

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

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**RECEIVED**

October 13, 2015

OCT 16 2015

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
Post Office Box 11330  
Columbia, South Carolina 29211-1330

**S.C. SUPREME COURT**

Re: Robert Cannon, III, #328<sup>347</sup>~~247~~ v. State of South Carolina; 2012-CP-28-00145.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the envelope provided. Inasmuch as I was court-appointed in this matter, I will now be turning this file over to the Appellate Division of the South Carolina Commission on Indigent Defense for perfection of this appeal. If Mr. Cannon and his family decide to hire me I will notify the Court and opposing counsel promptly. I am, of course, advising them that any such decision would have to be made very quickly. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Megan Harrigan Jameson, Assistant Attorney General  
Loriene French, South Carolina Office of Appellate Defense  
Robert Cannon, III, #328247  
Veronica Davis

STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas  
Alison Renee Lee, Presiding Judge

OCT 16 2015

**S.C. SUPREME COURT**

2012-CP-28-00145

ROBERT CANNON, III, #328<sup>347</sup>~~247~~

Applicant,

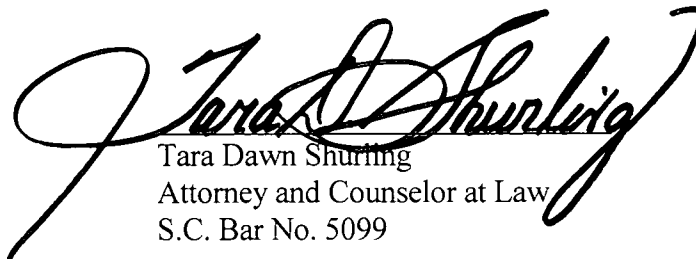
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

**NOW COMES** the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal filed on September 15, 2015, denying his Post-Conviction Relief Application.



Tara Dawn Shuring  
Attorney and Counselor at Law  
S.C. Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 13<sup>th</sup> day of October, 2015.

Other Counsel of Record:

Megan Harrigan Jameson, Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3737

STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

OCT 16 2015

**S.C. SUPREME COURT**

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas  
Alison Renee Lee, Presiding Judge

2012-CP-28-00145

ROBERT CANNON, III, #328247 <sup>347</sup>

Applicant,

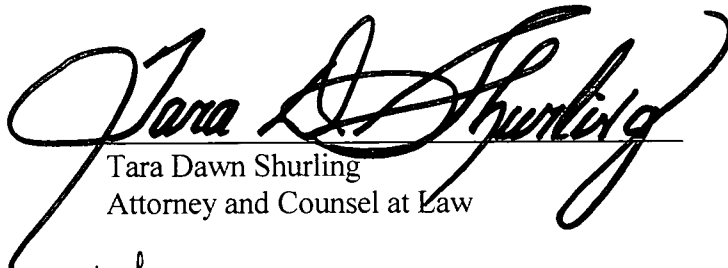
v.

THE STATE OF SOUTH CAROLINA,

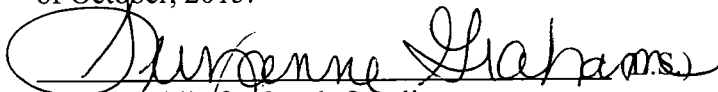
Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Megan Harrigan Jameson, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 13<sup>th</sup> day of October, 2015.

  
Tara Dawn Shurling  
Attorney and Counsel at Law

SWORN TO BEFORE me this 13<sup>th</sup> day  
of October, 2015.

  
Notary Public for South Carolina  
My Commission Expires: 2/28/24

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

FILED FOR RECORD

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012-CP-28-145

Robert Lee Cannon

2015 SEP 15 AM 10:25

State of South Carolina

JOYCE MCJINALE  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

2015 SEP 15 AM 10:25  
JOYCE MCJINALE  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

2015 SEP 15 AM 10:25  
JOYCE MCJINALE  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

This judgment was entered on 15th day of September, 2015, and a copy mailed first class or placed in the appropriate attorney's box on 15th day of September, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A  
Columbia, SC 29204

James Clayton Mitchell III PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Joyce M. McDonald*

Court Reporter

Joyce McDonald - Clerk of Court

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

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

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STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

FILED FOR RECORD  
IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
2015 SEP 15 AM 10:25

Robert Cannon, III, #328347,

JOHN McDONALD Case No. 2012-CP-28-00145  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed February 9, 2012. Respondent made its Return on March 2, 2012, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on March 11, 2014. An evidentiary hearing into the matter was convened March 17, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. After a thorough review of all testimony and evidence presented at the hearing, along with a review of the records from Applicant's trial and direct appeal, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined within the South Carolina Department of Corrections pursuant to orders of commitment from the Kershaw County Clerk of Court. During its February 2007 term, the Kershaw County Grand Jury indicted Applicant for murder (2007-GS-28-00018) and burglary in the first degree (2007-GS-28-00017), stemming from the home invasion and killing of Joshua Zoch. Two co-defendants, Christopher Whitehead and Derrick McDonald, were similarly indicted. Joshua Snow Kendrick, Esquire, represented Applicant. Deputy Solicitor John P. Meadors, Assistant Solicitor Joanna A. McDuffie, and Assistant Solicitor Ronald W. Moak prosecuted the case for the Fifth Circuit Solicitor's Office. On May 5, 2008, Applicant proceeded to a joint trial by jury alongside co-defendants Whitehead and McDonald before the Honorable G. Thomas Cooper, Jr. On May 13, 2008, the jury convicted Applicant as

*Handwritten initials: "ad" and "SH"*

indicted for murder and burglary in the first degree.<sup>1</sup> The trial court sentenced Applicant to thirty-five years for each offense, with the sentences to be served concurrently.

Applicant appealed his convictions and sentences to the South Carolina Court of Appeals. Melissa J. Kimbrough Armstrong, Esquire, represented Applicant in his appeal. Following briefing and oral argument, the Court of Appeals affirmed Applicant's convictions and sentences. State v. Robert Cannon, 2011-UP-267 (Ct. App. filed June 8, 2011). The Remittitur was issued on June 24, 2011.<sup>2</sup>

In his *pro se* application for post-conviction relief, Applicant alleged he was being held in custody unlawfully based on the following allegations:

1. Actual Innocence: "Not enough substantial evidence to convict," and
2. Ineffective Assistance of Counsel for failure to properly investigate the case.

On March 12, 2014, Applicant filed an amended application alleging the following additional grounds for relief:

1. Trial counsel was ineffective for neglecting to investigate and subpoena alibi witnesses where Counsel was provided with the names and contact information for these witnesses who could have verified the Applicant's presence at a party in Columbia, at a home next door to his mother's residence from 11:00 pm to 12:00 am. These witnesses Steven Coffee, Gerod Chandler, and Orlando Givens were made known to Trial Counsel and were at the time of the Applicant's trial, available to testify for the defense.
2. Trial Counsel was ineffective for failing to introduce testimony from the Applicant's mother, Veronica Davis, whose testimony could have confirmed that the Applicant was in and out of her home in Columbia during the time period he was next door at a neighbor's party.
3. Trial Counsel was ineffective for failing to call as alibi witnesses, two neighbors of his mothers, named Shannon and Melvin, who could

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<sup>1</sup>The jury similarly convicted co-defendants Whitehead and McDonald for murder and burglary in the first degree. The court sentenced Whitehead to life imprisonment and McDonald to thirty-five years imprisonment.

<sup>2</sup>Co-defendants Whitehead and McDonald also sought direct appellate review of their convictions and sentences. The South Carolina Court of Appeals affirmed both co-defendants' convictions. State v. Whitehead, Op. No. 2012-UP-536 (Ct. App. filed Sept. 12, 2012) and State v. McDonald, 400 S.C. 272, 734 S.E.2d 167 (Ct. App. 2012). Both then petitioned for certiorari to the South Carolina Supreme Court, which granted both petitions. Following full briefing and argument of each case, the Supreme Court affirmed both co-defendants' convictions and sentences, citing overwhelming evidence of guilt implicating each defendant. State v. Whitehead, Mem. Op. No. 2015-MO-033 (filed June 10, 2015) and State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015).

have confined his presence at a party at their home the evening of this crime in Camden, South Carolina.

4. Trial Counsel was ineffective for neglecting to call the Applicant's then girlfriend, Ember Blow, as a witness for the defense where she was made known to trial counsel as a witness who could have testified that the Applicant arrived at her home in Columbia shortly after midnight and spent the night with her home in Columbia shortly after midnight and spent the night with her.
5. Trial Counsel was ineffective for failing to call Sheila and Chad Rodden as witnesses for the defense where this couple lived very near the crime scene and they could have rebutted testimony offered by the victim's girlfriend Melissa A. Davy concerning the circumstances under which she found the victim's body and the timing with which she reported it to the police.
6. Trial Counsel was ineffective in representing the Applicant at trial inasmuch as he failed to present two witnesses, Dixon Barker and Joe Wilson, whose testimony would have supported the Applicant's defense of third party guilt when these witnesses were available and willing to testify to admissions made by an individual named Adrian Duran concerning his intent to harm the victim in retaliation for his robbery by the victim.
7. Trial Counsel erred in failing to present documentation of robbery charges against the victim for robbing an individual named Adrian Duran where these charges, and Adrian Duran's subsequent alleged threats against the victim, were the basis for the Applicant's plan to utilize a defense of third party guilt.
8. Trial Counsel was ineffective in that he informed the Court at the outset of the Applicant's trial of his intent to present third party guilt as a defense and then failed to present any evidence in support of that theory at trial.
9. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel prior to and during his jury trial where Trial Counsel failed to give the State proper notice of his alibi defense, as required by Rule 5(e) SCRCrimP, despite having been advised of the Applicant's alibi when Trial Counsel was first appointed to represent the Applicant in September 2007 and thereby deprived the Applicant of the opportunity to present that defense at trial.
10. Trial Counsel was ineffective for neglecting to prepare a defense for presentation at the Applicant's trial.

11. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel where he neglected to argue that statements made by Adrian Duran to two witnesses concerning his intent to harm the victim were admissible as admissions against penal interests pursuant to Rule 804 (b) (3), SCRE.
12. Trial Counsel failed to adequately explain the law of accomplice liability to the Applicant prior to the Applicant being required to make a decision on a plea offer from the State to plead to the lesser-included offense of voluntary manslaughter.
13. Trial Counsel was ineffective for failing to advise the Applicant concerning pleas pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and for failing to ascertain whether the State would have consented to the Applicant entering *Alford* pleas under the terms and conditions of the plea offer extended by the State.
14. Trial Counsel was ineffective for neglecting to seek a mistrial when the jury announced it was deadlocked and advised the Court that further deliberations were not likely result in a unanimous verdict.
15. Trial Counsel was ineffective for failing to make a motion for a severance where the Applicant's trial with co-defendant McDonald deprived him of the opportunity to cross-examine McDonald concerning his statements to law enforcement.
16. Trial Counsel was ineffective for failing to move to sever the Applicant's trial from his co-defendants where their joint trial deprived the Applicant of the opportunity to present testimony from Whitehead which would have verified that the Applicant left the Sonic with a friend; not one of his co-defendants.
17. Trial Counsel was ineffective for failing to object to the use of polygraph evidence relating to any of the three defendants on trial in the *Jackson v. Denno* hearing held in this case where polygraph evidence is inadmissible in South Carolina and its consideration by the Court in deciding the admissibility of the statements attributed to the Applicant improperly bolstered the credibility of the State's witness by improperly attacking the Applicant's credibility.
18. Trial Counsel failed to provide the Applicant reasonable professional assistance of Counsel when he informed the jury of a list of evidence they would hear during the Applicant's trial and then failed to introduce any of the evidence he promised the jury they would hear, thus setting the Applicant up for the jury to draw

negative inferences from this omission and from his election not to present a defense in general.

19. Trial Counsel failed to raise adequate arguments for the suppression of the co-defendant statement of McDonald where despite redaction, the statement of McDonald could easily be interpreted as implicating the Applicant, where McDonald was not available for cross-examination, and where the statement implicated the Applicant and Whitehead by confirming the State's theory that two others, in addition to McDonald, were responsible for this crime.
20. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he neglected to preserve the Applicant's objection to gruesome crime scene photographs and inflammatory photographs of the victim's body where any arguable probative value of this evidence was outweighed by the tendency of this evidence to prejudice the Applicant's ability to receive a fair trial by inflaming the jury by appealing to their passions and where other trial testimony established any facts arguably demonstrated by the photographs in question.
21. Trial Counsel was ineffective for requesting, as an alternative to the suppression of the testimony of Lt. Crawford, a recess to permit him the opportunity to consult with a polygraph expert prior to Lt. Crawford's testimony where evidence relevant to the testing was not timely produced during the discovery process.
22. Trial Counsel was ineffective for neglecting to request a continuance based upon the State's failure to produce evidence relevant to the Applicant's polygraph examination where Counsel discovered the State had this evidence in dispute during the pretrial motions hearing.
23. Trial Counsel erred in failing to pursue a Rule to Show Cause when the State failed to respond to his subpoena for the raw data and test strips from the multiple polygraphs administered in this case.

At the evidentiary hearing, Applicant proceeded on the twenty-three allegations as set forth in this amended application.

#### SUMMARY OF EVIDENCE ADDUCED AT TRIAL

Applicant, Christopher Whitehead, Derrick McDonald, and Joshua Zoch worked together at various times at a Sonic fast food restaurant in Columbia, South Carolina. On Tuesday, December 12, 2006, Joshua Zoch, was brutally murdered in his home. The evidence at trial established that the burglary and murder occurred at approximately 11:30 p.m. that night.

Zachary Waltemath, then an employee at the local Sonic along with co-defendant Whitehead, testified that at approximately 7:00 or 8:00 that evening, Whitehead called him and asked him to call the victim "and see what he's doing because he wanted to go over there and fight him or something." Waltemath declined. Whitehead called back shortly after and asked if Waltemath had tried to call him. He responded he had not, and Whitehead indicated he wanted Waltemath to call him. Waltemath had "hung out" with Whitehead on several occasions. He was sure that it was Whitehead who called him that night.

Allen Brown, a manager at the local Sonic, testified that all three co-defendants and the victim had worked at Sonic. McDonald, Whitehead (who was still employed at the time), and Applicant were together the evening of Zoch's murder. At approximately 10:00 p.m., Whitehead, McDonald, and Applicant were in the kitchen area of Sonic. Applicant was wearing a ski mask and was told to take it off. Brown instructed all three to leave. Christopher Rust, also an employee at Sonic who was working that same evening, confirmed all three left at the same time. Rust also recalled that Whitehead drove a car with "noticeable" muffler noise.

At approximately 11:30 p.m., a neighbor to the victim, Cosmo Baccamo, testified that he was outside with his son's dog and heard "a lot of knocking noise, loud, like somebody kicking something or slamming doors" and, "about ten minutes later," he heard "excited" and loud male voices, a door slam, and a car with a loud muffler take off.

Later that same night, at approximately 1:30 a.m., McDonald went to Rust's home. He was upset and asked to stay the night at Rust's house. He claimed he had an argument with his mother. Rust allowed him to stay, then took him to his mother's home the next morning on his way to school.

Patricia Heathcoe, part-owner of the Sonic, testified that on Wednesday, December 13, 2006, the day after the murder, Whitehead came to work at Sonic with a scratch under one eye, a noticeable limp, and was complaining that his ankle hurt. He did not have the injuries the previous day when he had worked an early shift. Whitehead told Heathcoe he had "slipped and fell." On Thursday, Whitehead demanded that a Worker's Compensation claim be filed. Because business was slow, Heathcoe had intended to let Whitehead go home that day, but "he got real adamant. Whitehead didn't want to leave, you know, until the Workman's Comp form was filled out on him." He wanted to report his injuries as occurring on December 12<sup>th</sup>. Heathcoe noted that Whitehead never went to a doctor. On Friday, Whitehead walked out of

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work, leaving the crew short-handed. Heathcoe called Whitehead on his cell phone and he became belligerent:

[T]he first thing he said to me was, F Sonic. I said, "Chris, what is wrong with you?" And he started just ranting. I said, "you walked out and left Cecile by herself." I said, "Why would you do that?" And he was just ranting. You know, I don't need that f'g job. I've got problems. I'm about to move to Aiken. And I was just trying to talk to him. I mean, he was just - - I never heard him sound like that ever . . .

"Cecile," as referenced in the above conversation, was Cecile Trapp. Trapp testified that she worked Tuesday morning with Whitehead and all was well. She went back to Sonic Tuesday night, to eat and check her schedule and confirmed, like Rust, that Whitehead and Applicant came by the store that night and that Applicant was wearing a ski mask. Whitehead was not limping earlier that day, or when she saw him later that night. On Wednesday, however, Whitehead came into work "complaining that his ankle was hurting, and he had a scratch on his face." He told Trapp "that he had got into like a play fight with his cousin and that he hurt his ankle and his cousin accidentally scratched him on his face." He was also limping. Further, Whitehead advised Trapp that he intended to "pretend that he fell on grease and hurt his ankle so that Ms. Pat could pay for the hospital bills." On Friday, Whitehead was with Trapp to open the Sonic, when his mother drove up. After speaking with his mother, Whitehead "kind of freaked out and was just like, 'I have to go.'" He would not tell Trapp what was happening but simply left immediately.

Victim's longtime, live-in girlfriend, Melissa Davy, was absent from the victim's home at the time of the burglary and murder, the two having had a disagreement over victim's drug use. Victim had hosted a party at their home on Friday, December 8, 2006 that lasted into the early morning hours of Saturday, December 9, 2006. At approximately 2:00 a.m. that Saturday, Davy left with friends Zachary Waltemath and his sister Molly after a fight about victim's drug use, specifically his smoking crack cocaine (though marijuana may also have "possibly" been used at the party, as well), and after his request that they leave the house. Davy would later spend time with the victim on Monday, December 11, 2006 and briefly on Tuesday. She last spoke to him when he called her at approximately 6:00 or 7:00 that night. The next day, Wednesday, at approximately 5:30 p.m., after completing her work shift at Sonic, Davy went back to the victim's home with Zach and Molly. The lights were off and victim's car was backed into the

garage, which was unusual for the victim and alerted Davy that something was wrong. She called victim's grandmother, Helen Zoch, who had purchased the home for victim to rent and stayed on the phone with his grandmother as she entered the home. She saw victim's lifeless body and called 911.

Helen Zoch testified that she had spent time with victim the day before the burglary and murder and hoped to help him with his drug problem. In fact, victim had planned to enter Morris Village but wanted to talk to Davy first. The next day, Ms. Zoch called at 7:30 in the morning but had not gotten an answer. At approximately 2:00 p.m., she went by the home, noticed the victim's car was backed into the garage, which was unusual, but she did not try to enter the home. She testified that she was aware that her grandson had worked with the police, making drug buys for them.

Investigating officers found the victim's home a "complete mess" with the victim's body "in the middle of it." The back door had been kicked in. The investigation began to focus on Whitehead, McDonald, and Applicant. Whitehead informed the investigating officers he "didn't know a damned thing about" the victim's murder. Both McDonald and Applicant similarly denied any direct knowledge or involvement in their initial statements to police. However, Applicant later gave a detailed confession to officers, implicating Whitehead and McDonald, which was redacted for presentation at trial. The statement included not only the grisly facts of the vicious beating – such as the attack on the victim while he slept, dragging him off his couch, using the victim's bat to strike the victim on his head – but also that victim was selected because he was thought to be a "snitch" and for his drugs. Applicant's details included that one person took frozen chicken from the kitchen and placed it on the victim's head wounds in an attempt to stop the bleeding; that they hit the victim with a glass object, that they first went to the local Walmart for supplies and used the purchased purple latex gloves during the attack and wore ski masks; and, that the attack occurred at victim's home at approximately 11:30. Applicant later supplemented his statement voluntarily with a list of items he recalled taking from the home, including DVDs, a DVD player, presents, hair clippers, and cellphones, and gave an additional statement in which he admitted kicking the victim.

McDonald also confessed to the crime in detail. Like Applicant's statement, his statement was also redacted before introduction. The statement referenced going to the local Walmart and buying a ski mask and a box of purple gloves; that one of them called "Zach" to see

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if someone was home; that all of them kicked in a sturdy back door; that one person "picked up a glass bowl with flower petals in it, picked it up over his head and hit Josh in the head with it while Josh was asleep on the couch"; that another person dragged victim off the couch; that he repeatedly hit victim with his fists then hit him in the back of the head using the victim's bat; that they were searching for drugs and money; that another person kicked and stomped the victim, and, eventually, someone pulled a Christmas tree over on him. He also claimed someone else left the house with "plastic bags of stuff" and gave him some "DVD's and stuff." Further, at the time of his arrest, when driving to the sheriff's department and before giving his detailed statement, McDonald volunteered to officers, "This is the way we came that night."

Whitehead, though he did not give a confession to officers, was twice overheard by another inmate, Michael Jenkins, at the detention center bragging about the killing, identifying the home where the murder occurred, and calling the victim's name. This caught Jenkins' attention as he had known the victim. A detention center officer confirmed that Jenkins had been in the cell next to Whitehead at the time the initial conversation was overheard.

Forensic pathologist Joel Sexton, M.D., testified that at autopsy, he identified "at least six" and possibly eight "injuries or blows were inflicted to the head that were each capable of causing death," with wounds inflicted on the top and back of the head and behind the left ear, along with abrasions and cuts to the face, injuries on legs, and abrasions on knees and on the abdomen. From the wounds and autopsy and from looking at scene photos, the pathologist was able to opine that two blows were inflicted on the couch, but that the victim either came off, or was pulled off, the sofa and was hit on the floor with a "cylindrical and linear" object such as the bat (State's Exhibit 99), and that he was hit on the head with a glass potpourri bowl, remnants of same still being on the couch. He also confirmed that tests of the victim's blood showed a prior use of cocaine and marijuana.

Investigators obtained a copy of a receipt from the local Walmart confirming a purchase of a ski mask and purple gloves on December 12, 2006 at 10:43 p.m. Davy testified that victim's grandparents had provided a bat to keep in their residence for protection. Ms. Zoch testified that she had recently replaced the back door to the home with another sturdier door prior to the burglary and murder. Photos from the scene also confirmed the use of the latex gloves, the bat, the placement of the frozen chicken near victim's head, the broken glass bowl, and the overturned lamp and Christmas tree. In sum, the physical evidence supported the detailed

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confessions of Applicant and McDonald, as well as the details overheard in Whitehead's detention center conversations.

**SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING**

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Shelia Ann Rodden, Veronica Ann Davis, trial counsel Joshua Snow Kendrick, and Ember Blow. Applicant testified first. He testified that he was twenty-five years old and had been incarcerated for approximately eight years. He went to the eleventh grade and later received his GED. He was sentenced to an aggregate thirty-five years for murder and first-degree burglary. He testified that he understands murder carries a mandatory minimum sentence of thirty years that must be served day-for-day and a maximum sentence of life imprisonment.

He testified that Kendrick was appointed to represent him. He met with Kendrick numerous times and spent a "good deal of time with him." Kendrick reviewed the discovery with him and gave him a copy of all discovery materials. He discussed possible defenses with Kendrick, including third party guilt and alibi. He wanted Kendrick to pursue both of these defenses. Applicant acknowledged that he gave two separate statements to law enforcement implicating himself in Zoch's murder.

