

VOLUME III of III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
Kristi Lea Harrington, Circuit Court Judge

RECEIVED

AUG 27 2015

S.C. Supreme Court

JEFFREY WAYNE RIEBE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000015

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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(c) N/A
6. Check whether a finding of guilty was made:

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty YES, A FIND OF JURY GUILTY
- (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. SOUTH CAROLINA COURT OF APPEALS
- ii. N/A
- iii. N/A

(b) the result in each such Court to which you appealed:

- i. AFFIRMED MURDER, MURDER
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. JUNE 26, 2013 remitted should be 15 days later
- ii. N/A
- iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. APPELLATE CASE NO 2011-193674
- ii. N/A
- iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

SEE also page 8 for more issue and attorney-client privilege

- (a) In effective Assistance of Counsel for failure to object to expert testimony and court not recognizing as expert.
- (b) In effective Assistance of Counsel for Failure to object to closing statements by state
- (c) In effective Assistance of Counsel for failure to object to

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) State had experts testify without asking court to recognize as experts
- (b) Statement at close by state took away the burden from jury
- (c) Trial was call under one indictment, then sentence under different one

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A

- iv. N/A
- (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Not Allowed by LAW
- (b) Not Allowed by LAW
- (c) Not Allowed by LAW

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ARRAIGNMENT yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. WELLS LAW FIRM LLC
 - ii. SSC ON INDIGENT DEFENSE, Division of appellate Defense
PO BOX 11589, Columbia, SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeal
 - iii. N/A

19. State clearly the relief you seek in filing this application:

Conviction to be set aside, vacated, corrected

20. Are you now under sentence from any other court that you have not challenged?

NO

20 13 CP26 5292

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

JEFFREY RIEBE 177 357

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jeffrey Riebe

SWORN to and subscribed before me this 30 day of July, 2013

John D. York (L.S.)
Notary Public

My Commission Expires: 10 11 2021

FILED
Horry County
2013 AUG -5 AM 8:54
MELANIE HUGGINS-WARD
CLERK OF COURT

2013 LF28 5292

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jeffrey P. Smith
Applicant

SWORN or affirmed to and subscribed before me this

30 day of July, 2013

Joseph L. Young
Notary Public

My Commission Expires: 10/1/2021

FILED
HERRY COUNTY
2013 AUG -5 AM 8:54
MELANIE HUGGINS-WARD
CLERK OF COURT

10(d) Ineffective assistance of counsel for Failure to object to the defects in the indictment.

11(d) The indictment does not have everything in it that is required.¹

10(e) Ineffective assistance of counsel for failure to bring up meritorious issue to appeal court.

11(e) Counsel did not bring up issue that had merit from trial.

10(f) Ineffective assistance of counsel for fail to bring up plain error issue before the appeals court

11(f) Counsel fail to bring up plain error issue to the appeals court.²

Applicant does not waive Attorney-Client privilege outside of issue brought up.

FILED
HURRY COUNTY
2013 AUG -5 AM 8:54
MELANIE HUGGINS-WARD
CLERK OF COURT

1. 10(a-d) 11(a-d) are trial counsel
2. 10(e,f), 11(e,f) appellate counsel
(8 of 8)

1008



ALAN WILSON
ATTORNEY GENERAL

June 3, 2014

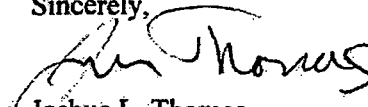
The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528-0677

Re: Jeffrey Riebe, #177357 v. State of South Carolina
2013-CP-26-5292

Dear Ms. Huggins-Ward:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,


Joshua L. Thomas
Assistant Attorney General

JLT/nb

Enclosure

Horry County Clerks Records
PCR Application
SCDC Records
Trial Transcript
Appellate Records (Opinion and Remittitur)

cc: Daniel A. Selwa, II, Esquire

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Jeffrey Riebe, #177357,)	Case No. 2013-CP-26-5292
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief filed August 5, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In October 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-1053). Brana J. Williams, Esquire, represented Applicant. On May 20, 2011, Applicant appeared before the Honorable Steven H. John for pre-trial motions. On May 24, 2011, Applicant proceeded to trial before Judge John and a jury. On May 31, 2011, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to forty (40) years imprisonment.

Applicant filed a timely notice of appeal, and Reid T. Sherard, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 26, 2013. State v. Riebe, Op. No. 2013-UP-278 (S.C. Ct. App. filed June 26, 2013). The remittitur was returned to the circuit court on July 15, 2013.

II.

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

1. "Ineffective Assistance of counsel for failure to object to expert testimony and court not recognizing as expert."
2. Ineffective Assistance of counsel for failure to object to closing statement by state"
3. "Ineffective Assistance of counsel for failure to object to trial under one indictment then sentence under another"
4. "Ineffective Assistance of counsel for failure to defects in the indictment."
5. "Ineffective Assistance of counsel for failure to bring up meritorious issue to Appeal court.
6. "Ineffective Assistance of counsel for fail to bring up plain erro issue before the appeals court"

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v.

Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant's allegation of ineffective appellate counsel is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 396 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 3, 2014

1014

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JEFFREY RIEBE, #177357)

Applicant,)

vs)

STATE OF SOUTH CAROLINA)

Respondent.)

IN THE COURT OF COMMON PLEAS


2013-CP-26-5292

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 3RD day of June, 2014.


Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CASE NO.: 2013-CP-26-5292

JEFFREY RIEBE,)
)
 APPLICANT,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

POST CONVICTION RELIEF HEARING

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Horry County Courthouse
Conway, South Carolina
on Tuesday, August 26, 2014, Commencing at 12:03 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Daniel A. Selwa, II, Esquire
Attorney at Law
1053 London Street, Suite A
Myrtle Beach, South Carolina 29577

FOR THE RESPONDENT: Joshua Thomas, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

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Jeffrey Riebe vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

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THE COURT: Mr. Selwa, you take all the time you need, but just let me know when you are ready.

MR. SELWA: Thank you, Your Honor.

Your Honor, I am ready to go forward on this. My client just informed me, and I wanted to bring this to the Court's attention because I know that he would want me to bring this to the Court's attention, he had a lot of notes and a lot of information that he's been working on and he claims to me that he wasn't allowed to bring that today. And he can articulate further if you wish to hear from him. But he has expressed that concern to me and I feel obligated to pass that on to the Court.

THE COURT: Are you Jeffrey Riebe?

MR. RIEBE: Yes, ma'am.

THE COURT: Please swear Mr. Riebe.

[Whereupon, Mr. Riebe is duly sworn by the clerk of court as follows: do you solemnly swear that the testimony you are about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

MR. RIEBE: I do.

THE CLERK OF COURT: Please state your name and spell your last name for the record.

Jeffrey Riebe vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 MR. RIEBE: Jeffrey Wayne Riebe. R-I-E-B-E.

2 THE COURT: Mr. Riebe, we are here on your
3 application for post conviction relief. You were
4 indicted and then found guilty by a jury on May 31st
5 of 2011. Judge John sentenced you to forty years. Do
6 you understand the possible punishment for murder is
7 thirty years up to life in prison?

8 MR. RIEBE: Yes, ma'am.

9 THE COURT: And do you understand what would
10 happen if I do grant your motion -- your application
11 for post conviction relief?

12 MR. RIEBE: Yes, ma'am.

13 THE COURT: What will happen?

14 MR. RIEBE: I can go to a new trial and get
15 sentenced again if I'm convicted.

16 THE COURT: If you are convicted. And you
17 understand that at that point, you would again be
18 facing the potential for life? Do you understand
19 that?

20 MR. RIEBE: Yes, ma'am.

21 THE COURT: And how old are you today?

22 MR. RIEBE: I am forty-nine.

23 THE COURT: And so you understand that there is
24 a potential that on the forty years, you may be
25 released prior to the end of your natural life?

Jeffrey Riebe vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

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MR. RIEBE: Uh-huh.

THE COURT: Is that a yes?

MR. RIEBE: Yes, ma'am.

THE COURT: So based upon that, do you wish to go forward on your application here today?

MR. RIEBE: I would like a continuance, ma'am.

THE COURT: But you are still interested in your post conviction relief?

MR. RIEBE: Yes, ma'am. I would still like to do that.

THE COURT: So tell me why -- your attorney shared with me that you have some notes. Tell me why you think you should have a continuance.

MR. RIEBE: Part of that -- part of my notes, and with my notes, I do have evidence that I want to turn into this Court that is very important to my case, ma'am.

THE COURT: Was there some reason why they wouldn't let you bring those? I've had --

MR. RIEBE: Yes.

THE COURT: I've had inmates in and out all week that they've had big --

MR. RIEBE: Yes, ma'am.

THE COURT: All right.

MR. RIEBE: I understand --

Jeffrey Riebe vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 THE COURT: Mr. Riebe, I know you have a lot to
2 say.

3 MR. RIEBE: Okay. Sorry.

4 THE COURT: And you probably haven't engaged in
5 dialog with people on a daily basis. However, it is
6 vitally important. I can't listen and hear at the
7 same -- I can't listen and speak at the same time. My
8 court reporter can't write both of us down at the same
9 time. And you want this to be a really clean record
10 and complete, don't you?

11 MR. RIEBE: Yes, ma'am.

12 THE COURT: Don't interrupt me.

13 MR. RIEBE: Sorry, ma'am.

14 THE COURT: All right. Not only is it rude, but
15 it does not make for a really clean record. Do you
16 understand?

17 MR. RIEBE: Yes.

18 THE COURT: Do I need to go over that again?

19 MR. RIEBE: No, ma'am.

20 THE COURT: So tell me why -- tell me what
21 happened that you couldn't bring those notes.

22 MR. RIEBE: I brought a box with me, a bunch of
23 paperwork with me, and they kept it in property
24 because they wouldn't allow me to keep it with me.
25 And they were supposed to --

Jeffrey Riebe vs. The State of South Carolina
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August 26, 2014

1 THE COURT: Who is they?

2 MR. RIEBE: Horry County Sheriff's Department

3 or --

4 THE COURT: So is this -- this box, it's close
5 to you by the courthouse?

6 MR. RIEBE: It's in J. Reuben Long right now.

7 THE COURT: Well, that's pretty close, isn't it,
8 Mr. Selwa?

9 MR. SELWA: That's about ten minutes away. Five
10 or ten minutes away.

11 THE COURT: Can you check on why we couldn't
12 bring that box over? For me.

13 OFFICER: Yes, ma'am.

14 THE COURT: Sometimes I find out, Mr. Riebe,
15 that individuals have been causing difficulties and
16 that's why their information -- or it contains some
17 inappropriate items. That wouldn't be what is
18 happening here today, is it?

19 MR. RIEBE: No, ma'am. What I was told at the
20 time is they had to search the box --

21 THE COURT: Right.

22 MR. RIEBE: -- and they didn't get a chance at
23 the time when they took me up to the cell, and that
24 they would bring it to me at a later time, and they
25 haven't yet.

MIA PERRON, CVR-CM-M

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Jeffrey Riebe vs. The State of South Carolina
Post Conviction Relief Hearing
August 26, 2014

1 THE COURT: When did they tell you that?

2 MR. RIEBE: When I come in here yesterday.

3 THE COURT: Yesterday.

4 OFFICER: The officer said that he didn't say
5 anything about a box this morning when they left the
6 jail.

7 THE COURT: Is that true, Mr. Riebe?

8 MR. RIEBE: Yes, ma'am.

9 THE COURT: All right. So why are you bringing
10 it here today? Why are you telling me and you didn't
11 tell anybody else today?

12 MR. RIEBE: Because I thought -- I forgot. I
13 was thinking about my case, and stuff like that, and
14 what was going on, and I forgot to ask them.

15 THE COURT: What's in the -- can we get the box
16 here? How long will that take? First of all, can we
17 get the box? Will they bring the box to us?

18 OFFICER: Yes, ma'am. Somebody should be able
19 to bring it.

20 THE COURT: Can you check on that, and then can
21 you tell me how long it would take?

22 Mr. Riebe, you've been sitting in that cell for
23 two hours I know, and this is the first time you've
24 mentioned this to anybody?

25 MR. RIEBE: Yes, ma'am.

Jeffrey Riebe vs. The State of South Carolina
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August 26, 2014

1 THE COURT: Do you think that was a good idea?

2 MR. RIEBE: No, ma'am.

3 THE COURT: Y'all may have a seat.

4 You're going to call -- I assume you're going to
5 call Ms. Williams; is that correct?

6 MR. SELWA: Yes, Your Honor.

7 THE COURT: Then so can we call Ms. Williams,
8 assuming we can get that box brought over, and then
9 maybe take a break, do my other one, and then --

10 MR. SELWA: Your Honor, I would love to
11 accommodate the Court. I think -- I don't know how to
12 put this.

13 THE COURT: Just spit it out. I'm over being
14 politically correct or sugar coated. Let's go.

15 MR. SELWA: Mr. Riebe has a number of things
16 that he wants to assert, and I don't, so --

17 THE COURT: Are we ready on the next one?

18 MR. THOMAS: I can go track down Mr. Galmore
19 again, yes, ma'am.

20 THE COURT: Ms. Williams, tell me -- I do not
21 remember. Tell me where your office is.

22 MS. WILLIAMS: Your Honor, my office is in
23 Surfside, so I'll just wait.

24 THE COURT: That's far, yes?

25 MS. WILLIAMS: Yes, ma'am. It will take me --

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1 it takes forty-five minutes, give or take traffic.
2 Between twenty-five and forty-five, depending on what
3 traffic --

4 THE COURT: I never can judge the traffic here.
5 Tell me what your tomorrow looks like.

6 MS. WILLIAMS: I have a mandatory court-ordered
7 mediation, Your Honor. I would --

8 THE COURT: So tomorrow is not good for you?

9 MS. WILLIAMS: No, ma'am. I would be better
10 off --

11 THE COURT: Just staying?

12 MS. WILLIAMS: Yes, ma'am.

13 [Off the record momentarily]

14 THE COURT: Mr. Riebe, we're going to try to
15 figure out what's going on with that box.

16 MR. RIEBE: Yes, ma'am. Thank you.

17 [Whereupon, a recess is taken from 12:12 p.m. to
18 1:49 p.m.]

19 THE COURT: All right. We are back on the
20 record with Mr. Riebe.

21 Is that your box?

22 MR. RIEBE: Yes, ma'am.

23 THE COURT: Thank you. Thank you for bringing
24 it over.

25 [Off the record momentarily]

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1 MR. RIEBE: Ma'am, can I try to look through the
2 box and see -- get my stuff now? Can I look through
3 my box and get my stuff?

4 THE COURT: I don't see what -- we've
5 ascertained that there's no issues with the box;
6 right?

7 OFFICER: No, ma'am. We've already been through
8 the box.

9 THE COURT: Been through the box.

10 All right. Are we ready? Mr. Thomas, are you
11 ready?

12 MR. THOMAS: The State is ready, Your Honor.

13 THE COURT: And Mr. Selwa, are you ready?

14 MR. SELWA: Yes, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 MR. SELWA: My name is Daniel Selwa. I am
18 representing Mr. Jeffrey Riebe. Interesting little
19 fact, which is not a part of this situation. They
20 actually have his name spelled wrong at the jail.
21 Jeffrey is spelled incorrectly. I don't know if that
22 matters. It's J-E-F-F --

23 MR. RIEBE: R-E-Y.

24 MR. SELWA: -- R-E-Y. They have it as E-R-Y.

25 THE COURT: All of mine are the correct

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1 spelling, so that's --

2 MR. SELWA: But we are ready to proceed, Your
3 Honor.

4 THE COURT: And what are we going forward on?

5 MR. SELWA: Your Honor, I would just say a
6 general ineffective assistance of counsel based on --
7 I think Mr. Riebe has some claims, regarding the
8 indictment, that he wants to put forward. Other than
9 that, I think that that would be it.

10 THE COURT: Mr. Thomas, what are you prepared to
11 go forward on here today?

12 MR. THOMAS: Your Honor, you know, from the
13 pleadings we had an ineffective assistance of counsel
14 for failure to object to some expert testimony, and
15 failure to object in closing, failure to object to
16 the indictment, maybe some appellate issues. But
17 I've talked to -- I've talked with Mr. Selwa and
18 Ms. Williams about this case, so I'm prepared to
19 handle anything that they want to go forward on.

20 THE COURT: All right. Perfect. Call your
21 first witness.

22 MR. SELWA: Your Honor, I would call Jeffrey
23 Riebe to the stand.

24 THE COURT: You may go forward and be sworn.

25 [Whereupon, Mr. Riebe comes forward]

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THE CLERK OF COURT: If you would raise your right hand.

[Whereupon, Mr. Riebe is duly sworn by the clerk of court as follows: do you solemnly swear that the testimony you're about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Please be seated, and please state your name and spell your last name for the record.

[Whereupon, Mr. Riebe takes the witness stand]

THE WITNESS: Jeffrey Wayne Riebe. R-I-E-B-E.

MR. SELWA: May it please the Court.

- - -
- - -
- - -

Jeffrey Riebe
Direct Examination by Mr. Selwa
August 26, 2014

1 JEFFREY RIEBE,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SELWA:

6 Q. Mr. Riebe, you are present before the Court in
7 your prosecution of the post conviction relief application
8 that you filed; is that correct?

9 A. Yes, sir.

10 Q. And in that application you claim that your
11 trial attorney, Brana Williams, was ineffective in
12 assisting you as trial counsel; is that correct?

13 A. Yes, sir.

14 Q. And you assert certain instances that she was
15 ineffective; is that right?

16 A. Yes, sir.

17 Q. Can you tell the Court why Ms. Williams was
18 ineffective for you?

19 A. Yes, sir.

20 One of the issue I got with the indictment is
21 that it was amended during trial. You take a look at the
22 indictment -- let's see if I can find it.

23 [Whereupon, the witness reviews documents]

24 Q. [Mr. Selwa] Mr. Riebe, you're claiming that
25 Ms. Williams failed to object to the indictment? Is that

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1 what you're saying?

2 A. Yes, sir. I think that she should have objected
3 to the indictment and ask for a direct verdict on the
4 basis of amending the indictment during trial. The murder
5 indictment that they served me said Jeffrey Wayne Riebe
6 did, in Horry County, on or about August 27th, 2008,
7 willfully with -- and intentionally kill the victim,
8 Phyllis Mallory, with malice aforethought, either
9 expressed or implied, by means of strangling and the
10 victim did die as an -- as a proximated result of, on or
11 about August 27th, 2008, in Horry County, in violation of
12 Section 16-03-0010, South Carolina Codes of Law, 1976 as
13 amended, against the dignity -- against the peace and
14 dignity of the State and contrary to the statute such as
15 case made and provided. Signed Gregory Hembree, Fifth
16 [phonetic] Circuit Solicitor.

17 During trial, they presented two weapons. Or
18 actually, more than two weapons. They presented like two
19 or three different versions of blunt force trauma causes
20 by different weapons, which this indictment fails to
21 mention. They also during trial mentioned a belt being
22 used as a strangulation weapon, which this indictment does
23 not mention.

24 Also during this indictment -- during the trial,
25 I mean, they mentioned that the cause of death was by

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1 blunt-force trauma and strangulation, which this
2 indictment did not give me notice of but only
3 strangulation.

4 Let me get the testimony.

5 [Whereupon, the witness reviews documents]

6 Q. [Mr. Selwa] Mr. Riebe, basically you're saying
7 that the indictment didn't put you on notice of what you
8 were charged with? Is that what you're claiming?

9 A. Yes, sir.

10 Q. And it was Ms. Williams' failure to object to
11 that indictment for which you are now claiming that she
12 was ineffective; is that correct?

13 A. Yes, sir.

14 Okay. Where is Dr. Bowers' testimony.

15 [Whereupon, the witness reviews documents]

16 Q. [Mr. Selwa] What is it about the testimony,
17 Mr. Riebe, that you claim will be effective in helping you
18 with --

19 A. Okay. Dr. Bowers, when he was asked a question
20 about the cause of death and he stated that the cause of
21 death was blunt force trauma and strangulation -- and
22 strangulation, by manual strangulation.

23 Q. And how is it, Mr. Riebe, that, again,
24 Ms. Williams was ineffective in representing you,
25 regarding that indictment, as it relates to that

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1 testimony?

2 A. Well, when she didn't -- failed to object to the
3 indictment -- to the thing -- the indictment being of a
4 different notice denied me of my due process right of
5 being adequately informed by an indictment, a legal
6 indictment. And since the State changed their view of
7 the -- and their view and the issue that was going on
8 during trial, it denied me the access to being prepared
9 for an adequate defense.

10 Q. Were you able to adequately meet with
11 Ms. Williams in preparation for your defense of
12 these charges?

13 A. I met with her a lot of times. But I never seen
14 the indictment until I got to county jail -- I mean, to
15 prison.

16 Q. Did she explain the elements of the crime that
17 you were charged with?

18 A. She said strangulation and stuff like that, if I
19 remember correctly.

20 Q. Did she go over the elements of murder?

21 A. I don't remember. I'm not sure.

22 Q. And when I say that, what I mean is the elements
23 -- each crime has an element and those elements must be
24 proven beyond a reasonable doubt --

25 A. Uh-huh.

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1 Q. -- each one of them, in order to prove the
2 crime. Did she go over anything like that when she was
3 explaining the charge of murder?

4 A. She went over some of it, yes.

5 Q. And is your objection -- or I'm sorry.

6 Is your claim of ineffective assistance of
7 counsel, as it relates to the indictment, is that the only
8 issues that you wish to bring before the Court?

9 A. No. I've got several more.

10 Q. Okay. What would those be?

11 A. Another issue with the indictment I got is that
12 it wasn't legally done by a properly constituted grand
13 jury.

14 Q. Why do you feel that?

15 A. Okay. The grand jury did not meet on March 26,
16 2009. I have two letters from the clerk of court stating,
17 with the reports of the grand jury, when they met. I
18 would like to put that in as evidence.

19 Q. Okay. And do you have those with you?

20 A. They should be up here with me or they're in my
21 box.

22 Q. And what does that letters state?

23 A. One stated was that -- here's the grand jury
24 reports for 2009 of March. And if I -- I need to get that
25 letter so I can get the specifics.

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1 [Whereupon, the witness reviews documents]

2 Q. [Mr. Selwa] Mr. Riebe, what you have,
3 basically, is a letter from the clerk; correct?

4 A. Yes, sir.

5 Q. And the clerk in that letter tells you when the
6 grand jury met --

7 A. Uh-huh.

8 Q. -- correct?

9 A. Yes, sir.

10 Q. And in that letter, did the clerk tell you that
11 they met on the date that was signed on the indictment?

12 A. She said in one of the letters I got from her
13 that the grand jury never met -- that the grand jury met
14 the first beginning of March, and that was a different
15 letter than the grand jury reports that was asked -- when
16 I asked for the court calendar.

17 Q. Okay. I'm a little confused. Maybe you can
18 clarify --

19 A. Okay.

20 Q. -- it for me and for the Court. What are you
21 claiming that the letter states?

22 A. I got two letters about the reports and I got
23 one letter about the calendar.

24 Now, the ones about the court -- the ones about
25 the -- forgive me. My mind is going all over the place.

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1 The ones about the grand jury reports, she
2 stated that these are the reports for the grand jury. One
3 letter states for the two years for 2008 and 2009, I asked
4 for, and another letter I asked for two specific
5 indictments and she states them two specific dates.

6 Q. And how does that relate to the date that you
7 were actually indicted?

8 A. One of the grand jury reports says the grand
9 jury met in March, 2009, March 1st and 2nd. That's at
10 least twenty-four days before -- yeah, twenty-four days
11 before my indictment was signed or by true bill.

12 Q. And so you're claiming that basically when the
13 indictment was signed was not the same date that the grand
14 jury met --

15 A. Not --

16 Q. -- to indict you?

17 A. Right.

18 I know they were authorized to meet then. I've
19 got an order for that, so I do know that they were
20 authorized to meet. So I'm not claiming that they weren't
21 authorized. What I'm claiming is that they never met.

22 Q. Do you have a copy of those letters?

23 A. Yeah. I'm trying to find them. They might be
24 in my box still. I didn't have a chance to --

25 Q. Would you like your box up there? Is that -- ?

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1 A. That would be good. Yes, sir.

2 MR. SELWA: Your Honor, would that be
3 permissible to give him his box?

4 THE COURT: You may.

5 THE WITNESS: Thank you, Your Honor. I had it
6 nice and neat. Sorry, Your Honor.

7 THE COURT: Take your time.

8 [Whereupon, the witness reviews documents]

9 MR. SELWA: Court's indulgence just for a
10 minute, Your Honor.

11 THE COURT: I told him to take all the time he
12 needed.

13 [Whereupon, the witness reviews documents]

14 THE COURT: Mr. Selwa, just for scheduling --
15 Continue your --

16 Just for scheduling, how long do you anticipate
17 taking with your client today?

18 MR. SELWA: Not long, Your Honor. I don't have
19 many other claims.

20 THE COURT: And then how long do you anticipate
21 with Ms. Williams?

22 MR. SELWA: Not long.

23 THE COURT: Do you anticipate that we will be
24 done by 3:00?

25 MR. SELWA: Yes, Your Honor.

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1 THE COURT: Okay. Thank you. If not, then I
2 want you to take Ms. Williams out of order.

3 MR. THOMAS: I'll be brief, Your Honor.

4 [Whereupon, the witness reviews documents]

5 THE WITNESS: Okay. There's -- do you mind if I
6 explain some of this stuff?

7 THE COURT: The way this process works -- I know
8 sometimes you feel it's ineffective -- your attorney
9 must ask questions. All right? Thank you.

10 THE WITNESS: That's why I asked.

11 THE COURT: Thank you.

12 MR. SELWA: Your Honor, may I continue? Thank
13 you.

14 Q. [Mr. Selwa] Mr. Riebe, can you identify these
15 two documents?

16 A. Okay. These are the letters that the Horry
17 County --

18 Q. Let's start with this one first. Who is that
19 from?

20 A. The Horry County clerk of court, Melanie
21 H. Huggins -- Huggins Ward. Excuse me.

22 Q. When was that sent?

23 A. July 12th of 2013.

24 Q. Who is it sent to?

25 A. It's sent to me.

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1 Q. What's the other letter?

2 A. The other letter is from Horry County clerk,
3 Melanie Huggins Ward, September 5th, 2013, and it's about
4 the grand jury reports.

5 Q. Do you recognize these documents?

6 A. Yes. They are two grand jury reports.

7 Q. And what do they indicate?

8 A. Okay. One of the reports is from the March
9 report, for the March report for the grand jury, and the
10 other one is the May report. And the reason I'm putting
11 in the May report is to show that they used -- well, they
12 used the last day when the grand jury meets. And the
13 grand jury report on mine says -- on the March one says
14 February 26th through Marcy 2nd, but she sent it in as a
15 March grand jury report.

16 Q. And the one dated May 1st, 2009, that one goes
17 with which letter?

18 A. That goes with the one that -- goes with the
19 letter that says July 12th, 2013 -- no. Hold on. Sorry.
20 It goes with the other one.

21 [Whereupon, the witness reviews documents]

22 A. Yeah. It goes to the July 12th, 2013, because
23 she says --

24 Q. [Mr. Selwa] And the other one goes to this one;
25 correct?

Jeffrey Riebe
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1 A. That one.

2 Q. And are these letters that you received
3 personally from Ms. Huggins?

4 A. Yes, sir.

5 I do got the other grand jury report for the
6 other letter in this -- if we need to --

7 MR. SELWA: Your Honor, I would like to mark
8 these, for identification purposes at this time, as
9 Applicant's 1 and 2.

10 THE COURT: Any objection?

11 MR. THOMAS: What are we --

12 THE COURT: How about you come look.

13 MR. SELWA: Just for identification at this
14 point.

15 [Whereupon, Mr. Selwa and Mr. Thomas confer]

16 [Whereupon, Plaintiff's Exhibit Number 1 is
17 marked by the court reporter]

18 [Whereupon, Plaintiff's Exhibit Number 2 is
19 marked by the court reporter]

20 Q. [Mr. Selwa] Mr. Riebe, I'm handing you what's
21 been marked as Plaintiff's Exhibit 1, the September 5th,
22 2013 letter, and the Plaintiff's Exhibit 2, the July 12th,
23 2013 letter. Are those accurate reflections of the
24 letters that you received from Ms. Huggins --

25 A. Yes, sir.

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1 Q. -- regarding the information you requested on
2 the grand jury meeting?

3 A. Yes, sir.

4 MR. SELWA: Your Honor, at this time I would
5 like to move these into the record as Exhibits 1
6 and 2.

7 MR. THOMAS: Your Honor, as to the letters, the
8 objection to that would be that it's hearsay. And the
9 objection to the actual report would be --

10 THE COURT: Don't walk away with my exhibits.
11 Let me take a look. Thanks.

12 MR. THOMAS: Anything Ms. Huggins would have
13 said would be hearsay. And then the objection to the
14 reports is just that he didn't prepare those, so he
15 can't properly authenticate it.

16 THE WITNESS: Ma'am, I believe they're --

17 THE COURT: Sir, I thought I had made myself
18 clear.

19 THE WITNESS: Okay.

20 THE COURT: I'm going to allow, over your
21 objection, 1 and 2 into evidence. Thank you.

22 MR. SELWA: Thank you, Your Honor.

23 [Whereupon, Plaintiff's Exhibit Number 1 is
24 admitted into evidence by the Court]

25 [Whereupon, Plaintiff's Exhibit Number 2 is

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1 admitted into evidence by the Court]

2 Q. [Mr. Selwa] Okay. Mr. Riebe, so you're saying
3 that that is your proof that the grand jury didn't meet
4 when they said they were supposed to have met to indict
5 you; is that correct?

6 A. Yes, sir.

7 Q. And, further, your testimony is -- was that
8 Ms. Brana failed to object to that; correct?

9 A. Yes, sir.

10 Q. And you're asking the Court today to grant you a
11 PCR based on that fact; is that correct?

12 A. Yes, sir.

13 Q. And because of her ineffective assistance of
14 counsel in failing to object to that, do you think you
15 would be in the position you are now?

16 A. No. I think I'd be home right now.

17 Q. Mr. Riebe, what is your next claim for support
18 of your petition or your application for post conviction
19 relief?

20 A. Okay. I got another issue with the indictment.
21 The issue I got is they gave me a 2008 indictment and
22 changed it to a -- and tried to change it to a 2009, which
23 they couldn't do, and I'll explain why. Okay. My two
24 thousand -- the indictment under 2008, I got an original
25 copy from the solicitor's office.

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1 [Whereupon, the witness reviews documents]

2 A. Okay. I got a letter from the solicitor's
3 office on May -- March 22nd, 2012, and I asked -- wrong
4 letter. Sorry.

5 [Whereupon, the witness reviews documents]

6 A. April 11th, 2012, asking for -- no, that's --

7 [Whereupon, the witness reviews documents]

8 A. Got the right one. Sorry.

9 February 2nd, 2012, I asked for the original
10 unaltered indictment and I got a letter from the
11 solicitor's office stating that this is the original
12 unaltered indictment and -- an original unaltered
13 indictment by the grand jury. It has 2008-GS-26-0 -- 1053
14 on the top, and in the Court of General Sessions, October
15 term, 2008 term. And then on the other side, on the back,
16 it says: in the court of General Sessions convened
17 October 30th, 2008, the grand jury of Horry County
18 presented their oath [phonetic]. This was the original
19 indictment that the grand jury true billed.

20 Q. [Mr. Selwa] Okay.

21 A. Okay.

22 Q. And what's your issue with that indictment?

23 A. Okay. When I went to court, I was taken to
24 trial on 2008 indictment. And I'll read -- there's stuff
25 in the transcript I would like to read in a minute. Then

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1 at the end of trial when they were -- after I was
2 sentenced by the judge orally, the court reporter came to
3 the judge and told him there was an issue with the number
4 on the indictment. The judge said he -- we have to make
5 sure the indictment number is right, we got to make sure
6 it's right, we got to make sure it's correct. So he sent
7 the solicitor -- or one of the assistants to the
8 solicitor, went and got the books. He checked the books
9 and the book said 2009, so they changed the indictment to
10 2009.

11 Okay. Let me get the testimony.

12 Q. And what do you have in your possession that
13 evidences that fact?

14 A. I got a letter from the solicitor's secretary, I
15 believe, a Mary L. Horn, and she sent the letter stating
16 that this was the original unaltered indictment and I got
17 the original unaltered indictment, a copy of it, I
18 believe, that she sent.

19 Q. Do you have any paperwork suggesting that that
20 indictment number was changed?

21 A. Yes, sir, I do. It's in the court transcript.

22 Q. Are you referencing your sentencing sheet?

23 A. No. I'm going to be representing [phonetic] the
24 court transcript itself.

25 [Whereupon, the witness reviews documents]

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1 Q. [Mr. Selwa] I've got mine. What page are you
2 referring to??

3 A. Hold on just a second, please.

4 THE COURT: In the transcript, counsel? Almost
5 to the last -- second-to-the-last page.

6 A. Okay. First I want to go to --

7 THE COURT: 945, counselor.

8 MR. SELWA: Thank you.

9 THE WITNESS: I'm going to be coming out of
10 volume one --

11 Q. [Mr. Selwa] Do you recall in the transcript,
12 Mr. Riebe, the Court stating that the indictment was 2009-
13 GS-26-01053?

14 A. Yes, sir.

15 Q. Now, what is your issue with the change of the
16 indictment number or the correction of that indictment
17 number?

18 A. Okay. The issue I got is that the grand jury
19 indicted on 2008. They altered the 2008 to 2009. And the
20 reason I say that is the indictment is also a self-
21 authenticating indictment. The docket number, the County
22 of General Sessions underneath, and on the back where it
23 says in the County of -- in the Court of General Sessions
24 convened on October 30th, 2008, they all verify each other
25 as a whole indictment. Okay?

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1 Q. And are you claiming that basically you weren't
2 put on notice because there was a change in the
3 indictment?

4 A. Right. And also because the crime in this
5 indictment is different than the crime that I was tried
6 on.

7 Q. And your claim is that Brana Williams failed to
8 object to that?

9 A. Right. And --

10 Q. And that failure to object, did that lead to the
11 prejudice which got you in the position that you're in
12 now?

13 A. Yes, sir.

14 Q. Had she objected to that, do you think the
15 outcome would have been different?

16 A. Yes, sir.

17 Q. Do you think you would be sitting here today?

18 A. No.

19 I still got a little bit more to say on
20 this.

21 Q. What else? What further do you have to present
22 to the Court for that claim?

23 A. Okay. I agree that the -- I should have had a
24 2009 indictment. The 2009 indictment I got, if you looked
25 at it like I was talking about earlier, it does not match.

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1 The whole indictment, as a whole, does not match because
2 the two -- the County of General Session Court on the
3 front and on the back make it different than the 2008.

4 Also, the authority from the book comes into
5 filling in the blanks. This indictment was presented to
6 the jury with the typed-in 2008. There was no blank.
7 This indictment 2008 -- the 2008 is a perfected
8 indictment. So I believe that changing that one number
9 caused their indictment to be frivolous on the issue right
10 there about it being a 2009 because it changes the one --
11 the docket number only and the indictment still verifies
12 itself by the other two and has a 2009. So I believe this
13 is a false indictment.

14 Also, the authority comes from the books for the
15 indictment. I believe that. But since they didn't have
16 this -- the one that were -- the 2008 being perfected
17 should have been altered to match the indictment that I
18 should have had.

19 Q. Do you recall Ms. Williams objecting at the
20 beginning or at the onset of the trial --

21 A. No, she did not --

22 Q. -- to the indictments?

23 A. -- check about the indictments.

24 At the beginning of the trial -- I was going to
25 go back to about when we first did the Jackson-Denno

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1 hearing we were having. The judge asked them to call the
2 indictment. The solicitor called the name. He didn't
3 have the number. My attorney told the number of 2008.

4 I can tell you the page.

5 [Whereupon, the witness reviews documents]

6 Q. [Mr. Selwa] And they all agreed on that number;
7 correct?

8 A. And they all agreed on that number. Correct.

9 And then during trial -- I don't have my verdict
10 form here, I don't believe. I might have one. But my
11 verdict form was altered, too. Because when they
12 published the verdict, they published it as a 2008.

13 So by all these changes, I believe all this
14 stuff -- that the whole trial didn't have a -- shouldn't
15 have been done under that indictment, 2008. I think the
16 whole trial, all the way up to sentencing, all the way to
17 being sentenced orally, was under 2008.

18 Q. And are you asking the Court, based on that
19 reason and the reason of the --

20 A. Yes, sir.

21 Q. -- the grand jury not meeting, according to your
22 evidence, are you asking the Court to grant you a new
23 trial?

24 A. Uh-huh.

25 Q. Okay. Is that -- are those the only claims of

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1 ineffective assistance of counsel that you have against
2 Ms. Williams?

3 A. I got one more. I got another ineffective
4 assistance of counsel for failure to ask for a direct
5 verdict for failure to present evidence of manner of
6 death.

7 Q. And did Ms. Williams make a motion for a
8 directed verdict?

9 A. She made a motion for a directed verdict for a
10 lack of evidence only. But I think if she would have told
11 the judge a specific reason, I think the judge would have
12 ruled in my favor.

13 Q. Is there anything further on that issue?

14 A. Yes. I got testimony --

15 [Whereupon, the witness reviews documents]

16 Q. [Mr. Selwa] Mr. Riebe, what would the testimony
17 reveal?

18 A. Dr. Proctor was asked by the solicitor, George
19 DeBusk, what is the cause of death. He said the cause of
20 death was death by manual strangulation and blunt-force
21 trauma, and he never gave the cause of death. But he also
22 did testify that one of the duties of the medical
23 examiners is to give the cause of death and the manner of
24 death.

25 The police said that they couldn't determine the

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1 manner of death until after autopsy because they didn't
2 know if it was an accident or murder or what, they did not
3 know at that time. He said after the autopsy, we'll know.

4 Q. And, Mr. Riebe, what did Ms. Williams fail to
5 do, in that instance, that you're claiming was
6 ineffective?

7 A. She failed to ask for a dismissal that --
8 because they didn't present no evidence on manner of
9 death.

10 I also got the autopsy report.

11 Q. Mr. Riebe, are there any other claims that
12 you're claiming that Ms. Williams failed to --

13 A. No. I got some due process claims, but --

14 Q. And what would those be?

15 A. The due process claim I got is the solicitor put
16 in false testimony and did not correct it when he was
17 supposed to.

18 Q. You're saying that Ms. Williams failed to object
19 to --

20 A. That, too, but --

21 Q. -- the solicitor authenticating the facts in his
22 closing?

23 A. That, too. Yeah.

24 Q. I'm sorry. Just to clarify. I don't want to
25 testify for you. I'm trying to understand what you're

Jeffrey Riebe
Direct Examination by Mr. Selwa
August 26, 2014

1 trying --

2 A. Okay.

3 Q. -- to tell the Court.

4 A. What I'm claiming is when the solicitor put on
5 his case, he put in false information. And when he found
6 out it was false information, instead of correcting it and
7 saying it was false information, he advocated it even more
8 to get it in.

9 Q. Did Ms. Williams object to that?

10 A. No, sir.

11 Q. And how did that prejudice you?

12 A. Well, I think with the false information the
13 jury couldn't make a reasonable decision to come to their
14 verdict because it would have biased the jury, making it
15 more towards what a guilt --

16 Q. Do you have any specific instances of that false
17 information?

18 A. Yes, sir.

19 [Whereupon, the witness reviews documents]

20 Q. [Mr. Selwa] And, Mr. Riebe, how would you prove
21 that that was false information?

22 A. I got Dr. Mehan's testimony to the report. I've
23 got the report. And I've got --

24 Q. Mr. Riebe, that would be -- that would be stuff
25 that the jury would decide as factual or non factual;

Jeffrey Riebe
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1 correct?

2 A. Right.

3 But the judge, in a ruling, denied my lawyer
4 that ability to present that that report had errors in it.

5 Q. So you're not claiming that Ms. Williams failed
6 to object --

7 A. No.

8 Q. -- you're saying that the Court didn't --

9 A. The Court --

10 Q. -- allow her to do it?

11 A. -- didn't allow her to do it. Because the
12 solicitor did object to the testimony.

13 And the solicitor lied to the Court about
14 receiving notice, because my lawyer did send them notice
15 that we were going to use all the reports from Rachel
16 Grant and stuff. And the solicitor says he never received
17 nothing until that morning. Because during trial what
18 happened was the night before Mehan was looking at the
19 information and noticed an error in the reports. Told my
20 lawyer. My lawyer told the solicitor. He looked at it
21 and he objected to this information coming in through him.

22 Q. Mr. Riebe, you understand that this is a claim
23 for ineffective assistance of counsel and you're claiming
24 that Ms. Williams didn't do something; correct?

25 A. I'm not claiming ineffective assistance of

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1 counsel. I'm claiming due process on this. I'm claiming
2 my right to the -- constitutional right of gotten due
3 process because I couldn't get a fair --

4 Also, and fairness, because with this false
5 information that the jury heard altered their perception,
6 because she gave the statistics on that report and it was
7 a very high statistics and the solicitor, during closing
8 arguments, did use that.

9 And he also did -- he made a claim that my
10 expert, Dr. Mehan, did the exact same thing that he was
11 doing right there and then. If you look at the closing
12 arguments, he said that Dr. Mehan put in altered report --
13 or an erroneous [phonetic] report; you could call it a lie,
14 but I'm not going to argue that. He did the exact same
15 thing. And he said that Mehan's report caused that
16 solicitor to get fired. Well, if that same thing happened
17 there, why can't it be the same thing that's happening in
18 my trial? Why does a solicitor that puts in false
19 information on a DNA report that's incorrect, being able
20 to get the judge to rule in his favor, to do the same
21 thing that the other court basically said it wasn't good?

22 Q. And so your claim is that you were not provided
23 due process --

24 A. Yes, sir.

25 Q. -- because of this?

Jeffrey Riebe
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August 26, 2014

1 A. And a fair trial because of that.

2 Q. You think the outcome would have been different?

3 A. I think the outcome would have been different,
4 too, because they would have known that the information
5 was unreliable directly, instead of an indirect standard
6 to the field [phonetic].

7 Q. Do you think you would have been convicted?

8 A. I don't think so.

9 Q. Mr. Riebe, do you have any other claims?

10 A. No.

11 But I would like to get some evidence put in for
12 this issue.

13 Q. For the due process?

14 A. For the -- yes.

15 Q. And what do you have for the Court today?

16 A. Okay. I got the letter from my attorney to the
17 solicitor about the notice, official notice. I've just
18 got to find it.

19 [Whereupon, the witness reviews documents]

20 MR. SELWA: Your Honor, I guess this would be a
21 motion. I'm not really sure how to handle this. In
22 the interest of time, Mr. Riebe has put forth his
23 claims. As I understand it, he wants to admit some
24 evidence. We can certainly wait for him to find that,
25 recess his testimony, or -- I would ask for that.

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1 Have Brana come testify and then we can put him back
2 on the stand to admit that. That was just --

3 THE COURT: Keep looking.

4 MR. SELWA: -- a suggestion. I'm not sure if
5 that falls under a motion or not.

6 THE COURT: Mr. Riebe, how much longer are you
7 going to be? I've been more than generous with my
8 time with you today.

9 THE WITNESS: I know, ma'am. I did ask to get
10 this stuff while we were at lunch.

11 THE COURT: That wasn't my question. How much
12 longer are you going to be?

13 THE WITNESS: I might be a little while longer.
14 I don't --

15 THE COURT: I don't know what a little while
16 longer means, Mr. Riebe.

17 THE WITNESS: Another hour or two.

18 THE COURT: No, sir. You put everything in that
19 box.

20 Counsel, you can later -- we'll talk about it
21 later. Do you have anymore --

22 Sit down.

23 [Whereupon, Mr. Riebe complies]

24 THE COURT: Do you have anymore questions?

25 MR. SELWA: No, not as they pertain to the due

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August 26, 2014

1 process claim. I would just ask that if he has
2 anymore claims on the application for post conviction
3 relief, which he -- I think he expressed already that
4 he does not, but I just want to make sure that he --

5 THE COURT: All right.

6 Q. [Mr. Selwa] You don't have any other claims for
7 your application for post conviction relief other than
8 what you are currently looking for, do you?

9 A. Well, I thought I can -- yeah, I got more
10 evidence -- or more ineffective assistance of counsel
11 claim.

12 My lawyer failed to object to the closing
13 arguments. Okay. During closing arguments, there are
14 several things that the solicitor said. He said three
15 times that I was guilty. He told the jury that he had the
16 real evidence. He said that we are -- he called my
17 experts liars. He called me a liar. He advocated his
18 evidence as being real. He told the jury several times
19 that I did stuff that I didn't do. And he basically never
20 gave the jury a chance to make a decision on their own
21 because by the time he was done with the closing
22 arguments, the only thing they could find was guilty
23 because he made sure that they found me guilty.

24 And by that, I wouldn't be here if the jury had
25 a chance, because they didn't deliberate that long because

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1 according to what I remember, they only did about an hour
2 deliberation. And I don't think they really looked at the
3 evidence because of his closing arguments. And I would
4 like to put the closing arguments in on the record.

5 THE COURT: Mr. Riebe, everything that is in the
6 transcript, I have it right here and it's part of the
7 record.

8 THE WITNESS: Okay. Thank you, ma'am.

9 Q. [Mr. Selwa] Is that it, Mr. Riebe?

10 A. Yes, sir.

11 MR. SELWA: No further questions. Please answer
12 any questions Mr. Thomas may have.

13 MR. THOMAS: I have no questions for this
14 witness, Your Honor.

15 THE COURT: You may step down. Thank you,
16 Mr. Riebe.

17 THE WITNESS: Thank you.

18 [Whereupon, Mr. Riebe is excused and exits the
19 witness stand]

20 THE COURT: Counsel, what I'm going to let you
21 do is I can -- I do not know what is contained in that
22 box, so I'm going to give you thirty minutes after we
23 finish -- but no more than thirty minutes, because my
24 court reporter is going to leave -- for you to mark
25 anything that will make those documents part of the

Jeffrey Riebe
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August 26, 2014

1 record.

2 MR. SELWA: I'll tread lightly here. I met with
3 Mr. Riebe already and have talked with him extensively
4 on this. I don't have any -- I don't have any other
5 exhibits as to my claim. Certainly, though, I can go
6 over with Mr. Riebe what he wishes for the Court.
7 With that, I don't know what else to tell you, Your
8 Honor.

9 THE COURT: That's why I'm giving you thirty
10 minutes.

11 MR. SELWA: Thank you.

12 THE COURT: I do not anticipate that there is
13 anything in his box that is not contained -- I think
14 it gets very confusing for lay individuals as to what
15 may or may not come in, and I think he's hoping some
16 things are going to come in that are not either
17 relevant or admissible, and so I'm going to entertain
18 no more than thirty minutes --

19 MR. SELWA: Thank you, Your Honor.

20 THE COURT: -- for you to go through that box.

21 Ms. Williams, please come forward.

22 And that's after the hearing.

23 MR. SELWA: I'm sorry?

24 THE COURT: After the hearing.

25 MR. SELWA: Okay.

Jeffrey Riebe
Direct Examination by Mr. Selwa
August 26, 2014

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THE COURT: I'm leaving the bench at three o'clock.

MR. SELWA: I'm sorry. Thank you, Your Honor.

THE COURT: Thank you.

[Whereupon, Ms. Williams comes forward]

THE CLERK OF COURT: Raise your right hand.

[Whereupon, Ms. Williams is duly sworn by the clerk of court as follows: do you solemnly swear that the testimony you're about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, ma'am.

[Whereupon, Ms. Williams takes the witness stand]

THE CLERK OF COURT: If you would please state your name and spell your last name for the record.

THE WITNESS: My name is Brana Williams.

W-I-L-L-I-A-M-S.

MR. SELWA: Thank you, Your Honor.

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Brana Williams
Direct Examination by Mr. Selwa
August 26, 2014

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BRANA WILLIAMS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SELWA:

Q. Ms. Williams, you represented Mr. Riebe in a
long trial; correct?

A. Yes, sir, I did.

Q. And it was very extensive, to my knowledge;
correct?

A. Yes, sir.

Q. How many days was it?

A. Gosh. It was at least two, if not three.

Q. You've heard his testimony. Did you object to
any of the indictment issues?

A. I don't recall objecting to any of the
indictment issues. I mean, I remember hearing what he
said about there was an issue whether it was a 2008 or
2009 because something had been misnumbered. But, no, I
did not object.

Q. Did you feel that that was something that would
have prejudiced his case?

A. At that time I did not or I would have objected.

Q. Are you aware of a situation where it was
changed at the end of the trial? Towards the end.

Brana Williams
Direct Examination by Mr. Selwa
August 26, 2014

1 A. I vaguely remember what he was saying, that
2 there was a question of whether it was a 2008 versus a
3 2009 number on the indictment.

4 Q. Was there any question in your mind, or
5 concerns, about when or if the grand jury met?

6 A. No.

7 Nor were there any questions in my mind that my
8 client was aware of what he was charged with and what
9 evidence the State was going to present to try to convict
10 him of the charges that were pending.

11 Q. Do you recall arguing for a directed verdict?

12 A. Yes.

13 Q. At any point during the closing arguments, did
14 you object to anything that the solicitor may have said
15 during his closing?

16 A. I don't specifically recall if I objected. I
17 will tell you that if the transcript reflects that I did,
18 I did; if it reflects that I didn't, then obviously I
19 didn't. If I didn't, I did not think that there was
20 anything said that was so objectionable that it needed
21 objecting to at that time.

22 Q. Okay. Second question.

23 [Whereupon, Mr. Selwa and Mr. Riebe confer]

24 Q. [Mr. Selwa] Ms. Williams, did you object, at
25 any point, to any of the opening statements by the

Brana Williams
Direct Examination by Mr. Selwa
August 26, 2014

1 solicitor?

2 A. I don't specifically recall objecting during his
3 opening.

4 Q. Do you recall anything that would have been
5 objectionable that raised your awareness of potential
6 problems?

7 A. No.

8 I can tell you that typically I don't like to
9 object during openings or closings; however, I have a job
10 to do and I have my client's right to protect and I think
11 that when they step over the line, that I will do that.
12 So if I didn't, then in my opinion it did not rise to the
13 level that I needed to object.

14 Q. Do you feel like you had sufficient notice,
15 because of the indictment, to defend Mr. Riebe of the
16 charges he was alleged to have committed?

17 A. Yes. I think we were aware of what the charges
18 were and what evidence they were going to present.

19 MR. SELWA: No further questions. Please answer
20 any questions Mr. Thomas has.

21 THE COURT: Mr. Thomas.

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Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 CROSS-EXAMINATION

2 BY MR. THOMAS:

3 Q. Ms. Williams, just briefly, could you -- how
4 long have you been practicing law?

5 A. Twenty-two years, twenty-three years.

6 Q. And in what capacity? I mean, you've been a
7 solicitor for a little while; right?8 A. I was in private practice, then I was a
9 prosecutor for a little bit, then I have been back in
10 private practice and done -- a large portion of my
11 practice, after leaving the solicitor's office, has been
12 devoted to criminal defense.13 Q. How many times did you get a chance to meet with
14 Mr. Riebe?15 A. Oh, my Lord. I don't know. A lot. I went to
16 the jail to see him a lot. I sent my investigator to meet
17 with him a lot. A lot.18 Q. And during those meetings you had a chance to
19 review with him the evidence the State was going to use to
20 try and convict him?

21 A. Absolutely.

22 Q. And he had an opportunity to give you his
23 version of events, what happened that night?

24 A. Yes.

25 And I will explain that. Part of the problem

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 with this case was Mr. Riebe really didn't have a lot of
2 recollection. And one of the things that I did in the
3 defense in his case is what I did was challenge the
4 overall evidence that was presented. I got an expert to
5 tell us that there was a bite mark that the police had
6 missed on the body. I got an evident [phonetic] expert to
7 challenge the fact that there were fingerprints at the
8 scene that had not been tested. There was a bloody
9 footprint at the scene that had not been tested.

10 He gave two statements to the police, but he
11 really did not have a recollection of the events. But he
12 and I finally discussed everything.

13 Q. And so it's safe to say your trial strategy was
14 basically trying to show that the police didn't do an
15 investigation and hadn't met their burden to show he was
16 guilty?

17 A. Correct.

18 Q. Nothing wrong with the indictments from what
19 your review of them was?

20 A. I think, based on what I believe the law to be
21 about the indictments, that they made a -- that they
22 weren't perfect and they didn't -- they may not have said
23 both words, but I think they did their job in making us
24 aware of what charges we were facing.

25 Q. So there was no surprise -- well, let me ask you

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 this. You had a chance to review the pathologist's
2 report?

3 A. Correct.

4 Q. And so you knew -- you weren't surprised when
5 they set the cause of death as strangulation and blunt-
6 force trauma?

7 A. No.

8 Q. Do you remember -- do you remember Judge John
9 charging the jury that what the attorneys say in argument
10 isn't evidence? Is that one of his standard charges?

11 A. I believe that is one of his standard charges.

12 Q. Do you remember specifically if he did that in
13 this case?

14 A. I do not specifically recall.

15 Q. Dr. Mehan's -- Mr. Mehan, was he a doctor or was
16 he a --

17 A. He's a doctor.

18 Q. He's Dr. Mehan?

19 A. A Ph.D. doctor.

20 Q. His testimony was basically that the Richland
21 County -- Richland County did the DNA analysis on this?

22 A. Correct.

23 Q. And his testimony was that Richland County -- or
24 his proffered testimony was that Richland County didn't
25 follow their protocols?

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 A. Correct.

2 Q. And you argued to get that in but Judge John
3 kept it out?

4 A. Correct.

5 Q. And but then Mr. Mehan -- Dr. Mehan also
6 testified that he didn't need Richland County's protocols
7 to testify that the analysis, the DNA analysis, was bad?

8 A. Correct.

9 Q. You moved for a directed verdict?

10 A. I'm sure I did.

11 Q. And you would have renewed that, as well?

12 A. Yes. I tried to.

13 MR. THOMAS: That's all the questions I have.

14 Thank you, Ms. Williams.

15 THE COURT: Mr. Selwa?

16 MR. SELWA: No redirect, Your Honor.

17 THE COURT: You may step down. Thank you. And
18 thank you for accommodating our schedule to allow
19 Mr. Riebe to have the extra time to get his box. Have
20 a great day. You are excused.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you.

23 THE WITNESS: Thank you, ma'am.

24 [Whereupon, Ms. Williams is excused and exits
25 the witness stand]

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 THE COURT: Call your next witness.

2 MR. SELWA: Your Honor, other than the box,
3 exhibits, I don't have any other witnesses.

4 THE COURT: Do you have any witnesses?

5 MR. THOMAS: No witnesses from the State, Your
6 Honor.

7 THE COURT: I'll give you -- start looking
8 through the box. I'm going to be wrapping up some
9 things here.

10 [Whereupon, a recess is taken from 2:52 p.m. to
11 3:03 p.m.]

12 THE COURT: I saw three pages. So you're going
13 to put --

14 MR. SELWA: I'm sorry, Your Honor --

15 THE COURT: -- in Applicant's 4 and 5?

16 MR. SELWA: 3 and 4, Your Honor.

17 THE COURT: 3 and 4 --

18 MR. THOMAS: Let me see which one is which, for
19 my records.

20 MR. SELWA: 3 is the letter from Brana to --

21 THE WITNESS: I want everything --

22 THE COURT: Mr. Riebe, I'm really trying to hear
23 your attorney talk to me.

24 THE WITNESS: Sorry.

25 MR. SELWA: Number 3 is the letter from Brana to

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 the solicitor's office disclosing what she's going to
2 use in trial.

3 Applicant's Number 4 is the administrative order
4 stating the dates on which --

5 THE COURT: The grand jury met.

6 MR. SELWA: -- the grand jury met.

7 [Whereupon, Plaintiff's Exhibit Number 3 is
8 marked by the court reporter]

9 [Whereupon, Plaintiff's Exhibit Number 4 is
10 marked by the court reporter]

11 [Off the record momentarily]

12 THE COURT: All right. Go back on the record
13 just real quick.

14 Mr. Selwa, you've had an opportunity to
15 introduce two more documents on the record, without
16 objection, from your client's box. Is there anything
17 else in that box we need to talk about?

18 MR. SELWA: No, Your Honor.

19 THE COURT: And one of the documents I noticed
20 was a list of the dates of the grand jury for 2009.
21 That was very helpful. Thank you for providing that,
22 Mr. Riebe.

23 And so with that, I'm going to allow you to
24 present proposed orders again. We're just going to
25 use that standard September 15th date at 9:00 a.m.

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 Again, you understand the protocol as to exchanging
2 with each other. And that's merely just a guideline.
3 So if you do not have anything additional to add to
4 what Mr. Thomas -- and, again, those are not -- I do
5 not just sign off on them. I will utilize what I need
6 to do.

7 But if you need any additional time -- I know
8 I've just hit you with three pretty-lengthy orders
9 from today and I know you have at least two or three
10 more tomorrow. So feel free -- those are just a
11 guideline. And I know you have a lot going on but if
12 I don't set a pretty tight date early on, then it will
13 just extend out and I know Mr. Riebe really wants a
14 ruling. So just -- that's my position. All right?

15 MR. SELWA: Thank you, Your Honor.

16 MR. THOMAS: Thank you, Your Honor.

17 THE COURT: Good luck to you, Mr. Riebe.

18 MR. RIEBE: Can I ask you one thing?

19 THE COURT: Why don't you ask Mr. Selwa? I have
20 a feeling you're going to ask me something you don't
21 need to ask me.

22 MR. RIEBE: Well, can I ask him and see if --

23 THE COURT: Yes. That's what -- you ask
24 Mr. Selwa.

25 [Whereupon, Mr. Selwa and Mr. Riebe confer]

Brana Williams
Cross-Examination by Mr. Thomas
August 26, 2014

1 MR. SELWA: Your Honor, my client's only concern
2 is that he would -- he wants to use the law library in
3 the jail. And I guess my proposal would be if he
4 does, in fact, win the PCR, maybe in one of the
5 proposed orders we can put that the applicant would
6 have access to the law library during the appellate
7 appeal process.

8 THE COURT: Is the law library at Reuben Long?

9 MR. SELWA: No.

10 THE WITNESS: No. It's at McCormick. They only
11 allow one day a week --

12 THE COURT: Mr. Selwa, I have no -- I know that
13 you find this hard to believe, but I have little to no
14 control over how the jail runs. And while I would
15 like to be more proactive as to how they are treating
16 individuals, that is not something that I can do. And
17 even if I put it in there, they likely will not listen
18 to me. All right? So I'm not going to put that in
19 there. But thank you.

20 All right. Good luck to you, Mr. Riebe.

21 MR. RIEBE: Thank you, ma'am.

22 THE COURT: And just -- I want to make sure --
23 we had a conference. Applicant's 3 and 4 are admitted
24 without objection, just so the record is abundantly
25 clear.

Jeffrey Riebe vs. The State of South Carolina
Certificate of Court Reporter

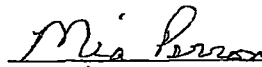
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Kristi L. Harrington, on Tuesday, August 26, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 20th day of March, 2015.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-58-

CLERK OF COURT

MELANIE HUGGINS-WARD
CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5030 • Fax: (843) 915-6081

September 5, 2013

Jeffrey Riebe #177357
F2B-120
McCormick Correctional Inst
386 Redemption Way
McCormick, SC 29899

Re: Grand Jury Reports 2008 & 2009
Court Calendar February & March 2009

Dear Mr. Riebe:

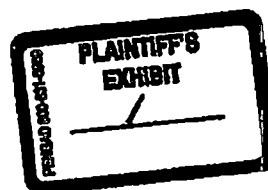
We are in receipt of your letter regarding the above reference.

I have enclosed copies of the reports I have. In May and October 2009 Grand Jury met twice in these months. Do not understand your reference to attachments.

Sincerely,

Melanie Huggins-Ward

Melanie Huggins-Ward
Horry County Clerk of Court



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN RE:)
REPORT OF HORRY COUNTY)
GRAND JURY)

IN THE COURT OF GENERAL SESSIONS

We, the undersigned members of the Grand Jury, do hereby certify that the Grand Jury met on February 26, 2009, and that a least twelve (12) members of the Grand Jury affirmatively voted for the issuance of 506 true billed indictments on the attached list unless otherwise noted before the Honorable BENJAMIN WILBERTSON.

Shawn Miller
FOREMAN (OR ACTING FOREPERSON)

~~Shawn Miller~~

Etta McKeever

Blain Burkant

Rubena Van Housen

Kay Vaught

Martha E. Horn

Diana Ream

Karen Clark

ROBERTS

Steph

Robert Jongo¹⁰

Ray Cuper

Benjamin Ellington¹²

¹³

¹⁴

¹⁶

¹⁷

¹⁸

2009 MAR -2 PM 12: 28
MELANIE HUGGINS
CLERK OF COURTS
HORRY COUNTY

FILED
HORRY COUNTY

Due to conflicts, the following Grand Jury members have recused themselves on the following cases:

Juror	Indict.#	Juror	Indict.#
_____	_____	_____	_____
_____	_____	_____	_____

Conway, South Carolina

March 2, 2009

TOTAL NUMBER PRESENTED
TOTAL TRUE BILLED
TOTAL NOT ACTED ON
TOTAL NO BILLED

Benjamin Ellington
PRESIDING JUDGE

2009 SEP -5 PM 2: 30
MELANIE HUGGINS
CLERK OF COURTS
HORRY COUNTY
CERTIFIED COPY

CLERK OF COURT

MELANIE HUGGINS-WARD
CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

July 12, 2013

Jeffrey Riebe 3177357
McCormick Correctinal Institute F2 B/120
386 Redemption Way
McCormick, SC 29899

Re: Grand Jury Report March 2009/October 30 2008
Motions/Hearings and Orders (Dates)

Dear Mr. Riebe:

We are in receipt of your letter regarding the above reference.

I have enclosed the grand jury reports as requested. You should have a copy of your file with motions etc reflecting the dates from our office. As to hearings you may need to contact the Solicitor.

Sincerely,

Melanie Huggins-Ward

Melanie Huggins-Ward
Horry County Clerk of Court



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN RE:)
REPORT OF HORRY COUNTY)
GRAND JURY)

IN THE COURT OF GENERAL SESSIONS

May 1, 2009

We, the undersigned members of the Grand Jury, do hereby certify that the Grand Jury met on April 30, 2009, and that a least twelve (12) members of the Grand Jury affirmatively voted for the issuance of 374 true billed indictments on the attached list unless otherwise noted before the Honorable Judge Steven N. John.

FOREMAN (OR ACTING FOREPERSON)

Ethan McKeever
Kay Vanhant¹
Alvin Buhrt²
Matthew Flon³
Kristen D. Warren⁴
Robert Longo⁵
Ronnie Chastain⁶
Dwain Reavis⁷
Judy L. C. Brunson⁸
Judy L. C. Brunson⁹

Edith Opal Harte¹⁰
Fay Cooper¹¹
Dale C. Clark¹²
Stanley Pugh¹³
Thomas Gore¹⁴
BENJAMIN ELLINGTON¹⁶
17
18

Due to conflicts, the following Grand Jury members have recused themselves on the following cases:

Juror	Indict.#	Juror	Indict.#
_____	_____	_____	_____
_____	_____	_____	_____

Conway, South Carolina
5/11, 2009

TOTAL NUMBER PRESENTED
TOTAL TRUE BILLED
TOTAL NOT ACTED ON
TOTAL NO BILLED

[Signature]
PRESIDING JUDGE

FILED
HORRY COUNTY
2009 MAY 14 AM 10:12
MELANIE HUGGINS
CLERK OF COURT
2009 MAY 14 PM 2:30
CERTIFIED COPY

WILLIAMS LAW FIRM, LLC

Brana J. Williams, Attorney at Law

889 Inlet Square Drive
Murrells Inlet, SC 29576Telephone: (843) 357-5100
Facsimile: (843) 357-5102

May 17, 2011

VIA Email and First Class Mail
George DeBusk, Senior Assistant Solicitor
Fifteenth Circuit Solicitor's Office
PO Box 1276
Conway, SC 29528Re: State vs. Jeffrey W. Riebe
WLF File No. 08-448Riebe

Dear George:

Please allow this letter to serve as official notice that the Defendant Jeffrey W. Riebe, pursuant to Rule 705, discloses the following as the underlying facts or data relied upon by said experts:

- DWP*
- A. Dr. Brian Meehan: Dr. Meehan was provided only materials supplied to the Defendant by the State, specifically the following:
1. All SLED reports and underlying data, graphs and documentation
 2. All Richland County reports underlying data, graphs and documentation
 3. All Arizona Department of Public Safety reports underlying data, graphs and documentation
- Dr. Bowers*
- B. Dr. Michael Bowers: Dr. Bowers was provided only materials supplied to the Defendant by the State, specifically the following:
4. All autopsy photos, reports, underlying data, graphs and documentation
 5. Dr. Proctor's CV
 6. Mr. Riebe's dental records from JRLDC and his dental provider
- State's Exhibit - PWS CS PWS*
- C. Dr. Robert Belloto: Dr. Belloto was provided only materials supplied to the Defendant by the State, specifically the following:
7. All audio and video interviews of Mr. Riebe along with the transcripts
 8. All SLED toxicology reports and underlying data, graphs and documentation
 9. All autopsy reports, underlying data, graphs and documentation
 10. Crime scene and evidence photos
 11. Writing sample from Mr. Riebe
 12. Investigative Report of Detective Pitsinger



DeBusk Letter
May 17, 2011
Page 2

crime scene expert

D. Donald Girndt: Mr. Girndt was provided only materials supplied to the Defendant by the State, specifically the following:

1. All SLED reports and underlying data, graphs and documentation
2. All audio and video interviews of Mr. Riebe along with the transcripts
3. All autopsy reports, underlying data, graphs and documentation
4. All photos
5. All Reports and documents provided by the North Myrtle Beach Police Department
6. All Reports completed by the Solicitor's Office

If you should have any questions or need further information, please contact me. With best personal regards, I remain,

Sincerely yours,
WILLIAMS LAW FIRM, LLC



Brana J. Williams

BJW/jls

Enclosure (as stated)

cc: Jeffrey W. Riebe
Dr. Brian Meehan – via email only
Dr. Michael Bowers – via email only
Dr. Robert Belloto – via email only
Donald Girndt – via email only

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN RE:)
SCHEDULE OF GRAND JURY)
MEETINGS,)
JANUARY THROUGH JUNE,)
2009,)

IN THE COURT OF GENERAL SESSIONS

ADMINISTRATIVE ORDER

Pursuant to the Order of the Honorable Jean A. Toal, Chief Justice of the South Carolina Supreme Court, the undersigned was appointed as Administrative Judge for the Fifteenth Judicial Circuit, and the Order provides for the Administrative Judge of General Sessions to set the days on which the Grand Jury shall meet.

In accordance with this authority, I hereby set the terms for the Grand Jury to meet in and for the County of Horry. It is, therefore,

ORDERED that the Grand Jury for Horry County shall meet at 9:00 a.m. on the following dates:

Thursday, January 22, 2009 (Organizational Meeting)

Thursday, January 29, 2009

Thursday, February 26, 2009

Thursday, March 26, 2009

Thursday, April 30, 2009

Thursday, May 28, 2009

Thursday, June 25, 2009

ORDERED that the Grand Jury for Horry County shall meet at such additional times as deemed necessary upon a call by the Foreman of the Grand Jury or the Court.

Conway, South Carolina

December 8, 2008

Steven H. John
STEVEN H. JOHN
CHIEF ADMINISTRATIVE JUDGE
FIFTEENTH JUDICIAL CIRCUIT

FILED
HORRY COUNTY
2008 DEC - 8 PM 1:27
MELANIE HUGGINS
CLERK OF COURT



1079
F2B-120
386 Redemption way
McLorain, SC 29899
December 1, 2014

FILED
Horry County
2014 DEC -3 PM 3:07
MELANIE HUGGINS-WARD
CLERK OF COURT

MELANIE HUGGINS-WARD
CLERK OF COURT, Horry County
P.O. Box 677
Conway, SC 29528-0677

Dear Ms. HUGGINS-WARD:

I am writing in pursuant of the freedom of
Information Act for the following case 2013-CP-26-
I am requesting the the follow information 05292

- 1) The Name of Judge that heard the case
- 2) HAS there been a ruling
- 3) Case history - please certify Case History

Enclosed is copy of my cooper + trust fund acca
Please waive any fee due to my poverty.

Thank you and God bless for your help and time
in this matter.

God bless,
Jeffrey Prite

P.S. I hope you had a good thank giving, and you
have merry Christmas.

1080

Jeffrey Riebe 17735,
MCCJ/F2B-120
386 Redemption way
McCormick SC 29896,
December 9, 2014

Horry County

14 DEC 11 PM 4:16

CLERK OF COURT

Daniel A. Selwa II
Attorney at Law
1053 London St.
Myrtle Beach, SC 29577

Dear Mr. Selwa II:

I received your letter dated December 2, 2014 on
December 8, 2014 pertaining to the dismissal order to
my case NO: 2013-CP-26-5292. I would like you to
put in a notice of intent to appeal.

Thank you for your time and help in this matter.

God bless
Jeff Riebe

CC/JWR/Horry county clerk of court/Appelete clerk of court

proof of service

I mailed this out on December 9, 2014 to
the above address.
Jeffrey Riebe

sworn and subscribed before
me J. A. Adkins on December
9, 2014
My Commission expires 12-16-2019

Jeffrey RIEBE 1084
In re: F2B-120
386 redemption way
McCormick SC 29899
January 12, 2015

Melanie Huggins-Ward
Clerk of Court, Horry County
P.O. Box 677
Conway, SC 29528-0677

Dear Ms. Melanie Huggins-Ward:

I am write you to find out if Mr. Daniel Selwa II,
Attorney at Law, Horry County, filed a Notice of Appeal
for PCR case No. 2013-CP-26 for Jeffrey Riebe vs state.
5292

Thank you for your time and help in this matter

God is not dead,
Jeffrey Riebe

2015 Jan 16 PM 1:45
CLERK HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Jeffrey Riebe, #177357,)

Case No. 2013-CP-26-5292

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
HORRY COUNTY
14 JUL 19 AM 9:42
MELANIE WIGGINS-YARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 5, 2013. Respondent made a timely Return on or about June 3, 2014. The Court convened an evidentiary hearing into the matter on August 26, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Brana J. Williams, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In October 2008, the Horry

Page 1 of 8


County Grand Jury indicted Applicant for murder (2009-GS-26-1053). Brana J. Williams, Esquire ("trial counsel"), represented Applicant. In May 2011 Applicant proceeded to trial before Judge John and a jury. The jury found Applicant guilty as indicted. On May 31, 2011, Judge John sentenced Applicant to forty (40) years in the State Department of Corrections.

Applicant filed a timely notice of appeal. Reid T. Sherard, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 26, 2013. *State v. Riebe*, Op. No. 2013-UP-278 (S.C. Ct. App. filed June 26, 2013). The remittitur was sent to the Circuit Court on July 15, 2013.

II. ALLEGATIONS

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

1. "Ineffective Assistance of counsel for failure to object to expert testimony and court not recognizing as expert."
2. "Ineffective Assistance of counsel for failure to object to closing statement by state"
3. "Ineffective Assistance of counsel for failure to object to trial under one indictment then sentence under another"
4. "Ineffective Assistance of counsel for failure to defects in the indictment."
5. "Ineffective Assistance of counsel for failure to bring up meritorious issue to Appeal court."
6. "Ineffective Assistance of counsel for fail to bring up plain erro issue before the appeals court"

At the evidentiary hearing, Applicant proceeded on only the allegations of ineffective assistance of trial counsel for failing to move to quash the indictment and for failing to object to the solicitor's closing argument.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified his indictment was amended during trial. Applicant stated the State presented evidence during trial that differed from the information in the indictment. Specifically, Applicant alleged the State presented evidence the victim died from strangulation and blunt force trauma, but the indictment only listed strangulation. Applicant believes this is a change in the State's theory of the case. Applicant testified trial counsel, Brana Williams, never reviewed the elements of murder or the State's evidence with him. He believes trial counsel should have moved for a directed verdict when the State failed to present evidence consistent with the allegations in the indictment.

Applicant further alleged his indictment was not true billed by a legally constituted grand jury. Applicant testified the grand jury was not authorized to meet on the date listed on his indictment. Applicant also testified trial counsel should have objected to the indictment because the indictment number indicates he was indicted in 2008, but was actually true billed in 2009. He recalled the trial judge amending the indictments at trial to reflect the correct year. Applicant further testified the difference in dates on the front and back of the indictment should have been objected to. Applicant also testified trial counsel should have objected to the solicitor's closing argument that called Applicant guilty and said his experts were lying.

Trial counsel testified she has been practicing law for over twenty (20) years, and has.

been employed in private practice and as an Assistant Solicitor. She testified she did not object to the indictment. Trial counsel also testified she recalled the difference in dates on the indictment, but did not think it was prejudicial. She testified she had no questions about whether the grand jury met and considered Applicant's indictment. Trial counsel testified she reviewed the State's evidence with Applicant prior to trial, and was not surprised by the medical evidence the State presented regarding the victim's cause of death. She testified she understood what the State was alleging in the indictments. Trial counsel also recalled the Solicitor's closing argument, and testified she would have objected if the Solicitor had said anything objectionable. She recalled no objectionable material in the closing. She also recalled Judge John instructing the jury it was the judge of the facts and that the attorney's arguments were not evidence.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions

in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of showing trial counsel was ineffective. The Court further finds trial counsel conducted a proper investigation, adequately communicated with Applicant, and was competent in her representation.

The Court finds the indictments provided sufficient notice of Applicant's charges. *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("The indictment is a notice document."). The evidence presented at trial was consistent with the allegations in the indictment. Thus, this is not a case where "the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged." *Bailey v. State*, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011) (quoting *Thomason v. State*, 892 S.W.2d 8 (Tex. Crim. App. 1994)). The Court finds trial counsel was not deficient in failing to object to the indictment on the grounds it was not consistent with the State's evidence.



Applicant's allegation the grand jury was improperly empaneled is without merit. A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Applicant presented evidence Judge John, as Chief Administrative Judge, issued an order directing the grand jury to meet on the date it true billed Applicant's indictment. (Applicant's Ex. no. 4). A grand jury is not unlawfully empaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See *State v. Jeffcoat*, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."). There is no evidence the grand jury was not authorized to meet and consider Applicant's indictment.

A presumption of regularity attaches to proceedings in the Court of General Sessions. *Pringle v. State*, 287 S.C. 409, 411; 339 S.E.2d 127, 128 (1986) (citing *State v. Britt*, 235 S.C. 395, 111 S.E.2d 669 (1959); *State v. Jones*, 211 S.C. 319, 45 S.E.2d 29 (1947); *State v. Waring*, 109 S.C. 52; 95 S.E. 143 (1918)). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. *State v. James*, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995); *State v. Thompson*, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991)). Applicant's indictment is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Id.* at 75, 472 S.E.2d at 40. The indictment is stamped "True Billed" and signed by the foreman. *Pringle*, 287 S.C. at 410, 339 S.E.2d at 128. The Court finds trial counsel was not ineffective for failing to object to the indictment.

The Court also finds Applicant has not demonstrated trial counsel should have objected to the Solicitor's closing arguments. The Court has reviewed the Solicitor's closing argument

and agrees with trial counsel's assessment that the Solicitor said nothing objectionable. *State v. Caldwell*, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990) ("A solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony." (citing *State v. Allen*, 266 S.C. 468, 224 S.E.2d 881 (1976))), *overruled on other grounds by State v. Evans*, 371 S.C. 27, 637 S.E.2d 313 (2006). The Court finds trial counsel articulated a strategic reason for not objecting. See *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The propriety of a closing argument must be reviewed "in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." *Brown v. State*, 383 S.C. 506, 516, 680 S.E.2d 909, 914-15 (2009) (citing *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). Here, Judge John instructed the jury it was not to consider closing arguments as evidence. See *Smith v. State*, 375 S.C. 507, 523, 654 S.E.2d 523, 532 (2007) (trial judge's instructions can cure any objectionable material in Solicitor's arguments (citing *Simmons*, 331 S.C. at 338, 503 S.E.2d at 166)). The Court finds Applicant has not shown any objection to the Solicitor's closing argument would have changed the outcome of his trial.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. This application for post-conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence

AND IT IS SO ORDERED this 7th day of October, 2014.


THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JEFFREY RIEBE, #177357)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS


2013-CP-26-5292

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 8TH day of December, 2014.



 Norma Bigbee, Legal Assistant
 For Respondent

WITNESSES

ven Lyniam North Myrtle Beach Police
Department.

109

DOCKET NO. 2007 GS-26-01053

The State of South Carolina

County of Horry

George Debusk

08H03848

COURT OF GENERAL SESSIONS

October, 2008 TERM

REST WARRANT NUMBER

41000

IR: 0116 16-03-0010, 0020

DA: 8/29/2008

THE STATE

vs.

Jeffrey Wayne Riebe

DOB:

SSN:

ATTORNEY: Williams, Brana J.

RETURN BY GRAND JURY

TRUE BILL

Shawn Miller
representative of Grand Jury

date: **MAR 26 2009**

INDICT

Indictment for

Murder

J. Gregory Hembree, Solicitor

CRIMINAL

representative of Petit Jury

date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010.0020

That Jeffrey Wayne Riebe did in Horry County, on or about August 27, 2008, willfully, feloniously, and intentionally kill the victim, Phyllis Mowery, with malice aforethought, either express or implied, by means of strangling, and the victim did die as a proximate result thereof on or about August 27, 2008 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR