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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
The Honorable Roger Young, PCR Action Judge
2024-CP-19-00051

WILLIAM SELLERS, #377621,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

William Sellers appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Roger Young, circuit court judge, on April 23, 2026, and was denied by written order issued filed on September 29, 2026. Applicant received notice of the judgement on September 30, 2026.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
William C. "Billy" Sellers, #377621,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2024-CP-19-00051

ORDER OF DISMISSAL
WITH PREJUDICE

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7:45
LEXINGTON COUNTY COURT
CLERK OF COURT CHARLES REEL

Presiding Judge:	Hon. Roger M. Young, Sr.
Applicant's Attorney:	Chelsey F. Marto, Esq.
Respondent's Attorney:	MacKinnon G. Westraad, Esq.
Trial Counsel:	Bennett Casto, Esq. Elizabeth Fullwood, Esq.
Date of Hearing:	April 23, 2026
Court Reporter:	Stacy S. Johnson

This matter comes before the Court by way of William C. "Billy" Sellers' (Applicant) application for post-conviction relief (PCR) filed on February 9, 2024. Respondent, the State of South Carolina, made its return on February 6, 2025. On April 17, 2026, Applicant, through counsel, amended his PCR application.¹

On April 23, 2026, an evidentiary hearing was held before the Honorable Roger M. Young, Sr., at the Lexington County Courthouse. Applicant was present and represented by Chelsey F. Marto, Esquire (PCR Counsel). Assistant Attorney General MacKinnon G. Westraad represented Respondent. At the hearing, Applicant proceeded forward on the allegations within his amended application. In support of these claims, Applicant testified on his own behalf and presented the

¹ While the amendments were filed after the evidentiary hearing date, they were provided ahead of the hearing to Respondent, and this Court also had a copy.



testimony of Bennett Casto, Esquire. (Trial Counsel). Respondent presented the testimony of Eleventh Circuit Assistant Solicitor Suzanne Mayes, Esquire.

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

PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections. In 2015, during its January term, the Edgefield County Grand Jury indicted Applicant for murder (2015-GS-19-044). Assistant Solicitors Robert McNair and Suzanne Mayes prosecuted the case on behalf of the Eleventh Circuit Solicitor's Office. Applicant was represented by Bennett Casto, Esquire (Trial Counsel), and Elizabeth Fullwood, Esquire. Applicant's trial was held before the Honorable Eugene C. Griffith, Jr., and a jury from August 27-31, 2018. On August 31, 2018, a jury found the Applicant guilty as indicted. Judge Griffith sentenced the Applicant to life in prison.

Direct Appeal

On September 17, 2018, Trial Counsel filed a notice of intent to appeal on the Applicant's behalf. On appeal, Applicant was represented by Robert M. Dudek of the South Carolina Division of Appellate Defense. In his Final Brief of Appellant in the Court of Appeals, he raised the following issues:

- (I) Whether the court erred by instructing the jury that malice "is the intentional doing of a wrongful act without just cause or excuse" since it could be reasonably interpreted as shifting the burden to appellant to prove a justification or excuse for his wrongful acts thereby rendering the instruction violative of appellant's Due Process constitutional rights?
- (II) Whether the court erred by instructing the jury on accomplice liability, "the hand of one is the hand of all," since it was improper to instruct accomplice liability on the theory that the jury may believe some of the evidence and



- disbelieve other evidence, it improperly invited speculation as to another person being the shooter and appellant being guilty as a participant where the evidence did not justify this instruction?
- (III) Whether the court erred by admitting State's Exhibits 58-59, where they were irrelevant since they were not probative of whether crucial state's witness Phillip Griffin received consideration from the state for his testimony against appellant?

Final Brief of Appellant, p. 1.

On July 7, 2021, the South Carolina Court of Appeals issued an unpublished opinion affirming Applicant's conviction and sentence. State v. Sellers, No. 2021-UP-254 (S.C. Ct. App. filed July 7, 2021).

Applicant sought certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court granted certiorari to resolve the following issues:

- (I) Whether the Court of Appeals erred by not finding reversible error where it acknowledged the trial court's instruction that malice "is the intentional doing of a wrongful act without just cause or excuse" was needlessly confusing particularly where the charge also could reasonably have been interpreted as shifting the burden to petitioner to prove a justification or excuse for his wrongful acts thereby rendering the instruction violative of petitioner's Due Process constitutional rights?
- (II) Whether the Court of Appeals erred by finding no abuse of discretion in the trial court instructing the jury on accomplice liability, "the hand of one is the hand of all," since it was improper to instruct accomplice liability on the theory that the jury may believe some of the evidence and disbelieve other evidence, and it improperly invited speculation as to another person being the shooter and petitioner being guilty as a participant where the evidence did not justify this instruction under the precedent of State v. Washington, 431 S.C. 394, 848 S.E.2d 779 (2020)?

Brief of Petitioner, p. 1.

On January 17, 2024, the South Carolina Supreme Court issued a published opinion affirming the Court of Appeals' decision. The Court held that the trial court's jury instructions on malice did not constitute burden shifting. Additionally, the Court held that the jury instruction regarding the hand of one if the hand of all was appropriate in light of the supporting evidence.



See State v. Sellers, 442 S.C. 140, 153, 898 S.E.2d 116, 123 (2024). The Remittitur was returned on February 5, 2024.

FACTS ADDUCED AT TRIAL

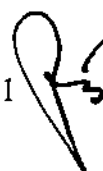
Johnny Hydrick ("Victim") lived in Trenton, a rural area of Edgefield County. Victim left the doors to his home unlocked even at night, kept a .38 pistol with him at all times, and usually slept on his living room sofa with his pistol tucked under the cushions. Victim had previously been in a car accident, which left him disabled and in steady receipt of prescription pain medication. Victim last filled his prescription on October 6, 2014, receiving 120 Oxycodone tablets. Victim was on probation and wore an ankle monitor tracking his movements at all times. (R. 237-39; 35-36; 251-53; 63-64). On October 11, 2014, after a day of no contact from Victim, Victim's brother Richard Hydrick ("Richard") went to Victim's home to check on him. Victim's front door was closed and unlocked, and his car was in the yard. Stepping inside, Richard found Victim dead on the floor and immediately called 911. Edgefield County deputies arrived at the scene and found no signs of forced entry. However, there was blood present in "several locations all throughout the house." Victim's hands were bound with duct tape; he was in his underwear, and his body had been covered with a blanket. Victim had suffered several injuries to the head. In addition to his hands being bound with duct tape, officers observed handprints near both of his knees. Another piece of duct tape was found lying on the blanket covering Victim's lifeless body. Victim's cause of death was listed as closed head injury "due to a beating." He suffered multiple blunt force injuries to the head, including lacerations to the left eyebrow, the nose, and the side of the head. He also had injuries to the eyes and a fractured nose, the latter requiring significant force. The injuries to the eyes could have been caused by a fist, and the injuries to the eyebrows, nose, and side of the head



by an object with a straight edge or a pistol. Victim was not shot with a gun. (R. 36-40, 32; 52- 55; 86-92; 381-96).

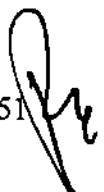
Richard last spoke with his brother, the Victim, on the night of October 9, 2014. The motion sensor on Victim's ankle monitor recorded Victim stopped moving at 1:43 AM on October 10, 2014. Victim never moved again after that, not even by the slightest vibration. (R. 67-72; 74-76). While processing the scene, officers found blood transfer and spatter near the body, blood spatter on a nearby couch and vacuum cleaner, on the window blinds behind the couch, and more on the bed in a bedroom. The couch cushions had been removed by someone and wrapped in a sheet, and part of the couch had been cut into. There were several more blood spatters on the refrigerator and blood transfers on the kitchen counter, on 2 ceramic jars, on a basket, and on duct tape atop the refrigerator. There was also blood transfer on a kitchen light switch. All the blood was determined to be Victim's, though some areas showed another, unidentifiable, minor contributor. Officers could not recover any fingerprints, only Victim's palm print in 1 location: the non-adhesive side of a bloodied piece of duct tape. No other DNA was recovered from any sampled surface. (R. 98-99; 101-04; 120; 418-22; 427-31; 111-14; 115; 368-70; 153-54; 164).

Victim's guns, his prescription Oxycodone pills, and some coins were missing from the home. Victim owned 3 shotguns and a rifle in addition to his .38 pistol. Police found 3 boxes of shotgun shells when processing the scene, but no guns. Victim also had a toy slot machine he kept in his kitchen area. Victim would deposit a coin in the slot machine each day, and, like a fortune cookie, the machine would forecast Victim's future. After the murder, the slot machine was found busted into pieces in a room in the back of the house, with other broken items. It was not broken when Victim's brother Richard saw it at Victim's home a day or so before the murder. (R. 143; 43-47; 127; 119).

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Police began working on the case by investigating Victim's existing relationships. Victim had been seeing a woman, Jessica Reeder ("Jessica"); however, she lived with her boyfriend, Travis Murray ("Travis"). Jessica would buy pills from Victim, and Victim would drive Jessica and Travis around because they had no car. Investigators learned that Travis and appellant William "Billy" Sellers ("Sellers") were friends and co-workers. Sellers drove Travis to work each day. On October 16, 2014, an investigator made contact with Sellers at his home in Aiken County. Sellers said he, Travis, and Shawn Nicholson ("Shawn"), collected scrap metal across the street from Victim's home on October 7th or 8th, 2014. Sellers also said: "he knew Johnny [Hydrick] [the Victim] and would buy pills from him mostly on the weekend." Cell phone records also placed Sellers near Victim's home from 8:17 to 8:55 AM on October 8th, 2014. Shawn corroborated that he, Sellers, and Travis were "scrapping" metal near Victim's home at that time. Shawn recalled that Travis and Sellers were talking trash about Victim, and Shawn overheard Travis and appellant Sellers say something about "hitting a lick." Business records also showed that Sellers went to a metal recycling yard on Edgefield Highway in a red van on October 7th & 8th, 2014, and sold scrap metal. All of this evidence placed Sellers near Victim's home a day or two before the murder and discussing "hitting a lick," i.e., committing a robbery. (R. 40-41; 266-67; 490-95; 462; 578-86; 257-60).

Shawn and appellant Sellers were neighbors. On the evening of October 9th [Victim died shortly after midnight October 10th], Sellers came over to Shawn's home allegedly due to an argument with his girlfriend about methamphetamine. At the time, Sellers was on his cell phone, but Shawn did not know with whom. Shawn went to bed around 10:00 PM but awoke at midnight to find Sellers gone from Shawn's home. Shawn called Sellers on his phone, but Sellers did not answer. Between 2:00 and 3:00 AM on October 10th, Sellers reappeared at Shawn's front door.

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Shawn let Sellers in his home. This is corroborated by a phone call Shawn received from Sellers at 2:52 AM, during which Sellers was at Shawn's door. When Shawn opened the door to let Sellers in, Sellers' red van was missing, and Sellers was acting uncomfortably. Sellers told Shawn he parked the van down the street so his girlfriend couldn't see it. Sellers did not say where he had been, and Shawn "never really asked." (R. 588-97; 607).

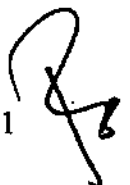
Another acquaintance of Sellers, Joey Lowe ("Lowe"), was approached by Sellers in October 2014. Sellers wanted to know if [Joey] wanted to "do a lick with him" on a disabled man who would be an "easy target." Lowe refused. Then, at 2:48 AM on October 10th, Sellers called Lowe asking to trade some pills, a shotgun, and a rifle Sellers had stolen for some crystal meth. Lowe refused. Sellers sounded out of breath and told Lowe during this phone call that "he would have given everything he had to not get a beating like that." The comment turned Lowe's stomach. The next day, Lowe heard on the news that someone had been killed and "picked up enough of the pieces of the puzzle" to go to the Aiken County police a couple of days later. Lowe was directed to Edgefield County police on October 24, 2014. Lowe began cooperating with them. (R. 630-38; 657; 513; 650).

On October 22, 2014, 10 days after the murder, during the execution of a search warrant for drugs in Aiken County, Aiken County officers seized a gun connected to Victim's murder in Edgefield County. The gun, a .38 revolver, was seized from the home of Hakim Talib ("Talib"), also known as "Jersey." Talib sold marijuana to appellant Sellers. Sellers would also call Talib looking for a guy named "Gee" that Sellers worked with and Talib went to high school with. Talib testified that in October 2014, Sellers came to Talib's home in his red van to try to sell Talib "*a shotgun, pills, and a .38.*" (emphasis added). Talib refused to buy the shotgun or pills but gave Sellers some marijuana and \$30 for the .38. Victim's niece, who had lived with Victim from time

to time before his death, identified the .38 seized from Talib's home as the same pistol Victim kept on him at all times and slept with under his pillow. Edgefield County police recovered the gun from Aiken County police and sent it to SLED. Victim's DNA was located on the gun by SLED's forensic DNA lab. (R. 138-40; 247-78; 291-93; 334; 295-97; 299-301; 237-38; 434-35).

Police also extracted data from Sellers' phone. Phone records for Sellers and Shawn [Nicholson] were examined for the period beginning October 9, 2014, at 7:46 PM through October 10, 2014, at 9:52 AM. Contact information for "Gee," and any calls concerning him, had been deleted from Sellers' phone. At least one series of text messages exchanged between 3:00 and 4:00 AM on October 10th had also been deleted. Sellers' phone data also showed a gap of activity on October 10th from 12:17 AM to 2:11 AM, corresponding with the "no-movement" on Victim's ankle monitor. Also, during this time, calls made by Shawn to Sellers did not appear in Sellers' phone records, indicating Sellers' phone was off. Finally, on October 10th at 2:36 AM, Sellers used his phone to Google the term "K57." Victim's prescription Oxycodone pills were imprinted with the identifier K57. (R. 553-56; 558; 562-69; 603; 605; 254-56).

An inmate, Phillip Griffin ("Griffin"), first met Sellers when they became cellmates at the Edgefield County jail on November 21, 2014. The more they spoke, the more Sellers talked about the basis for his own charges. Griffin testified: "His [Sellers'] story would change a little bit" each time, "and he kind of started putting himself involved in the case." At first, Sellers was inquisitive about DNA and said he was worried because he let somebody borrow his van, and he was concerned there was blood inside it. Sellers said a guy named "Gee" borrowed his van and returned it around 2:00 or 3:00 that morning. Sellers also said that in September 2014, "the guy Johnny [Victim] fell down his steps and kind of broke his nose," and Sellers tried to help him into the van. Victim refused to go to the hospital, but Sellers worried Victim's blood may be in the van. Sellers



said he wore blue jeans, black work boots, and a white t-shirt during the incident on October 10th at 2:36 AM. Sellers used his phone to Google the term "K57," but he threw away the t-shirt "because even if he was going to bleach it, the stains wouldn't come out" (R. 21 1; 200-05).

In November, after his arrest, Sellers asked to speak to the police investigator. Sellers asked, "Have you found anyone else besides me who did this, or do you feel like it's just me?" He wanted to know if another person had been arrested. On November 21, 2014, officers processed the red van for possible blood. None was visible to the naked eye. A presumptive test of the van's interior was conducted with LCV. A small part of the interior driver's side door above the armrest tested presumptively positive for blood, and 3 small areas on the driver's floor mat and 1 area on the driver's seat near the seat adjuster did as well. (R. 502-05; 347-54).

Eventually, Sellers told his cellmate, Griffin, something different: that he got into a fight with his "old lady," left the house, and met up with his friend "Gee." Sellers and Gee went to Walmart. Then they drove down Highway 19 to Victim's home to rob him of his prescription pills and any money he had on hand. (R. 205-13; 235). Sellers ultimately told Griffin:

They were in his van and they drove down 19 and went close to his house, like an abandoned lot about a hundred, 1 50 yards away from where Johnny lived and that's where they parked and they went to his house. They parked there. They went to his house and they taped him up and was asking him where the pills were and they were pistol whipping him until he told them where the pills were.

(R. 207, 11. 8-14). Sellers said, "When he left, the guy was still alive," leaving Sellers surprised that it was a murder. They did get the pills. Prior to this, Griffin did not know Sellers, Victim, the co-perpetrator identified as "Gee," his "weed man," or a person Sellers named only as Gee's cousin "Jersey" [Talib]. Griffin recalled that Sellers told him all of this prior to Sellers' preliminary hearing. Griffin went to an investigator with the information. Griffin also made efforts to be moved to another cell in order to avoid Sellers getting his discovery and Griffin "being in a room with

him where he had information about [Griffin] talking to the investigators." Griffin's contact with the police provided the first specific information that a revolver had been involved in the killing. (R. 205- 07; 21 1-13; 209-10; 235; 507).

Dennis Amerson ("Amerson") was also housed in the jail at the same time as Sellers. Amerson, who was in on a probation violation, met and struck up a conversation with Sellers during recreation time. Sellers told Amerson "some drug dealer had got[ten] caught ... in Aiken or somewhere like that and he had told on him," leaving Sellers "worried that they were gonna find stuff in his van to convict him of murder. Sellers hoped his wife would not "find out that he had done it." Sellers never named the Victim or said where he lived but said that he "and some of his friends were scrapping metal across from" where Victim was murdered and that they returned later that day and tied up and beat the Victim. Sellers said they took a slot machine, some pills, and some change from Victim's home but got rid of those items. Amerson had completed rehab, had no experience with Edgefield County or anyone living in it, and felt compelled to go to the police with this information because "[m]urder is totally different" than the drug charges he previously faced. (R. 175-80; 1 82- 84).

Another cellmate of Sellers, Wesley Omar Brown ("Brown"), was arrested in mid-January 2015. As Brown and Sellers got to know each other, Brown learned that they had a mutual friend, Shawn [Nicholson]. Sellers told Brown that he and Shawn were playing a game the night of the murder and Shawn was his alibi, but "that a guy named Jersey was the reason why he [Sellers] was locked up." Sellers did not tell Brown what happened, as he had done with Griffin and Amerson. Sellers negotiated with Brown, asking him "to go to the investigator and basically tell the investigator that Jersey was the one who killed the guy." Brown said he would consider it and went to sleep. When he awoke, Sellers gave Brown a piece of paper on which Sellers had written down

what he wanted Brown to say to the police. Brown retorted that if he [Brown] "was gonna do it, [he] needed a little bit more detail." Sellers said "they" beat an old white guy with a .38, but never named the other person involved. (R. 440, In. 14 - 443, In. 5; 443, 11. 10-23; 445, 11. 3-23; 446, In. 10 - 447, In. 20). The statement Sellers wrote for Brown was as follows:

Sometime in the middle of October I went to serve some reefer to a guy named Jersey, a/k/a Hakim Talib. After I served him, he began to ask me if I was interested in buying a shotgun, a .38 revolver or some pain pills. He said he had beat some dude's ass who owe him some money. Beat him unconscious with a .38 he was trying to sell so he took the guy's shotgun and pills as payment. Told me that had it been him he'd have given everything that he had to avoid a beating like that. Jersey said he had his cousin handle it like pros, that there was no way it would come back on them. I said I didn't need anything like that. A couple of weeks later I was visiting a friend who told me Jersey got busted with a pound of reefer and some gun. I went to his house off Alfred Street and he told me that he was gonna get probation he thought because he told the police about the guy he beat who ended up dying and set up a white boy he used to sell reefer to. Jersey said he found out from the white boy dude named Billy that he was questioned by the Edgefield police about the death of his pill guy so Jersey had his cousin who was serving the white guy at the time start putting certain information in the white boy's phone but didn't say what. It said that the white boy was a duck and trusted anyone. He said he was a meth head and was an easy fall guy. Jersey then asked if I could get him right with some reefer and I said I'll see what I could do. I'll see what was up.

(R. 448, In. 19 - 449, In. 18). Brown had never met Jersey, and he did not know who Gee was, though Sellers implied that Gee planted incriminating text messages into Sellers' phone to make it look like he did it. Brown turned the letter Sellers drafted over to an investigator and was removed as Sellers' cellmate that day. A handwriting analyst at SLED opined that Sellers indeed wrote the document Brown turned over to the police. The information in the letter about the .38 formed the second reference to the revolver used in the killing and gave rise to Edgefield County investigators contacting Aiken County law enforcement for information about Hakim "Jersey" Talib, who had already been arrested on drug charges. The .38 later identified as Victim's gun had already been seized by Aiken County law enforcement in the drug raid. (R. 450, 11. 7-25; 451; 485; 509-12).

CURRENT ACTION BEFORE THIS COURT

In his original PCR application, Applicant alleges he is being held unlawfully based on the following:

- (1) Ineffective Assistance of Trial Counsel
 - (a) "Failure to use alibi defense"
- (2) Actual Innocence
 - (a) "no actual evidence of involvement in alleged crime"
- (3) Illegal Sentence
 - (a) "YOA sentence used for two-strike enhancement"

On April 17, 2026, Applicant, through PCR Counsel, amended his PCR application with the following allegations:

- (1) Ineffective Assistance of Trial Counsel
 - (a) Failure to object or properly move for a mistrial on record for the State's mid-trial dismissal of the co-defendants' charges, which Applicant characterizes as misconduct.
 - (b) Failure to request a more thorough colloquy with the jury regarding whether they heard about the co-defendant's charges being dismissed in the middle of trial. (Tr. 811).
 - (c) Failure to object to the State's opening statement. (Tr. 138).
 - (d) Failure to present third party guilt and alibi defenses at trial and failure to weigh the State's evidence when determining approach.
 - (e) Failure to more thoroughly cross-examine witnesses.
 - (f) Failure to properly advise Applicant concerning the right to testify.
 - (g) Failure to more effectively argue the Jackson v. Denno motion; specifically, failure to object under State v. Howard that Applicant did not utter a spontaneous statement regarding the case:
 - (h) Failure to pursue a motion in limine concerning Ashley Myers's identification of the gun.
 - (i) Failure to investigate the owner and identification of the gun including the serial number.
 - (j) Failure to bring up the victim's criminal history at trial.
 - (k) Failure to maintain proper communication with Applicant.
 - (l) Failure to request a jury instruction regarding jailhouse informant information.

