman in defending Applicant) testified Tyler was represented by attorney Carl Grant, and Wise reached out to him twice about speaking with Tyler. However, Wise stated Grant did not want him to talk to Tyler. This Court finds the foregoing testimony by Wise credible. This Court further finds that in light of the foregoing credible testimony, there was nothing more counsel could have done prior to the trial to speak with Tyler. Counsel did, however, impeach Tyler at trial with inconsistencies in Tyler's statements. Counsel's cross-examination of Tyler using these statements was reasonable under prevailing professional norms and not deficient. Likewise, four other defense attorneys extensively cross-examined Tyler. Applicant ultimately did not set forth what more counsel could have done related to Tyler that would have reasonably changed the

¹⁵ To the extent Applicant contends counsel was ineffective for not objecting when the State told the jury during opening statement that it would hear from Washington during the trial (Tr. 163), counsel was not ineffective in this regard. At the PCR hearing, counsel and the solicitor testified Washington was on the State's witness list. Additionally, the trial transcript reflects the defendants were aware the State may call Washington, and the jury was questioned about whether they knew him. (Tr. 22, 25-28, 95). Thus, at the time of opening statement, counsel would not have known that the State would decide not to call Washington—and there would not have been a valid objection to raise.

outcome of trial and thus did not prove deficiency or prejudice.

In his arguments to this Court, Applicant averred counsel was ineffective for not cross-examining Tyler about an alleged discrepancy between the address listed on his Miranda waiver form and his statement to police. However, an objective review of the record and the Exhibits show there was not a discrepancy in the addresses on the forms. The Miranda waiver form (Exhibit 5) identifies the place as “1032 Chestnut,” followed by the date and time. Tyler’s statement (Exhibit 6) contains the following information at the top:

Date: 3/18/10 **Time:** 4:53 pm **Place:** [this is blank]
Defendant Name: Patrick Tyler **SSN:** [redacted]¹⁶
Age: [redacted] **Date of Birth** [redacted] **Phone number** [redacted]
Address: [redacted] Ashland

In context, the “Ashland address” is Tyler’s address¹⁷—not the place where the statement was taken. This is further evident by the fact that three lines above it, next to Date and Time, there is an additional line for Place. It is logical to conclude that the first line for “Place” is intended to be the place where the statement occurred, whereas the line for “Address” (which follows all of Tyler’s personal identifying information) is intended to be the address of the individual giving the statement. This is not a discrepancy in the addresses on the forms.¹⁸

¹⁶ This Court has redacted from this order personal identifying information that is not relevant to this analysis.

¹⁷ This is consistent with Tyler’s trial testimony that he lived was on Ashland Street with his grandmother. (Tr. 297).

¹⁸ Although counsel for Applicant questioned Skidmore about a discrepancy between Investigator Shumpert’s trial testimony (that the statement occurred at Ellis Street, Tr. 718) and the Miranda form (which indicated the statement was taken at Chestnut Street), Skidmore’s testimony remained focused on his perceived discrepancy between the two addresses on the forms themselves (PCR 54-55 in general, pg. 55 ln. 21-25 specifically). This Court takes judicial notice that the Orangeburg County Sheriff’s Department has locations at both 1520 Ellis Avenue and 1032 Chestnut Street. See <https://www.orangeburgcounty.org/281/Contact-Us> (last visited July 14, 2025). Further, the distance between the locations is less than a half a mile (.4 miles). See https://www.google.com/search?q=distance+between+1520+ellis+avenue%2C+orangeburg%2C+sc+and+1032+chestnut+street%2C+orangeburg+sc&rlz=1C1GCEA_enUS1139US1140&oq=distance+between+1520+ellis+avenue%2C+orangeburg%2C+sc+and+1032+chestnut+street%2C+orangeburg+sc&gs_lcrp

Further, Applicant did not introduce evidence of what Tyler or the investigators would have actually said had they been cross-examined on this point.¹⁹ If the Court is to engage in speculation, it is most reasonable to speculate that investigators and/or Tyler would have explained the Ashland address was Tyler's address (as Tyler testified at trial, Tr. 297), whereas the other address was the police station where the statement was provided.²⁰

Finally, Tyler was extensively cross-examined by *five* defense attorneys—for over 100 pages of the trial transcript—and he admitted multiple times that he lied. Additionally, although Tyler's credibility was critical for the State's case against some of the co-defendants, the State's case against Applicant did not hinge solely on Tyler's credibility because the surviving victim identified Applicant from a photographic lineup. Based on the foregoing logical, rational explanation for the alleged discrepancy in the addresses, the extensive impeachment of Tyler at trial, and the fact the surviving victim identified Applicant from a lineup, it is not reasonably probable the outcome would have been different had counsel additionally cross-examined Tyler and investigators about the different addresses on the Miranda form and Tyler's statement.

ii. Newly discovered evidence (recanting statement)

This Court further finds Tyler's recanting affidavit does not warrant a new trial.

In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such

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¹⁹ This is different than a situation where counsel had a statement about what a witness would have said that could be used for impeachment if the witness deviated from the statement. Applicant is relying on two police forms and speculating that the investigators and Tyler would have folded under such questioning rather than merely explaining one address was part of Tyler's identifying information whereas the other was the location the statement was given.

²⁰ Likewise, if further questioned about the discrepancy between the Chesterfield address and the Ellis address, Investigator Shumpert most likely would have explained they are both physical locations for the Orangeburg County Sheriff's Department that are located right next to one another. Critically, however, Applicant did not submit any credible evidence of what Investigator Shumpert or Tyler would have said if questioned about this and thus did not meet his burden of proving prejudice.

as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching.

State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) “Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” Id.; see also State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (same); State v. Wright, 269 S.C. 414, 421, 237 S.E.2d 764, 768 (1977) (same). “To hold such affidavits sufficient to require the granting of a new trial would be to open the door to fraud and perjury, as well as to invite interminable delays in the disposition of causes.” State v. Parker, 249 S.C. 139, 142, 153 S.E.2d 183, 184 (1967).

Here, although Tyler signed an affidavit attesting Applicant was not involved in the home invasion, Tyler refused to attend the PCR hearing and offer such testimony. In fact, while Tyler was still incarcerated with the South Carolina Department of Corrections, he refused to be transported to a previously-scheduled hearing in this case—prompting Applicant to request a continuance at that time. The credibility of the affidavit—wherein Tyler stated he was giving the affidavit because “it is the right thing to do”—must be weighed against the fact Tyler refused to attend the PCR hearing to testify to its contents.

In closely scrutinizing this affidavit, as it is required to do, this Court notes that Tyler—like Applicant—was incarcerated when he signed this affidavit. See State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (noting recanting affiant was confined with appellant when he signed recanting affidavit and agreeing with circuit court that affidavit was not worthy of belief). This Court likewise notes the timing of the affidavit—which was provided more than a decade after this trial—and the fact it was provided to an investigator hired by Applicant. In light of extensive caselaw indicating recantation testimony is generally unreliable and the fact Tyler



refused to attend the PCR hearing to actually recant his testimony, this Court finds the recanting affidavit not credible. Cf. Parker, 249 S.C. at 142, 153 S.E.2d at 184 (1967) (“The character of the affidavits, and that of the affiant, furnished a reasonable basis for the refusal of a new trial.”).

This Court further finds that based on Tyler’s refusal to be involved in this PCR hearing, it is not reasonably probable he would attend any subsequently-scheduled trial to offer different testimony. See Harris, 391 S.C. at 545, 706 S.E.2d at 529 (“[T]o warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted”). Likewise, the surviving victim identified Applicant as a shooter from a photographic lineup. (Tr. 242-43, 730). Thus, although Tyler’s testimony may have been crucial to the codefendants’ cases, it was less crucial to Applicant’s case. In short, because (1) the surviving victim identified Applicant and (2) Tyler refused to attend the PCR hearing to recant his testimony, this Court finds Applicant did not prove the statement in the affidavit would change the outcome of a new trial.²¹

Failed to object – State’s closing argument

Applicant contends counsel was ineffective for not objecting to bolstering and vouching in the State’s closing argument. This Court finds Applicant did not prove this claim.

“A solicitor’s closing argument must be carefully tailored so as not to appeal to the personal biases of the jury.” Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). “The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.” Id. “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” Id. Further, “a prosecutor is expected

²¹ Further, based on Tyler’s statement to police implicating Applicant, the affidavit is merely impeaching and does not constitute a basis for a new trial. See Harris, (“[T]o warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence . . . is not merely cumulative or impeaching.”).

to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer.” State v. Busse, 439 S.C. 104, 111, 886 S.E.2d 208, 212 (2023). “Zealous advocacy crosses the line and becomes improper vouching, however, when the prosecutor indicates to the jury—even implicitly—that her argument as to the credibility of a witness is based on anything other than the evidence admitted.” Id. at 109, 886 S.E.2d at 211.

When assessing allegedly improper comments by the solicitor, appellate courts “view the alleged impropriety of the solicitor’s argument in the context of the entire record, including whether the trial judge’s instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant’s guilt.” Id. “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Id. “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.

At the PCR hearing, Applicant pointed to the following portions of the State’s closing argument that he alleged were improper:

But we also got to witness the great side of Orangeburg County, courage, and I’m talking about the courage of witnesses coming forward back in March to tell the police what happened. I’m talking about the courage of people that are friends with Danny Ryant, who came forward and said, Danny Ryant, yeah, he was at the Corner Pocket [Bar] which is just about a half a mile from the victim, but we couldn’t find him for a while. And one witness who I’ll talk about in a minute who actually said, hey, and I saw him getting in the car with two people. And she picks out Mario Shivers and Patrick Tyler. I’m talking about the courage of a Shannon Mitchell who gets on the witness stand and tells the police, Walter Harris was in that house right before the murder. And that’s kind of unusual, I don’t know why he would be in there, I’ve never known him to be in there. And why would he go in there? Because Charles Pringle

knows Mario Shivers but he doesn't know Walter Harris, part of the conspiracy. I'm talking about the courage, yes, of a Patrick Tyler, a sixteen year old child. You think you're a man when you're sixteen, you're not a man, you're still a kid, breaking down and crying in front of his parents with Investigator Shumpert and finally telling him on March the eighteenth, not just on Tuesday, but March the eighteenth who was involved in this murder, he and his buddies. And not just the courage back in March of these witnesses to come forward, but the courage of them to then come into this courtroom, put their hand on that Bible, get on that witness stand, face those attorneys, face me, face those defendants, and testify. You saw the grilling you get when you get on a witness stand, you saw what you have to go through. And they had the courage to get on that witness stand and testify against those five defendants. Even though some of them were friends with their family, even though some of them were friends with the defendants. That's courage. And what I'm asking of you today, Ladies and Gentlemen, is that you display that same degree of courage that every single one of those witnesses had when you reach your verdict today. Have the courage to do the right thing like those witnesses and find those defendants guilty of murder, armed robbery, and burglary in the first degree. Because, Ladies and Gentlemen, how is there any doubt whatsoever, much less a reasonable doubt—I'm going to say it because I'm going to prove it—how is there any doubt, much less a reasonable doubt that all five of them, and Patrick Tyler are guilty. And if I'm wrong, find them not guilty, find them not guilty.

(Tr. 1013-15).

Say what you want about Patrick Tyler, but he accepted responsibility in this courtroom, and he accepted responsibility on March the eighteenth with Investigator Shumpert.

And let's talk about that, the statement that he gave to Investigator Shumpert at four: forty-three p.m. on March the eighteenth. He told Investigator Shumpert that day, after he broke down and cried, everybody that was involved in this murder, including himself, everybody. He also told you, he was honest about his statement, which is defense exhibit two, he told you on the witness stand, I wasn't a hundred percent accurate in that statement. I didn't want to tell the police that I knew everybody's real name. I wasn't a hundred percent accurate, I was scared, I was crying, but I told them who the six people were. And what makes this statement really credible? Two things: number one, the statement by itself convicts all six of them. So if he wanted to lie, all he needs to do is get on the witness stand and say exactly what's in the statement. If he was

going to lie to you, just get up there and say the exact same that's in the statement, because it convicts all six of them, himself and the five defendants. But he didn't do that, he told you the truth. There are some things in the statement that aren't true that y'all need to know about, like how I got a ride to the Woodbine address; like, who had which gun; like who went in the house at what time; and what was said and done after the murder. And how else do we know that's true? Like Investigator Shumpert told you, what's great about that statement, what makes it trustworthy is, he implicates himself. That's what makes a defendant's statement trustworthy, when you implicate yourself and, you say, yeah, I'm guilty, too. It's not like he went to the police and said I didn't have anything to do with it, I was just in the car, they did it. He implicated himself, and that's what makes that statement trustworthy. Stubborn facts of guilt. And what makes it trustworthy is, he got on that witness stand and had the guts to face those five lawyers and testified.

(Tr. 1025-26).

But what makes this case even more than beyond a reasonable doubt is the unbelievable amount of corroboration to Patrick Tyler's testimony, unbelievable amount of corroboration. First, we have Ashley Parsley, Ashley Parley. And she was honest with you. She obviously told you, she's not perfect, but she told you the truth. She sold marijuana. She also told you how someone had come to the house earlier, to the apartment earlier to ostensibly buy marijuana and that later on that night the home invasion occurred. She told you she didn't see everybody, that one person came in there, I submit, Patrick Tyler, why she couldn't pick him out, covering his face up, and the second person behind him had a gun, shoved it into her face and said, Get on the ground. She heard the footsteps, she heard the duct tape, she heard the gun shots. She heard the malice, she heard the horrifying acts of that night when her friend was gunned down. And she was honest with you and she was honest with the police. She couldn't—they showed her multiple lineups. Talk about credibility, she called nine one one, of course, but talk about credibility, if we're going to get her to lie, especially after they know who's involved, let her to pick them all out of the photo lineup, pick them all. She's not going to do that, but isn't it interesting who she is able to pick out? She picks out Ralph Coleman. Is it because Patrick Tyler says that he was right behind him and he's the one that shoved the gun in her face? That would be one of the defendants that she got the best look at, Ralph Coleman.

(Tr. 1028-29).



The foregoing did not constitute improper vouching (the only legal objection Applicant raised). Rather, the solicitor's argument was based on reasonable inferences from the evidence presented at trial. Although the solicitor set forth his version of facts and commented on the credibility of witnesses, this was proper under the law. See Busse, 439 S.C. at 111, 886 S.E.2d at 212 (“[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer.”). Applicant has not pointed to any specific language used by the solicitor that was not a reasonable inference from the evidence and thus did not meet his burden of proving improper vouching. Because Applicant has not set forth a valid legal objection to the foregoing, he did not prove deficiency.

Likewise, Applicant did not prove prejudice. Specifically, this Court finds the allegedly improper comments did not so infect the trial with unfairness as to make the resulting conviction a denial of due process. See id.; Darden v. Wainwright, 477 U.S. 168 (1986) (finding prosecutor's improper comments—which included statements such as “He shouldn’t be out of his cell unless he has a leash on him” and “I wish that I could see him sitting here with no face, blown away by a shotgun”—did not “so infect the trial with unfairness as to make the resulting conviction a denial of due process”). Applicant did not point to any other portion of closing argument that counsel should have objected to and thus did not prove deficiency or prejudice. Thus, this claim is denied.

Inferred malice instruction

Applicant contends counsel was ineffective for failing to request a proper inferred malice instruction and failing to object to the instruction given to the jury. At the PCR hearing, PCR counsel framed this as an allegation that counsel was ineffective for not objecting when the court failed to give the “permissive inference” language from Elmore as part of its inferred malice

charge. Due to the overwhelming evidence of express malice presented by the State, this Court finds Applicant did not prove prejudice.

In State v. Elmore, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983), overruled by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), and overruled by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), the South Carolina Supreme Court suggested the following permissive inference instruction to be given when the trial court charges the inferred malice charge:²²

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

In Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), the Supreme Court of South Carolina found counsel was deficient for not objecting to the inferred malice charge that did not include the presumptive inference charge from Elmore. The Court found that in evaluating prejudice, the “Court must decide whether the erroneous malice instruction contributed to the verdict based on all the evidence presented to the jury.” Id. at 265, 786 S.E.2d at 124. More specifically, “[t]he Court must weigh the significance of the presumption to the jury against the other evidence of malice considered by the jury without the erroneous malice charge.” Id. The Court concluded the applicant was prejudiced by the charge “[b]ecause there was little evidence of malice aside from the use of a gun.” Id. at 266, 786 S.E.2d at 124. Specifically,

Although the State argued petitioner received a phone call from his brother, who knew petitioner had a gun, to come to the bar, the only

²² Admittedly, the inferred malice charge is no longer proper. However, as Applicant conceded during the PCR hearing, under the law that existed at the time of Applicant’s trial, the instruction that the jury could infer malice from the use of a deadly weapon was proper. The sole issue here is whether counsel was ineffective for not objecting to the court’s failure to charge the “permissive inference” charge from Elmore.

evidence of petitioner shooting the gun indicated he shot his weapon in the air after other shots were fired. Petitioner admitted in one of his statements that it was possible his gun "may have dropped down" toward the victim while he was driving away and shooting in the air; however, this is not overwhelming evidence of malice.

Id. at 266, 786 S.E.2d at 124.

Initially, under Gibson, this Court finds counsel was deficient for not objecting to the trial court's failure to charge the "permissive inference" language of Elmore as part of its inferred malice charge. However, due to the overwhelming evidence of express malice, this Court finds Applicant did not prove prejudice from counsel's failure to object. Specifically, Tyler testified to the premeditated plan to rob Victim: "I was supposed to go and buy the weed, . . . and that's when they was going to come in there and rob him." (Tr. 312, 315). On the way over, they decided they needed an additional person, so they called Walter Harris. (Tr. 313). When Harris no longer wanted to participate, they picked up Danny Ryant. (Tr. 316). When they arrived at Victim's home, Tyler went inside to purchase marijuana. (Tr. 318). Once inside, they duct taped Victim. (Tr. 320, 625). It is difficult to conceive a situation where duct taping a victim could constitute anything other than malice. Unlike Gibson, where the Court found there was little evidence of malice aside from the use of a gun, the State here presented overwhelming evidence of malice.

Further, unlike Gibson, this was not a situation where "the only evidence of petitioner shooting the gun indicated he shot his weapon in the air after other shots were fired." Rather, the use of guns here was excessive. The codefendants invaded the home with four guns—two of which were SKS rifles. As Tyler described it, "When I was about to leave out the house like I was told, that's when [Applicant] pulled his gun on the female. And when I opened the door that's when everybody came in with the guns." (Tr. 318-19). The victim was shot twenty-four times, and most of those shots were fired after the victim was already lying on the floor. (Tr. 518, 626 628). The

foregoing is vastly different than Gibson and constitutes overwhelming evidence of malice. Due to the overwhelming evidence of express malice, this Court finds it is not reasonably likely the outcome would have been different had the jury received the presumptive inference charge from Elmore. Thus, this claim is denied.

Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing *Jones v. Barnes*, 463 U.S. 745 (1983). “For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . .” *Jones*, 463 U.S. at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Failed to raise all meritorious issues

Applicant first contends appellate counsel was ineffective for failing to raise all meritorious issues for appeal. However, this blanket allegation—without more—is insufficient for Applicant



to meet his burden of proof. Here, appellate counsel filed a brief arguing the trial court erred in (1) denying his motion for a severance, (2) denying his motion to suppress a witness's identification of him, and (3) denying his motion to suppress a photograph of a rifle. Following oral argument, the Court of Appeals issued an opinion affirming. At the PCR hearing, appellate counsel testified that when she receives a case, she reviews the transcript for preserved issues and then researches those issues to determine which ones are best for appeal. Based on her review, she raised three issues in this appeal. This Court finds Applicant has not overcome the strong presumption that counsel was effective. Further, Applicant has not shown any additional preserved issue counsel should have raised that would have been meritorious and thus did not meet his burden of proving deficiency or prejudice. This claim is thus denied.

Brief on Appeal

Applicant next contends counsel was ineffective for failing to fully apply facts to the law in the argument for the issue raised on appeal. At the PCR hearing, Applicant questioned appellate counsel about her briefing of the severance issue. Specifically, the following exchange occurred:

Q. Now, regarding that severance issue I just wanted to ask you, it appears you raised that issue beginning on page 5 of the final brief of the appellant. You go through a very detailed analysis which I actually referenced the Court to, of the pretrial hearings on this effort and the trial hearing on this effort, and then you cite to the law, but then there's no analysis. Is there any reason why you didn't take those facts, after finding the law, and give an analysis or make an argument as to why the Court should reverse?

A. Well, if you look at the other two issues I raised, I did do an analysis on those. This issue-if you'll notice, I did a two-sentence analysis. It said in the two cases that the State cited in favor of not granting severance, I think one was Crow and one was Smith, I did argue that those cases did not apply to Mr. Coleman's case because Crow had two defendants and I think Smith had three. In Mr. Coleman's case, they were trying five people at one time, which I felt was much more prejudicial.

So, granted, that was not a deep analysis, but I did feel that, in this issue, it's a pretty straightforward issue. I mean, it's not a convoluted issue. It just should not have happened. And I felt the case was particularly strong and straightforward on the severance issue, so that's why I did not go into more in-depth analysis than I did.

Based on the foregoing, this Court finds counsel articulated a valid reason for not going further in her analysis in that it was a straightforward issue. Having reviewed the appellate brief, this Court agrees the issue was straightforward. As to this issue, appellate counsel advanced four reasons in the issue statement that she contended showed the joint trial violated due process, and she attempted to differentiate precedent that contradicted this argument. The fact that the law was against Applicant does not make appellate counsel deficient. Further, Applicant has not set forth with specificity what more counsel should have argued and has thus not overcome the presumption of effectiveness. Finally, based on the Court of Appeals' opinion, it appears the Court did in fact consider his arguments but cited controlling precedent that refuted it. Applicant has not shown what more counsel should have argued in the brief that would have led to a different result and thus did not prove deficiency or prejudice. Thus, this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek

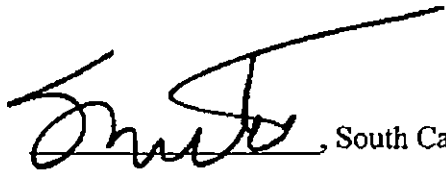


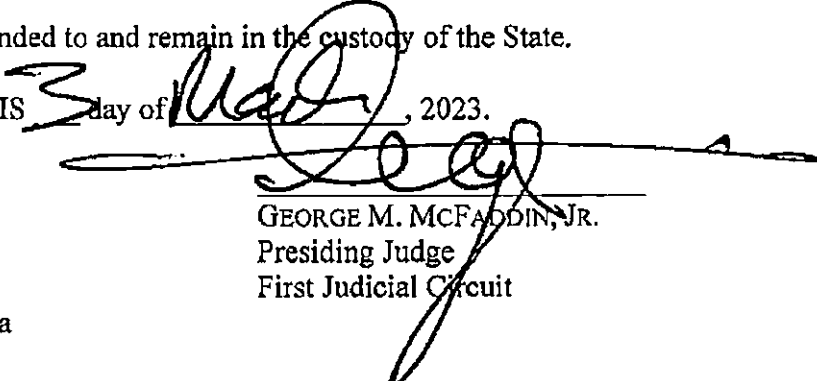
appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 3 day of March, 2023.


_____, South Carolina



GEORGE M. MCFADDIN, JR.
Presiding Judge
First Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT

RALPH B. COLEMAN, # 344173

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE

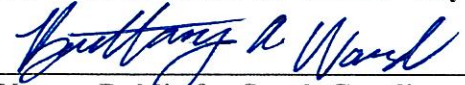
The undersigned hereby certifies that a true copy of the filed Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

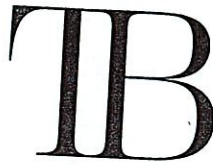
Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
PO Box 2147
Leesville, SC 29070

This 26th day of March, 2026.


Jensen Helgersen
Legal Assistant for Respondent

SWORN to before me this 26th day of March, 2026.


Notary Public for South Carolina.
My Commission Expires: 4/19/2023



LAW OFFICE OF
TRICIA A. BLANCHETTE

September 19, 2025

Orangeburg County Clerk of Court
ATT: Common Pleas
PO Drawer 9000
Orangeburg, SC 29116

RE: Ralph B. Coleman v. State; Docket No.: 2014-CP-38-1591

Dear Clerk:

For filing in the above referenced case, enclosed please find an original and one copy of an Order Granting Application for Post Conviction Relief. Upon filing, please return the copy in the enclosed envelope.

Thank you for your assistance with this matter. Please do not hesitate to contact me with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Danielle Dixon, Assistant Attorney General
Ralph B. Coleman

FILED FOR RECORD
WINNIFRA B. CLARK
2025 SEP 25 A 11:15
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Ralph B. Coleman, 344173,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-38-1591

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 2147

Leesville, SC 29070

phone: 803-908-3266 fax:

e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:

Danielle Dixon, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

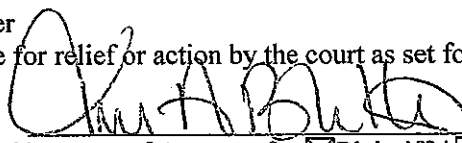
Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☒ Plaintiff / ☐ Defendant

September 19, 2025

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Ralph Bernard Coleman,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-1591

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on December 29, 2014. The State submitted a Return and Partial Motion to Dismiss on April 11, 2017. Tricia A. Blanchette, Esquire, was substituted in as counsel via written Order dated June 4, 2018.

Applicant, through counsel, filed a Motion for Discovery on January 9, 2019. A hearing was conducted on February 25, 2019 in front of the Honorable Maite Murphy. On March 18, 2019, Judge Murphy issued an Order Authorizing Discovery.

On January 13, 2022, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief. On May 2, 2022, Applicant, through counsel, submitted a superseding Amendment to Application for Post Conviction Relief that read as follows:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Applicant alleges trial counsel was ineffective for failing to make complete and effective arguments regarding Applicant being called to a joint trial with his co-defendants under a Solicitor controlled docket and for not being properly prepared to proceed with a joint trial. Specifically, but not limited to the following, Applicant would allege:



ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Ineffective assistance of trial counsel for failing to make full and effective arguments regarding the Solicitor controlled docket and severance of Applicant's case. Ineffective assistance of trial counsel for not being properly prepared to proceed to a joint trial. Ineffective assistance of trial counsel for not effectively continuing to argue regarding due process concerns and for failing to fully argue that the five attorneys were being required to act as one, have a joint trial strategy and a joint defense. Ineffective assistance of trial counsel for not timely making an argument regarding the loss of last closing argument and for failing to argue against the State's failure to close in full and use last close as a reply. *See State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018).

2. Applicant alleges trial counsel was ineffective for failing to make further argument during the *Biggers* hearing, to include failing to fully address the lighting issue and utilize demonstrative evidence. Ineffective assistance of trial counsel for failing to timely address the demonstrative evidence regarding the lighting in order to make such argument to the jury.
3. Applicant alleges trial counsel was ineffective for failing to object to improper burden shifting statements to the jury by the court. Transcript p. 152, ln. 20. *See State v. Daniels*, 737 S.C. 251, 737 S.E.2d 473 (2012).
4. Applicant alleges trial counsel was ineffective for the handling of matters related to co-defendant Ronnie Washington.
5. Applicant alleges trial counsel was ineffective for the handling of matters related to testifying co-defendant Patrick Tyler prior to, during and after trial. Alternatively, newly discovered evidence derived from the new information and/or testimony provided by Patrick Tyler.
6. Applicant alleges trial counsel was ineffective for failing to object to bolstering and vouching during the State's closing argument.
7. Applicant alleges trial counsel was ineffective for failing to request a proper inferred malice instruction and failing to object to the instruction given to the jury. *See State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016), *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985), *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983).
8. Applicant alleges ineffective assistance of appellate counsel, specifically, but not limited to the following:



- a. Failing to raise all meritorious issues on appeal.
- b. Failing to fully apply the facts to the law in the argument for the issue raised on appeal and make specific argument regarding the loss of lasting closing argument.

On September 7-8, 2023, an evidentiary hearing was conducted at the Calhoun County Courthouse in front of the Honorable George M. McFaddin, Jr. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Danielle Dixon, Assistant Attorney General. During the hearing, the following witnesses were called: Mark Wise, Esquire, LaNelle Cantey Durant, Esquire, Peter G. Skidmore, Jillian D. Ullman, Esquire, and Donal N. Sorenson, Esquire. Applicant introduced eleven exhibits, and one Court's Exhibit was marked.

At the conclusion of the hearing, the Court took the matter under advisement and allowed the parties time to obtain the transcript before making further submissions for the Court's review. Following a thorough review of all materials provided, along with the record before this Court, this Court issued a letter dated April 3, 2025 indicating his findings, from which this Order follows.

GENERAL SESSIONS PROCEDURAL HISTORY

During the May 2010 term of the Orangeburg County Grand Jury, Applicant was indicted for Burglary, 1st Degree, Possession of a Weapon during the commission of a Violent Crime, Murder, and Armed Robbery (Indictment No. 2010-GS-38-0808 to 0811).¹

Following a pre-trial hearing on November 23, 2010 in front of the Honorable Edgar W. Dickson, Applicant was called to trial on December 10-17, 2010 in Orangeburg

¹ The State did not proceed on the weapons charge at trial.



County in front of the Honorable Edgar W. Dickson, along with his following co-defendants: Christian Coleman, Danny Ryant, Mario Shivers and Walter Harris.

Applicant was represented by Jillian Ullman, Esquire, and Mark Wise, Esquire. The State was represented by Solicitor David Pascoe and Don Sorenson, Esquire.

On December 17, 2010, Applicant was found guilty on the charges of Murder, Armed Robbery, and Burglary, 1st Degree. The Honorable Edgar W. Dickson sentenced Applicant to concurrent terms of forty-five years for Murder, thirty years for Armed Robbery, and forty-five years for Burglary, 1st Degree.

A timely direct appeal was filed and perfected by Lanelle C. Durant, Esquire, of the Office of Appellate Defense. On January 2, 2013, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Coleman*, Op. No. 2013-UP-001 (S.C. Ct. App. filed March 30, 2016). A Petition for Rehearing was filed on January 17, 2013, and the State filed a Return on January 24, 2013. An Order denying the Petition for Rehearing was entered on February 22, 2013. The Remittitur was issued on April 15, 2016.

On May 23, 2013, a Petition for Writ of Certiorari was filed in the South Carolina Supreme Court. An Order denying the Petition for Writ of Certiorari was entered on November 7, 2014. The Remittitur was issued on November 24, 2014.

FINDINGS OF FACT AND CONCLUSION OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* 466 U.S. at 686; *see Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. *Bell v. State*, 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). Second, counsel's deficient performance must have 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.

It is well established that a criminal defense attorney has a duty to investigate, but that duty is limited to a reasonable investigation. When evaluating the reasonableness of counsel's conduct, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). Moreover, while the scope of a reasonable investigation depends upon a number of issues, at a minimum,

counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. *Id.*

In *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008), the South Carolina Supreme reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The South Carolina Supreme Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. *Lounds*, 380 S.C. at 460, 670 S.E.2d at 649, *See Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). In *McKnight*, the South Carolina Supreme Court held: "This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" *McKnight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

In analyzing a claim of ineffective assistance of appellate counsel, the South Carolina Supreme Court has held that the lower court must apply the two prong *Strickland* test just as it would be to a claim of ineffective assistance of trial counsel. *See Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 277 (2009), the South Carolina Supreme Court explained that the lower court should "ask 1) whether appellate counsel's performance was deficient, and 2) whether Petitioner was prejudiced by appellate counsel's deficient performance."

As a threshold matter, the reviewing court must assess the credibility of the testimony offered. If the reviewing court finds credible counsel's testimony, the court

may find ineffective assistance based upon the testimony of trial counsel. *See Pauling v. State*, 331 S.C. 606, 610, 503 S.E.2d 468, 471 (1998) (noting a court may find ineffective assistance of counsel when trial counsel admitted the testimony of a witness might have made the difference in obtaining an acquittal), *Martinez v. State*, 304 S.C. 39, 403 S.E.2d 113 (1991) (where trial counsel admits the testimony of a certain witness may have made the difference in obtaining an acquittal, the Court may find ineffective assistance.).

In analyzing the record and the credibility of the witnesses offered, this Court must preface this ruling by stating emphatically that in a PCR ruling, this Court, focuses on the actions or trial conduct of the trial attorney. These PCR rulings are the result of trial level decisions and actions of the trial attorney. The PCR level attorneys inherit the trial level history, a history the PCR attorneys did not make.

Upon thorough review of the record, this Court finds that Applicant is entitled to a relief as addressed below. This ruling is made in part upon trial counsel's credible acknowledgement that she was ineffective at trial. This court finds her deficient performance was not malicious, but she was admittedly overwhelmed by the complications and events associated with a multiple defendant trial. This Court finds as follows to each issue raised in the Amendment and addressed at the evidentiary hearing.

Issue One: Applicant alleges trial counsel was ineffective for failing to make complete and effective arguments regarding Applicant being called to a joint trial with his co-defendants under a Solicitor controlled docket and for not being properly prepared to proceed with a joint trial. Specifically, but not limited to the following, Applicant would allege:

Ineffective assistance of trial counsel for failing to make full and effective arguments regarding the Solicitor controlled docket and severance of Applicant's case. Ineffective assistance of trial counsel for not being properly prepared to proceed to a joint trial. Ineffective assistance of trial counsel for not effectively continuing to argue regarding due process concerns and for failing to fully argue that the five attorneys were being required to act as one, have a joint trial strategy and a joint defense. Ineffective assistance of trial counsel for not timely making an

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argument regarding the loss of last closing argument and for failing to argue against the State's failure to close in full and use last close as a reply. *See State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018).

At the pre-trial hearing on November 23, 2010, Ms. Ullman took the lead in a motion for severance, as was addressed in the Brief of Appellant. Pre-trial pp. 147-158, Brief of Appellant pp. 8-9. The defense argument focused primarily on the potential usage of the statement of co-defendant Walter Harris as part of Applicant's defense. In making an argument for severance, Ms. Ullman also raised concerns regarding the State's control of the docket and the impact such control had on the case. Pre-trial p. 156. In making his ruling, the court responded that he could not change that the Solicitor calls the cases and noted that the defense had made good points before denying the motion. Pre-trial pp. 157-158.

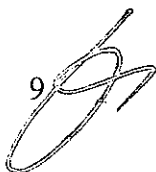
At the outset of trial on December 10, 2010, Ms. Ullman renewed the motion for severance and informed the court that there were three reasons the joint trial should be severed. Trial p. 27. Before addressing the three reasons, the court asked her to address what was new following his pre-trial ruling. Trial p. 27. In response, she explained that the defense had recently received the statement of Ronnie Washington and it was inconsistent with the account of Ashley Parsley and Patrick Tyler and that she needed to be able to address the statement of Walter Harris, as argued before, and the completely different stories provided via Investigator Shumpert. Trial pp. 27-29. She further argued regarding the antagonistic view Applicant's defense of misidentification created with his brother and co-defendant Christan Coleman. Trial. Pp. 29-30. In making his ruling, the court noted that it would be easier with just one defendant, but he denied the renewed motion to sever. Trial pp. 32-33.

On December 14, 2010, the Solicitor notified the trial court that Ms. Ullman had brought up a relevant issue regarding the order of closing argument. Trial p 373.

Thereafter, Ms. Ullman explained to the court that only one defendant, Mario Shivers represented by Attorney Joshua Koger, introduced evidence and now the Solicitor had informed her that there is a case that says all the defendants have lost last closing argument. Trial pp. 373-374. After she raised additional concerns regarding due process, the court responded that he understood her motion. Trial p. 375, lns. 10-11. Mr. Koger informed the court that he did not consult with the co-defendants' attorneys before introducing the piece of evidence that forfeited last closing argument and joined in the motion that the other co-defendants should not lose last closing argument. Trial p. 375-377.

After a short break, the court returned and commented that the issue of closing argument was implicit in the argument for severance. Trial pp. 378-379. In response, Ms. Ullman disagreed with the court and stated that it was not in her argument for severance because she was unaware it could happen. Trial p. 379, lns. 7-17. She continued to argue about the prejudicial nature of having to work as a team and being treated as a team in losing last closing argument, which she was unaware of. Trial pp. 379-380. In denying the motion, the court noted that it was an interesting argument and that he was sympathetic to her position. Trial pp. 380-381.

At the directed verdict stage, Ms. Ullman asked to put several matters on the record regarding the joint trial and/or denial of the severance motion. Trial p. 862. She argued that the State indicated that all the same witnesses would be utilized if trials severed, but over half of the witnesses, which she listed, were not relevant to the trial of

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Applicant. Trial pp. 862-865. Regarding the matter of antagonistic views, she surmised that she could not properly argue misidentification or defend against the State's theory of the case. Ms. Ullman also joined in Attorney Mellard's motion regarding the loss of last closing argument, and she added that she did not know it could happen and how it affected everything she did including how she questioned witnesses and her closing argument. Trial pp. 865-867. All the defense attorneys joined in to point out how hard it was to work together and how crowded they were on their side of the courtroom. Trial pp. 868-869. In response, Solicitor Pascoe argued that he was prejudiced by five attorneys against one and submitted that have called the same witnesses if severed. Trial pp. 869-870. In denying the motions made on behalf of the co-defendants, the court complimented the attorneys on how well they had worked together. Trial pp. 870-871.

Following the issuance of the verdict, Ms. Ullman moved for a new trial and renewed all her prior motions. Trial pp. 1100-1101. The court denied the motion for a new trial and her renewal of all prior motions. Trial pp. 1102-1103. On appeal, the court's denial of the motion for severance was raised and affirmed pursuant to Rule 220(b), SCACR, and a string cite of authorities.

At the evidentiary hearing, Ms. Ullman was adamant that Applicant was prejudiced by the joint trial and that she failed to properly raise all grounds for severance. She explained that she was unaware of the matter that later developed that affected the order of closing argument and did not properly raise it to the court. She admitted that she did not fully and/or effectively argue about the State's control of the docket. She also very candidly admitted that she was unprepared to try the case jointly. For example, she explained how she was not aware of the statute on how jury strikes would be allotted, and she explained

how the defense attorneys were required to act as one, which was a complete violation of due process. Throughout her testimony, she referenced back other errors to the fact that she was unprepared to proceed with the joint trial and how the joint trial impacted her ability to properly defend Applicant. PCR pp. 78-92, 103-113.

During her testimony, Ms. Durant acknowledged that she did address the facts and relevant case law, but she did not provide a detailed analysis section in the appellate brief on the issue of severance as she did on the other issues raised. On cross-examination, she recalled attempting to include the loss of last closing argument as part of the argument on appeal. PCR pp. 18-19.

When called by the State, Mr. Sorenson explained that the trial schedule was most likely controlled by Judge Dickson. He also testified that Mr. Coleman's case would have been one of the first cases called if severance was granted. PCR pp. 163-164.

As stated before, this Court finds credible the testimony of Ms. Ullman and finds that Applicant was prejudiced by her representation at the joint trial due to her admitted unpreparedness to go forward with a joint trial. This Court also finds troubling her admissions she was unprepared to make full and effective arguments for severance, such as on the matter of losing last closing argument. This Court's finding of prejudice can be reconciled with the South Carolina Court of Appeals decision due to the record before this Court to include trial counsel's testimony that additional ineffective assistance was provided due to her being overwhelmingly not prepared to proceed with the joint trial versus the State being abundantly prepared and capitalizing on her lack of understanding of how a joint trial proceeded, i.e. jury strikes, and the joint trial limiting her ability to properly defend Applicant. Therefore, it must be noted that the Court of Appeals reviewed

the issue on a record that was admittedly missing all arguments that should have been made by trial counsel in an effective manner, which further supports this Court's finding of ineffective assistance of trial counsel.² Therefore, this Court finds that Applicant has established that relief is warranted under both prongs of the *Strickland* analysis.

Issue Two: Ineffective assistance of counsel for failing to make further argument during the *Biggers* hearing, to include failure to fully address the lighting issue and utilize demonstrative evidence. Ineffective assistance of counsel for failing to timely address the demonstrative evidence regarding the lighting in order to make such argument to the jury.

During the pre-trial hearing on November 23, 2010, Attorney Wise handled the *Biggers* hearing for Applicant. Pre-trial p. 35. During the hearing, Ashley Parsley identified Applicant as someone she saw in the apartment. Pre-trial pp. 68-70. On cross-examination, Mr. Wise went over a diagram with her and what had occurred, to include her being in a face-down position. Pre-trial pp. 74-80. He also questioned her about the lighting, and she responded that there was a red light bulb that let off enough light for her to see. Pre-trial pp. 80-82. After Mr. Wise made an argument regarding the risk of misidentification, the court held that all the arguments and/or the weakness of her identification went to weight that could be argued to the jury and not to admissibility. Pre-trial pp. 143-146.

At the outset of trial, Ms. Ullman again moved to preclude the identification of Applicant by Ashley Parsley. Trial pp. 33-35. After her argument, the State and the court deferred to the prior hearing, and the court again denied the motion. Trial p. 36.

² In making these findings, this Court has considered *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), *State v. Hardin*, 425 S.C. 1, 819, S.E.2d 177 (S.C. Ct. App. 2018), *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018), *State v. Smith*, 387 S.C. 619, 693 S.E.2d 415 (S.C. Ct. App. 2010).



When she took the stand, Ashley Parsley testified regarding the line-ups she participated in and the identifications she made, and Ms. Ullman entered an objection. Trial pp. 235-243. During cross-examination by Ms. Ullman, Ms. Parsley stated there were no red lights and she was asked about her prior testimony. Trial pp. 258-259. When Shannon Mitchell was being cross-examined by Mr. Wise, he testified that the light in the apartment living room was a black light and possibly a red light in the kitchen. Trial p. 558.

Prior to closing argument, Ms. Ullman informed the court that she wanted to utilize a black light to make a demonstrative argument to the jury. Trial pp. 908-909. In response, the court questioned the issue of the wattage and turning off the lights in courtroom. Trial p. 909, ln. 15. Thereafter, Ms. Ullman made suggestions regarding options with the courtroom lighting, and the court did not agree with her suggestions. Trial p. 910. The State argued that the lighting request was 100% improper and that she could have possibly done a demonstration when the witness was on the stand, and the court concurred. Trial p. 911. During closing argument, Ms. Ullman argued to the jury that just about every witness said there was a black light, and she hoped they had a reference of how a black light illuminates a room. Trial p. 959.

At the evidentiary hearing, Ms. Ullman agreed that she should have requested to use the demonstrative evidence during the *Biggers* hearing and/or trial, and it impacted her closing argument when she was precluded from using the light demonstration during her closing argument. PCR pp. 112-119.

Upon review of the complete record, this Court is not convinced that counsel's admitted failure to address the demonstrative evidence at an earlier stage of trial amounted



to ineffective assistance that directly affected the outcome of the trial. Prior to being precluded from using the demonstrative evidence, Ms. Ullman and Mr. Wise made pre-trial and trial arguments on the matter, and they cross-examined Mr. Parsley and Mr. Mitchell on the matter. Additionally, counsel addressed the matter in her closing argument despite the preclusion of the demonstrative evidence. Therefore, this Court finds that this claim fails under a *Strickland* analysis.

Issue Three: Ineffective assistance of trial counsel for failing to object to improper burden shifting statements to the jury by the court. Transcript p. 152, ln. 20. *See State v. Daniels*, 737 S.C. 251, 737 S.E.2d 473 (2012).

Applicant has alleged that the following language was objectional on the basis of burden shifting at trial: “After doing that you will render a verdict, a true and just verdict under the solemn oath that you just took as jurors. Transcript p. 152, ln. 20-23. Applicant has cited to *State v. Daniels*, 737 S.C. 251, 737 S.E.2d 473 (2012) in support of this allegation.

At the evidentiary hearing, Ms. Ullman testified that she found the language objectionable on the basis of burden shifting, and she did not object simply because it was the standard charge given at the time. PCR pp. 119-121. Mr. Sorenson testified that he could not recall defense attorneys making objections to such language. PCR p. 172.

This Court finds credible Ms. Ullman’s testimony regarding finding the language objectionable, but this Court also agrees with Ms. Ullman and Mr. Sorenson that the language was standard at the time of trial, which was before the decision in *Daniels*. Also, in consideration of the trial court’s remarks and instructions as a whole, this Court finds that that counsel’s failure to object to the statements by the trial court fails under a *Strickland* analysis. *See Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992), *State v.*

Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000), *State v. Patterson*, 425 S.C. 500, 823 S.E.2d 217 (S.C. Ct. App. 2019).

Issue Four: Ineffective assistance of trial counsel for the handling of matters related to co-defendant Ronnie Washington.

As discussed above, Ms. Ullman renewed her motion for severance at the outset of trial due to the newly received statement of Ronnie Washington. Trial p. 27. In addressing the statement of Ronnie Washington, she informed the court that it was inconsistent with the account of Ashley Parsley and Patrick Tyler. Trial pp. 27-28.

In opening, the State informed the jury that they would hear from Ronnie Washington and detailed what he would say. Trial p. 163, lns 14-22. The State did not call Ronnie Washington to the stand.

When Investigator Shumpert was on the stand, he was discussing Patrick Tyler's statement, which was admitted by co-defendant Mr. Shivers' counsel, and testified that Mr. Tyler did not know who the driver was but he found out two weeks ago. Trial pp. 723-725. He testified that he took a statement from the driver (Ronnie Washington), and the State introduced the two pictures he took of his vehicle. Trial p. 724. He testified that the driver had not been charged, but charges were still being evaluated since they just found out about him two weeks ago. Trial p. 724, ln. 23 – p. 724, ln. 6.

During cross-examination by Mr. Lackey, counsel for co-defendant Christian Coleman, Investigator Shumpert was asked whether there was a supplemental report regarding Ronnie Washington, and he responded that there was just a statement. Trial p. 774. After Investigator Shumpert began to respond to questions about whether Ronnie Washington admitted being the driver and why he was not charged, Ms. Ullman objected because the question was about the content of the statement and he was not there to be

cross-examined. Trial p. 774, ln. 24 – p. 775, ln. 9. The objection was sustained. Trial p. 775, ln. 10. Without further objection, Investigator Shumpert was asked about how Ronnie Washington knew Christian Coleman, not arresting Ronnie Washington and about whether he participated in the crime at issue. Trial pp. 775-776.

In the cross-examination of Investigator Shumpert conducted by Attorney Wise, he was questioned about Patrick Tyler's account and if it was believed why was Ronnie Washington not arrested for being aware of the plan. Trial pp. 798-800. In response, Investigator Shumpert testified that no one could identify Ronnie Washington, to include Patrick Tyler, and the investigation was still ongoing. Trial pp. 800-801.

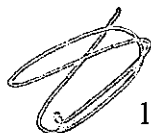
During closing argument, Ms. Ullman argued that the State submitted in opening that Ronnie Washington corroborated Patrick Tyler's account, and the State failed to produce him at trial. Trial p. 972. In response, the Solicitor argued that the defense argument regarding the absence of Ronnie Washington was without merit, he went into what Ronnie Washington said in his statement and that he was not called since he had culpability and needed to be charged. Trial pp. 1018-1019. The State reiterated the argument made in opening that Ronnie Washington corroborated Patrick Tyler and explained that Ronnie Washington was the getaway driver and drove them in the vehicle described by Patrick Tyler. Trial pp. 1019, 1031, lns. 13-25.

When called at the evidentiary hearing by Applicant, Peter Skidmore testified that he was hired to conduct an investigation for Applicant. He testified that he reviewed the transcript and discovery before meeting with and interviewing Ronnie Washington. He further testified that he had Mr. Washington under subpoena for evidentiary hearings that were previously continued, but he was now deceased. He also testified that Mr. Washington

was willing to come to an evidentiary hearing to testify. He testified that Mr. Washington recalled being present during the trial, but not being called as a witness by either side during the trial. The statement of Mr. Washington was introduced through Mr. Skidmore. Applicant's #7. Based upon his investigation, he testified that Mr. Washington's statement did not corroborate the trial testimony of Mr. Tyler. PCR pp. 28-29, 58-65, 74-75.

Due to the State's objections that were sustained PCR counsel asked to proffer further testimony from Mr. Skidmore. PCR p. 71. During his proffered testimony, Mr. Skidmore recalled meeting with Mr. Washington and going over his statement. PCR p. 71. Mr. Skidmore testified that Mr. Washington affirmed the veracity of his statement, agreed what occurred was what was in his statement and recounted the events in line with his statement. PCR pp. 71, 73-74. He also recalled discussing the last question with him and Mr. Washington stood by his answer that that he was not aware of a plan to rob anybody. PCR p. 74.

Regarding Mr. Washington's willingness to come testify, Mr. Skidmore testified that he was willing to come testify to the contents of his statement. PCR p. 72. He recalled that Mr. Washington was surprised that he had never been charged, but he was willing to come testify despite opening himself up to criminal liability. PCR p. 72. He also testified that Mr. Washington said no defense attorneys had attempted to contact him and he would have been willing to speak to anyone that approached him. PCR p. 72. Mr. Skidmore also confirmed that Mr. Washington was in the courthouse during the trial. PCR p. 72. Mr. Skidmore explained that he never had any problems with locating or talking to Mr. Washington, and he even set up communication with PCR counsel to prepare Mr. Washington to testify. PCR pp. 72-73.



Following the conclusion of Ms. Ullman's testimony, PCR counsel made argument regarding the admissibility of the proffered testimony of Mr. Skidmore, and this Court agreed to take the matter under advisement until the issuance of this Order. PCR p. 160. This Court finds that the proffered testimony of Mr. Skidmore was properly before this Court under the basis argued by PCR counsel.

While on the stand, Ms. Ullman testified that she did not conduct an investigation into or speak with Mr. Washington prior to or during trial. PCR pp. 93, 139-140. She acknowledged that she incorporated the newly obtained statement from Mr. Washington in her motion for severance because it presented inconsistencies she wanted to address as part of Applicant's defense. PCR pp. 90-93, 96, 102. She also testified that Mr. Washington's statement contradicted the testimony of Mr. Tyler. PCR pp. 92-93.

She recalled seeing Mr. Washington in the courthouse throughout the trial, but she could not provide a reason for failing to call him when the State did not during the trial. PCR pp. 92-93. She testified that the information contained in his statement would have "absolutely" aided the defense, but she did not contemplate putting him on the stand. PCR pp. 103-104.

She also did not provide a reason for failing to further object and/or properly address when the State interjected Mr. Washington's testimony into the trial, without calling him. PCR pp. 94-101. She was emphatic that she should have addressed the matter and that the State using Mr. Washington to corroborate Mr. Tyler without calling him at trial was prejudicial to Applicant. She explained, in detail, how she thought calling Mr. Washington would have affected the outcome of trial and said his absence and the State's interjection of him into trial was absolutely prejudicial to Applicant. PCR pp. pp.

A handwritten signature in black ink, appearing to be a stylized 'E' or 'G' followed by a flourish.

90-104, 137-140, 152, 155-156, 159. On cross-examination, when asked if being able to argue in closing that the State failed to produce Ronnie Washington benefited her client, Ms. Ullman responded:

No. He was convicted. I don't think it benefited him at all that any of this conversation that Ronnie Washington happened. I mean, he wasn't a witness. None of this should have ever been discussed. It shouldn't have been brought up by Shumpert, and it certainly shouldn't have been brought up in anybody's opening or closing, because he was not a witness.

PCR p. 155, ln. 17 – p. 156, ln. 9.

When he took the stand, Mr. Sorenson testified that the State obtained Mr. Washington's statement on November 30th, and it was turned over to the defense on December 1st. He explained that Mr. Washington was under subpoena for trial, and he was on the State's witness list. Per his notes, he recalled being prepared to call Mr. Washington as a witness, but he recalled as the trial progressed the prosecution made the decision not to call him to avoid him further incriminating himself and being arrested. He said it was a problem since he did not have a lawyer, but he did not provide a reason for failing to request a lawyer for him prior to trial. He agreed that he should have addressed getting Mr. Washington a lawyer before he told the jury in opening what they would hear from Mr. Washington. On cross-examination, he explained that Mr. Washington's statement was not necessarily inconsistent with Mr. Tyler's testimony because the driver may not have heard what everyone was talking about in the vehicle. PCR pp. 168-170, 175-176.

This Court finds that counsel was ineffective for not requesting a continuance and/or investigating the newly obtained statement of Mr. Washington prior to proceeding with the joint trial. Based in part on counsel's own admissions, this Court further finds



that counsel was ineffective for not interviewing Mr. Washington, not properly addressing the State interjecting Mr. Washington into the trial via argument and witnesses, to include investigative hearsay, without calling him as a witness, and for not calling Mr. Washington as a witness herself to impeach Mr. Tyler and support Applicant's defense. *See State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2018).

Even without the testimony of Mr. Washington due to his death, it is clear from his written statement that he could have impeached Mr. Tyler's testimony that the plan to rob the victim was discussed while he was driving the defendants to the victim's location and it would have kept the State from offering information regarding what he said (via investigative hearsay) without the inherent dangers of putting him on the stand. Counsel was adamant that Mr. Washington's statement contradicted Mr. Tyler and would have absolutely aided the defense. Additionally, his statement, specifically that he was not aware of a plan to rob, contradicts the closing argument made by the Solicitor that it would be unreasonable to believe that Mr. Washington did not know what was about to happen and that he needed to be charged. It must be noted that the Solicitor's closing argument also directly contradicts the testimony offered by Mr. Sorenson that the testimony of Mr. Tyler and the statement of Mr. Washington were not inconsistent since the driver may not have been aware of the plan to rob since he may not have heard what the others were talking about in the vehicle. Trial pp. 1018-1019, PCR pp. 175-176.

Mr. Sorenson testified that Mr. Washington was not called because his testimony would have been incriminating, and he did not have a lawyer. Mr. Sorenson's testimony further demonstrates why trial counsel was ineffective for not calling Mr. Washington and merely trying to argue to the jury that the case should be questioned since he was not

yet charged. The defense calling Mr. Washington would have exposed the inconsistencies between his statement and Mr. Tyler's testimony, admittedly forced the arrest of Mr. Washington and directly impacted the outcome of Applicant's trial.

Based upon the record, to include the trial transcript, the statement of Mr. Washington, and the testimony of Mr. Skidmore, Ms. Ullman and Mr. Sorenson, this Court finds that trial counsel was ineffective for her handling of the matters related to Mr. Washington. This Court further finds that the outcome of Applicant's trial is completely unreliable as a result of counsel's deficient performance. As even Mr. Sorenson's testimony demonstrated, calling Mr. Washington would have put the outcome of the trial in jeopardy. Counsel's deficient performance allowed the State to utilize the alleged information provided by Mr. Washington to establish their case and corroborate Mr. Tyler without running the risk of exposing the truth of what Mr. Washington said in his statement and having to arrest Mr. Washington after incriminating himself. As a result, this Court finds that relief is warranted under both prongs of the *Strickland* analysis.

Issue Five: Ineffective assistance of trial counsel for the handling of matters related to testifying co-defendant Patrick Tyler prior to, during and after trial. Alternatively, newly discovered evidence derived from the new information and/or testimony provided by Patrick Tyler.

At trial Patrick Tyler was called by the State to testify against his co-defendants, he recounted the events of the day in question as follows. He was smoking weed with Darius Gardner that afternoon and went to Applicant's house around 7:30 p.m. to see guns Mr. Shivers had that Mr. Ryant called and told him about. Trial pp. 302-303. He hung out and smoked marijuana with Mr. Gardner, Applicant and Mr. Shivers. Trial p. 306. Mr. Shivers showed him two rifles and a pistol, and Mr. Gardner left. Trial pp. 306-307. Mr. Shivers brought up the victim and a plan to rob him, but all three of them discussed it. Trial pp.

308-309. Christian Coleman and a friend came over in an SUV (Explorer), he did not know the friend and had never heard the name Ronnie Washington. Trial pp. 309-310. He identified a photo of the SUV and where everyone was sitting in it. Trial p. 311. The plan was discussed on the ride, with Mr. Shiver's doing most of the planning and talking. The plan was for him to go in and buy marijuana, come out and the remaining people would go in and do the robbery. Trial pp. 311-312. Mr. Shivers supplied the guns that were placed in the back of the SUV. Trial p. 312.

He called Walter Harris (AKA: Pete) because Mr. Shivers said they needed one more person. Trial pp. 312-313. After restating the plan, he explained that Mr. Harris went in originally with him and did not want to go back in because he knew someone inside. Trial pp. 315. Mr. Shivers had the idea to call Danny Ryant, and they went and got him at Corner Pocket Trial pp. 316-317.

In detailing what occurred, he stated that he was inside making the purchase and was going to leave as told when Applicant pulled a gun on a female and the others entered with guns. Trial p. 318, ln 21 – p. 319, ln 5. Mr. Harris taped up the victim, they were asking and searching for money, he heard a shot outside, ran out, and heard more shots. Trial pp. 320-321. He ran to the vehicle, and they took off and started dropping people off. Trial p. 322-23. He called Darius Gardner, and he came and picked him up. Trial p. 324.

He said the plan was to rob the victim for marijuana and money. Trial p. 322, ln. 14-21. Afterwards, he talked with Mr. Shivers, and he told him how many bullets he fired. He also talked with Mr. Ryant about not saying anything. Trial pp. 326-327. On March



18th, he turned himself in with his mother because law enforcement was looking for him. Trial pp. 327-328.

He testified about his line-up identification of Applicant and made an in court identification of Applicant as one involved in the robbery. Trial p. 333. He said he did not personally know who the driver was. Trial p. 338, Ins. 13-15. Over objection, he identified pictures of a gun. Trial pp. 338-339. He also testified regarding phone records and calls made. Trial pp. 341-342.

When asked about plea negotiations or expectations from testifying for the State, he testified that he had been made no promises about his potential sentence, but it had been agreed upon that his murder charge would be reduced to voluntary manslaughter. Trial pp. 337, 431-432. He said he understood that he could get 30 years to life and his sentence would be left totally up to the court. Trial pp. 337, 431-432.

During cross-examination by Mr. Lackey, counsel for co-defendant Christian Coleman, Mr. Tyler recalled giving his written statement, and he testified that it was truthful. Trial p. 344. His statement was introduced by Mr. Lackey, and he was asked specific questions about it. Trial pp. 344-346.

When Mr. Wise cross-examined Mr. Tyler on behalf of Applicant, he stated that he knew who had guns, but he did not know who shot. Trial p. 357, Ins. 6-8. He said there were four guns involved, and Mr. Harris gave his gun to Applicant. Trial p. 360, Ins. 4-10. He stated that Mr. Shivers directed him to go in with Applicant, Mr. Shivers was calling the shots, and Applicant volunteered. Trial p. 363, ln. 8-22. He recalled being scared when he wrote his statement, being scared to talk to police, and Investigator Shumpert treated him like it was his job. Trial pp. 364-365. He testified that he was less friendly with

Applicant than his brother, and he denied that he or his family had problems with Applicant. Trial pp. 365-366.

When he was cross-examined by Mr. Mellard, counsel for co-defendant Mr. Ryant, Mr. Tyler admitted that he was interested in seeing the guns. Trial p. 407. He also testified that he, along with Applicant, were there when Mr. Shivers came up with the plan. Trial p. 409.

During his cross-examination by Mr. Koger, counsel for co-defendant Mr. Shivers, Mr. Tyler testified about three meetings with the State. Trial pp. 417-419. He stated that the first meeting with the Solicitor was the only time his charges were discussed. Trial pp. 417-419. He recalled a second meeting that his mother attended, and a third meeting. Trial pp. 418-419. He stated that he would not be upset or shocked if he received the maximum sentence. Trial pp. 419-420.

On direct, Investigator Shumpert testified that Mr. Ryant and Mr. Tyler turned themselves in on March 18th, and he recalled Mr. Tyler having a parent with him. Trial pp. 718. He identified Mr. Tyler's statement and recalled taking it at the main office complex. Trial p. 718. He identified and the State admitted Mr. Tyler's advice of rights form. Trial p. 719. He explained that Mr. Tyler first said he knew nothing and did not know why he was there before breaking down, crying and saying he wanted to tell the truth. Trial p. 722, ln. 4-14. He said he made Mr. Tyler no promises and he was charged. Trial pp. 722-723. He testified about the photo line-ups that were done of the co-defendants and Mr. Tyler's identification of Applicant, over counsel's two-fold objection. Trial pp. 725, 732-734.

During cross-examination conducted on Applicant's behalf by Mr. Wise, Investigator Shumpert was questioned about why he did not arrest Ronnie Washington if

he believed Mr. Tyler's account and he was asked about Mr. Tyler's statement. Trial pp. 799-801. Regarding Mr. Washington, he testified that the investigation was still ongoing. Trial p. 801, lns. 6-7.

At the directed verdict stage, the State argued against the motion for directed verdict due to the accounts of Ms. Parsley and Mr. Tyler. Trial p. 859, lns. 8-17. In denying the direct verdict motion, the court noted the evidence of a plan as testified to by Mr. Tyler, along with his account of the events. Trial pp. 860-861.

During the charge conference, Ms. Ullman requested a charge regarding the benefit (reduction to voluntary manslaughter) that Mr. Tyler received for his testimony. Trial p. 901, lns. 8-23. Mr. Palmer, counsel for co-defendant Walter Harris, asked the court how far they could go with it in argument, and the court responded that it was not his job and could not tell him. Trial p. 905, lns. 9-17. In the State's final closing argument, the Solicitor argued that if Mr. Tyler was the only evidence, he alone proves guilt; then, the State addressed the corroborating evidence of his account. Trial pp. 1028-1034.

At the evidentiary hearing, Pete Skidmore testified that he was hired to conduct an investigation for Applicant. He identified Mr. Tyler as an individual he needed to speak with based upon his review of the transcript, discovery and information given. As a result, Applicant's counsel requested appointment of counsel for Mr. Tyler and Art Aiken, Esquire, was appointed to Mr. Tyler. Thereafter, all communication prior to meeting with Mr. Tyler and the details of the meeting were addressed via Mr. Aiken. Mr. Skidmore explained how he obtained an Affidavit from Mr. Tyler and that he had Mr. Tyler initial each line to ensure it's accuracy. He recalled Mr. Tyler making it clear that he wanted to provide the Affidavit despite his attorney's advice that it could be detrimental for him and

he included that information in the first paragraph of the Affidavit. He testified that he did not force or coerce Mr. Tyler to give the information or sign the Affidavit, and an attestation to the same was included in the Affidavit. He explained that the information contained in the Affidavit was “very important” because it contradicted his trial testimony that was utilized to convict Applicant. PCR pp. 37-50. After argument from both sides, the Affidavit was admitted as Applicant’s #4. PCR p. 50.

The complete Affidavit is in the record before this Court, but by way of summary via the signed statement, Patrick Tyler recanted his trial testimony and provided detailed information of how he incorrectly testified to Ralph Coleman’s involvement at trial. He stated that the reason he provided false testimony and his prior statement was to get a more favorable sentence.

During his testimony, Mr. Skidmore also addressed a matter of inconsistent addresses on Mr. Tyler’s advice of rights form and statement, along with the locations given for his interrogation and statement at trial by Mr. Tyler and Investigator Shumpert. PCR pp. 28-54, 65-69.

Turning to the testimony of the trial attorneys, Mr. Wise recalled that Mr. Tyler’s attorney (Carl Grant, Esquire) did not agree to their request to speak to Mr. Tyler prior to trial. PCR pp. 13-14. Ms. Ullman also acknowledged that they were not allowed to speak with Mr. Tyler prior to trial. PCR pp. 136-137.

Ms. Ullman testified that she did not notice the issue regarding the different addresses, and it was a matter she should have raised with Investigator Shumpert and Mr. Tyler. She explained that raising it would have been beneficial to the defense strategy of attacking the veracity of Mr. Tyler and the investigation. She noted that Mr. Tyler was a

minor and explained how the change in location could have been used at trial to call into question his statement, his testimony and the investigation. PCR pp. 122-128, 136-137.

Regarding the Affidavit, she acknowledged that it was the opposite of his trial testimony. She also acknowledged that she did not have the information contained in the Affidavit at the time of trial and she explained how it would have affected the outcome of trial. PCR pp. 135-137. Specifically, the following testimony was elicited:

Question: And if you would have had that information do you think it could have affected the outcome of the trial or your defense in this case?

Answer: Absolutely. I would have certainly cross-examined Mr. Tyler about his inconsistencies beyond the inconsistencies that existed at the time. For sure I would have questioned him. This case really does hinge on Patrick Tyler putting all five of these defendants there, and I would certainly think that this would undo that argument.

PCR p. 137, lns. 6-14.

When called by the State, Mr. Sorenson was asked about his interaction with Mr. Tyler, without his notes, he could only recall that he would have communicated with Mr. Tyler's attorney about cooperating and met with Mr. Tyler a few months before trial. PCR p. 165, lns. 5-21. Mr. Sorenson was also asked about whether there were any deals with Mr. Tyler for his testimony, and he recalled an agreement to reduce the murder charge to voluntary manslaughter, reducing the minimum on his sentencing exposure to 15 years to life, which he agreed was in line with Mr. Tyler's trial testimony. PCR pp. 166-167. Regarding Mr. Tyler's recantation, Mr. Sorenson testified that he did not find the recantation unusual based upon Mr. Tyler's age and the number of co-defendants. PCR pp. 167-168.



Here, Applicant has made the following allegation: Ineffective assistance of trial counsel for the handling of matters related to testifying co-defendant Patrick Tyler prior to, during and after trial. Alternatively, newly discovered evidence derived from the new information and/or testimony provided by Patrick Tyler. To obtain a new trial based on after discovered evidence, the party must show that the evidence: 1) would probably change the result if a new trial is had; 2) has been discovered since trial; 3) could not have been discovered before trial; 4) is material to the issue of guilt or innocence; and 5) is not merely cumulative or impeaching. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993), *Hayden v. State*, 278 S.C. 610, 299 S.E.2d 854 (1983), *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979).

Based upon counsel's own admission and the complete record before this Court, there is concern that counsel failed to notice the issue involving the addresses on the waiver form and statement and question Mr. Tyler and Investigator Shumpert accordingly. As counsel explained, she could have utilized this inconsistency to further attack the investigation and veracity of Mr. Tyler. Counsel did not provide a reasonable basis for missing this issue, so this Court finds that she was deficient and her deficiency was prejudicial to Applicant. As is also discussed below, counsel herself stated that the entire case hinged on the testimony of Mr. Tyler. Considering how defense counsel for all the co-defendants attacked the procurement of the statement, the statement and the veracity of Mr. Tyler, it is highly prejudicial that counsel did not capitalize on the contradiction between the exhibits and the testimony offered regarding the interrogation of Mr. Tyler and the procurement of his statement.

Turning to the matter of the Affidavit of Mr. Tyler offered at the evidentiary hearing and the allegation of newly discovered evidence, this Court finds credible the Affidavit, which was executed after Mr. Tyler received the advice of court appointed counsel, and this Court also finds credible the testimony offered by Mr. Skidmore and Ms. Ullman.

This Court finds that the information contained in the Affidavit has been discovered since trial and could not have been discovered before trial. Defense counsel attempted to speak to Mr. Tyler prior to trial, but they were denied access to him by his counsel. Additionally, counsel cross-examined Mr. Tyler, along with four other defense attorneys, and he did not provide the exculpatory information contained in the Affidavit.

This Court finds the recantation contained in the Affidavit is exculpatory and is not merely cumulative or impeaching as it stands in direct contradiction to Mr. Tyler's statement and trial testimony. This Court further finds that the information contained in the Affidavit would change the outcome if a new trial was granted based upon the record, to include Ms. Ullman's testimony that the trial hinged on the testimony of Mr. Tyler and the State's closing argument regarding the importance of Mr. Tyler's testimony. As a result, this Court finds relief is warranted under both prongs of the *Strickland* analysis and on the grounds of newly discovered evidence.

Issue Six: Ineffective assistance of trial counsel for failure to object to bolstering and vouching during the State's closing argument.

During his final closing argument, Solicitor Pascoe told the jury that the worst and evil part of Orangeburg County where the co-defendants' actions that resulted in gunning down of the victim, but they also got to witness the great side of Orangeburg County during the trial, courage... the courage of the witnesses coming forward from back in March until today. Trial. P. 1012, ln. 18 – 1015, ln. 8. The Solicitor urged the jury to display the same



courage as the witnesses and return a guilty verdict. Trial p. 1015, ln. 2-8. Regarding Mr. Tyler he addressed how the jury should assess his credibility and argued that his statement was trustworthy since he had the guts to face five lawyers Trial pp. 1024-1026. He also argued that Ms. Parsley was honest and told the truth. Trial pp. 1028, ln. 22-23, 1029, ln. 11-12.

At the evidentiary hearing, Ms. Ullman testified that she did not have a valid reason for not entering an objection to the statements by the Solicitor in closing argument. She explained that her mind may not have been focused on making objections during closing argument, but she should have objected to the Solicitor's closing argument. She testified that she should have objected on the basis of bolstering and telling the jury to put themselves in the witnesses' shoes. PCR pp. 140-142, She deemed the Solicitor's argument as "almost bullying." PCR p. 142, lns. 7-8.

Applicant has alleged, as follows: Ineffective assistance of trial counsel for failure to object to bolstering and vouching during the State's closing argument. In evaluating this issue, this Court has considered the record, cases already discussed herein and the following relevant cases: *Matthews v. State*, 350 S.C. 272, 565 S.E.2d 766 (2002), *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004), *Forrestal v. Magendantz*, 848 F.2d 303 (1st Cir. 1998), and *Washington v. State*, 891 S.E.2d 668 (S.C. Ct. App. 2023).

Based upon the record, to include counsel's own admission and lack of reasonable basis for failing to object, this court finds counsel was deficient for failing to object to language she found objectionable. Additionally, this Court finds that counsel's failure to object to the Solicitor's closing argument affected the outcome of Applicant's trial, especially when counsel had lost the opportunity for last closing argument to the jury as



discussed above. Therefore, this Court finds that relief is warranted under both prongs of the *Strickland* analysis.

Issue Seven: Ineffective assistance of trial counsel for failure to request a proper inferred malice instruction and failure to object to the instruction given to the jury. *See State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016), *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985), *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983).

In denying the motion for a directed verdict, the court addressed whether there was malice and reasoned that malice could be inferred from use of the weapons. Trial p. 861, lns. 9-14. During the State's closing argument, the Solicitor addressed express and inferred malice and argued that pulling the trigger and using a deadly weapon is malice. Trial pp. 929-930. He also asked the jury how much more malicious can you get than invading a home with four weapons. Trial p. 1034, lns. 20-21.

During the jury instructions, the court provided an instruction on malice. Trial pp. 1057-1058. Specifically, he gave the following malice instruction:

Malice may also be inferred from the conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. As I told you before, a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm, and whether an instrument has been used as a deadly weapon depends on the facts and circumstances in each case. Again, I refer you to you the examples of instruments which may be deadly weapons which I have state earlier.

Trial p. 1058, lns. 17- p. 1059, ln. 2.

An inferred malice charge has two components, the charge detailing the circumstances from which malice can be inferred, which is not limited to a deadly weapon, and the general permissive malice instruction. In *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315

(1991), the South Carolina Supreme Court set forth the standard general permissive inference instruction:

If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

279 S.C. at 421, 308 S.E.2d at 784. The South Carolina Supreme Court also warned that “only slight deviations from this charge will be tolerated.” *Id.*

In *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) overruled by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), the South Carolina Supreme Court explained that *Elmore*’s first sentence constituted “[t]he standard implied malice charge” whereas the second sentence constituted “the general permissive inference instruction.” 385 S.C. at 612, 685 S.E.2d at 811, fn. 9. Since *Elmore*, South Carolina’s appellate courts have repeatedly instructed trial courts to give the general permissive inference charge when the standard implied malice instruction is given and have not limited this instruction to when a deadly weapon inference charge is given. See *State v. Lewellyn*, 281 S.C. 199, 201, 314 S.E.2d 326, 327 (1984) (“The trial bench is reminded that the proper charge on implied malice is that suggested in *Elmore*.”), *State v. Peterson*, 287 S.C. 244, 247-8, 335 S.E.2d 899, 802-3 (1985) (“Even though the *Elmore* charge dealt only with the prohibition of a presumption of malice from the use of a deadly weapon, the principle behind the case likewise prohibits the presumption of malice from the intentional doing of an unlawful act.”); *State v. Mattison*, 276 S.C. 235, 238, 277 S.E.2d 598, 600 (1981) (“[W]e strongly suggest to the Trial Bench that a more appropriate instruction on implied malice would deal with the evidentiary nature of the presumption



and that the implication does not require the jury to infer malice but only permits it”), *overruled on other grounds by Belcher*; *State v. Wilds*, 355 S.C. 269, 277, 584 S.E.2d 138, 142 (Ct. App. 2003) (“In a charge to the jury, the judge should make clear to the jury that it is free to accept or reject the permissive inferences depending on its view of the evidence.”).

Also, in *Belcher*, the Court concluded that the inference of malice from the use of a deadly weapon is a “half-truth” because “[o]ther facts and evidence (or the absence of other facts and evidence) are required for the fulfillment of [malice’s] component parts” which “include the absence of justification, excuse and mitigation.” *Belcher*, 385 S.C. at 609-10, 685 S.E.2d at 808. After a lengthy discussion, the Court overruled prior precedent and held:

Under our policy-making role in the common law, we hold that the “use of the deadly weapon” implied malice instruction has no place in a murder (or assault and batter with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with the intent to kill).

Belcher, 685 S.E.2d at 809.

Ten years later well after Applicant’s trial, in *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), the South Carolina Supreme Court found it necessary to completely eliminate the deadly weapon jury instruction and held: “[R]egardless of the evidence presented at trial, a trial court shall no longer instruct a jury that malice may be inferred from a deadly weapon.” *Burdette*, 427 S.C. at 493, 832 S.E.2d at 575.³ The Court explained: “A jury instruction that malice may be inferred from the use of a deadly

³ Even though *Burdette* was decided after Applicant’s trial, as a matter of completeness this Court finds that it is necessary to acknowledge the decision rendered by the Court.



weapon is an improper court-sponsored emphasis of a fact in evidence – that the deed was done with a deadly weapon – and it should no longer be permitted.” *Burdette*, 427 S.C. at 503, 832 S.E.2d at 582.

In *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016), the South Carolina Supreme Court held that a trial attorney’s failure to object to the lack of a general permissive inference instruction when it is warranted constitutes deficient conduct. The Court instructed that when examining the question of prejudice, the court “must decide whether the erroneous malice instruction contributed to the jury’s verdict based on all the evidence presented to the jury.” *Gibson* at 265, 786 S.E.2d at 265. “The Court must weigh the significance of the presumption to the jury against the other evidence of malice considered by the jury without the erroneous malice charge.” *Id.*

Here, Ms. Ullman testified that she did not know about the *Elmore* decision at the time of trial. PCR pp. 143-144. She agreed that the permissive inference instruction as set forth in *Elmore* was not included in the court’s malice instruction. PCR p. 144. The only reason she could offer for not requesting a proper inferred malice instruction and/or objecting to the instruction given was that she simply did not know. PCR pp. 144-145.

She agreed that the court denied the directed verdict on the basis of inferred malice. When asked if she thought it was important for the jury to get the correct inferred malice instruction, she responded: “Definitely. I don’t think there was express malice in the sense that usually what you’re looking at is some relationship where they already disliked each other or some words that come out of their mouth that would show some sort of malice, ill will, hatred, things like that. There certainly wasn’t anything like that. I think this was

certainly a case of inferred malice, relying heavily on the fact that there was a deadly weapon used.” PCR p. 145, lns. 12-22, pp. 142-146.

This Court finds credible counsel’s testimony and finds that she provided ineffective representation when she failed to request and/or enter an exception to the court’s incomplete malice instruction. Here, the trial court’s malice instruction contains an inferred malice charge but no permissive inference charge. Trial counsel failed to object to the lack of the permissive inference instruction, which renders her performance deficient. *Gibson* at 265, 786 S.E.2d at 124.

Turning to prejudice, this court “must decide whether the erroneous malice instruction contributed to the jury’s verdict based on all the evidence presented to the jury.” *Gibson* at 265, 786 S.E.2d at 265. “The Court must weigh the significance of the presumption to the jury against the other evidence of malice considered by the jury without the erroneous malice charge.” *Id.*

Here, the trial court denied the directed verdict citing the existence of inferred malice. Trial p. 861. Additionally, the trial record and argument of the State establish that the State was relying upon the existence of inferred malice to obtain a guilty verdict. This Court also finds credible and supported by the record counsel’s testimony that it was “certainly a case of inferred malice, relying heavily on the fact that there was a deadly weapon used.” PCR p. 145, lns. 12-22. In conducting the analysis required by *Gibson*, this Court finds that the record establishes that the errant inferred malice instruction contributed to the jury’s verdict and was prejudicial. Thus, relief must be granted.

Issue Eight: Applicant alleges ineffective assistance of appellate counsel, specifically, but not limited to the following: a) Failing to raise all meritorious issues on appeal; b) Failing to fully apply the facts to the law in the argument for the issue raised on appeal and make specific argument regarding the loss of lasting closing argument.

Even though the appellate issue on the severance motion was lacking in analysis, the appellate court addressed the issue as presented. As a result, this Court cannot find counsel's performance deficient nor prejudicial. Additionally, this Court finds that Applicant has failed to establish any additional meritorious issues that counsel that counsel should have raised on appeal. Therefore, this Court finds that the claim of ineffective assistance of appellate counsel fails under *Southland* and *Bennett*.

CONCLUSION

As addressed above, this Court finds that Applicant has met his burden of proof on specific allegations of ineffective assistance of trial counsel. Also as addressed above, this Court find that Applicant has failed to meet his burden of proof on several claims of ineffective assistance of trial counsel and his claim of ineffective assistance of appellate counsel. This Court also finds that no further issues were raised that have not been ruled upon above.

Therefore, this Court finds that the Application for Post Conviction Relief is hereby granted, as detailed above, that Applicant's conviction be vacated, and that Applicant be granted a new trial. Applicant shall be transferred from the custody of South Carolina Department of Corrections to the custody of Orangeburg County pending the disposition of his criminal case, with normal bond proceedings.



IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to specific allegations of ineffective assistance of trial counsel, as detailed above;
2. Applicant has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel and post-trial motion hearing counsel, as detailed above;
3. That the Application for Post Conviction Relief be granted, Applicant's convictions and sentences be vacated;
4. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Orangeburg County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDERED this 12th day of September, 2025



Honorable George M. McFaddin
Presiding Judge, First Judicial Circuit

Spartanburg, South Carolina