

RECEIVED

Sep 01 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Eugene Warr Jr., PCR Action Judge
2024-CP-07-00661

JOSEPH BURTON, #385450,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Joseph Burton appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Eugene Warr Jr., circuit court judge, on September 24, 2025, and was denied by written order issued filed on August 27, 2026. Applicant received notice of the judgement on September 1, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201
(864)-404-5583

Other Counsel of Record:
Danielle Dixon, Esquire
Office of the Attorney General, State of SC
P.O. Box 11549
Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Joseph Burton, #38540,

2026 AUG 27 PM 1:01

Case No.: 2024-CP-07-00661

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Joseph Burton (Applicant) on March 28, 2024. Respondent filed a return on August 8, 2024, moving to dismiss a claim related to actual innocence and requesting an evidentiary hearing on the remaining issues. On September 24, 2025, an evidentiary hearing convened before the Honorable Eugene P. Warr, Jr. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Scott W. Lee, Esquire. Respondent did not call any additional witnesses. After reviewing the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate forty-year sentence. In January 2019, the Beaufort County Grand Jury indicted Applicant for possession of a weapon during a violent crime (2019-GS-07-1273). In February 2019, the Beaufort County Grand Jury indicted Applicant for murder (-00262). These charges arose from the fatal shooting of Christopher Fells (Victim) on August 4, 2018.



On June 1-3, 2021, Applicant proceeded to a jury trial before the Honorable Robert Bonds. Scott Wayne Lee, Esquire, represented Applicant. Assistant Solicitor Mary C. Jones prosecuted the case. The jury convicted Applicant as indicted, and Judge Bonds sentenced him to concurrent terms of forty years for murder and two years for the weapon charge.

Applicant timely filed a notice of appeal, which was perfected by Appellate Defender Sara Shipe. On appeal, Applicant argued the trial court's malice charge was an unconstitutional comment on the facts. The South Carolina Court of Appeals affirmed on the merits. *State v. Burton*, 2024-UP-034 (filed Jan. 31, 2024). The remittitur was sent February 20, 2024.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

Applicant's charges arose from the fatal shooting of Christopher Fells (Victim) in a gas station parking lot. The shooting was captured on surveillance video and played for the jury. At trial, Investigator Seth Reynells described the video:

In the top corner, you see the vehicle—high and to the right side is the silver vehicle that the defendant and his party showed up in. This is after the fight inside the gas station.¹ All the parties have exited outside.

And I know you've shown it a couple of different times, but the defendant, who's seen in the white t-shirt and black pants, had walked up to that vehicle, gone into the front passenger side, that door is still standing open, and come out of that vehicle, and he is—he is advancing towards the victim who is just behind, or what I call over the hood of that silver SUV parked in the foreground, and he's currently engaged in like a fistfight or a physical altercation with Mr. Shaquille Green and Mr. Derrick Frazier during which time the defendant fires at him as he advances.

(Tr. 379-80). Investigator Reynells also identified a still-shot from the video showing Applicant

¹ Applicant testified he and his friends had previously had an altercation with another group at a club, and that group followed them to the gas station; there was an altercation inside the gas station between the two groups.



with “his arm extended and there’s like muzzle flash. (Tr. 378). Applicant’s wife Christine Martinez—who was with him the night of the shooting—identified him in the video as the individual wearing black pants and a white t-shirt. (Tr. 305-13). Investigators recovered five casings from the scene, and subsequent testing indicated they were fired from the same gun. (Tr. 460). The pathologist documented five gunshot wounds on Victim.² (Tr. 484-85).

Applicant testified in his defense and admitted he was the person in the video wearing the white shirt, he retrieved his gun from the car, and he fired his gun. (Tr. 541-43, 556). He testified that while he was inside the gas station, Christian Paez pushed Applicant’s friend Shaquille Green. According to Applicant, when Paez pushed Green, Paez’s shirt came up and Applicant saw “[s]omething silver on his waist.” (Tr. 532-34). Applicant also testified Paez was “[c]lutching like reaching for a weapon or something,” and “it look[ed] like he removed something, like off his hip towards the back of his trousers.” (Tr. 534, 536). However, police did not recover any guns from the gas station or parking lot. Applicant testified he told his group to follow him outside; as he was walking to his car, Green said, “That bi**h cut me.” (Tr. 539). Applicant stated he was heading toward his car to leave when he “heard impacts, punching. I heard—first he opened the door, I heard the gun click.” (Tr. 540). He claimed he was scared for his safety and “the safety of others that was out there with me,” so he walked to his vehicle, retrieved his gun, and fired it. (Tr. 540-43). On cross-examination, he admitted Paez’s hands were empty in several portions of the video. (Tr. 551-54). He also admitted Paez was still inside the gas station when Applicant fired his weapon. (Tr. 555, 557). At the conclusion of trial, the jury convicted Applicant of murder.

² Victim was paralyzed as a result of the shooting and died five months later; the pathologist testified the cause of death was “sepsis, wound infection due to bilateral, both sides, necrotizing bronchopneumonia as a consequence of C4 quadriplegia as a result of the gunshot wound to the neck.” (Tr. 414, 484, 488).



CURRENT APPLICATION

On March 28, 2024, Applicant filed this PCR application alleging:

A. Ineffective Assistance of Counsel:

1. Counsel failed to move for pretrial immunity;
2. Counsel failed to request a supervening causation jury charge;
3. Counsel failed to request a voluntary manslaughter charge;
4. Counsel failed to request a charge on self-defense.

B. Actual innocence:

1. State failed to prove the elements of the crime because the victim's death was caused by medical negligence by the healthcare provider;
2. Applicant is actually innocent of murder because the victim's death was caused by complications from a hospital-acquired infection.

On September 24, 2025, Applicant filed an amended application alleging:

1. Ineffective assistance of Counsel:

- a. Failure to make a mistrial motion regarding Seth Reynell's statement that Applicant was laughing (Tr. 393);
- b. Failure to properly prepare for closing argument;
- c. Failure to object to the question concerning whether Applicant showed a total disregard to human life;
- d. Failure to request an immunity hearing;
- e. Failure to properly prepare Applicant for testifying;
- f. Failure to object to truth langue in the State's closing (Tr. 614-16);
- g. Failure to request a self defense or defense of others charge;
- h. Failure to request a voluntary manslaughter instruction;
- i. Failure to request a supervening causation charge;
- j. Failure to properly communicate throughout the trial.

At the hearing, Applicant proceeded on the allegations of his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records of Applicant's direct appeal, and the records of this PCR application. This Court has further had the opportunity to observe the



witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.³ After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Motion to Dismiss

At the outset of the hearing, Respondent renewed its motion to dismiss Applicant's claim related to actual innocence, asserting it is not a cognizable PCR claim. This Court agrees and grants Respondent's motion to dismiss allegation B of the initial application, as set forth above. See S.C. Code Ann. § 17-27-20(A)(6) (providing the PCR act "shall not be construed to permit a collateral attack on the ground that the evidence was insufficient to support a conviction").

Ineffective Assistance of Counsel⁴

In a PCR action, an applicant bears the burden of proving the allegations. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. *Id.*; *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR

³ This Court will reference PCR testimony where relevant below.

⁴ Applicant's remaining allegations from his initial application were realleged in his amended application; thus, this Court will follow the structure of the amended application.



applicant must prove the deficiency prejudiced him such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to move for a Mistrial

Applicant first contends counsel was ineffective for not moving for a mistrial based on the solicitor's comment that he was laughing during trial. Applicant did not prove this ground.

At trial, after the solicitor asked Investigator Reynells to identify Applicant, the following occurred:

[Solicitor]: May the record reflect, the defendant, who is laughing, has been identified by Investigator Reynells.

[Trial counsel] Mr. Lee: I'm sorry. What was the identification she just said? The defendant was laughing?

The Court: Counsel, approach. Counsel approach.

The Court: Counselor, what did you just say?

[Solicitor]: I said, the defendant who is laughing.

The Court: The defendant's mask was off?

[Solicitor]: Yes.

The Court: Mr. Lee.

Mr. Lee: That's outrageous to suggest something like that.

The Court: I think that's inappropriate. Mr. Lee, I'm going to instruct the jury to disregard that statement. I'll do whatever you want me to do. It's inappropriate.

Mr. Lee: I would ask for a curative instruction. And then, at that point, I think I would have to say that I'm not satisfied with that and ask for a mistrial and then get a ruling on that. For the record, I think I need to do that. You can deny it.

The Court: And I would.

[Solicitor]: I can apologize for my comment.

The Court: No, no. By way of a curative instruction, do you have one, or what is it that you—I want to make sure.

Mr. Lee: I'd just ask that it be stricken from the record.

The Court: I'll instruct them, I want the comment—Solicitor's comment to be stricken from the record, and then—you're okay with that?

Mr. Lee: Yes, sir.

The Court: Then what we're going to do is, we're going to proceed with your cross-examination. And when you finish, you can make a motion for a mistrial. Do you want to do that? We'll send the jury out so you can make your motion.

Mr. Lee: I'm not going to make that motion.

The Court: You do whatever you want to do.

Mr. Lee: It's inappropriate. She's apologized.

(Tr. 388-90). The Court then instructed the jury to “disregard the last statement of the Solicitor, and do not consider that statement at all.” (Tr. 390-91). Later, the following exchange occurred:

[The Court]: Mr. Lee, I want to make certain you are satisfied with the instruction that the Court gave the jury as relates to the solicitor's comment; is that correct?

Mr. Lee: That's correct, your Honor. I'm totally satisfied with that. I never—it's the heat-of-the battle. I've never seen Miss Jones do anything. It was heat of the battle with me jumping up and asking because I wasn't quite sure what she said.

I'm satisfied, my client is satisfied with what you said to the jury. I know she wasn't trying to play dirty pool or anything at all. She doesn't do that. So I'm happy with that and ready to move on.

The Court: And so you had mentioned a mistrial. I take it that you are not going to make a motion for a mistrial; is that correct?

Mr. Lee: That is correct. I believe that your curative instruction was sufficient. I believe that only if I thought it was not that I would be asking for a mistrial.

(Tr. 393).

At the PCR hearing, trial counsel explained he did not to move for a mistrial because he believed the trial “was going like we had hoped and maybe even better than we hoped.” (PCR 33). Specifically, counsel successfully argued for the court to exclude a jail call and Applicant’s two prior convictions. (Tr. 128-43, 272-74, 279-85; PCR 33). Counsel also testified a mistrial would give the solicitor additional time to correct mistakes or patch holes in her case:

I don’t think the State was very—provided very good answers for one of our defenses, which was, in my opinion, if you called it a shoddy investigation, you’re probably giving it too much credit. The lead investigator got on the stand, and I had the timeline, and I think he spent 10 hours and 12 minutes during his investigation of a murder case. And we made a big deal about that. Again, getting back to the things that you don’t see and you don’t hear. We argued it was a bad investigation, that witnesses weren’t called. And, again, you get a mistrial and the State hasn’t produced certain witnesses you’re talking about, if they get another shot a trial, you can bet they’re gonna make sure that they clean everything up.

(PCR 34).

This Court finds counsel’s foregoing testimony credible. Based on this credible testimony, counsel articulated a valid reason for not moving for a mistrial in that he believed the trial was going well. Applicant thus did not prove deficiency. Additionally, Applicant did not prove prejudice here where the trial court indicated it would have denied a motion for a mistrial (Tr. 389), and Applicant did not set forth any additional argument counsel should have made (other than to generally move for a mistrial) that would have had a reasonable probability of changing the court’s decision. Likewise, there is no reasonable probability the denial of a mistrial would have been reversed on appeal had it been preserved. *See State v. Stanley*, 365 S.C. 24, 34, 615



S.E.2d 455, 460 (Ct. App. 2005) (“The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.”). Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failure to properly prepare for closing argument

Applicant next contends counsel was ineffective for not properly preparing for closing argument. This contention seems to be based on counsel’s following statement to the jury:

One of the things they teach you in law school is always be prepared and be ready for court, and about five minutes ago, I realized I violated that rule because I spent a lot of time last night and before writing out a really awesome closing argument for you all. Single spaced. It was good to go And, as I coming over here, I changed briefcases and I left it in my office.

(Tr. 578). Applicant did not prove this ground.

At the PCR hearing, Applicant questioned why counsel would leave his draft of the closing argument in his office. Trial counsel testified he would not have read the closing argument even if he had it because it is better to talk to the jury than read to them. He explained he had notes from trial during closing argument, and he did not believe he missed anything. Although he stated he always begins trial preparation by writing a closing argument and then working backwards, he clarified it was not his practice to read a closing argument to the jury. He testified, “[A] hundred percent, I don’t think it would’ve made any difference whatsoever if I had the thing.” (PCR 37).

This Court finds counsel’s foregoing testimony credible. Based on the foregoing credible testimony, this Court finds counsel’s preparation of the closing argument was reasonable within prevailing professional norms and not deficient. This Court agrees with counsel’s assessment that a jury would not like to have a prewritten closing argument read to it. Further, this Court has had an opportunity to review the closing argument and finds it was reasonable within prevailing professional norms. (Tr. 578-608). Finally, Applicant did not point to anything specific about the

closing argument (other than the foregoing statement about counsel not having his prewritten closing argument) that he believed harmed his case, nor did not point to anything specific that he believed counsel should have argued instead. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failure to object to solicitor's question

Applicant contends counsel was ineffective for not objecting when the solicitor asked him if he believed “blindly shooting into a crowd is a total disregard for human life.”⁵ (Tr. 563). Applicant did not prove this ground.

At the PCR hearing, Applicant testified he believed he did “all right” on cross-examination, but the State tripped him up about how many shots were fired. (PCR 16). He averred counsel should have objected when the solicitor asked him about his glasses and whether “blindly shooting into a crowd is a total disregard for human life.” (PCR 16). Counsel testified he viewed the question as a hypothetical by the solicitor, but firing blindly into a crowd was not what Applicant said he did, and counsel did not believe the evidence supported that theory. Thus, he testified, “I don’t think that that was held against him, or I don’t think that was the reason that the prosecutor got a conviction was because of some gotcha moment on cross-examination.” (PCR 34-35).

Based on counsel’s foregoing testimony, which this Court finds credible, this Court finds counsel articulated a valid reason in not objecting in that he viewed the question as a hypothetical question, and he did not believe it was critical enough to impact the jury. This Court further finds that although Applicant generally asserted counsel should have objected, Applicant did not set forth a valid legal objection counsel could have raised and thus did not overcome the presumption

⁵ Applicant replied, “Yes, I’d agree with that.” (Tr. 563).



of effectiveness. For the same reason, Applicant did not prove prejudice. Likewise, even if counsel had successfully objected, there is no reasonable probability the outcome would be different. Ultimately, the jury had the video of Applicant shooting Victim when assessing whether Applicant acted with malice, and the video—as described by Investigator Reynells at trial and counsel at the PCR hearing—was more compelling evidence than this single question and answer.⁶ Applicant did not set forth a valid objection that would have excluded the question, nor is it reasonably likely the outcome would be different without this question and response. Thus, this claim is denied.

Failure to request an Immunity Hearing and Self-Defense Charge⁷

Applicant contends counsel was ineffective for not requesting a pretrial immunity hearing, a self-defense charge, or a defense of others charge. Applicant did not prove this ground.

At the PCR hearing, when asked whether he thought self-defense or voluntary manslaughter was more appropriate, Applicant replied, “I would say self-defense before I choose voluntary manslaughter. If it doesn’t fit in there as self-defense then I would go from that to voluntary manslaughter.” (PCR 18-19). He believed the following fit self-defense: “From what I’ve seen . . . the victim, who he was with, what he had on his waist inside the gas station.” (PCR 19). When asked if that person ever pulled a gun, he replied, “No. He was clutching it.” (PCR 19). Applicant acknowledged Victim was not the person who was “clutching” something. (PCR 20-21). When asked what he thought the jury would have done had it been charged with self-defense and voluntary manslaughter, Applicant replied, “I’m gonna have to be honest and say voluntary manslaughter.” (PCR 20). Applicant stated he did not mean to kill anyone when he fired his gun.

⁶ Counsel’s description of the video is set forth in the next section, and this Court finds counsel’s testimony about the video credible. Applicant did not set forth any evidence at the PCR hearing to refute these descriptions of the video.

⁷ This section combines allegations (d) and (g) of the amended application.



(PCR 21).

Trial counsel testified the surveillance video did not support self-defense or voluntary manslaughter. (PCR 47-48). He described the video:

[I]t shows some type of confrontation in the store where [Applicant's] girlfriend . . . says she was inappropriately bumped into or touched. It shows Mr. Raydel, who isn't the victim, kinda going like this. And it shows the confrontation inside the store.

Now, this time, [Applicant] wasn't even in the store. The various clips then show a part of his group going out—or actually I guess Chrissy going out talking to [Applicant] and another guy, and they go back—they go in the store as if to confront or at least find out what's going on. Again, there is some fisticuffs inside the store. They go to leave. There are two people that are allied with [Applicant] who are having, apparently, a fistfight with [Victim]. But, again, wasn't really involved in any of the stuff inside the store or anything. He'd gone in there simply to shoplift a couple cases of beer.

So over on that side by the other car, there is physical confrontation. And, again, there's people from [Applicant's] side as well as the victim. And then the video shows Mr. Burton walk over to his car, get into it, pull out a gun, and shoot toward the confrontation that was taking place on the other side of the parking lot.

(PCR 44-45). Counsel clarified no one was standing in Applicant's close vicinity or confronting him when he walked to his car to retrieve a gun, and he walked to his car—not by the altercation—to retrieve the gun. (PCR 45). He also testified Paez was inside the store when the shooting occurred, and based on the video, Paez went outside about 20 to 24 seconds after the shooting. (PCR 46). Counsel stated “there was no evidence of [Paez] having a gun as far as [investigators] finding one,” although he argued to the jury that Paez may have hidden a gun inside the store that police did not recover due to a shoddy investigation. (PCR 46-47).

Counsel testified that based on the “undisputed facts in the case, self-defense was out.” (PCR 23). As a result, he focused his trial strategy on arguing the State did not meet its burden of

proof and Applicant did not have malice. (PCR 23). Trial counsel elaborated:

[I]t clearly wasn't a self-defense case. I don't think that any of the four elements of self-defense were present. You know, there was a video of this. . . . Yes, there was fight earlier that he wasn't involved in. But it went from a fistfight with other people to escalating to [Applicant] retrieving a gun from the car and shooting the victim.

Although he testified he was . . . in fear. I don't think that the elements of the subjective and the objective requirements of being in reasonable fear for your safety were met.

And then, finally, I thought there was a problem with the last element which is that the person had no reasonable opportunity to escape or withdraw from the confrontation. So I felt like we were 0 for 4 on the self-defense elements. As you know, the pretrial immunity hearings that I've had plenty of are a higher standard than at trial. At a pretrial immunity hearing, the defendant must prove every one of those four elements by a preponderance of the element. There's a burden-shifting requirement in that hearing. And I simply did not think that that was appropriate or warranted or justified in requesting that in this case.

(PCR 24-25). Regarding Applicant's testimony that Paez appeared to be clutching a weapon, counsel replied,

Yeah. That was clear throughout. The problem with that is that the person who was alleged to have the gun stayed at the scene after it happened. No gun was ever found at the scene. We tried to suggest that he may have ditched it or hid it. **But the problem with that is Mr. Paez, who [Applicant] testified was clutching a gun, was inside the store when the shooting happened.** The shooting happened out in the parking lot. And any type of imminent fear because someone had a gun, Mr. Paez wasn't even involved in the fight that led to this. He was inside the store. So I don't think there's any indication there was imminent fear of Mr. Burton being—or someone being shot [by] Mr. Paez because he wasn't even outside when the shooting happened.

(PCR 27, emphasis added). Regarding defense of others, counsel explained,

The problem with defense of others is you have a lot of the same elements of self-defense. But someone claiming defense of others, essentially, has to put themselves in the shoes of the person that they say they were going to defend and who was in imminent danger of

serious bodily harm. That would require us to put [Applicant] in the shoes of Shaquille Green who was fighting in the parking lot and even admitted that he sucker punched the guy once the fight started back out in the parking lot. So putting ourselves—we would essentially have to prove that Shaquille Green had a right to self-defense and the defense of others stem from that. And there was nothing to support that one bit, again, going through the elements of self-defense.

(PCR 27-28).⁸

Based on counsel's foregoing testimony, which this Court finds credible, this Court finds counsel articulated valid reasons for not pursuing pretrial immunity, self-defense, or defense of others. This Court agrees with counsel's assessment that the fact did not fit self-defense or defense of others—especially evidence showing Applicant brought about the difficulty by retrieving a gun, and Applicant had a reasonable means of escape by simply leaving in his car.⁹ *See State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (finding defendant not entitled to self-defense charge when “record clearly reflect[ed] that Slater approached an altercation that was already underway with a loaded weapon by his side,” which “could be reasonably calculated to bring the difficulty that arose in this case.”). This Court disagrees with Applicant's assertion that Paez “clutching” a

⁸ At sentencing, counsel informed the trial court:

[W]e did discuss, he and I, briefly about asking for a defense of others charged based on his testimony. However, we decided hat, in order to prevail on that, we would essentially have to put [Applicant] in the shoes of Derrick Frazier and/or Shaquille Green and we thought, strategy-wise, that that was not the thing to do, that him being around those guys had harmed him enough. We didn't think that it was smart to try to muddy the waters or try to carry that burden.

(Tr. 670-71).

⁹ Applicant did not present testimony at trial or the PCR hearing that he was prevented from leaving or that someone confronted him while he was in the car attempting to leave.

gun inside the store supported self-defense, especially when the *undisputed* evidence showed Paez remained *inside* the store after Applicant and his friends walked outside, and Paez was *still* inside the store when the shooting occurred.

Likewise, the evidence before this Court does not support defense of others. This Court additionally finds counsel articulated a valid reason at sentencing for not pursuing defense of others. Likewise, counsel's credible testimony that Green "admitted that he sucker punched the guy" further supports counsel's assessment that this was not a viable defense. Applicant has not set forth additional evidence to support these charges and thus has not met his burden of proving deficiency or prejudice. Further, because these defenses were not supported by the evidence, Applicant did not prove deficiency or prejudice based on counsel's decision to not pursue pretrial immunity. This claim is thus denied.

Failure to properly prepare Applicant to testify

Applicant contends counsel was ineffective for not adequately preparing him to testify. Applicant did not prove this ground.

At the PCR hearing, Applicant testified a "situation occurred at the club" the night of the shooting, and the guys from the club followed them to the gas station. He continued,

[T]he same guy that started the altercation at the club, he came inside and started more stuff with my girlfriend. And one thing led to another, words were said. She came outside. She told what happened, what was said. One of the guys I was with came in—and confronted him. And another altercation. Fists blows was thrown, pushing and shoving. When he finally pushed—he pushed one of my codefendants and his shirt lifted up. And that's when I seen on his hip. So I got everybody out of the store, came outside. And that's where the shooting happened.

(Tr. 8). Applicant testified he did not learn he would testify until the day of trial, and when counsel asked if he wanted to testify, he told counsel he "didn't really feel comfortable getting on it."



However, counsel advised him he “didn’t have no choice and it would be better if I testified.” When asked if there was anything he would change about his testimony, Applicant replied, “Just the parts about the shots.” He explained that at his “first bond hearing, the State said that I shot him seven times. . . . When we came to trial, they said I shot five times. And I shot twice. So how did all of that—it’s not adding up.” Applicant averred he “would have given more accurate description of how many shots were fired” had he been better prepared. (PCR 10-11).

Trial counsel testified he was retained in November 2020, after the initial bond hearing. (PCR 22). Regarding five shots versus two shots, he testified police “found five Smith & Wesson 40-caliber shells in the parking lot,” and the forensic analyst concluded they were fired from the same gun. Additionally, the pathologist testified the victim had five bullet wounds. Thus, “I don’t even get around five. There’s five casings, there’s five bullet wounds in the victim.” (PCR 30).

Counsel testified the decision of whether a defendant should testify is a game-time decision—which he explains to clients before trial, and he does not advise clients about whether to testify until the State has rested its case. (PCR 30-31). He elaborated:

[I]f the defense doesn’t put up any evidence, . . . then you get to have last argument, which is often very crucial in a criminal trial. So one of the considerations for whether someone testified, and we even talked about this, is that if you do put your client up, you lose last argument. Sometimes, strategically, it can be advantageous. So, you know, we did lose last argument by having him testify.

(PCR 32). When asked whether he considered a mock cross-examination, counsel replied,

Well, I think we had those general discussions about things. But, again, it’s my—I’ve always done it and I think it’s a lot better as long as—I kinda told him what kind of questions would probably be asked on cross-examination. But there’s no way to know exactly the exact questions a prosecutor is going to answer [sic]. And, basically, I just tell people, you know, if you’re gonna testify, number one, tell the truth; and number two, I don’t know or I don’t remember is a perfect answer to a question; and number three, only answer the question that’s asked. . . . And we certainly had those discussions

about general things about this testimony. So I felt comfortable that he was prepared. And, again, I think he did a good job on the stand.

(PCR 32-33). Counsel explained, “As far as preparation, I do not go into intimate details with a client about their testimony because, in my opinion from doing it for a long time, is if it comes off sounding like a lawyer or sounded scripted, it’s worse than . . . not testifying or testifying poorly.” However, he discussed the case with Applicant sufficiently to know the substance of his testimony. Counsel averred Applicant needed to testify so the jury could hear his story “because what the State had presented was not good for him.” (PCR 31-32).

Based on counsel’s foregoing testimony, which this Court finds credible, counsel’s preparation for and advice to Applicant related to Applicant testifying was reasonable under prevailing professional norms and not deficient. Counsel gave valid reasons for not rehearsing Applicant to testify in that he did not want his testimony to sound “canned” or created by a lawyer. Counsel also credibly testified he knew what the substance of Applicant’s testimony would be. Counsel’s strategy of waiting until the State has rested before deciding what advice to give regarding testifying is valid, sound strategy. Further, under the facts of this case, counsel’s advice to Applicant about testifying was reasonable. Applicant thus has not overcome the strong presumption of effectiveness and has not met his burden of proving deficiency.

Applicant likewise did not prove prejudice. Critically, Applicant’s PCR testimony about the shooting mirrored his trial testimony and other evidence before the jury, and he did not offer additional testimony that would have reasonably changed the outcome. Applicant’s insistence that he only fired two times is not credible in light of the forensic evidence at trial—which included five bullet casings that the analyst concluded were all fired from the same gun, and the pathologist’s testimony that Victim had five gunshot wounds. Based on the foregoing, Applicant did not prove deficiency or prejudice, and this claim is denied.



Failure to object to truth-seeking language in Solicitor's closing argument

Applicant contends trial counsel was ineffective for not objecting to the following truth-seeking language in the solicitor's closing argument:

We know the truth of what happened that night. We went through the power of technology in the year we live in, you all were there. I'm going to play the video and I may have played ad nauseum this week, but it's the truth and it takes you back to August 4th of 2018.

(Tr. 614).

Here's Kyle Burden and here's Joseph Burton. You really [think] that man is going to obey a subpoena that this court issued to come on the this witness stand and point the finger at Joseph Burton? Absolutely not. He's not going to risk being labeled a snitch. You heard Investigator Reynells tell you about a snitch and what that means. He's not going to do it. He's just not going to show up, and that's what he did. We can issue subpoenas. We can give people court dates. We can tell them to come. They can be court ordered to appear in this very courthouse. *I cannot physically make someone get in that witness stand and tell you the truth.*

(Tr. 616, emphasis added; PCR 15). Applicant did not prove this ground.

At the PCR hearing, counsel testified he did not find the foregoing objectionable:

[M]y understanding and interpretation of the case law is that the solicitor only crosses the line if they say they're administrators of truth or that their job is to tell the truth, or if they somehow vouch for a witnesses and say what that witness said is the truth. . . . And I certainly don't think that anything came close to crossing the line. If a solicitor says, "I believe what this witness said. You know, here I am, I believe this." And I think she used the word truth a few times. But I don't think that it was objectionable. I don't think it was harmful. I don't think the jury, you now, somehow said, well, because she's saying the word truth that means that that is what happened.

(PCR 38). When asked whether it constituted burden-shifting, he replied,

I think that's . . . her trying to explain their missing evidence and that sort of thing. . . . [T]here was no testimony about what those witnesses would say. She didn't backdoor, you know, what witnesses said through other testimony. And I think that was a nonissue. It certainly didn't affect the outcome of the trial. I think it

looked like a flimsy excuse from her, which I thought was good for us, to try to explain away why she didn't have critical witnesses there. And our argument was . . . they would've helped us . . . I don't think the jury read anything into that or were prejudiced at all.

(PCR 39).

Based on counsel's foregoing credible testimony, counsel articulated a valid reason for not objecting in that he did not believe the closing argument was objectionable. This Court agrees the foregoing did not constitute improper vouching.¹⁰ *See State v. Busse*, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023) ("A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial. 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.").

This Court also finds the foregoing did not shift the burden of proof. *See State v. Aleksey*, 343 S.C. 20, 26, 538 S.E.2d 248, 251-52 (2000) (finding "truth" language in jury charge did not unconstitutionally shift the burden of proof because it was not charged in conjunction with the

¹⁰ Even if improper—which this Court does not find—the solicitor's comments related to absent witnesses was an "invited response" that "did no more than respond substantially in order to 'right the scale'" and did not unfairly prejudice Applicant. Specifically, this comment was invited by counsel's extensive argument related to witnesses the State did not call (including Burden, 589) and counsel's insinuation that the State was hiding "inconvenient truths." (Tr. 585-90, 597, 605). *See United States v. Young*, 470 U.S. 1, 11 (1985) ("[A] criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context; only by so doing can it be determined whether the prosecutor's conduct affected the fairness of the trial."); *id.* at 12 ("[T]he issue is not the prosecutor's license to make otherwise improper arguments, but whether the prosecutor's 'invited response,' taken in context, unfairly prejudiced the defendant."); *id.* at 12-13 ("Thus the import of the evaluation has been that if the prosecutor's remarks were 'invited,' and did no more than respond substantially in order to 'right the scale,' such comments would not warrant reversing a conviction.").

reasonable doubt charge or the circumstantial evidence charge). Further, although *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) admonished *judges* to stop using “truth” language, Applicant has not pointed to any South Carolina precedent prohibiting *attorneys* from using truth language. *Cf. State v. Burdette*, 427 S.C. 490, 503, 832 S.E.2d 575, 583 (2019) (“It is axiomatic that some matters appropriate for jury argument are not proper for charging.”). Thus, counsel was not deficient for not objecting based on burden-shifting. *See Pantovich v. State*, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) (“[A] retrospective PCR analysis under *Strickland* . . . seeks to determine whether counsel was ineffective *at the time of the alleged error*. . . . [W]e do not require attorneys to be clairvoyant in anticipating changes to the law”). Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to request voluntary manslaughter charge

Applicant contends counsel was ineffective for not requesting a voluntary manslaughter charge. Applicant did not prove this ground.

At the PCR hearing, Applicant testified a voluntary manslaughter charge would have been appropriate “[b]ecause it’s not murder. There’s no malice in it.” (PCR 9). He elaborated:

The reason why I say it’s a voluntary manslaughter charge because voluntary manslaughter is a lesser charge for murder. And it’s a heat—it’s a heat—it’s a heat of a passion. It’s a heat of a passion charge which was in this case. It’s like heat—it’s like heat of a passion, you know, out of fear or—it wasn’t malice.

(PCR 18). Applicant averred the following facts fit voluntary manslaughter, “It’s a heat of passion because it’s no malice in this case at all. Like, I’m on camera having a conversation with him. My intent wasn’t to go there to shoot anybody. You know, it’s a lesser charge for murder than if anything.” (PCR 19).



Trial counsel testified that based on the undisputed facts of the case, “[v]oluntary manslaughter was out.” (PCR 23). He elaborated:

There was no evidence he was acting in a sudden heat of passion upon sufficient legal provocation. He wasn’t—I just didn’t think it was even close on the voluntary manslaughter charge. You know, we were trying to win the trial. We were trying to walk him out of that courtroom. And it’s another reason that I didn’t—the one I did [sic] think the facts fit, I didn’t think the judge would give that charge. And, quite frankly, I thought it would give the jury—even if they went with it, which I don’t think it was even justified as a charge, it still carries 30, and you gotta do 85 percent of the 30. I certainly didn’t think that any facts that were elicited showed his actions were in a sudden heat of passion, which is required for voluntary manslaughter.

(PCR 26). He additionally testified the video did not support voluntary manslaughter because “nothing I saw on there gave any type of credence to sudden heat of passion, sufficient legal provocation as I understand the law.” (PCR 48).

Based on counsel’s foregoing testimony, which this Court finds credible, this Court finds counsel articulated a valid reason in not requesting voluntary manslaughter because (1) evidence did not support it and (2) they were hoping for an acquittal, and giving the option of voluntary manslaughter—if the jury accepted that—would still mean a sentence of up to thirty years. Based on the evidence before this Court, this Court agrees with counsel’s assessment that the facts did not support voluntary manslaughter. Specifically, Applicant did not offer testimony at trial or the PCR hearing that he was acting under a sudden heat of passion. Likewise, no evidence before this Court supports sufficient legal provocation—especially when the person Applicant claimed “clutched” a weapon wasn’t even outside when the shooting occurred. Even if evidence supported voluntary manslaughter, this Court finds counsel’s all-or-nothing strategy was reasonable under prevailing professional norms and the facts of this case. Applicant thus did not prove deficiency or prejudice, and this claim is denied.



Failure to request a supervening causation charge

Applicant contends counsel was ineffective for not requesting a supervening causation charge. Applicant did not prove this ground.

At the PCR hearing, Applicant averred the victim died as a result of medical negligence rather than the shooting. (PCR 17). When asked why he believed a supervening causation charge would be relevant, he responded, “I felt like if we would’ve had a hearing before any of this, there probably wouldn’t be no need for trial.” (PCR 11).

Regarding the proximate cause charge, counsel testified:

The solicitor had asked for the charge, was ultimately charged. And, you know, typically, you don’t see that in criminal cases. Usually that’s a civil thing is some type of supervening causation. But we really didn’t have much to argue on that because one of the doctors testified that the most significant sound that led to Mr. Fells’ death was a gunshot wound to the right hip and buttocks area, which I believe perforated his colon, and that’s why he was in the hospital from six months before he died. SO there was nothing that I saw that would merit that case, number one. Number two, I think the charge was appropriate recitation of the law because it doesn’t have to be the proximate cause, it has to be a proximate cause. And, clearly, the reason that the victim was in the hospital for some six months intubated and, you know, on life support for a while, the reason he was there is because he was shot, not two times but five times.

(PCR 29-30).

Having reviewed the jury charge—including the charge that the State must prove beyond a reasonable doubt that the injury inflicted by Applicant was the proximate cause of Victim’s death (Tr. 637-38)—this Court agrees with counsel’s testimony that the charge was proper under the law and not objectionable. Notably, the pathologist testified Victim died of “sepsis, wound infection due to bilateral, both sides, necrotizing bronchopneumonia as a consequence of C4 quadriplegia *as a result of the gunshot wound to the neck.*” (Tr. 488, emphasis added). This Court further finds Applicant is conflating medical negligence law with criminal law. Even if a supervening causation

charge was proper in a murder case (which this Court does not find), Applicant has not set forth any evidence that Victim died as a result of medical negligence. Based on the foregoing, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to properly communicate throughout trial

Applicant contends counsel was ineffective for not properly communicating with him throughout trial. Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel “[s]ort of” communicated with him at trial:

He told me some things pertaining to the trial before he got to the trial. Basically, he didn’t speak with my family. He didn’t present the evidence that I was trying to tell him. And the things that I tried to put in it, like the truth, basically the truth, like, just like they lied and said five shots was fired. No, there was no five shots were fired. Twice. And I felt like he could’ve been more consistent in—you know, like fought for me more. And I could have expanded my testimony more if I knew I was gonna be able to get on the stand.

(PCR 9-10). Trial counsel testified he was retained in November 2020, and he met with Applicant six to ten times. He averred he met with Applicant “sufficient times to adequately discuss the case with him, have him make a decision about whether to go to trial or not, and prepare for trial.” (PCR 23). Counsel also testified he discussed the case with Applicant sufficient times to know the substance of his testimony. (PCR 31). Counsel did not recall anything specific that Applicant asked him to do during trial, but he assumed that if Applicant requested something that he didn’t do, “it was because I didn’t think it was appropriate and that it was not a good strategy.” (PCR 28-29).

Based on counsel’s foregoing testimony, which this Court finds credible, this Court finds counsel communicated adequately with Applicant at trial. Further, Applicant did not articulate specifically *what* evidence he wanted introduced—other than wanting to testify that he only fired twice. This Court finds Applicant’s testimony that he only fired twice not credible here where investigators recovered five casings from the scene that were fired by the same weapon, and the

pathologist documented five bullet wounds on Victim. Applicant did not specifically set forth any other evidence he wanted introduced and did not meet his burden of proving deficiency or prejudice. Thus, this clam is denied.

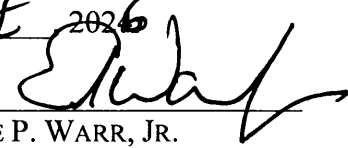
CONCLUSION

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 appeal, 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 appellate procedures.

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 14th day of August 2026


EUGENE P. WARR, JR.
Presiding Judge
Fourteenth Judicial Circuit

DaLington, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2024CP0700661

Joseph D Burton

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

ORDER OF DISMISSAL

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ E. P. Warr, Jr
Circuit Court Judge

2793
Judge Code

8/14/2026
Date

For Clerk of Court Office Use Only

This judgment was entered on **August 27, 2026**, and a copy mailed first class or placed in the appropriate attorney's box on **August 27, 2026**, to attorneys of record or to parties (when appearing pro se) as follows:

Joseph D Burton #385450 Ridgeland Correctional Instituti
Post Office Box 2039 Ridgeland, SC 29936
Chelsey Faith Marto PO Box 8795 Columbia, SC 29201

Danielle Dixon PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.