Applicant requests relief as follows:

"conviction reversed and charges remanded back to lower courts for a new trial."



RECORDS BEFORE THIS COURT

Before this Court are the following records:

- (1) Applicant's appellate records.
- (2) Records from the Edgefield County Clerk of Court.
- (3) Pertinent records from the S.C. Department of Corrections.
- (4) PCR Transcript, April 23, 2026.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of

² S.C. Code Ann. §§ 17-27-10 to -160.

such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that



the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

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

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent that there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result



at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court also heard the testimony presented at the evidentiary hearing and observed the witnesses, allowing the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our



jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant they rendered adequate assistance and exercised reasonable professional judgment in their representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead, 308 S.C. at 122, 417 S.E.2d

at 531.

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

- Allegation (1)(a):** Failure to object or properly move for a mistrial on record for the State's mid-trial dismissal of the co-defendants' charges, which Applicant characterizes as misconduct.
- Allegation (1)(b):** Failure to request a more thorough colloquy with the jury regarding whether they heard about the co-defendant's charges being dismissed in the middle of trial. (Tr. 811).

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object or properly move for a mistrial on the record for the State's mid-trial dismissal of the co-defendants' charges, which Applicant characterizes as misconduct. Applicant further alleges Trial Counsel failed to request a more thorough colloquy with the jury regarding whether they heard about the co-defendant's charges being dismissed in the middle of trial. (Tr. 811). This Court finds these allegations to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally

unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Additionally, during the course of a criminal trial, the occurrence of an error in some form or fashion is "virtually inevitable[.]" which is why a defendant is only guaranteed a fair trial as opposed to a perfect one. Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986); see State v. Black, 400 S.C. 10, 29, 732 S.E.2d 880, 891 (2012) ("[A] defendant is entitled to a fair trial, not a perfect



one."). When an error occurs, one remedy available to a trial judge is to grant a mistrial. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). However, the granting of a mistrial is an extreme remedy that should only be imposed when an incident occurs during trial that is so grievous its prejudicial impact cannot be removed through any other means. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). "The power of the court to declare a mistrial should be used with the greatest caution and for plain and obvious causes." Earley v. State, 418 S.C. 255, 267, 792 S.E.2d 226, 232–33 (2016) (internal citations omitted). In determining whether to grant a mistrial, the trial court should consider whether the mistrial is dictated by manifest necessity and must exhaust all other methods to cure any possible prejudice that occurred prior to stopping the trial. State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct. App. 2002); see Council, 335 S.C. at 13, 515 S.E.2d at 514 ("[T]he trial judge should exhaust other methods to cure possible prejudice before aborting a trial."); State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) ("The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment."). Significantly, a mistrial should **not** be granted unless "absolutely necessary." Harris, 340 S.C. at 63, 530 S.E.2d at 627-628; see State v. Brown, 389 S.C. 84, 94, 697 S.E.2d 622, 627 (Ct. App. 2010) ("A manifest necessity must exist for the trial court to discharge the jury and declare a mistrial.").

Trial

The following colloquy occurred during trial with the trial judge and jury:

THE COURT:	All right. To discuss some things with y'all before we get started. First of all, I told y'all early on that what you need to decide the case will be here in the courtroom when we're all together. It has been brought to my attention that there was some news television station that covered the story of this trial. I haven't seen it and I didn't watch it. I wasn't aware
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they were in here. What you get in here is the only thing to make your decision so I'm gonna caution you about watching local news accounts talking about the case. Do something else. There's no reason to let a newscaster tell you about what they think is going on. I haven't seen any news reporter in here so whatever information they've got didn't come from what we've been doing. We're getting it from the horse's mouth. They get it from the street corner. I'm just telling y'all stay away from that, okay? I'm not gonna look to see what it says, whether what's wrong or what's right, okay? We'll get everything right here. So I wanted to caution you about that. I want you to hear it in here.

(Trial Tr. pp. 700–701).

[THE COURT]: All right. Now, I asked you about the news report that I was made aware of at lunch time. Has anybody seen that at all?

(No response from the jury.)

THE COURT: All right. I didn't think so. I only want to caution everybody again don't go looking for it. Let's just steer clear of it. We're gonna get the best of it in the courtroom under oath with a record that y'all got to watch. To me it's usually helpful for me to say what did that news reporter know when he wasn't here. Therefore, it's a waste of time to go see what he thought. I had a newspaper report that Judge Addy did this, did that, and the whole time they weren't in the courtroom and they put it in the newspaper that Judge Addy did several in Laurens County. And we're good friends and I said you got the wrong judge. You can't mistake us. But I don't want anything affecting your decision that y'all didn't get in here, okay? So please steer clear. Don't talk about the case this afternoon or tonight. Come back in the morning ready to go and we'll try to finish. Steer clear of the TV. Just don't watch the news. Watch something else. Big Bang Theory, anything you like. So we're done for the day.

(Trial Tr. pp. 811–812).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, *supra*. At the evidentiary

hearing, Applicant testified that charges against co-defendants Travis and Jessica were dismissed during the trial, that the dismissals were reported in the news, that Trial Counsel moved for a mistrial, which Applicant claimed occurred off the record, and that the subsequent jury colloquy was inadequate. (PCR Tr. pp. 9, 26). Applicant further testified that the only colloquy consisted of a brief inquiry after lunch and that the issue was never revisited. (PCR Tr. p. 26).

Trial Counsel testified that he recalled the existence of co-defendants whose charges were ultimately dismissed, but he did not specifically recall the timing of the dismissals or whether he moved for a mistrial. (PCR Tr. pp. 31–32). He agreed that the trial transcript is the best evidence of what occurred. (PCR Tr. p. 32). The record reflects that the trial court conducted a colloquy with the jury concerning whether any juror had heard or seen anything about the dismissals. (Trial Tr. p. 811). Trial Counsel further testified that drawing additional attention to the dismissals through an expanded colloquy could have risked highlighting the issue for the jury. (PCR Tr. p. 52).

Notably, no evidence was presented at the PCR hearing demonstrating that any juror was actually exposed to extrinsic information about the dismissals or that any such exposure affected the verdict. While the trial judge did not poll the jurors individually, he did ask all of them whether they had seen the news report, and no one said they had. While Applicant avers that the trial judge should have questioned them to determine whether they were biased, no juror admitted to having seen the new story. This Court is left only to speculate what further colloquy the trial judge could have had that would have changed the outcome of the trial.

Further, this Court cannot find that the record before this Court supports that a mistrial was warranted, and Applicant's contention that Trial Counsel should have or could have done more is purely speculative. Applicant's contention that Trial Counsel should have requested further

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colloquy of the jury by the trial judge is unsupported by the record and by the evidence presented at the evidentiary hearing. Thus, Applicant has failed to prove his burden that Trial Counsel's performance was deficient and further failed to show any prejudice from the alleged deficiency.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(c): Failure to object to the State's opening statement. (Trial Tr. p. 139).

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the State's opening statement. (Trial Tr. p. 139). This Court finds this allegation to be without merit.

Opening remarks serve to inform the jury of the general nature of the trial and the issues involved so that they can better understand the evidence presented. State v. Kornahrens, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986). The solicitor is permitted in the opening statement to outline the facts the State intends to prove, and so long as the State introduces evidence to reasonably support the stated facts, there is no error. Id.

Trial

At trial, the State presented the following in its opening statement:

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Now, I mentioned Jessica Reeder and Travis Murray. They were initially arrested in this case for the murder. As under the belief and information that the police had at the time it was their belief that they acted with Billy Sellers.

(Trial Tr. p. 139).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. This Court finds that the portion of the State's opening that Applicant avers Trial Counsel should have objected to was a fact the State intended to introduce during trial. Also, the statements were consistent with the procedural history known at the time of opening. Additionally, opening statements are not evidence, and even if technically imprecise in chronology, any error was harmless in light of the full trial record.

Further, this Court finds that Trial Counsel had no legal basis to object. See Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.



Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

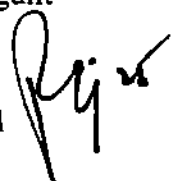
Allegation (1)(d): Failure to present third-party guilt and alibi defenses at trial and failure to weigh the State's evidence when determining the approach.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to present third-party guilt and alibi defenses at trial and failure to weigh the State's evidence when determining approach. This Court finds this allegation to be without merit.

The admissibility of evidence of third-party guilt is governed by the rule set forth in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). See State v. Cope, 385 S.C. 274, 292-93, 684 S.E.2d 177, 186-87 (Ct.App.2009) (quoting State v. Gregory as the rule governing admissibility of evidence of third-party guilt); State v. Swafford, 375 S.C. 637, 641-43, 654 S.E.2d 297, 299-300 (Ct.App.2007) (affirming application of State v. Gregory). In Gregory, the Supreme Court stated:

[T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are **inconsistent with his own guilt**, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible But before such testimony can be received, **there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party**. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.

198 S.C. 98, 104-105, 16 S.E.2d 532, 534-35 (1941) (emphasis added). The United States Supreme Court clarified the above-outlined rule regarding the admission of third-party guilt in Holmes v. South Carolina, 547 U.S. 319 (2006). Holmes held that, though the trial court erred in denying the admissibility of the statement, the limitations on the admissibility of third-party guilt

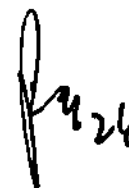


as outlined in Gregory do not deny a defendant his right to present evidence. Id.; see also State v. Burgess, 391 S.C. 15, 703 S.E.2d 512 (2010); Miller v. State, 379 S.C. 108, 114, 665 S.E.2d 596, 599 (2008). Holmes v. South Carolina preserves Gregory as the appropriate standard for evaluating the admissibility of evidence of third-party guilt.

When an applicant alleges trial counsel failed to investigate or present an alibi witness, the PCR court must make two findings to determine if counsel's deficient performance constitutes prejudice under Strickland. Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012), rev'd, 407 S.C. 400, 756 S.E.2d 144 (2014). "*First*, the court must find as a matter of law whether the witness's testimony meets the legal definition of an alibi. *Second*, the court must assess the witness's credibility." Walker, 397 S.C. at 238, 723 S.E.2d at 616 (emphasis added). In making the first finding, the Court must consider the entire record. Id.

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "[S]ince an alibi derives its potency as a defense from the fact that it involves the **physical impossibility** of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319) (emphasis added).

In determining prejudice, the strength of the evidence against an applicant must be considered in determining whether there is a "reasonable probability that the result of the trial



would have been different had counsel's performance not been deficient." Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991) (Finding that though counsel was ineffective for failing to object to repeated reference to petitioner's prior incarceration, the overwhelming evidence of petitioner's guilt—the corroborating testimony of the victims' and medical evidence—did not establish a reasonable probability the result of trial would have been different had counsel not been deficient.); Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (In determining whether an applicant alleging ineffective assistance of counsel has proven prejudice, the postconviction relief (PCR) court should consider the specific impact counsel's error had on the outcome of the trial; in addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, *supra*. Trial Counsel credibly testified that he explored both defenses. Trial Counsel testified that he spoke with Applicant's ex-wife and found her account to be uncertain and unhelpful. (PCR Tr. p. 30). Deputy Solicitor Suzanne Mayes testified that the neighbor, Applicant identified as an alibi witness, Shawn Nicholson, ultimately testified for the State that Applicant left and returned alone around 3:00 a.m. (PCR Tr. pp. 57, 60–61). Regarding third-party guilt, Trial Counsel credibly testified that he reviewed the discovery, including police reports admitted as Applicant's Exhibit A-1, showing possible motive involving Travis and Jessica, but the evidence also suggested possible joint involvement with Applicant. (PCR Tr. pp. 39–40, 44–46). Trial Counsel testified that he argued the available third-party motive points in closing to the extent permitted by South Carolina law. (PCR Tr. pp. 40, 42–43). This Court finds Trial Counsel's overall strategy was that the State's case