However, Applicant acknowledged that he wanted Kendrick to pursue an alibi defense, which is inconsistent with accomplice liability theories. He elaborated that he was at his neighbor's house from 11 p.m. to 12 a.m., told Kendrick this, and asked Kendrick to call his neighbor and mother as alibi witnesses. He acknowledged that his mother was not at the party but that he was constantly "in and out" of his mother's house during the party. He also gave Kendrick the names of Orlando Givens, Steven Coffee, and Gerald Chandler, who could support his alibi defense. He also testified that he was at his girlfriend Ember Blow's house from midnight until the next morning. Kendrick used an investigator to help with the case and that he gave the investigator the names of all potential witnesses, but then testified he could not recall if he had given full names to the investigator or Kendrick. Kendrick neither subpoenaed these witnesses nor notified the State of an alibi defense. Applicant also wanted Kendrick to call Shelia and Chad Rodden to testify. The Roddens were neighbors of the victim who had given statements to law enforcement about Melissa Davy's behavior prior to calling the police. He testified that Kendrick explained to him it would be better not to call any witnesses so he could present the final closing argument. He acknowledged that several witnesses testified that they

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saw him at Sonic with his two co-defendants shortly before the murder and that the victim's house was less than ten miles from Sonic.

He spoke with Kendrick about possible plea offers and he recalled an offer for eight to twelve years imprisonment for the lesser included offense of voluntary manslaughter and the dismissal of his burglary charge. He testified that he rejected this offer because he is innocent. Kendrick did not explain the theory of hand-of-one, hand-of-all or accomplice liability to him and that he likely would have taken the plea offer if Kendrick had explained these concepts to him. He also testified that counsel never discussed with him the possibility of an Alford<sup>3</sup> plea and that he would have taken a plea pursuant to Alford.

Applicant testified that he wanted his trial severed from his two co-defendants but that Kendrick never pursued this or discussed it with him. He testified that McDonald and Whitehead had prior records and he would have impeached them with their records. He testified he also would have wanted to cross-examine his co-defendants regarding his presence at the scene. He testified that he understood that both co-defendants could have refused to testify or invoked their right to remain silent.

Applicant testified that he wanted to pursue a third party guilt claim involving Adrian Duran based on statements Duran made to two friends about harming the victim and the victim's previous robbery of Duran. Applicant testified he was aware of the statements based on the discovery materials. He told Kendrick to subpoena the witnesses so they could testify at trial, but none were present at his trial. He recalled Kendrick and his co-defendants' counsels requesting to pursue third party guilt and the trial court ruling that such a defense could be pursued only if Duran were present to testify.

Applicant testified that Kendrick was ineffective in his opening statement to the jury. He elaborated that Kendrick promised the jury that Applicant would be putting up a defense and introducing evidence but then failed to call any witnesses or enter any evidence into the record. Applicant also testified that Counsel did not properly preserve objections to the introduction of crime scene photographs into evidence, which he characterized as gruesome.

Applicant also testified that Kendrick was ineffective as to his handling of statements made by his co-defendants. Applicant acknowledged that pre-trial hearings were held as to these statements but testified that Kendrick should have objected to any references of polygraph tests.

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<sup>3</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

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He also testified that Kendrick was ineffective as to the redactions made to his statement and his co-defendants' statements. He acknowledged that Kendrick had objected to the redactions and was overruled by the court. Kendrick was also ineffective for failing to timely obtain data from the polygraph test, for failing to move for a recess or continuance to analyze the data, and for failing to move for a rule to show cause when the State did not initially provide the data as requested by his subpoena.

Kendrick did not discuss available options with him once the jury announced it was deadlocked and failed to object to additional instructions given by the trial court. Kendrick was ineffective for these reasons. Additionally, Applicant wanted Kendrick to move for a mistrial.

Following his own testimony, Applicant called Sheila Rodden to testify. She lived next-door to the victim. The day following the victim's murder, she arrived home at approximately 5:00 p.m. and saw four people on the victim's front porch, including the victim's girlfriend whom she recognized. She testified that approximately thirty minutes later, a very tall boy left the scene, leaving behind Davy, another girl, and another boy. She testified that she became aware of law enforcement activity at the scene between 6:30 p.m. and 7:00 p.m.

She testified that she spoke to law enforcement in December 2006 approximately a week after the murder on December 14, 2006, but was not interviewed any additional times. She never provided a written statement but that the officer who spoke to her took notes. When presented with these notes, she acknowledged that the notes reflected that she told law enforcement that three people were on the porch, not four people as she testified at the hearing. She testified that her son Chad also spoke with law enforcement. She was not contacted by Kendrick prior to Applicant's trial. Neither she nor her son was subpoenaed for trial.

Following Rodden's testimony, Applicant presented his mother Veronica Davis as a witness. She testified that she recalled the murder being discussed shortly after it happened. Her son was arrested two days after the murder. Davis testified that her son lived with her prior to his arrest, along with her daughter and husband. On the night of the murder, her son was at her next-door neighbor's house attending a party. She testified that her son kept coming back and forth from her house to the party that she eventually told him this was not a "revolving door" and that he either needed to "stay in or stay out." Applicant did not come home that night and stayed at his girlfriend Ember Blow's house. She testified that she saw her son again the next day. She did not tell law enforcement that her son was at her house that evening, but rather that he was "in

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and out" at a party next-door. She testified that Kendrick came to her house and spoke with her once for approximately twenty minutes. She elaborated that Kendrick did not ask about her son's whereabouts that evening and she did not tell him that Applicant had been home. She testified that Kendrick's investigator came to talk to her and she did tell him her son had been back and forth between her house and the party next-door. Kendrick subpoenaed her as a witness so that she could attend the trial daily without any penalty for missing work. She testified that she never told Kendrick that she could provide an alibi for her son or to call her as an alibi witness. She testified that she is not familiar with Kershaw County and does not know how far her house is from the victim's house.

Next, Applicant called trial counsel Joshua Snow Kendrick to testify. Kendrick testified that he had been practicing law for approximately five years when he was appointed to represent Applicant. He had tried numerous criminal cases but that this was his first murder case that had gone to trial. The vast majority of his caseload is criminal defense. Kendrick testified that he worked closely with co-defendants' counsel, Neil Riley and Marcus Whitlark, both of whom had a great deal of criminal defense experience. Additionally, he hired an investigator to assist with Applicant's defense.

He met with Applicant "many times" and thoroughly reviewed all discovery materials with him. He testified that he reviewed the underlying facts giving rise to the charges, focusing on Applicant's statements. Applicant's statement to law enforcement showed that he was actively involved in the beating on the victim, not merely a bystander. He elaborated that Applicant's statement was very detailed, including: leaving Sonic with both co-defendants, going to Wal-Mart to buy gloves and ski masks, going to the victim's home, and a detailed description of the assault, what the victim was hit with, placing frozen chicken on his head to attempt to stop the bleeding, and pushing a Christmas tree on top of him. He testified that Applicant denied making this statement and told him he signed multiple blank pages. Applicant told him that he was never at the victim's home and was innocent. He questioned Applicant as to why the statement was so vivid and aligned so well with the evidence if it was fabricated, and Applicant's response was that he was innocent. He explained the theory of hand-of-one, hand-of-all to Applicant. Applicant's statement to law enforcement was that he actively participated which contrasted with Applicant telling him that he was never at the house; therefore, Kendrick did not focus his discussion with Applicant on accomplice liability. Instead, he focused on how to

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suppress Applicant's statement and explored whether an alibi defense was viable. He also testified that this was not a classic accomplice liability case and it was not the State's theory of the case. He did explain to Applicant that it did not matter if he was the perpetrator who struck the fatal blow, as the pathologist testified that a number of the blows could have been fatal.

Kendrick was aware that law enforcement had given Applicant a polygraph examination and that he subpoenaed the raw data. He testified that these materials were not turned over until pre-trial hearings before trial. He reviewed this raw data with a polygraph expert immediately and there was no need for a continuance or any other delay based on the polygraph materials. He testified that he considered using a polygraph expert at trial and consulted with an expert, but that it would not have been helpful to Applicant's case. He testified that he did not move to exclude any reference to the polygraph examination during the pre-trial Jackson v. Denno hearing, where his client's credibility was paramount. He testified that he does not think the trial court would have excluded references to Applicant's polygraph during this pre-trial hearing. He testified his paramount concern was the jury not hearing about the polygraph and the jury did not hear about it.

Kendrick discussed third party guilt with Applicant, focusing specifically on Adrian Duran. He was aware of Duran from discovery materials and knew that the victim had robbed Duran, leading to an ongoing dispute. He also testified that the victim had pending criminal charges as a result of the robbery. He testified that he did not need to introduce the documents from this charge into evidence, as it was a collateral matter and the witnesses all testified that the victim was facing charges. He testified that he issued a subpoena for Duran but was unable to ever serve him with it. His investigator tried to locate Duran but was unable to find him. He testified that co-counsels were also unsuccessful in locating Duran, which was also placed on the record during trial. He considered calling two other witnesses that knew about the ongoing dispute between the victim and Duran, but the trial court would not allow them to testify unless Duran testified. He testified that he was able to explore third party guilt of Duran during his cross-examination of numerous witnesses and was able to fully present this to the jury despite being unable to locate Duran.

Regarding an alibi defense, Kendrick testified that he was not able to find any witnesses that would have covered the time frame and established that Applicant was unable to have committed the crime. He elaborated that Applicant's mother could not testify with certainty that

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he was with her at the time the murder was committed and Ember Blow was only able to account for Applicant's whereabouts after the time the murder was committed. Furthermore, she testified that the locations of Sonic, the victim's home, Applicant's mother's home, and Blow's home were all close geographically, and Applicant could have quickly moved between locations.

Kendrick testified that he recalled looking at law enforcement notes from conversations with the victim's girlfriend, Melissa Davy. He testified that he cross-examined Davy and other witnesses regarding inconsistencies in Davy's timeline and therefore, did not need to call the Roddens as witnesses.

As to the Allen charge the trial court gave to the jury, Kendrick testified he has no independent recollection as to why he did not object or move for a mistrial. He recalled that the particular count written on the note the jury sent the trial court indicated that the jury was deadlocked on Applicant's murder charge with a vote of 10-2 in favor of conviction.

Kendrick testified that the State never made any plea offers to Applicant and that Applicant's testimony of Kendrick informing him of a plea offer for eight to twelve years is completely untrue. He testified that he wanted to work out a plea deal with the State and prosecuting Deputy Solicitor Meadors told him that if Applicant cooperated with the State and testified, he would allow Applicant to plead to the lesser included offense of voluntary manslaughter. He discussed this with Applicant and Applicant adamantly refused to cooperate with the State or assist in any way. He testified that an Alford plea was never discussed or offered by the State because the State wanted Applicant to testify against his co-defendants, which would have required him to admit his guilt. Kendrick testified that he did not move to sever Applicant's trial from his co-defendants' and he cannot recall why.

As to his opening statements, Kendrick testified that he never told the jury any particular evidence he would introduce. He testified that he did not adopt the opening statements of either co-defendant, including McDonald's counsel who opened directly before him. He testified that he did advise the jury that he was not going to go over everything again because McDonald's counsel had already covered numerous topics in his opening statement and he wanted to establish a good rapport with the jury.

Kendrick testified that he moved to exclude McDonald's statement based on confrontation problems. He also prepared two differently redacted versions of McDonald's statement and presented both to the trial court. The trial court declined to use his versions and

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instead redacted the statement in a different manner. He testified that the court overruled his objections and allowed a redacted version of McDonald's statement into evidence. He similarly objected to numerous crime scene photographs based on undue prejudice, which was overruled by the trial court.

Kendrick testified that he did not call any witnesses because none of the potential witnesses would have been able to provide any substantial benefit to outweigh losing the final argument to the jury. He testified that he was able to thoroughly explore third party guilt of Duran during his cross-examination of numerous witnesses, rendering it unnecessary to call any witnesses. He testified again that he was not able to locate any witnesses establishing an alibi for Applicant and there would have been no benefit in putting up witnesses that did not conclusively establish an alibi and who would be exposed to cross-examination by the State. He testified that he did not inform the State of a potential alibi defense because he knew in advance of trial that he could not establish an alibi.

Following Kendrick, Applicant presented testimony from his former girlfriend, Ember Blow. Blow testified that she and Applicant were dating at the time of the murder but are now friends. Applicant slept at her house the night of the murder, arriving in the early morning hours around 12:30 a.m. She testified that she recalled this well because this was the last time she saw him before his arrest. She testified that Applicant slept at her house and she took him home around 6:00 a.m. the next morning. She never spoke with anyone about Applicant's case, including law enforcement or Kendrick. She also did not want her mother to know that Applicant had spent the night with her at her house because she was still in high school at the time and her mother was at work. She never contacted Kendrick because she assumed he would contact her if he needed her for anything. She testified that she would have been willing to testify for Applicant.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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### *Ineffective Assistance of Counsel*

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007), *cert. denied*, — U.S. —, 128 S.Ct. 370, 169 L.Ed.2d 247 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood, 338 S.C. at 110, 525 S.E.2d at 517).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged

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deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

After careful review of the entire record, including the testimony and exhibits presented at the evidentiary hearing, and based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's rulings regarding each of Applicant's specific allegations of ineffective assistance of counsel:

*Allegations 1 and 3. Counsel failed to investigate and subpoena alibi witnesses: Steven Coffee, Gerod Chandler, and Orlando Givens, and Shannon and Melvin.*

Applicant alleges that all of the abovementioned witnesses were present at a party in Columbia next door to Applicant's mother's home at which Cannon was present between 11:00 p.m. and 12:00 a.m. Applicant failed to present any of these witnesses at the evidentiary hearing to provide testimony. Two of the witnesses, Coffee and Givens, are in the military and were not in South Carolina at the time of the evidentiary hearing according to proffered comments of Applicant's post-conviction relief counsel. Without their testimony at the hearing, this Court can only speculate as to whether their testimony would have been helpful at trial. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498 - 99, 458 S.E.2d 538, 540 (1995). Further, Kendrick testified that the alibi witnesses did not necessarily cover the time period during which the incident is alleged to have occurred and he did not believe that the testimony of those witnesses would be helpful as they did not create a perfect alibi. Therefore, this Court finds that Applicant has failed to carry his burden as to allegations one and three, which must be denied and dismissed with prejudice.

*Allegation 2. Counsel failed to call Applicant's mother as an alibi witness.*

Applicant alleges that Kendrick was ineffective for failing to call his mother as a witness during his case in chief to support an alibi defense. Applicant's mother, Veronica Davis, testified during the Jackson v. Denno hearing immediately before Applicant's trial as to the voluntariness of Applicant's statements. At the evidentiary hearing, she testified her neighbors Shannon and Melvin (last names not known by her), were having a party next-door the night before the victim's body was discovered. The party was loud and there were lots of cars. According to Davis' testimony, Applicant kept going in and out of Davis' house to use the bathroom between 11:00 and 11:45 p.m. (she not pinpoint the exact time) and was at the party

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next door. When Davis objected to the coming and going of Applicant, he told her he was going to spend the night at his girlfriend Ember Blow's house. Davis met with Kendrick once and spoke with him a couple of times. They did not discuss Applicant's whereabouts on the evening of the murder. She never told Kendrick that her son was at the house at a party but she did tell Kendrick's investigator. After Davis testified at the Denno hearing, she told Kendrick she could be an alibi witness and Kendrick told her he was not finished yet. She was given a subpoena for trial but was not called. However, Kendrick testified that he subpoenaed Davis as a witness at her request so she could attend the trial without penalty from work.

Kendrick testified that he investigated whether Applicant could pursue an alibi defense and ultimately concluded that Applicant's whereabouts were not accounted for well enough to establish a viable alibi. Based upon the timeline of events presented at trial, Davis' testimony, and Kendrick's testimony, this Court finds no error in Kendrick's decision not to pursue an alibi defense or call Davis in support of an alibi defense. Further, this Court finds that Applicant cannot establish any resulting prejudice from this alleged error. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 4. Counsel failed to call Ember Blow as an alibi witness.*

Applicant similarly alleges that Kendrick was ineffective for failing to call his former girlfriend, Ember Blow, as an alibi witness. In support of this allegation, Applicant presented testimony from Blow at the evidentiary hearing. Blow, who was a high school senior in 2006, testified that Cannon spent the night at her house the evening that the victim was murdered. Blow testified that Applicant arrived at her house between 12:00 a.m. and 12:30 a.m. and he stayed until about 6:00 a.m. when she drove him home. This was the last time she saw him. She never spoke to Kendrick or any investigator for the defense. No law enforcement officers contacted her either. She and Applicant stopped dating soon after he was arrested. She did not volunteer any information about Applicant being at her house overnight because she did not want her mother to know that Applicant had spent the night. Kendrick does not recall ever talking with Ember Blow. He testified he would not have used her as an alibi witness because she could only testify as to what happened after midnight, after the time the incident was believed to occur. Kendrick testified that he investigated whether Applicant could pursue an alibi defense and ultimately concluded that Applicant's whereabouts were not accounted for well enough to establish a viable alibi. Based upon the timeline of events presented at trial, Blow's testimony,

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and Kendrick's testimony, this Court finds no error in Kendrick's decision not to pursue an alibi defense or call Blow in support of an alibi defense. Further, this Court finds that Applicant cannot establish any resulting prejudice from this alleged error. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 5: Counsel failed to call Sheila and Chad Rodden to rebut testimony of Melissa Davy (Victim's girlfriend) on the timing and circumstances in finding victim's body.*

Applicant alleges that Kendrick was ineffective for failing to present testimony from the victim's neighbors, Chad and Sheila Rodden, to refute the testimony of the victim's girlfriend, Melissa Davy. Sheila Rodden testified at the evidentiary hearing. According to Rodden, she lived next-door to the victim; her son Chad was in-town visiting her when the victim was murdered. She testified that she got home from work between 4:30 - 5:00 p.m. the day following the murder. She saw four people on the victim's front porch, including Davy, whom she recognized, another girl, and two boys. Approximately thirty minutes after she arrived home, one of the two boys, whom she described as very tall, left. Rodden testified that law enforcement arrived at the victim's home around 7:00 p.m. Rodden did not give a written statement to law enforcement, but was interviewed and the officer took notes during the interview. She was not interviewed by Kendrick or his investigator. Law enforcement also interviewed Chad, who is currently on disability from the military and is living in Texas. Rodden was not subpoenaed by the State or any of the three co-defendants to testify at trial. However, the notes from Investigator Tisdale, one of the responding officers from the scene who spoke to the Roddens, do not reflect that the Roddens mentioned four people at the victim's home before law enforcement arrived. Rodden does not recall if she told law enforcement that there were three people and Davy or four people.

Applicant asserts that Rodden's testimony indicates that Davy and her friends were at the house for over an hour and a half before the police were called and that prior to law enforcement arriving at the scene an unknown male left. This unknown male was never interviewed by the police. According to Davy's testimony at trial, she had an argument with the victim late Saturday night and left the home. She stayed with Molly Waltemath and her family for a couple of days. She saw Zoch on Monday while she was out shopping and gave him money to buy Christmas presents. She spent Monday night at Molly's. On Tuesday, she worked at Sonic and saw Zoch when he stopped by the Sonic. She spent Tuesday night at Molly's. She worked on

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Wednesday until 5:30 p.m. and after work she was going to the house to pick up some items. Molly and her brother Zack were with her when she left work. When they arrived at Zoch's house, no lights were on in the house which she found unusual because there were always lights on. She saw Zoch's car backed into the garage which surprised her because she had previously tried to call him and he did not answer. Additionally, he never parked his car in the garage. She called Zoch's grandmother and told her that she had a bad feeling about going inside the house. She wanted to leave but his grandmother told her to go check. While on the phone she unlocked the door, turned on the light, and saw Zoch, he was not moving. The house had been "trashed." She told his grandmother that she thought he was dead and grandmother told her to call 911 which she did immediately. On cross examination she testified that she probably left work between 5:30 to 6:00 p.m. and would have arrived at the house about 6:20 or 6:30 p.m. The phone records revealed she called the grandmother at 6:33 p.m. She also called her dad. There were no records of any call to 911 as she testified. Davy testified that she stayed on the line with 911 until the police arrived about five to ten minutes later. She also testified that she moved her car out of the driveway upon request of the police officer after they arrived.

Applicant now suggests that Davy may have conspired with others to harm Zoch because of their history of verbal and, perhaps, physical abuse. While there is a slight factual discrepancy about the time she arrived on the scene and called law enforcement, the significance of this information is insignificant in light of all of the testimony presented at the trial. Throughout the course of the trial, reference was made to the sometimes volatile nature of the relationship between Davy and the victim. Davy was not the only person to testify to this but also Molly and Zachary Waltemath, who were close friends of Davy and Zoch, as well as the investigators. Certainly the evidence shows that the victim was not killed shortly before Davy arrived at the house, and there is no evidence to link Davy to the scene at or near the time of the murder. Kendrick acknowledged that the defense strategy was to demonstrate a rush to judgment on the part of law enforcement. The testimony of Rodden may have been of some small value to the defense, but the failure to present it during the trial was not prejudicial to Applicant. Additionally, Kendrick testified that he was able to effectively cross-examine or impeach other witnesses and the testimony of Chad and Sheila Rodden would not have added anything further to the cross examination. Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

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*Allegation 6. Counsel failed to present witnesses (Dixon Barker and Joe Wilson) to support third party guilt.*

Applicant alleges that Kendrick was ineffective for failing to present the abovementioned witnesses in support of his third party guilt claim against Adrian Duran. Applicant failed to present any testimony from either witness at the evidentiary hearing. The trial transcript reveals that co-defendant McDonald's counsel, Marcus Whitlark, informed the trial court that Mr. Barker was available to testify, but that no one from the defense had been able to locate Wilson or Duran. According to Mr. Whitlark's argument to the trial court, these witnesses would be able to testify about threats made by Adrian Duran against the victim's life relating to the victim robbing Duran of \$4000 approximately two months before the victim's murder.

Without their testimony at the hearing, this Court can only speculate as to whether their testimony would have been helpful at trial. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover, 318 S.C. at 498-99, 458 S.E.2d at 540. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

*Allegation 7. Counsel failed to present documentation of pending robbery charges against Zoch for allegedly robbing Adrian Duran.*

Applicant alleges that Kendrick was ineffective for failing to introduce documentation of the victim's pending charges for robbing Duran during his trial. As discussed above, the victim had pending charges at the time of his death stemming from the robbery of Duran. At the evidentiary hearing, Applicant presented as an exhibit a copy of the bond for the victim that occurred in September 2006. It states that the victim should "stay away from [Duran] concurrent with . . . bond on grand larceny charge." Also attached was a statement from Duran taken on September 14, 2006. According to his statement, the victim and two other white males broke into his house at 2:30 a.m. on September 6, 2006 and robbed his girlfriend at gunpoint. Kendrick testified that it was not necessary for him to introduce any documentation of these charges because multiple witnesses testified as to the charges.

After a thorough review of the record, this Court agrees that introduction of this documentation was not necessary. The record is replete with references to the pending charges against victim for allegedly robbing Duran, and the jury was clearly aware of these charges. Kendrick was not deficient for failing to introduce documentation to further establish these

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charges. Additionally, Applicant cannot establish any requisite prejudice, as introduction of the documentation would have had no impact on the outcome of the proceedings. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 8. Counsel failed to present evidence of third party guilt after informing the court of the intent to do so.*

As discussed above in allegations 6 and 7, Applicant alleges that Kendrick was ineffective for failing to present evidence of third party guilt of Duran for threats Duran made against the victim. The record contains numerous discussions about the admissibility of such evidence. Collectively, defense counsel for all co-defendants made numerous arguments to the trial court to allow the introduction of evidence pertaining to third party guilt of Duran based on Duran's threats against the victim. The defense acknowledged that they collectively could not locate Duran or a number of other witnesses, but nonetheless wanted to present evidence tending to establish Duran as the guilty party. After hearing these arguments, the trial court declined to allow the defense to introduce evidence of third party guilt against Duran.

The admissibility of evidence of third-party guilt is governed by State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). In Gregory, the South Carolina Supreme Court held evidence of third-party guilt that only tends to raise a conjectural inference that the third party, rather than the defendant, committed the crime should be excluded. Id. at 105, 16 S.E.2d at 534. Furthermore, to be admissible, evidence of third-party guilt must be "limited to such facts as are inconsistent with [the defendant's] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence." State v. Cope, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) cert. denied, 135 S. Ct. 400, 190 L. Ed. 2d 289 (2014) (citing Gregory at 104, 16 S.E.2d at 534 (internal quotations omitted)). Pursuant to this standard, this Court finds the evidence of Duran's threats are not facts raising an inference or presumption of innocence because they are not facts or circumstances that tends to clearly point out Duran as the guilty party. Evidence of Duran's guilt is not inconsistent with Applicant's guilt, nor does it raise a "'reasonable inference' and certainly not a presumption" of Applicant's innocence. See Id. Therefore, this Court finds that Kendrick did not perform deficiently, as he ardently argued for the evidence to come in, and after these arguments of behalf of Applicant, the trial court correctly excluded any such evidence of Duran's guilt. Furthermore, as this evidence was properly excluded, Applicant cannot establish any prejudice. This Court finds that this allegation must be denied and dismissed with prejudice.

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*Allegation 9. Counsel failed to give proper notice of alibi defense.*

Similar to allegation numbers 1, 2, 3, and 4, Applicant alleges that Kendrick was ineffective for failing to give the State proper notice of his intention to pursue an alibi defense. As discussed above, Kendrick did not present an alibi defense on behalf of Applicant. Kendrick and his investigator spoke to necessary witnesses and decided that the potential witnesses were unable to sufficiently account for Applicant's whereabouts during the timeframe of the murder, approximately 11:30 p.m. according to testimony from the victim's neighbor. Kendrick testified that had he been able to sufficiently establish an alibi for Applicant, he would have notified the State and gone forward on an alibi defense.

Based upon the timeline of events presented at trial and the testimony of the purported alibi witnesses and Kendrick presented at the post-conviction relief evidentiary hearing, this Court finds no error in Kendrick's decision not to pursue an alibi defense or provide notice of an alibi defense to the State. Where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992); Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Further, this Court finds that Applicant cannot establish any resulting prejudice from this alleged error. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 10. Counsel failed to present a defense.*

Applicant argues that Kendrick neglected to prepare a defense on his behalf. At trial Applicant did not testify or call any witnesses. Kendrick testified that after reviewing all discovery materials from the State and his own independent investigator, his defense strategy was to try to show that the police rushed to judgment in charging Applicant and to poke holes in the State's case. Kendrick also testified that he focused his attention on trying to suppress Applicant's very incriminating statement, which was demonstrated during the pre-trial Jackson v. Denno hearing. Based on Applicant's statement that he was an active participant in the horrific beating of the victim, additional evidence showing he was with both co-defendants the night of the attack, they purchased the supplies used at Wal-Mart immediately before the attack, a lack of any viable alibi defense, and an inability to fully pursue third party guilt, Kendrick's decision to challenge the State's evidence by highlighting weaknesses in the State's case and establish a sloppy and hasty investigation by law enforcement was a valid and prudent trial strategy. Additionally, Kendrick argued salient issues of law and cross-examined witnesses to

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address issues important to the defense. This Court finds that Kendrick's performance was not deficient and Applicant was not prejudiced. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 11. Counsel failed to argue that the statements made by Duran to witnesses were admissible as statements against penal interest.*

Applicant alleges that Kendrick was ineffective for failing to argue that Duran's threats against the victim were admissible as statements against penal interest and should have been admitted in support of a third party guilt defense. S.C. Rules of Evidence Rule 804(b)(3) states a statement made by the declarant, which at the time of its making, tended to subject the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. The trial transcript reveals that Kendrick argued to the court that statements made by Duran threatening the life of the victim should be admissible because they are statements against Duran's interest. See ROA pp. 697-700. He argued that the statements did not have to be made to law enforcement or any other government agency but could be made at any witness. He also made arguments to the trial court throughout the trial about the investigators interviewing Duran, performing a polygraph on him, and arresting him on other charges. As the record reflects that Kendrick did indeed make such arguments to the trial court, this Court finds that this allegation is without merit and must be denied and dismissed with prejudice.

*Allegation 12. Counsel failed to explain accomplice liability to Applicant before he rejected plea.*

Applicant alleges that Kendrick failed to advise him on accomplice liability and that due to this failure, he rejected a favorable plea offer from the State and suffered prejudice. In contrast, Kendrick testified that he did discuss accomplice liability with Applicant briefly, but did not focus his discussions with Applicant on accomplice liability because Applicant and McDonald's statements both indicated Applicant was an active participant in the violent beating of the victim. Additionally, Kendrick testified that Applicant told him he was not present during the crime and therefore he did not participate in the crime. Kendrick also testified that the State's theory was that Applicant was an active participant, not an accomplice. As to plea offers, Kendrick testified that no formal offer was ever extended to Applicant, only a general statement that if Applicant participated in the prosecution of his co-defendants he would be allowed to

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plead to the lesser-included offense of voluntary manslaughter. Kendrick testified that Applicant adamantly refused to work with the prosecution and no further plea discussions took place.

This Court finds Kendrick's testimony to be credible and affords it great weight as to this allegation. This Court finds that Kendrick's performance was not deficient. Furthermore, this Court finds Applicant cannot establish any requisite prejudice, particularly in light of his refusal to accept the State's offer conditioned on his assistance. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 13. Counsel failed to advise Applicant about N.C. v. Alford and discuss with Solicitor.*

Similar to allegation number 12, Applicant alleges that Kendrick was ineffective for failing to explain an Alford plea to him and negotiate with the State for an Alford plea. As discussed above, Kendrick testified no plea offer was extended by the State, but rather, the State made a general reference to allowing Applicant to plead to the lesser-included offense of voluntary manslaughter if he assisted in the prosecution of his co-defendants. Kendrick testified that he did not discuss an Alford plea with Applicant and did not pursue with the State an offer for a plea pursuant to Alford because the State was very clear that Applicant would have to admit his guilt and participate in its prosecution of the co-defendants in exchange for any plea offer. This Court finds Kendrick's testimony to be credible and affords it great weight. This Court finds that Kendrick's performance was in accordance with professional norms. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice. This allegation must be denied and dismissed with prejudice.

*Allegation 14. Counsel failed to seek mistrial when jury was deadlocked.*

Applicant alleges that Kendrick was ineffective for failing to move for a mistrial when the jury indicated it could not come to a consensus on his murder charge. The trial transcript reveals that the jury indicated it could not come to a consensus as to Applicant's murder charge but had reached a verdict on the other five charges before them. The trial court inquired of the forelady, "Do you believe that after further consultation the jury would be able to reach a verdict on that particular indictment?" to which the foreperson replied, "No." The trial court then requested the jury return to its jury room and spoke with the attorneys in an off-the-record bench discussion. Immediately thereafter, the trial court recalled the jury, gave an Allen charge, and

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requested the jury continue its deliberation. Approximately an hour later, the jury returned with guilty verdicts on all six charges, including Applicant's murder charge.

The trial judge has the duty to urge, but not coerce, a jury to reach a verdict. Dawson v. State, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002) (internal citations omitted). An Allen charge cannot be directed to the minority voters on the jury panel but instead must be even-handed, directing both the majority and the minority to consider the other's views. Id. Whether an Allen charge is unconstitutionally coercive must be judged "in its context and under all the circumstances." Tucker v. Catoe, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001) (citing Lowenfield v. Phelps, 484 U.S. 231, 237(1988)). The Tucker Court considered various factors to determine whether the given Allen charge was unconstitutionally coercive.

This Court has reviewed the Allen charge given to the jury and finds that it is not objectionable. See ROA pp. 1684-87. This Court finds that Kendrick was not ineffective for failing to move for a mistrial when the jury indicated it was at an impasse or when the trial court gave its Allen instruction. Furthermore, this Court finds that even if such a motion had been made, it is unlikely that the trial court would have granted it and therefore, Applicant cannot establish any requisite prejudice. This allegation is denied and dismissed with prejudice.

*Allegations 15 and 16. Counsel failed to move to sever trial to allow for cross-examination of co-defendant McDonald on his statement and to allow testimony from co-defendant Whitehead that Applicant left Sonic with a friend and not the co-defendants.*

Applicant alleges that Kendrick should have moved to sever his trial from his two co-defendants McDonald and Whitehead so that he could cross-examine them on his involvement in the case. None of the three defendants moved for severance. McDonald's statement to law enforcement implicated Applicant as actively involved in the assault. Kendrick testified he could not recall why he did not move to sever Applicant's trial but acknowledged that McDonald's statement was redacted to remove any reference to Applicant. Kendrick also testified that he worked closely with the other defense counsel.

Applicant, by raising these allegations, assumes that both McDonald and Whitehead would have waived their rights and voluntarily testified, either for the State or on Applicant's behalf. This Court notes that severance would certainly solve problems with the use of statements made by McDonald and Whitehead, but in light of the statements made by Applicant incriminating the co-defendants and the pending charges against co-defendants, it is highly

unlikely they would testify for Applicant. Therefore, this Court finds that Applicant cannot establish any requisite prejudice from this allegation, which must be denied and dismissed with prejudice.

*Allegation 17. Counsel failed to object to the testimony about the polygraph [showing deception] during the Denno hearing which was used by the Court to bolster the credibility of the investigator by attacking Applicant's credibility [when he testified].*

Applicant alleges that Kendrick should have objected to testimony regarding his polygraph examination during the pre-trial Jackson v. Denno hearing on the admissibility of his statement. During this hearing, an investigator testified that Applicant submitted to a polygraph which showed deception. Mention of the polygraph and the results of deception were relevant only to show the context in which Applicant's statement was made. There is no evidence or inference that the Court used the polygraph and its results to bolster the investigator's credibility (thereby attacking the credibility of Applicant regarding the voluntariness of the statement) during the Denno hearing. Therefore, this Court finds that Kendrick's performance was not deficient and that Applicant has failed to establish any prejudice. This allegation is denied and dismissed with prejudice.

*Allegation 18. Counsel failed to introduce evidence after Counsel told the jury what evidence they would hear.*

Applicant alleges that Kendrick promised the jury he would introduce evidence during his opening statement and then failed to introduce any evidence, thereby tarnishing his credibility with the jury. After a thorough review of the record, this Court finds no evidence to support this claim. During his opening statement, Kendrick did not list any evidence that the jury would hear during the trial. ROA pp. 496-500. Rather, Kendrick's remarks to the jury were brief and did not mention any evidence. This Court finds this claim is without merit and must be denied and dismissed with prejudice.

*Allegation 19. Counsel failed to raise adequate arguments for the suppression of the statement by co-defendant McDonald.*

Applicant alleges that Kendrick failed to move for the suppression of McDonald's statement. In contrast, Kendrick testified that he moved to suppress the statement in full, and once that was denied by the trial court, he presented numerous redacted versions of the statement, which were also denied by the trial court. A review of the trial record supports

Kendrick's testimony. Kendrick, as well as other counsel, argued repeatedly about the proposed redaction of the statements and against the admissibility of the statements. See ROA pp. 815-832. The record reveals that Kendrick did raise sufficient arguments about redacting the statements.

In both co-defendants' appeals, the South Carolina Supreme Court found that the implantation of the redactions violated the Confrontation Clause but affirmed both co-defendants' convictions and sentences, citing overwhelming evidence of guilt implicating each defendant. State v. Whitehead, Mem. Op. No. 2015-MO-033 (filed June 10, 2015) and State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015).

This Court finds that Kendrick acted with reasonable and sound professional judgment in objecting to the introduction of McDonald's statement and objecting to the redaction selected by the trial court. Furthermore, this Court finds that Applicant cannot establish any requisite prejudice based on the overwhelming evidence of guilt presented against him. See Id. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation 20. Counsel failed to preserve objection to gruesome crime scene photos.*

Applicant alleges that Kendrick failed to properly object to the introduction of various crime scene photographs, thereby prohibiting appellate review. Kendrick testified that he recalled objecting but was not certain. The photographs that were objected to and admitted into evidence during the testimony of Dr. Sexton were close-up photographs of the victim lying on the floor, face down, showing the back of the victim's head which was bloody and his skull smashed. Two additional photos of the victim's head after it had been cleaned and partially shaved during the autopsy were also introduced. While there was a discussion about the admissibility of the photos, the record reveals that Kendrick failed to join in the objection of co-counsel at the time the photos were admitted into evidence to preserve the issue for appeal. This Court finds that Kendrick's failure to object and preserve the issue for appellate review was deficient, but there is no prejudice to the Applicant because the omission of the photographs would not have affected the resulting verdict, particularly in light of the overwhelming evidence of guilt implicating Applicant. Therefore, this allegation must be denied and dismissed with prejudice.

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*Allegations 21, 22, and 23. Counsel failed to request a recess or continuance to consult with polygraph expert when discovery material was produced during the trial; failed to seek a Rule to Show Cause when the State did not produce the discovery as requested prior to trial.*

Applicant alleges that Kendrick failed to seek a recess or continuance to consult with an expert to review discovery that was received during trial from the polygraph examiner. Kendrick testified that he subpoenaed the information, and when he had not received it prior to trial, he again requested the information. Kendrick testified that although he did not receive the information until the early stages of Applicant's trial, he was able to consult with a polygraph expert and thoroughly review the information. He testified that a continuance or recess was not needed, as he had time to consult with his expert. Additionally, he testified that he elected not to call a polygraph expert on Applicant's behalf because it would not have been beneficial to Applicant. At the evidentiary hearing, Applicant failed to demonstrate that this information produced by the State during the trial provided any value not utilized.

The record reveals that prior to the testimony of Lt. Crawford (who administered the polygraph test to Applicant), Kendrick sought suppression of the testimony and also requested time to review the data. The trial court indicated that it was not going to stop the trial for additional review of polygraph information. The Court had previously ruled that any information or testimony about polygraphs would not be admissible during the course of the trial. The State argued that Kendrick had come to the office, spent several hours reviewing the entire file from law enforcement, and failed to raise the issue of the raw data (which was not in the file provided by the Solicitor). Kendrick argued during the trial that he had no duty to follow-up when a discovery requested is known to any agent of the State and cited Kyles v. Whitley, 514 U.S. 419 (1995). "Evidence is material under Brady if there is a "reasonable probability" that the result of the proceeding would have been different had the information been disclosed. E.g., State v. Proctor, 358 S.C. 424, 595 S.E.2d 480 (2004). The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed but whether, without this impeachment evidence, he received a fair trial "resulting in a verdict worthy of confidence." Kyles, 514 U.S. at 434; Riddle v. Ozmint, 369 S.C. 39, 44-45, 631 S.E.2d 70, 73 (2006).

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This Court finds that Kendrick was not deficient in his handling of the polygraph data and his requests to obtain such data. Furthermore, this Court finds that Applicant failed to show any resulting prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

**CONCLUSION**

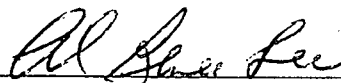
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
ALISON RENÉE LEE  
Presiding Judge  
Fifth Judicial Circuit

September 14, 2015  
Columbia, South Carolina

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LAW OFFICE OF



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October 13, 2015

**RECEIVED**

OCT 16 2015

Megan Harrigan Jameson, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-

**S.C. SUPREME COURT**

RE: Robert Cannon, III, #328247 v. State of South Carolina; 2012-CP-28-00145.

Dear Ms. Jameson:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was court-appointed in this matter and will now forward this file to the Appellate Division of the South Carolina Commission on Indigent Defense in the next few days. Therefore, please direct any further questions to that office after this date. If Mr. Cannon and his family were to decide to hire me to represent him on appeal I will let you know. It was a pleasure working with you on this case. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written over the typed name and title below it.

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

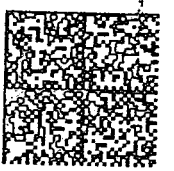
Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina ✓  
Robert Cannon, III, #328247  
Veronica Davis

Law Office of  
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The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
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