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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Alex Kinlaw, Jr.

Case No. 2019-CP-07-1498

Walter Tucker, #363718,

Petitioner,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner Walter Tucker appeals the Honorable Alex Kinlaw, Jr.'s Order Denying his Application for Post-Conviction Relief filed on **February 9, 2026**, and the Court's Order Denying Applicant's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP, filed on **October 12, 2026**.


Dayne C. Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

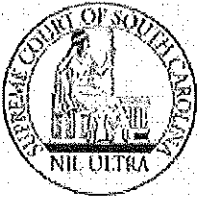
ATTORNEY FOR PETITIONER

October 14, 2026

Other Counsel of Record:

Danielle Dixon, Assistant Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

cc: Jerri Ann Roseneau, Beaufort County Clerk of Court



Beaufort County Fourteenth Judicial Circuit Public Index



[Beaufort County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Walter Tucker VS South Carolina State Of

Case Number:	2019CP0701498	Court Agency:	Beaufort County Common Pleas	Filed Date:	06/27/2019
Case Type:	Common Pleas	Case Sub Type:	Post Convict Rel 500	File Type:	PCR
Status:	Dismissed	Assigned Judge:			
Disposition:	Ended by Non Jury	Disposition Date:	02/09/2026	Disposition Judge:	Kinlaw, Alex Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
South Carolina State Of	Order Denying Applicant's Motion to Reconsider	Order		10/12/2026-11:54		
Tucker, Walter	Motion Filing Fee Waived (Motion to Alter/Amend)	Filing		03/02/2026-14:27		
Tucker, Walter	Certificate of Service of Motion to Alter/Amend Judgment	Filing		03/02/2026-12:41		
Tucker, Walter	Motion to Alter or Amend Judgment Pursuant to Rule 59(e) SCR	Motion		03/02/2026-12:41	10/12/2026-14:27	
South Carolina State Of	Certificate of Service-Return in Oppo to Motion/Alter or Ame	Filing		02/24/2026-11:20		
South Carolina State Of	Return in Opposition to Motion to Alter/Amend Pursuant to Ru	Filing		02/24/2026-11:20		
Tucker, Walter	Order of Dismissal With Prejudice	Order		02/09/2026-12:33		
South Carolina State Of	Motion Filing Fee Waived (Motion/Partial Summary Judgment)	Filing		11/12/2024-11:23	02/09/2026-11:23	
South Carolina State Of	Amended Return and Motion for Partial Summary Judgment	Motion		11/12/2024-10:36	02/09/2026-11:21	
Tucker, Walter	Amended PCR	Filing		10/31/2024-09:23	02/09/2026-09:23	
Tucker, Walter	Order on Motion/Leave to Obtain Discovery/Limits Scope	Order		04/18/2022-16:26	02/09/2026-16:26	
Tucker, Walter	Order-Motion/Discovery	Order		03/14/2022-11:30	02/09/2026-11:30	

	Granted, Applicant's Counsel Directed					
Tucker, Walter	Order Re:Discovery-Motion/Discovery Held in Abeyance	Order		11/23/2020-15:02	02/09/2026-15:02	
South Carolina State Of	Certificate Of Service of Return to Applicaiton for PCR	Filing		07/02/2020-13:34	02/09/2026-13:34	
South Carolina State Of	Return to the Application for Post-Conviction Relief	Filing		07/02/2020-13:30	02/09/2026-13:30	   
Tucker, Walter	Motion Filing Fee Waived -Motion for Leave to Obtain Discove	Filing		09/12/2019-16:31	02/09/2026-16:31	
Tucker, Walter	Motion for Leave to Obtain Discovery in a PCR Action,Service	Motion		09/12/2019-16:31	11/23/2020-16:31	 
Tucker, Walter	Post Conviction Relief	Filing		06/27/2019-16:38	02/09/2026-16:38	



ALAN WILSON
ATTORNEY GENERAL

October 6, 2026

The Honorable Jerri Ann Roscneau
Beaufort County Clerk of Court
Post Office Box 1128
Beaufort, South Carolina 29901-1128

Re: Walter Tucker, #363718 v. State of South Carolina
Case No. 2019-CP-07-01498

Dear Ms. Roscneau:

Enclosed please find the original Order Denying Applicant's Motion to Reconsider, signed by the Honorable Alex Kinlaw, Jr., in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/vh

cc: Dayne C. Phillips, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Walter Tucker, #363718,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)

) CASE NO. 2019-CP-07-01498
)

) **Order Denying Applicant's**
) **Motion to Reconsider**
)
)
)
)
)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Walter Tucker (Applicant) on June 27, 2019. Following an evidentiary hearing, this Court issued an order on February 9, 2026, denying relief and dismissing the application with prejudice. On March 2, 2026, Applicant filed a timely motion to reconsider pursuant to Rule 59(e), SCRCP. Respondent filed a return opposing the motion. Following a virtual hearing on the motion, and after careful consideration of the arguments raised therein, the motion is denied.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED THIS 29 day of September, 2026.

ALEX KINLAW, JR.

Presiding Judge

Fourteenth Judicial Circuit

 , South Carolina

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-07-01498

ORDER OF DISMISSAL

)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Walter Tucker (Applicant) on June 27, 2019. Respondent filed a return requesting an evidentiary hearing. On October 31, 2024, Applicant filed an amended application. On November 12, 2024, Respondent filed an amended return and partial motion for summary judgment. On November 13, 2024, an evidentiary hearing convened before the Honorable Alex Kinlaw. Applicant was present and represented by Dayne C. Phillips, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections serving an aggregate thirty-nine-year sentence. In December 2012, the Beaufort County Grand Jury indicted Applicant for murder (2012-GS-07-2246), kidnapping (-2248), and armed robbery (-2247). On April 13-16, 2015, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith. Robert E. Ferguson Jr. and Derek Wright, Esquires, represented Applicant. Deputy Solicitor Sean Thornton and Assistant Solicitor Hunter Swanson prosecuted the case. The jury

acquitted Applicant of kidnapping but convicted him of murder and, on the armed robbery charge, the lesser included offense of attempted armed robbery. Judge Goldsmith sentenced Applicant to concurrent terms of thirty-nine years for murder and twenty years for attempted armed robbery. He denied Applicant's post-trial motion for new trial based on the insufficiency of the evidence.

On October 14, 2015, Applicant filed an Amended Motion for a New Trial Based on Juror Misconduct. (R.18-23). In response, the State submitted six juror affidavits. (R. 740-745). On October 14, 2015, Judge Goldsmith issued an order denying Applicant's motion for a new trial.

Applicant timely appealed and was again represented by Ferguson and Wright. On appeal, Applicant argued the trial court erred in (1) failing to conduct a hearing on his motion for new trial alleging juror misconduct, (2) allowing 404(b) evidence that Applicant conspired to murder a codefendant, (3) failing to grant a directed verdict on murder, and (4) failing to grant a directed verdict on armed robbery. The South Carolina Court of Appeals affirmed on the merits. State v. Tucker, 423 S.C. 403, 407–08, 815 S.E.2d 467, 469 (Ct. App. 2018). Applicant petitioned for rehearing, which was denied. The remittitur was sent August 14, 2018.

BRIEF SUMMARY OF TRIAL TESTIMONY

Quantez Greer (Victim) was fatally shot outside Antonio Brewer's trailer.¹ At trial, Jessica Power—who initially called 911—testified she and Victim arranged to meet Applicant at the trailer to purchase marijuana. (Tr. 250). When they arrived, Applicant and Victim began haggling over the price. (Tr. 253). Power testified Applicant began to walk away, and she and Victim got out the car and followed Applicant. Power testified Applicant held the door to the trailer open while Power went inside, but he slammed and locked it before Victim could enter. (Tr 254-55). Power stated

¹ Brewer testified at co-defendant Travis Polite's trial but was killed before Applicant's trial.

Applicant pulled out a gun, pointed it at her, and "said give me the money you stupid white bitch." She testified someone grabbed her arm while Applicant looked through her purse, but Applicant couldn't find the money and threw the purse back at her. (Tr. 255-56). Power testified she "got the money out of my purse and handed it to him." (Tr. 255). She stated co-defendant Travis Polite was in the trailer, and Polite asked Applicant for the gun. When Applicant gave him the gun, Polite ran outside and Power heard a gunshot. (Tr. 257). She testified Applicant then ran outside, and she heard "multiple gunshots." (Tr. 257). Power testified she escaped from a back door and ran to her boyfriend's nearby trailer. (Tr. 259-60). When she ran out the back door, she noticed another man leaving the back door of the trailer. (Tr. 259). Shortly after she left, Power testified Applicant called and threatened her. (App. 261-62). Specifically, Applicant said "if I said anything that he would hurt my family and then kill me." (App. 262).

Keamber Bigelow testified she met Applicant about a month before the shooting, and Applicant told her the shooting "was a drug deal gone bad," and "he didn't have anything to do with the murder; but the way he explained it, he wasn't sure. He said he was running and that he was shooting and his adrenaline was high." (Tr. 451). When asked if Polite mentioned "the white girl," Bigelow replied, "He told me that she wasn't testifying because she had moved or she—that she wasn't testifying." (Tr. 451). She later testified Applicant said the white girl wouldn't testify because "[h]e was threatening her." (Tr. 453). When asked if Applicant mentioned co-defendant Polite, Bigelow stated, "He said that he had to kill the co-defendant because if he did then there wouldn't be the trial." (Tr. 451). Bigelow testified Applicant solicited Cedric "Savage" to kill Polite and hid a black pistol under the gearshift of a black Camry. (Tr. 452).

On cross-examination, she agreed Applicant "[p]romises but never delivers on his promises" and "talk[s] like he is going to do things and he doesn't ever actually do them." (Tr.

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453). She also agreed Applicant was upset about being accused of murder, worried about the trial, and felt he didn't commit the murder. (Tr. 454). When questioned about whether she had access to Applicant's discovery, she testified, "I wouldn't read his case." (Tr. 454-55). Bigelow admitted she attempted to pawn some of Applicant's jewelry for herself, but she disputed it was worth \$15,000. (Tr. 455-56). She recalled telling police Savage wouldn't commit a murder because he was "not that type of person," and "[i]t was discussed that they were gong to get another gun." (Tr. 456-57). Finally, when asked whether she knew the name "Travis" before talking to police, Bigelow replied, "I was pretty sure, because it started with a TR. And then I figured out that Travis was actually a co-defendant and then I figured out the rest."² (Tr. 458).

Investigator Dillon Hightower testified that after receiving information from Bigelow, he spoke to Cedric "Savage" McDuffy at the detention center about a black Toyota that had been impounded. (Tr. 460). Hightower verified he was speaking to the right person because he was told the person had "Savage" tattooed across his chest. (Tr. 461). After speaking with Savage, Hightower searched the Camry and found a handgun hidden under the gearshift. (Tr. 462-63).

In his defense, Applicant called as a witness Power's boyfriend Eugene Jabar, who recalled Power hiding at his trailer on the day of the shooting. (Tr. 494-95). Jabar testified Power hid a black bag full of money under his trailer that day. (Tr. 496-97). At the conclusion of trial, the jury

² Specifically, the following exchange occurred:

Q. Do you remember when you first started talking to law enforcement? . . . At the time you say you were hearing these things did you hear the name Travis or did you later come to understand whether the person being talked about may be Travis?

A. I was pretty sure, because it started with a TR. And then I figure out that Travis was actually a co-defendant and then I figured out the rest.

(Tr. 458).

Page 4 of 32 # 4

acquitted Applicant of kidnapping but convicted him of murder and, on the armed robbery indictment, the lesser-included offense of attempted armed robbery.

CURRENT APPLICATION

On June 27, 2019, Applicant timely filed this PCR application alleging:

(a) Ineffective Assistance of Trial Counsel:

- (i) Counsel failed to move for a change of venue and submit adequate voir dire based on the timing, location, and publicity of Antonio Brewer's murder.
- (ii) Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence.
- (iii) Counsel failed to interview critical witness(es) who could have challenged the credibility of the State's witness(es) and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial.
- (iv) Counsel failed to consult with an expert witness(es).
- (v) Counsel failed to interview witness(es) who could have testified regarding Applicant's good character and reputation and request a jury instruction on good character and reputation.
- (vi) Counsel failed to object to inadmissible and unduly prejudicial evidence.
- (vii) Counsel failed to object to the Court's jury instructions on circumstantial evidence and the lesser-included offense of attempted armed-robbery.
- (viii) Counsel failed to adequately object to and preserve the Court's improper recharge in response to a jury note requesting the definition of kidnapping and murder.
- (ix) Counsel failed to object to the jury's inconsistent verdicts acquitting Applicant of kidnapping but convicting him of murder and attempted armed robbery.

(b) Ineffective Assistance of Appellate Counsel: Counsel failed to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court after informing Applicant they would file the petition, thereby denying Applicant the opportunity to retain separate counsel.

(c) Due process: The State withheld favorable impeachment evidence. Specifically, it appears that a detective paid for witness Keamber Bigelow's tow bill prior to trial and that evidence was not disclosed to trial counsel.

As relief, Applicant requested his convictions be vacated and this case be remanded for a new trial.

On October 31, 2024, Applicant filed an amended Application alleging:

a. Ineffective Assistance of Counsel

- i. Counsel failed to move for a change of venue and submit adequate *voir dire* based on timing, location, and publicity of Antonio Brewer's murder;
- ii. Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence ;
- iii. Counsel failed to interview critical witness(es) who could have challenged the credibility of the State's witness(es) and could have undermined the State's evidence ;
- iv. Counsel failed to consult with expert witness(es) or call expert witness(es) to rebut the State's evidence;
- v. Counsel failed to interview witness(es) who could have testified regarding Applicant's good character and reputation;
- vi. Counsel failed to object to inadmissible and unduly prejudicial evidence;
- vii. Counsel failed to object to the Court's jury charge on circumstantial evidence and the lesser-included offense of attempted armed-robbery.
- viii. Counsel failed to adequately object to and preserve the Court's improper recharge in response to a jury note requesting the definitions of kidnapping and murder;
- ix. Counsel failed to object to inconsistent verdicts acquitting Applicant of kidnapping but convicting him of murder and attempted armed robbery;
- x.³ Counsel improperly conceded that the Court could instruct the jury that one of the two eyewitnesses to the shooting was deceased and unavailable to testify when the State sought to present evidence that Applicant had planned to have a hitman kill his Co-Defendant;
- xi.⁴ Counsel improperly stipulated the authenticity of a letter purportedly authored by Applicant to his Co-Defendant stating that he did not want the Co-Defendant to testify against him (which resulted in disciplinary proceedings against him);
- xii.⁵ Counsel failed to adequately cross-examine witness Keamber Bigelow regarding her personal knowledge of the allegation that Applicant hired a hitman to kill his Co-Defendant and threatened the State's key witness;
- xiii.⁶ Counsel improperly argued in closing, "We have to get to the truth", and referenced the truth numerous times during his closing argument by misstating and improperly shifting the State's burden of proof.
- iv.⁷ Counsel failed to object and move for a curative instruction when the

³ This was raised as allegation (a)(d)(ii).

⁴ This was raised as allegation (a)(d)(iii).

⁵ This was raised as allegation (a)(d)(iv).

⁶ This was raised as allegation (a)(d)(v).

⁷ This was raised as allegation (a)(d)(vi).

Prosecutor argued in closing, "We want the rest of the truth, the whole truth, the truth as it applies to Walter Oowee Tucker."

xv.⁸ Counsel failed to move for the Trial Court to instruct the jury on the lesser-included offense of voluntary manslaughter.

xvi.⁹ Counsel failed to object to the Court's charge that the jury could infer malice from the use of a deadly weapon as an unconstitutional comment on the facts.

b. Ineffective Assistance of Appellate Counsel:

i. Appellate Counsel failed to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court after informing Applicant that Counsel was filing the Petition, thereby denying Applicant an opportunity to hire separate counsel and to exhaust his direct appeal;

ii. Appellate Counsel failed to file a petition for writ of certiorari for our Supreme Court to review whether the trial court erred by denying Applicant's motion for a new trial and refusing to hold a full evidentiary hearing on the issue of whether Juror A committed misconduct.

iii. Appellate Counsel failed to file a petition for writ of certiorari for our Supreme Court to review whether the trial court erred by allowing witness Keamber Bigelow to testify about Applicant's purported plan to hire a hitman to kill his Co-Defendant and threaten the State's key witness Jessica Power.

c. Due process violation: the State violated Applicant's due process rights by withholding favorable impeachment evidence; specifically, a detective paid for Keamber Bigelow's tow bill prior to trial, and that evidence was not disclosed to trial counsel.

d.(i) Prosecutorial Misconduct: The Solicitor's Office committed prosecutorial misconduct by knowingly and intentionally failing to disclose that a critical witness for the State, Keamber Bigelow, requested that Darrell Allen Body Shop in North Carolina fax a tow bill for \$345.00 to a detective in South Carolina on October 23, 2014, and that the Detective paid the bill over the phone using a credit card the same day after the original trial date was continued on October 20, 2014;

a. It further appears that on October 22, 2014, the Solicitor paid \$1,100.00 to Leandra McDonald to stay at the Holiday Inn Express in Bluffton from October 13 through 21, 2014.

At the start of the hearing, Applicant waived allegation (a)(xi) as set forth above, related to

⁸ This was raised as allegation (a)(d)(vii).

⁹ This was raised as allegation (a)(d)(viii).

counsel's stipulation of a letter Applicant wrote while in jail. (PCR Tx. 6). Additionally, Applicant waived allegation (a)(iv) related to expert witnesses and allegation (a)(v) related to good-character witnesses. (PCR Tx. 35).

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, Applicant's appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses, closely pass upon their credibility, and weigh their testimony accordingly. 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 fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudiced applicant. Strickland v. Washington, 466 U.S. 668 (1984).

When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at

Page 8 of 32 #8

442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Change of Venue (a)(i)

Applicant first contends counsel was ineffective for not moving for a change of venue and submitting adequate voir dire based on timing, location, and publicity of Antonio Brewer's murder.¹⁰ Applicant did not prove this claim.

At the beginning of the PCR hearing, PCR counsel averred that had counsel requested additional voir dire questions, he would have potentially discovered an alleged juror issue that was raised as part of a post-trial motion (and again on appeal).¹¹ (PCR Tx. 8). Critically, the trial court *did* question the jury about whether anyone was related by blood or marriage or had a "close personal or social relationship" with potential witnesses Jones and Brewer (Tr. 34, 36, 38), but no juror indicted they knew Jones or Brewer. (Tr. 36-43). Likewise, the court questioned whether anyone had read, heard, or seen anything about this case through media, internet, or "your next door neighbor" (Tr. 60); whether anyone had formed an opinion about any issue or matter involved

¹⁰ Brewer was an eyewitness to this murder and testified at the co-defendant's trial. Brewer was killed about two weeks before Applicant's trial. The State did not introduce evidence that Brewer had been killed; rather, the jury only heard that he was deceased.

¹¹ In his post-trial motion, Applicant sought a new trial based on alleged intentional concealment of Juror A—whom he averred knew potential State witnesses Brewer and Quornisha Jones. Applicant submitted an affidavit from Jones alleging she was "co-worker and friends" with Juror A, and Juror A was friends with Brewer. However, Juror A submitted an affidavit denying she was friends with Jones or Brewer or that she had discussed this case with either of them. The circuit court's finding that Applicant did not prove juror misconduct was affirmed on the merits by the Court of Appeals.

in the case (Tr. 61), and whether anyone was aware of any bias or prejudice they may have towards Applicant. (Tr. 61). The foregoing was sufficient to elicit information about whether anyone knew Jones and Brewer or had prior knowledge of the case, and prevailing professional norms did not require counsel to request additional voir dire questions. Prevailing professional norms likewise did not require counsel to foresee that Jones would submit an affidavit post-trial attesting she knew Juror A. See Strickland, 466 U.S. at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."). Counsel's performance was reasonable under prevailing professional norms, and Applicant has not set forth what additional questions counsel should have requested¹² that would have caused Juror A to respond differently. Applicant thus did not prove deficiency.

Further, Applicant did not prove prejudice. Critically, as part of the post-trial motion, Juror A submitted an affidavit stating she was NOT personal friends with Jones or Brewer, she had not discussed the case with Jones or Brewer, and she had not had any conversations where she blamed Tucker for Brewer's death. Based on this affidavit—which the general sessions court implicitly found more credible than Jones's affidavit—it is not reasonably likely any additional questions about Brewer (or Jones) would have changed Juror A's responses to voir dire—especially when she issued an affidavit after the fact attesting she was not friends with Jones or Brewer and had not discussed the case with them. Applicant did not submit any evidence showing Juror A would have

¹² In allegation (a)(d)(ii) of the amended application, Applicant alleges counsel was ineffective for stipulating that Brewer was deceased. In light of this allegation, it is unclear what additional questions Applicant believes counsel should have asked that would have caused Juror A to respond differently but would not have tipped the jury off to the fact Brewer was deceased. In other words, asking the jurors specifically if they had heard of Brewer's murder would have alerted them to Brewer's death—the very thing Applicant alleges counsel was ineffective for stipulating to.

responded differently to different questions and thus did not prove prejudice.

To the extent Applicant argues counsel should have requested additional questions to further support a motion to change venue, the Court questioned jury about whether anyone had read, heard, or seen anything about the allegations “on TV or radio or Internet or newspapers, any kind of publications, or your next door neighbor,” but no one stood.¹³ (Tr. 60-61). This question was broad enough to encompass whether anyone had heard media coverage or rumors about this case, and Applicant did not prove counsel was deficient for not requesting additional questions, nor did Applicant prove prejudice from counsel’s failure to do so.

Finally, because no one stood, Applicant cannot demonstrate a valid basis for requesting a change of venue based on pretrial publicity. See State v. Evins, 373 S.C. 404, 412–13, 645 S.E.2d 904, 908 (2007) (“When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial. Therefore, mere exposure to pretrial publicity does not automatically disqualify a prospective juror. The relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. It is the defendant’s burden to demonstrate actual juror prejudice as a result of such publicity.” (internal citations omitted)); Sheppard v. State, 357 S.C. 646, 655, 594 S.E.2d 462, 467 (2004), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) (finding, in a case where eighty-two of the eighty-seven potential jurors indicated they were exposed to pretrial publicity, that “[t]he trial court

¹³ Although Juror 7 stood, he relayed he stood in response to the Court’s prior question, “Has any member of the jury panel ever been interviewed by law enforcement and provided a written statement or recorded statement concerning your witnessing of an event that caused law enforcement to interview you; if so, please stand.” (Tr. 59-61). Juror 7’s response consistent with him answering the prior question.

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properly denied petitioner's motion for a change of venue because petitioner did not show extraordinary circumstances why this decision should be disturbed given the adequacy of the voir dire examination of the jurors"). Because no one stood in response to questions about pre-trial publicity, counsel's failure to move to change venue was not below prevailing professional norms, nor is it reasonably probable a motion to change venue would have been granted. Applicant thus did not prove this ground.

Failed to investigate and interview witnesses (a)(ii), (iii)

Applicant next contends counsel was ineffective for not conducting a reasonable investigation and developing all available, relevant, and admissible or mitigating evidence. Applicant likewise asserts counsel was ineffective for not interviewing critical witnesses who could have challenged the credibility of the State's witnesses or undermined the State's evidence. Applicant did not prove this ground.

At the PCR hearing, Ferguson and Wright testified about their investigation, which included obtaining funds for and utilizing an investigator, interviewing witnesses, and calling as a witness Jabbar. Based on this credible testimony, counsel's investigation was reasonable under prevailing professional norms and not deficient. Further, counsel called Power's boyfriend as a witness to contradict Power's testimony and undermining her credibility. (Tr.494; PCR 40). This strategy worked to an extent because the jury acquitted Applicant of kidnapping—indicating it did not believe *everything* Power said. Viewed objectively and from counsel's perspective at the time of trial—as Strickland requires—counsel's performance was reasonable under prevailing professional norms and not deficient.

Finally, Applicant did not present any evidence of what an additional investigation would have uncovered that would have had a reasonable probability of changing the outcome. Although

he called his mother at the PCR hearing,¹⁴ the crux of her testimony was that the solicitor's office paid Bigelow's tow bill. Much of Applicant's mother's testimony would have been inadmissible at trial, and testimony that the solicitor's office paid Bigelow's tow bill would have only been useful for further impeachment of Bigelow. This Court finds Applicant did not prove by a reasonable probability the outcome would have been different had counsel called Applicant's mother to impeach Bigelow or further impeached Bigelow with the tow bill—especially here where Bigelow admitted she provided the statement to law enforcement *before she even knew her car had been towed*. In other words, it is not reasonably probable the jury would have believed Bigelow was induced to lie by the payment of this tow bill when Bigelow didn't know her car had been towed at the time she provided the statement. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to object to inadmissible and unduly prejudicial evidence (a)(vi)¹⁵

Applicant asserts counsel was ineffective for not objecting to inadmissible and unduly prejudicial evidence. Other than the Rule 404(b) evidence—which *was* objected to and raised on appeal—Applicant has failed to set forth with clarity what counsel should have objected to. Applicant thus has failed to prove deficiency or prejudice, and this claim is denied.

Failed to object to circumstantial evidence charge (a)(vii)

Applicant asserts counsel was ineffective for not objecting to the Court's charge on circumstantial evidence. Applicant did not prove this ground. At trial, the Court charged the

¹⁴ Applicant also called Bigelow, who was a witness for the State at trial. To the extent she recanted her trial testimony, this Court notes—consistent with Bigelow's PCR testimony—that she provided her statements to law enforcement *before* she became aware that her car was towed. (PCR 65). This Court finds the recantation of her trial testimony not credible. This issue is addressed more thoroughly below.

¹⁵ As set forth above, Applicant waived allegations (a)(iv) and (a)(v). (PCR Tx. 35).

following circumstantial evidence charge:

Typically speaking there are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence.

Direct evidence is testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes no distinction between the weight or the value to be given to either direct or to circumstantial evidence nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in this case and after weighing all of the evidence in this case if you are not convinced of the guilt of the defendant beyond a reasonable doubt you must find the defendant not guilty.

(Tr. 613). This was preceded by a proper reasonable doubt charge (Tr. 612) and was a proper charge under the law that existed at the time of Applicant's April 2015 trial. See, e.g. State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997); State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). In fact, this charge is virtually identical to the charge given in Logan—which was affirmed on appeal. 405 S.C. at 90, 747 S.E.2d at 447. Because the charge was proper, there was no basis for counsel to object. Applicant did not set forth in his application or at the PCR hearing any valid objection to this charge and thus did not prove deficiency or prejudice.¹⁶ This claim is thus denied.

¹⁶ To the extent Applicant asserts counsel should have requested the additional language *permitted* by Logan—an allegation that was not raised at the PCR hearing—the Logan court did not mandate the additional language be requested or given. Rather, Logan (in dicta) merely modified prior caselaw to provide that *if requested*, the Court should charge:

AA #14

Failed to object to lesser-included charge of attempted armed robbery (a)(vii))

Applicant contends counsel was ineffective for not objecting to the Court's charge on the lesser-included offense of attempted armed robbery. Applicant did not prove this ground. At the PCR hearing, counsel could not recall a strategic reason for not objecting on the record to the attempted armed robbery charge, but he recalled discussing charges in chambers and believed the State requested the attempted armed robbery charge. Although counsel could not recall a strategic reason for not objecting, it is Applicant's burden to overcome the strong presumption that counsel's performance was effective. See Butler, 286 S.C. at 442, 334 S.E.2d at 814 ("Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." (citing Strickland, 466 U.S. at 690)); Cherry, 300 S.C. at 118, 386 S.E.2d at 625 ("The defendant is required to overcome the presumption that counsel was effective in order to receive relief."). Here, Applicant did not articulate *any* objection that could have been raised to the attempted murder charge in either his application or at the PCR hearing other than a generic, general assertion that counsel should have objected. Applicant thus did not meet his burden of proving deficiency.

[T]o the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicions, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Logan, 405 S.C. at 100, 747 S.E.2d at 452-53. Critically, Logan affirmed the conviction and the ongoing propriety of the Grippon and Cherry charges even though the foregoing language was not charged—showing the language is not critical to a proper jury charge. Here, where the reasonable doubt and circumstantial evidence charges were correct, there was no basis to object. Likewise, because the reasonable doubt charge was correct, there is no reasonable probability the additional foregoing language would have changed the outcome of trial.

Likewise, because evidence supported the charge, it is not reasonably probable an objection would have changed the outcome. Specifically, although Power testified she gave Applicant the money in her purse after he demanded it (Tr. 255, 257), Jabar testified Power hid a bag of money under his trailer shortly after the shooting. (Tr. 494-97). The foregoing was sufficient to support an attempted armed robbery charge. Because evidence supported the charge, it is not reasonably probable an objection would have caused the trial court to omit the charge or led to a different outcome. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to adequately object to improper recharge in response to jury note (a)(viii)

Applicant asserts counsel was ineffective for not adequately objecting to and preserving the Court's improper recharge in response to a jury note requesting the definitions of kidnapping and murder. This allegation lacks merit. Here, counsel *did* object to the Court's decision to recharge the jury after it sent notes requesting the definitions of kidnapping and murder. (Tr. 625-26). Thus, this issue was properly before the trial court and preserved for appellate review. Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to object to inconsistent verdict (a)(ix)

Applicant contends counsel was ineffective for not objecting to what he contends were inconsistent verdicts, wherein the jury acquitted him of kidnapping but convicted him of attempted armed robbery. Applicant did not prove this ground. At trial, Power testified she and Victim went to a trailer to purchase drugs from Applicant; once she entered the trailer, Applicant slammed and locked the door (before Victim could enter), pointed a gun at her, and said "give me the money you stupid white bitch." (Tr. 254-55). She testified Applicant took her purse and looked for money, but "he was not able to find the money. So he threw the purse back and me and told me to give him the money. And so I got the money out of my purse and handed it to him." (Tr. 255). Power

stated she "was laying face down on the floor," and the other individual in the home (Polite) asked Applicant for a gun. She testified Applicant gave Polite a gun, Polite ran outside, and Power heard a gunshot. Power continued, "[A]fter the gunshot [Applicant] jumped up and he ran outside, and I heard multiple gunshots." (Tr. 255).

Critically, the jury could believe all or only a portion of Powers' testimony.¹⁷ Because the jury could believe Applicant demanded money at gunpoint and then ran outside shooting but disbelieve that Applicant restrained Power, the verdicts were not inconsistent. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Improperly conceded Court could instruct jury that one of the eyewitnesses was deceased (a)(x)

Applicant avers counsel was ineffective for improperly instructing the jury that eyewitnesses Antonio Brewer was deceased. Applicant did not prove this ground.

At the PCR hearing, counsel testified Brewer owned the trailer where Applicant and Polite were hanging out prior to the shooting, and the State had planned to call Brewer as a witness at Applicant's trial. However, shortly after Polite's trial (where Brewer testified), Brewer was killed. Counsel testified, "I remember, certainly, being very concerned about the State referring to the fact that a witness was killed so close in time. And so I know we objected to the State doing so. And I want to say that the Judge agreed and—and suggested a compromise of saying that one of the two witnesses were deceased without drawing any further attention to the issue." (PCR Tx. 24; Tx. 76-81). As a result, defense counsel stipulated that Brewer was deceased and unavailable. When questioned about his strategic reason, counsel explained, "[I]t was to lessen the impact of it being disclosed in another way or a more prejudicial manner. And so I think that—that the reason

¹⁷ The fact Applicant was convicted of the lesser-included offense of attempted armed robbery rather than armed robbery shows the jury did not believe everything Power said.

was that to avoid the possibility of the State being able to say that a witness was killed—murdered—and so—versus just unavailable.” (PCR Tr. 25).

Here, counsel articulated a valid strategic reason for stipulating that Brewer was deceased. Based on the trial transcript, the State initially sought to submit evidence that Brewer “was killed in front of his home three weeks ago and that it is an open investigation.” (Tr. 78). Counsel requested the jury be instructed only that Brewer was unavailable. (Tr. 78-79). The State objected to merely saying the witness was unavailable and suggested, as a compromise, that the jury be instructed Brewer was deceased. The Court indicated that was what it had already planned to do.¹⁸ (Tr. 80-81). In light of the foregoing, counsel’s decision to stipulate that Brewer was deceased was reasonable under prevailing professional norms and not deficient. Critically, counsel made a compromise that prevented the jury from hearing Brewer had been murdered. Likewise, based on the transcript, the trial court considered both sides’ arguments and decided to instruct that Brewer was deceased. Applicant did not set forth any additional argument or objection that had a reasonable probability of changing the outcome and thus did not prove deficiency or prejudice.

Failed to adequately cross-examine Keamber Bigelow (a)(xi)¹⁹

Applicant avers counsel was ineffective for failing to adequately cross-examine witness Keamber Bigelow regarding her personal knowledge of the allegation that Applicant hired a hitman to kill Polite and threatened Power. Applicant did not prove this ground.

This Court finds counsel’s cross-examination of Bigelow was reasonable under prevailing

¹⁸ The transcript indicates this issue was discussed in chambers prior to being put on the record. (Tr. 7 ln. 11-12).

¹⁹ Applicant conceded issue (a)(d)(iii) of his amended application (related to stipulating to the authenticity of a letter), which is set forth as (a)(xi) above.

AA #18

professional norms. Specifically, counsel questioned Bigelow about whether she had access to Applicant's discovery in this case (Tr. 454-55); and whether she told law enforcement that Savage would not commit a murder and she wasn't sure the gun would be used in a murder (Tr. 456-58). He likewise questioned her about whether she had come into possession of some of Applicant's jewelry and pawned it for herself, and he used her response during closing argument to infer that she stole Applicant's necklace. (Tr. 455-56, 562).²⁰ Finally, counsel cross-examined Bigelow about whether she actually knew the name "Travis" or heard it from somewhere else. (Tr. 458). A review of the transcript shows counsel's cross-examination of Bigelow was reasonable under prevailing professional norms and not deficient.

Further, at the PCR hearing, Bigelow acknowledged telling police that Applicant "had hired a hitman to kill a co-defendant." (PCR Tr. 65). Trial counsel Ferguson credibly summarized Bigelow's statements to law enforcement as follows:

Mr. Tucker was not concerned about Ms. Powers; that he did not think she would testify because she had been threatened; and that she testified about a plot to hire a co-defendant, Travis Polite. She also made statements—she also gave a statement attributed to Mr. Tucker, said that Mr. Tucker told her that he didn't have any involvement with the murder. But that there was some uncertainty because his adrenaline was high, he was running and shooting at the same time, and he wasn't sure. And so that statement was the only statement . . . that statement put Mr. Tucker at the scene of the murder and . . . allegedly admitting to firing a weapon.

(PCR 22, emphasis added). Likewise, Investigator Dylan Hightower credibly testified Bigelow (1) told police they had been in Savannah raising money to purchase weapons, (2) told police Applicant "was there to attempt to possibly take out or put out a hit on his co-defendant, Tavis

²⁰ During closing, counsel argued, "[S]he stole his jewelry. She admits to you she stole his jewelry. She disputes whether it was worth 15,000, but she stole his jewelry." (Tr. 562).

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Polite," (3) provided information about Cedrick Savage McDuffie, and (4) told police Applicant had put a gun in the console of a Toyota Camry he rented. (PCR Tr. 82-84). Hightower also credibly testified he obtained a search warrant for the Toyota, "disassembled the console area[,] and located the firearm that she described to a T."²¹ (PCR 82-83). Because Bigelow's trial testimony about Applicant threatening Power and planning to kill Polite was consistent with her statements to police, counsel's cross-examination was reasonable under prevailing professional norms and not deficient. Likewise, because her testimony was consistent with her police statements, it is not reasonably probable the outcome would have been different had counsel further cross-examined her about Applicant threatening Power and planning to kill Polite. Applicant thus did not prove deficiency or prejudice, and this claim is denied.²²

Truth-seeking language (a)(xiii),(xiv)

Applicant contends counsel improperly argued in closing, "We have to get to the truth," and referenced truth numerous times during his closing argument, which he contends misstated

²¹ Investigator Hightower also testified at trial about recovering a gun hidden in the console of the Camry that Savage had rented. (Tr. 460-61, 463-66).

²² In a proposed order granting relief submitted to this Court, Applicant relied on Bigelow's post-trial recantation testimony in the discussion on counsel's cross-examination of Bigelow. This Court finds Applicant did not clearly raise recantation as a ground. Nonetheless, the law regarding recanting witnesses requires recantation testimony to be subjected to close scrutiny. See, e.g., State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial."). The fact that Bigelow recanted her trial testimony years after trial does not make counsel deficient for not getting her to recant at the time of trial. Further, *had* she recanted at trial, the State could have impeached her with her statement to law enforcement, which was consistent with her trial testimony that Applicant hired a hitman to kill Polite. (PCR Tr. 65, 82-84). Finally, the State independently corroborated Bigelow's statement about "Savage" and a gun in the car and presented that to the jury through the Hightower. (Tr. 460-64). Although Applicant did not raise an issue related to recantation, this Court finds Bigelow's recantation *not credible* based on her statement to law enforcement—which was consistent with her trial testimony—as well as the independent corroboration of the statement by Hightower.

and improperly shifted the State's burden of proof. He likewise contends counsel failed to object and move for a curative instruction when the solicitor argued, "We want the rest of the truth, the whole truth, the truth as it applies to Walter Oowee Tucker." Applicant did not prove this ground.

As a matter of law, these statements did not shift the burden of proof because they were not made in conjunction with the trial court's charge on reasonable doubt or circumstantial evidence. See State v. Beaty, 423 S.C. 26, 33, 813 S.E.2d 502, 506 (2018)²³ ("In Aleksey,^[24] we found there was no reversible error because the "seek the truth" language was charged in conjunction with the credibility of witnesses charge, and not with either the reasonable doubt or circumstantial evidence charges."); id. (finding no prejudice in court's truth-seeking comments because "they were a mere statement to the jury and not a charge on the law" and "were not linked to either the reasonable doubt or the circumstantial evidence charges").

Further, these statements were made by *attorneys* rather than the court, and Applicant has not pointed to any case that indicates an attorney cannot argue truth-seeking language. Cf. State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) ("[W]e instruct the *trial judge* to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. Such a charge could effectively alter the jury's perception of

²³ Beaty was decided *after* Applicant's trial. However, even under Beaty, Applicant's allegation fails as a matter of law.

²⁴ State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251–52 (2000) ("While we have urged trial courts to avoid using any "seek" language when charging jurors on either reasonable doubt or circumstantial evidence (see State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)), the "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility."); id. at 28–29, 538 S.E.2d at 252 (finding no "reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt" when the "instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses").

the burden of proof . . .” (emphasis added); State v. Beatty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (“[A] *trial judge* should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.” (emphasis added)); State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019) (noting that although it is improper for a court to charge that malice may be inferred by the use of a weapon, attorneys are free to argue the existence of malice based on a weapon or the absence of malice based on the lack of a weapon); id. at 503, 832 S.E.2d at 583 (“It is axiomatic that some matters appropriate for jury argument are not proper for charging.”). Because no law prohibits the use of truth-seeking language by attorneys, counsel was not deficient. See Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) (“Fundamentally, a collateral review proceeding is ill-suited for announcing a new rule of substantive law This is especially true in a retrospective PCR analysis under Strickland, which seeks to determine whether counsel was ineffective *at the time of the alleged error*.”).

Finally, Applicant cannot demonstrate prejudice. The trial court correctly admonished the jury that it must accept the law as provided by the court, and the trial court did not use truth-seeking language as not a part of its circumstantial evidence or reasonable doubt charges. (Tr. 610, 612–13). Because the truth-seeking language was not a part of the court’s charge, it did not shift the burden of proof. Thus, as a matter of law, Applicant cannot demonstrate prejudice.

Lesser-included offense – Voluntary manslaughter (a)(xv)

Applicant next contends counsel was ineffective for not requesting the lesser-included offense of voluntary manslaughter. This allegation lacks merit. At the PCR hearing, counsel testified there were no eyewitnesses to the actual shooting, and Applicant would have had to testify to establish legal provocation. However, he stated there was a risk to Applicant testifying in that it

[Handwritten signature] # 22

could have opened the door to other evidence that would have been otherwise inadmissible, including allegations that Applicant and Bigelow were involved in prostitution. (PCR Tx. 37-38). Finally, counsel credibly testified he proceeded on a strategy of mere presence (PCR Tr. 166) and “needed to avoid any inference of trying to put a gun in his hand or acknowledging anything that says he had a gun, fired any shots, or anything.” (PCR Tr. 165). He averred a “justification defense could come back to bite us.” This Court finds no evidence supported a voluntary manslaughter charge. This Court likewise finds counsel articulated a strategic reason for not eliciting evidence from Applicant that may have supported voluntary manslaughter. Because no evidence supported the charge and counsel had a valid reason for not eliciting evidence to support the charge, Applicant failed to prove deficiency or prejudice, and this claim is denied.

Inferred malice charge (xvi)

Applicant contends counsel was ineffective for failing to object when court charged, “Inferred malice . . . may arise when the deed is done with a deadly weapon.” (Tr. 619). However, this was a correct statement of law at the time of trial and under the evidence presented in this case. See State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009), *overruled by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (“[W]here evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon. The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill.” (internal footnote omitted) (emphasis added)).²⁵

²⁵ No evidence was presented at trial that would reduce, mitigate, excuse, or justify this murder.

Because this was correct statement of law at the time of trial, counsel was not deficient for not objecting. See Chappell v. State, 429 S.C. 68, 79, 837 S.E.2d 496, 501-02 (Ct. App. 2019) ("For an ineffective assistance claim, the PCR court must determine whether counsel was ineffective at the time of the alleged error. Thus, the court must consider the law as it existed at the time of trial and not as it has evolved today Accordingly, trial counsel will not be found deficient for failing to be clairvoyant or anticipate changes in the law" (internal citations and quotation marks omitted) (alterations in original)); Strickland, 466 U.S. at 690 ("[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.").

Although Burdette subsequently overruled Belcher, Burdette had not been decided at the time of trial. Further, Burdette specifically provided it does not apply to PCR actions. See Burdette, 427 S.C. at 505, 832 S.E.2d at 583 ("[T]oday's ruling will not apply to convictions challenged on post-conviction relief."). Because effectiveness under the Sixth Amendment does not require counsel to anticipate changes in the law, and because the implied malice charge was proper at the time of trial, counsel's failure to object was not deficient. Thus, this claim fails as a matter of law.

Ineffective assistance of appellate counsel

Applicant claims appellate counsel was infective for failing to file a Petition for Writ of Certiorari in the South Carolina Supreme Court (i) after informing Applicant that counsel would file the petition, thereby denying Applicant an opportunity to hire separate counsel and to exhaust his direct appeal; (ii) to review whether the trial court erred by denying Applicant's motion for a new trial and refusing to hold a full evidentiary hearing on the issue of whether Juror A committed

misconduct; and (iii) to review whether the trial court erred by allowing Bigelow to testify about Applicant's purported plan to hire a hitman to kill his Co-Defendant and threaten Power.

However, Applicant's claims against appellate counsel all relate to discretionary review, and the Sixth Amendment does not apply to discretionary review. See Folkes v. Nation, 34 F.4th 258, 273 (4th Cir. 2022) ("The Supreme Court [of the United States] has drawn a bright line regarding the constitutional right to counsel between an initial appeal as of right and a subsequent, discretionary appeal. Defendants do not have a constitutional right to counsel to pursue discretionary state appeals or applications for review in the supreme court."); id. (explaining an ineffective assistance of counsel claim cannot be brought based on counsel's failure to file a petition for rehearing from a Court of Appeals decision."); Douglas v. State, 369 S.C. 213, 631 S.E.2d 542 (2006) ("We decline to impose a duty on appellate counsel to pursue rehearing and/or certiorari following the decision of the Court of Appeals in a criminal direct appeal."). Thus, as a matter of law, Applicant has not alleged a constitutional violation by appellate counsel and has failed to prove this ground.

Prosecutorial Misconduct

Applicant contends the solicitor knowingly and intentionally failed to disclose it paid a tow bill for witness Keamber Bigelow. Alternately, he avers the withholding of this payment violated due process. He also alleges the solicitor's office committed prosecutorial misconduct by paying hotel costs for Bigelow and Leandra McDonald when they were in South Carolina for Applicant's initial trial (that was continued). Applicant did not prove this ground.

In Brady v. Maryland, 373 U.S. 93 (1963), the United States Supreme Court examined whether the prosecution's failure to disclose a codefendant's statement wherein he admitted to committing the homicide violated due process. In concluding the suppression of the codefendant's

statement violated due process, the Court held “the suppression by the prosecution of evidence favorable to an accused upon request violates due process *where the evidence is material either to guilt or to punishment*, irrespective of the good faith or bad faith of the prosecution. *Id.* at 87 (emphasis added).

In Giglio v. United States, 406 U.S. 150 (1982), the United States Supreme Court examined whether the State’s failure to disclose a promise to a witness violated due process. There, a prosecutor promised a witness that “if he testified before the grand jury and at trial he would not be prosecuted.” *Id.* at 152. However, a different prosecutor prosecuted the case and elicited testimony from that witness that no promise had been made in exchange for his testimony. *Id.* at 151-52. The Supreme Court concluded that due to the importance of the witness’s testimony—without which “there could have been no indictment and no evidence to carry the case to the jury”—any “evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it.” *Id.* at 154-55. The Court elucidated:

We do not, however, automatically require a new trial whenever ‘a combing of the prosecutors’ files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict . . .’ United States v. Keogh, 391 F.2d 138, 148 (CA2 1968). A finding of materiality of the evidence is required under Brady, supra, at 87, 83 S.Ct., at 1196, 10 L.Ed.2d 215. A new trial is required if ‘the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . .’ Napue, supra, at 271, 79 S.Ct., at 1178.

Id. at 154 (emphasis added).

In United States v. Bradley, the United States Supreme Court applied the prejudice standard from Strickland for courts determining the materiality of undisclosed impeachment evidence: “The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A “reasonable probability”

is a probability sufficient to undermine confidence in the outcome.” 473 U.S. 667, 682 (1985).

At the PCR hearing, trial counsel Ferguson testified Bigelow first provided a statement to law enforcement in Georgia—*before* speaking with South Carolina law enforcement or solicitors. (PCR 38). Trial counsel Ferguson credibly summarized Bigelow’s statements to law enforcement:

Mr. Tucker was not concerned about Ms. Powers; that he did not think she would testify because she had been threatened; and that she testified about a plot to hire a co-defendant, Travis Polite. She also made statements—she also gave a statement attributed to Mr. Tucker, said that Mr. Tucker told her that he didn’t have any involvement with the murder. But that there was some uncertainty because his adrenaline was high, he was running and shooting at the same time, and he wasn’t sure. And so that statement was the only statement . . . that statement put Mr. Tucker at the scene of the murder and . . . allegedly admitting to firing a weapon.

(PCR 22).

Likewise, Bigelow recalled first meeting with Georgia law enforcement in Savannah, Georgia, after informing them that Applicant had kidnapped her. (PCR 63-65). Thereafter, she spoke to Investigator Hightower from Beaufort County and provided a statement; she clarified that when she provided that statement, she did not know her car had been towed. (PCR 64-65). Bigelow agreed she told law enforcement that Applicant hired a hitman to kill Polite. (PCR 65). She further admitted the solicitor’s office never gave her a check or money. (PCR 56-57). However, she stated the solicitor’s office paid her and McDonald’s hotel room and food when they were subpoenaed for Applicant’s initial trial, and a tow bill she incurred while she was in Beaufort awaiting the initial trial. Although Bigelow testified McDonald paid her light bill and phone bill using a gift card, Bigelow did not know where that card came from.

Investigator Dillon Hightower testified he first learned about Bigelow and McDonald from detectives in Savannah, Georgia on October 13, 2014—seven days before Applicant’s initial trial

was scheduled to begin.²⁶ (PCR 80-81). Hightower and Investigator Heaton traveled to Savannah to interview Bigelow and McDonald; those interviews were audio and video recorded. (PCR 81). During the interviews, Hightower learned they were in Savannah raising "money to purchase weapons," and Applicant "was there to attempt to possibly take out or put out a hit on his co-defendant, Travis Polite." (PCR 81). Hightower explained they arranged for Bigelow and McDonald to stay in a hotel in Bluffton; the following day (October 14), law enforcement and an assistant solicitor interviewed Bigelow and McDonald again. (PCR 82). Hightower testified the solicitor's office subpoenaed Bigelow and McDonald for Applicant's trial, which was scheduled to begin October 20. The State also provided McDonald two checks on October 17, 2014, totaling \$424; the checks were paid as per diem rates for the time McDonald and Bigelow were awaiting trial as potential witnesses. (PCR 73). Hightower stated both of their payments were made to McDonald because Bigelow did not have a drivers' license. (PCR 71-72).

Deputy Solicitor Thornton testified he learned about Bigelow and McDonald after Hightower spoke to them in Savannah, and he subpoenaed them for Applicant's trial that was scheduled the following week. Thornton arranged for them to stay in a hotel in Beaufort because he was concerned that due to their transient lifestyle, he would not be able to locate them the following week. He testified the State paid the hotel bill because Bigelow and McDonald were subpoenaed for Applicant's trial. (PCR 100, 117). Thornton testified it is common for the State to reimburse witness expenses, including hotel costs, travel expenses, and a per diem rate of around \$30-\$35 per day. (PCR 101-02, 112, 118-19). He agreed McDonald received two checks on October 17, 2014, totalling \$224, which represented McDonald's and Bigelow's per diem payments. Thornton later authorized the payment of Bigelow's tow bill—which was incurred on

²⁶ That trial was continued.

October 17, 2014—because it was an expense Bigelow incurred due to being subpoenaed and remaining in South Carolina for Applicant's trial. (PCR 100-01). He clarified he did not learn about the tow bill until *after* Applicant's first trial was continued and Bigelow contacted them sometime between October 20-23, 2014. (PCR 98-99).

a. The payments were not material, and thus Applicant failed to show a Brady or due process violation.

Here the reimbursement of fees incurred by the witnesses was not material to Applicant's guilt or innocence. The *only* potential value this information could have had for the defense would have been to further impeach Bigelow. However, based on the timing of Bigelow's statements and Investigator Hightower's independent corroboration of them, it is not reasonably likely the outcome would be different had the reimbursement of these fees been disclosed to the defense. Thus, Applicant has not shown a Brady or due process violation. See Giglio, 406 U.S. at 154 ("We do not, however, automatically require a new trial whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict' A finding of materiality of the evidence is required under Brady. A new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury" (emphasis added) (alterations in original) (internal citations omitted)); Bradley, 473 U.S. 682 ("The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome."); Kyles v. Whitley, 514 U.S. 419, 436–37 (1995) ("[T]he Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense. We have never held that the Constitution demands an open file policy (however such a policy might work out in practice), and the rule in Bagley (and, hence, in Brady) requires less of the prosecution

than the ABA Standards for Criminal Justice, which call generally for prosecutorial disclosures of any evidence tending to exculpate or mitigate." (internal citation omitted)).

Critically, Bigelow provided statements to law enforcement *prior to* incurring the expenses that were reimbursed by the State. She provided the statements on October 13 and 14 but did not incur the tow bill until October 17. As Deputy Solicitor Thornton explained, if Bigelow had testified inconsistently with the statements, he would have impeached her with the prior statement using Rule 613(b), SCRE. Because the statements were obtained prior to the tow bill and other expenses, the impeachment value of these payments was minimal such that there is no reasonable probability the outcome would have been different had counsel used this as impeachment at trial.

Further, Investigator Hightower independently corroborated Bigelow's statements. Hightower explained that Bigelow indicated they rented a Toyota Camry and Applicant hid a gun in a compartment "that no one would find." (PCR 82-84). Hightower located the Camry, executed a search warrant, "disassembled the console area and located the firearm that she described to a T." (PCR 83).

At most, evidence that the State reimbursed Bigelow's tow bill, hotel bill, and food costs could have been used for further impeachment. These reimbursements, however, would not have led to the exclusion of Bigelow's testimony. Because Bigelow provided her statement prior to incurring these expenses and her statements were independently corroborated, it is not reasonably probable the outcome would have been different had counsel impeached Bigelow with the reimbursement of these expenses. The reimbursement of these fees was not material to the defense, and Applicant has failed to show a due process violation or prejudice.

b. The timeline of the statements and independent corroboration does not support a finding that the State elicited fabricated testimony.

As framed, Applicant's allegations relate to the State's failure to *disclose* the reimbursement of these expenses rather than the State's reimbursement of these expenses in and of itself. Nonetheless, this Court finds nothing nefarious about the State's reimbursement of these fees, which were incurred by the witnesses while they remained in Beaufort awaiting Applicant's initial trial. Unlike Giglio, there is no evidence that the State elicited fabricated testimony or failed to correct any misstatement by a witness. Rather, the State reimbursed expenses that were incurred *after* Bigelow provided her initial statement to police and as a direct result of Bigelow remaining in Beaufort for Applicant's trial. (PCR 73-74, 85).

The reimbursement of the fees did not amount to prosecutorial misconduct or a violation of due process. Rather, as Solicitor Thornton credibly testified, McDonald and Bigelow were subpoenaed for Applicant's trial, and lodging is an expense commonly paid to subpoenaed witnesses. Solicitor Thornton further credibly explained he authorized the payment of the hotel for the timeframe leading up to trial because he was concerned that due to their transient lifestyle, he would not be able to locate McDonald and Bigelow the following week. This Court finds this was a reasonable payment, and nothing indicates the hotel bill was paid as a means of procuring fabricated or false testimony. Likewise, although the payment of the tow bill was not a common witness expense, Hightower testified the description on the voucher stated, "Witness was in our jurisdiction assisting with investigation and subpoenaed to testify. During the witness time in South Carolina, her vehicle was towed from Defendants' residence." This corroborates Thornton's testimony that he authorized payment of the tow bill because the car was towed while Bigelow was in South Carolina awaiting Applicant's trial—for which she was subpoenaed to testify. This

Court thus finds the payment of the fees did not violate due process or amount to prosecutorial misconduct. Applicant has thus failed to prove this allegation, and it is denied.

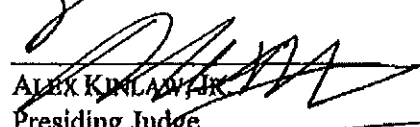
CONCLUSION

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 17 day of Feb, ~~2021~~ 2024


ALEX KINLAW, JR.
Presiding Judge
Fourteenth Judicial Circuit

Culla, South Carolina

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP0701498**

Walter Tucker		South Carolina State Of	
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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/ A. Kinlaw, Jr
Circuit Court Judge

2763
Judge Code

2/2026
Date

For Clerk of Court Office Use Only

This judgment was entered on February 9, 2026, and a copy mailed first class or placed in the appropriate attorney's box on February 10, 2026, to attorneys of record or to parties (when appearing pro se) as follows:

Dayne C. Phillips 1614 Taylor Street Suite D 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-Fileers 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.