was circumstantial and rested on unreliable informants and cell data; he therefore elected not to present a defense case in order to retain last argument. (PCR Tr. pp. 29–30, 54).

This Court finds Trial Counsel's strategic decisions were reasonable and informed. South Carolina's third-party guilt doctrine requires evidence that is inconsistent with the defendant's own guilt. State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). The discovery materials Trial Counsel reviewed indicated possible concerted action, rendering a pure third-party defense problematic. Applicant's alibi was undermined by the neighbor's testimony and cell-phone evidence, which showed the cell phone was deactivated during the critical window, followed by activity near the county line and contact with Joey Lowe. Notably, Applicant presented no alibi witness at the evidentiary hearing. This Court further finds Trial Counsel reasonably weighed the State's evidence and chose a pure reasonable-doubt strategy.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.



Allegation (1)(e): Failure to more thoroughly cross-examine witnesses.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to cross-examine witnesses more thoroughly. This Court finds this allegation to be without merit.

The approach and scope of cross-examination should not be second-guessed. See Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Marzullo not intended to promote judicial second-guessing on questions of strategy as basic as handling of a witness); see also Dunham v. Travis, 313 F.3d 724, 732 (2d Cir. 2002) (“Decisions about ‘whether to engage in cross-examination, and if so to what extent and in what manner, are ... strategic in nature’ and generally will not support an ineffective assistance claim.” (quoting United States v. Nersesian, 824 F.2d 1294, 1321 (2d Cir. 1987)); Johnson v. Hofbauer, 159 F.Supp.2d 582, 607 (E.D. Mich. 2001) (“Impeachment strategy is a matter of trial tactics, and tactical decisions are not ineffective assistance of counsel simply because in retrospect better tactics may have been available.”) (citing Gallo v. Kernan, 933 F.Supp. 878, 881 (N.D.Cal.1996); aff’d 141 F.3d 1175 (9th Cir. 1998); cert. den. 525 U.S. 856 (1998)).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. At the evidentiary hearing, Applicant initially claimed inadequate cross-examination but later conceded that Trial Counsel was thorough on the informants’ sentencing exposure and that, after reviewing the record, he could not identify additional cross-examination that should have been conducted. (PCR Tr. pp. 26–27). Trial Counsel testified that he attacked the informants’ bias and motivation (PCR Tr. pp. 37–38) and elicited from Ashley Myers that she had last seen the victim a year earlier. (PCR Tr.



p. 55). This Court finds that the record demonstrates competent cross-examination focused on bias, motivation, and reliability. Further, Applicant's own concession at the PCR hearing undermines his claim.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(f): Failure to properly advise Applicant concerning the right to testify.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to properly advise Applicant concerning the right to testify. This Court finds this allegation to be without merit.

"The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. However, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner



during its deliberations." Id. "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." Id.

Trial

The following colloquy occurred during the trial with the trial judge and Applicant:

THE COURT: I guess we can but -- All right. Mr. Sellers, let me ask you a couple questions. You know, obviously you counseled with your attorneys. Y'all have not put up any evidence which is your decision. First of all, did you have enough time to discuss whether or not to present evidence from your side and/or testify in your own behalf? Did you talk to your lawyers about that decision?

[APPLICANT]: Yes, sir. We did.

THE COURT: Last night?

[APPLICANT]: Yes, sir.

THE COURT: And again later this morning?

[APPLICANT]: Yes, sir.

THE COURT: Understanding that's the way it's gonna work, your defense team will get the last argument to the jury and the last thing in my instructions is the jury cannot discuss your not testifying and exercising your constitutional right to remain silent. They can't discuss that at all in their deliberations. They have to consider what's been presented, not your exercising your constitutional right to remain silent. Do you understand that?

[APPLICANT]: Yes, sir.

THE COURT: Are you comfortable with that?

[APPLICANT]: Yes, sir.

THE COURT: Do you need any more time to discuss that decision with your attorneys?

[APPLICANT]: No, sir.

THE COURT: Okay. Very well.

(Trial Tr. pp. 824–825).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. Trial Counsel credibly testified that he advised Applicant that testifying would risk undoing the reasonable-doubt strategy

and would forfeit the last argument. (PCR Tr. pp. 30–31). The trial court conducted a colloquy with Applicant, confirming that the decision was his and that he had discussed it with Trial Counsel. (Trial Tr. pp. 824–25; PCR Tr. pp. 24–25). Trial Counsel credibly confirmed Applicant understood the discussions. (PCR Tr. p. 55).

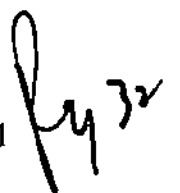
This Court further finds that Trial Counsel's advice was reasonable strategic advice. Additionally, the trial court's colloquy further protected Applicant's rights. Applicant's claim that he did not fully understand the risks is not credible in light of the colloquy and Trial Counsel's credible testimony.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(g): **Failure to more effectively argue the Jackson v. Denno motion; specifically, failure to object under State v. Howard that Applicant did not utter a spontaneous statement regarding the case.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to more effectively argue the Jackson v. Denno motion; specifically, failure to object under State v. Howard that Applicant did not utter a spontaneous statement regarding the case. This Court finds this allegation to be without merit.



Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. At trial, a Jackson v. Denno, 378 U.S. 368 (1964) hearing was held on Applicant's three statements that he made to law enforcement. (Trial Tr. pp. 96–99). Trial Counsel took issue with the third statement that was made to law enforcement. Id. The State argued that State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988) was controlling on the third statement. Id. At the evidentiary hearing, Trial Counsel testified that he viewed Applicant's statements to investigators as non-inculpatory where Applicant was asking questions about the investigation and property. (PCR Tr. p. 36). Trial Counsel testified that he did not view the statements as damaging. (PCR Tr. p. 54). Trial Counsel did argue against the admission of the third statement. Trial Counsel cannot be found deficient for raising an objection and being unsuccessful. Furthermore, after reviewing the record, this Court finds that the statements made by Applicant to law enforcement were not confessions and were not the core of the State's case.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

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- Allegation (1)(h): Failure to pursue a motion in limine concerning Ashley Myers's identification of the gun.**
Allegation (1)(i): Failure to investigate the owner and identification of the gun, including the serial number.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to pursue a motion in limine concerning Ashley Myers's identification of the gun and failure to investigate the owner and identification of the gun. This Court finds this allegation to be without merit.

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

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

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v.

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State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

As an initial matter, this Court finds that any motion in limine would not have been granted on Ashley Myers' identification of the gun. Certainly, witnesses are allowed to testify on the identification of the gun where they have personal knowledge, as is required for all witness testimony.

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. At trial, Ashley Myers identified the gun as one she had previously seen with the victim. (Trial Tr. p. 386). Hakim Talib also identified the same gun as the one Applicant sold him. (Trial Tr. p. 452; PCR Tr. p. 55). At the evidentiary hearing, Trial Counsel testified that SLED testing revealed the victim's DNA on the gun. (PCR Tr. p. 33). Trial Counsel testified that he was able to elicit the temporal gap in Myers's observation (PCR Tr. p. 55) and reasonably concluded the DNA evidence was the more significant link. Notably, Applicant failed to present any credible evidence of what further investigation of the gun would have produced a different outcome at trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(j): Failure to bring up the victim's criminal history at trial.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to bring up the victim's criminal history at trial. This Court finds this allegation to be without merit.

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. At the evidentiary hearing, Trial Counsel credibly testified that he considered the issue and determined it was irrelevant because the defense was not self-defense or justification. (PCR Tr. pp. 33–34). Further, Applicant acknowledged a stipulation that the history would not be raised. (PCR Tr. p. 18). This Court finds that Trial Counsel's strategic decision was reasonable where introducing the victim's criminal history risked alienating the jury without advancing the chosen defense theory.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

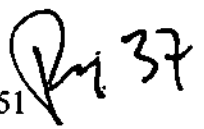
Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(k): Failure to maintain proper communication with Applicant.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to maintain proper communication with Applicant. This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings

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were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id.*; see *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See *Butler, supra*. Applicant provided no competent evidence to this Court identifying what specific information, advice, strategy, or preparation further communication would have yielded, nor did Applicant assert that the particular product of further communication would have changed the result of his trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

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omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation (1)(I): Failure to request a jury instruction regarding jailhouse informant information.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to request a jury instruction regarding jailhouse informant information. This Court finds this allegation to be without merit.

Findings

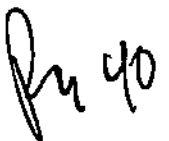
This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. *See Butler, supra*. This Court finds from a review of the record that Trial Counsel attacked the informants' credibility and motivation on cross-examination and at closing. The trial court gave the standard credibility instruction permitting the jury to consider bias, motive, and interest. (Trial Tr. pp. 891–92; PCR Tr. pp. 38–39, 55). Trial Counsel testified at the evidentiary hearing that he was unaware of any additional specialized instruction required under South Carolina law at the time. (PCR Tr. pp. 38–39, 55). This Court agrees and is unaware of any specific jury instruction regarding jailhouse informant testimony beyond the standard credibility instruction. Trial Counsel cannot be deficient for failing to request something that does not exist in current South Carolina law.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has

failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

[CONCLUSION & SIGNATURE PAGE FOLLOWS]

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CONCLUSION

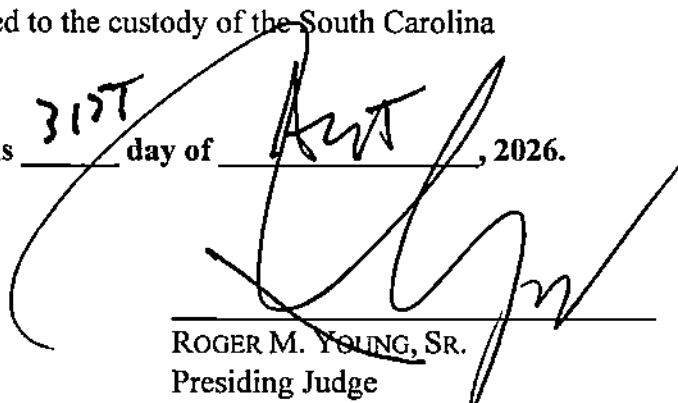
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to assistance from appellate counsel in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the applicant's behalf if the applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

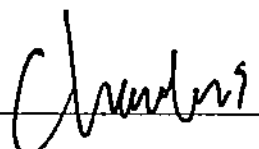
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31ST day of Aug, 2026.



ROGER M. YOUNG, SR.
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina