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December 2, 2015

HAND DELIVERED

RECEIVED

DEC - 2 2015

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

S.C. Supreme Court

Re: Randolph Ashford, #256638, vs. State of South Carolina
Civil Action No.: 2012-CP-40-01053

Dear Mr. Shearouse:

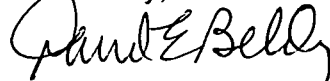
Enclosed for filing is a *Notice of Appeal* in the above-referenced case. Also enclosed are the following:

1. Proof of Service of the *Notice of Appeal* on the Respondent.
2. A copy of the *Order* which is challenged on appeal.

Since the Appellant is indigent, and the undersigned appeared as Court-appointed counsel in this matter, I respectfully request that the filing fee be waived pursuant to Rule 203(d), *South Carolina Appellate Court Rules*.

Thank you very much for your assistance.

Sincerely,



David E. Belding
Attorney for Appellant

DEB/ym

cc: J. Clayton Mitchell, III, Esquire (w/o Order)
Appellant

RECEIVED

DEC - 2 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-40-01053

Randolph Ashford, #256638,.....Appellant,

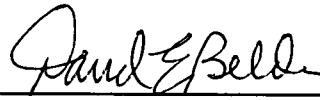
v.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

Randolph Ashford, #256638, appeals from the *Order of Dismissal* of the Honorable Brooks P. Goldsmith, Circuit Court Judge, in this case, dated November 9, 2015, and filed November 19, 2015, dismissing Appellant's *Application for Post-Conviction Relief*. Appellant's counsel received notice of entry of this *Order* on November 30, 2015.

BY:



David E. Belding (S.C. Bar #00623)
Post Office Box 11964
Columbia, South Carolina 29211
(803) 665-3161
ATTORNEY FOR APPELLANT

Columbia, South Carolina
December 2, 2015

Other Counsel of Record:
J. Clayton Mitchell, III, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3737
Attorney for Respondent

RECEIVED

DEC - 2 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-40-01053

Randolph Ashford, #256638,.....Appellant,

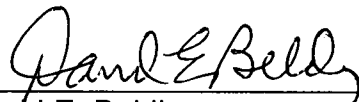
v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the *Notice of Appeal* on J. Clayton Mitchell, III, Esquire, counsel for Respondent, by depositing a copy of same in the United States Mail, postage prepaid, on December 2, 2015, addressed to him as counsel of record at Post Office Box 11549, Columbia, South Carolina, 29211-1549.

December 2, 2015



David E. Belding
Post Office Box 11964
Columbia, South Carolina 29211
(803) 665-3161
ATTORNEY FOR APPELLANT.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4001053

Randolph #256638 Ashford

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

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

JUDGMENT ENTERED
 2015 NOV 20 10:55
 JOHN MITCHELL III

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 PUBLIC 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
		\$
		\$
		\$

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

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 November 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Randolph #256638 Ashford
David Edward Belding

Suzanne G. Grigg

James Clayton Mitchell III

Randolph #256638 Ashford

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeannette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Randolph Ashford, #256638,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2012-CP-40-01053

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2015 NOV 19 AM 11:38
JEANNETTE W. McBRIDE
C.C.P. & C.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 6, 2012. Respondent made its Return on May 7, 2012, requesting an evidentiary hearing be convened. Applicant filed a *pro se* amended application on May 22, 2012. An application for forensic DNA testing was also filed on May 22, 2012. David E. Belding, Esquire, was substituted as counsel by Order filed June 6, 2012. Applicant then filed a "Motion for Leave to Conduct Discovery" on December 21, 2012. Respondent filed a Return to Motion for Discovery on January 7, 2013, objecting to the generalization and breadth of the request. Respondent filed a Motion to Sever on February 27, 2013, requesting the Court order the application for forensic DNA testing be severed from the current PCR matter as it was improperly filed as a pleading related to the common pleas PCR action. Respondent requested the Court to order the matter re-filed by the Richland County Clerk of Court as prescribed by statute and assign the application a new general sessions docket number. This Court, by order filed March 4, 2013, entered an Order consistent with Respondent's motion. On March 11, 2013, the Honorable Alison R. Lee issued a Form 4 Order ruling which stayed Applicant's current PCR case. The application for DNA testing was denied by order filed April 29, 2015.

An evidentiary hearing was held on March 31, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Belding, J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's counsel, Deon S. O'Neil, Esquire, and Nicole Singletary, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April and May 2007 terms of the Court of General Sessions for Richland County for a number of charges. Applicant was represented by Counsel O'Neil and Counsel Singletary. The cases were called for trial on March 31, 2009, before the Honorable G. Thomas Cooper, Jr. Applicant was indicted and convicted as follows:

GJ Term	Indictment	Charge	Sentence
April 2007	2007-GS-40-1938	Kidnapping	20 years
April 2007	2007-GS-40-1939	Assault and battery with intent to kill (ABWIK)	10 years
April 2007	2007-GS-40-1940	Assault and battery of a high and aggravated nature (ABHAN), lesser included of criminal sexual conduct, 1 st degree	10 years
April 2007	2007-GS-40-1941	ABWIK	10 years
April 2007	2007-GS-40-2048	Burglary, first degree	20 years consecutive to - 2003, -1938
May 2007	2007-GS-40-2000	Carjacking	10 years
May 2007	2007-GS-40-2001	Carjacking	10 years
May 2007	2007-GS-40-2002	Carjacking	10 years
May 2007	2007-GS-40-2003	Kidnapping	20 years

Judge Cooper ordered indictments -2003, -2001, -2000, -2040, -1939, -1941 to be run concurrently. Indictment -2003 was ordered to be run consecutively to indictment -2048. Indictment -2048 was to be run consecutively to -2003, -1938. The aggregate sentence is forty (40) years' imprisonment.

A Notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf by the South Carolina Office of Appellate Defense. The Court of Appeals dismissed the appeal by order dated January 25, 2012. State v. Ashford, 2012-UP-035 (S.C. Ct. App. filed January 25, 2012). The Remittitur was issued February 15, 2012.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in
 - a. Failing to properly prepare Applicant for trial;
 - b. Failing to investigate:
 - i. 911 calls,
 - ii. Phone call records between Applicant and law enforcement during the hostage situation, and
 - iii. The jacket Applicant was allegedly wearing.
 - c. Failing to move for a mistrial:
 - i. Where a juror allegedly stated, "I've heard all I need to hear."
 - ii. Where individuals in the gallery allegedly laughed, patted their feet, rolled their eyes, and make facial expression in the presence of the jury.
 - d. Failing to effectively cross examine crime scene investigator Patricia Reed-Enzor;
 - e. Failing to object during the solicitor's closing argument where she allegedly vouched for a State's witness;
 - f. Failing to object to Judge Cooper's remark when instructing the jury.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application

alleges ineffective assistance of counsel as a ground for relief, Applicant 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, appellate records, records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the

attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below. As an initial matter, Applicant waived any challenge to appellate counsel's performance and made his intentions clear that he wished to go forward with Counsel Thomas.

Ineffective Assistance of Trial Counsel

Failure to properly prepare Applicant for trial

Applicant alleges Counsel were ineffective for failing to prepare Applicant for trial. Specifically, he argues that Counsel was ineffective in allowing Applicant to testify in his defense due to his alleged mental health issues. Under the United States and South Carolina Constitutions, a criminal defendant has a right to remain silent and to not testify during his trial. U.S. Const. amend. V; S.C. Const. art. I, § 12. It is clear that a defendant in a criminal trial has a constitutional right to testify on his own behalf. Rock v. Arkansas, 483 U.S. 44, 51, 107 S.Ct. 2704, 2709, 97 L.Ed.2d 37 (1987). Further, it is the defendant who retains the ultimate authority to decide whether or not to testify. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312, 77 L.Ed.2d 987 (1983).

This Court finds this allegation is without merit. Applicant was fully advised of his right to remain silent and of the risks of testifying by Judge Cooper. (Trial Tr. p. 773, line 5 – p. 775, line 16). The record reflects Applicant made the decision to testify on his own. Counsel Singletary's testimony as to her interactions with Applicant is credible. She testified that she did

not believe Applicant had any mental issues that would affect his understanding of the proceedings or his ability to assist in his defense. This was supported by the evaluation Applicant underwent prior to trial where he was found competent and criminally responsible. Counsel Singletary testified Applicant was very capable of assisting in his defense and that he wrote notes throughout the trial that were passed back and forth between him and Counsel. This Court finds Applicant was capable of assisting in his defense and that he had active communications with Counsel during trial. This allegation is denied and dismissed with prejudice.

Failure to investigate

Applicant further alleges that Counsel were ineffective for failing to investigate and present to the jury the 911 calls made by the victim, Deborah Simmons, during the standoff with law enforcement. Applicant argues the 911 calls would have supported his defense. He also alleges that Counsel was ineffective in failing to obtain the telephone records to challenge the State's evidence that dozens of calls were made during the standoff between Applicant and law enforcement. He further argues Counsel was ineffective for failing to obtain DNA testing on the jacket allegedly worn by Applicant during the incident. Counsel testified he and Applicant's previous attorneys attempted to obtain the 911 call but were told they were not available for production. Counsel Singletary credibly testified that the 911 tapes were not requested in time and that it was her belief that the calls are only kept for a certain period of time. Applicant testified that the 911 tapes would have cleared him of wrongdoing. He testified the 911 recordings would have showed that the victim, Simmons, was not being held hostage and against her will and that he was in fact being held hostage by Simmons. He testified that he was wearing a brown jacket and not a green jacket as the State alleged. He alleges that his DNA would not have been found on the jacket recovered at the crime scene. Counsel O'Neil testified that the



jacket was not an issue he planned to present to the jury because it was irrelevant to the defense. Applicant was arrested at the scene after a lengthy standoff with law enforcement, so there was no issue as to identity. He also testified that Applicant would get caught up on small details that Counsel O'Neil believed were irrelevant. Counsel Singletary testified she agreed with Counsel O'Neil's testimony on these points.

This Court finds this allegation without merit. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court finds Counsel O'Neil and Singletary's testimony on this issue credible and persuasive. Applicant's testimony is not credible. This Court finds that since Applicant failed to produce any of this evidence it is impossible to thoroughly judge the merits of these claims. From the evidence before the Court it is clear that the 911 calls, DNA testing of the jacket, and the phone records to support the State's position that dozens of calls took place between law enforcement and Applicant during the standoff were not pertinent to Applicant's defense. This Court finds Applicant's testimony that the 911 calls would have bolstered his position that he did not hold the victim hostage to be far-fetched and not credible. As to the phone records, this Court finds that the calls very likely would have further incriminated Applicant in the incidents. There was testimony from numerous law enforcement personnel detailing their involvement in the hostage negotiations and situation which directly contradicted Applicant's assertions. This Court finds persuasive Counsel O'Neil's testimony that the jacket was irrelevant to Applicant's defense. Counsel O'Neil noted that there was no issue of identification because Applicant was arrested on



the scene after the residence was breached. This Court finds Applicant has failed to meet his burden in proving Counsel was ineffective in any regard for failing to procure these records.

In any case, this allegation rests entirely on speculation because no records were produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). Applicant failed to present any evidence to this Court as to how this investigation could have changed the result of the trial.

Failure to Move for a Mistrial

Applicant alleges that Counsel were ineffective for failing to move for a mistrial when a juror allegedly said something along the lines of, “I’ve heard all I need to hear,” and when individuals in the gallery allegedly laughed, patted their feet, rolled their eyes, and made facial expressions in the presence of the jury during Applicant’s trial testimony. The Court will address each allegation in turn.

Applicant alleges that although Counsel O’Neil did move a mistrial on the grounds that a juror was not impartial, he was mistaken about which juror possibly made the remark. Applicant argues there were four (4) black females on the jury, not three (3) as Counsel O’Neil stated to Judge Cooper. The record reflects that Counsel O’Neil asked Judge Cooper to bring in the jurors suspected of making the remark to question them on their impartiality. (Trial Tr. p. 665-67). Counsel O’Neil alleged that a deputy overheard juror number 134 say, “I’ve heard all I need to hear.” The deputy described the juror as a younger black female. Judge Cooper brought five jurors in to question them off the record on whether they had formed any opinions regarding the



ultimate issues in the case. Judge Cooper found all jurors categorically denied making any such statement and denied the motion for a mistrial.

Counsel O'Neil testified that the courtroom deputy brought this issue to his attention. Counsel O'Neil recounted that he made a motion for mistrial, but Judge Cooper denied the motion and found no evidence of any juror misconduct. He credibly testified that he was certain the juror the deputy was referring to was juror number 134 who was questioned by Judge Cooper. Counsel Singletary echoed this recollection and also believed the deputy to be describing juror number 134.

A defendant has a constitutional right to be tried by competent jurors, which implies a tribunal both impartial and mentally competent to afford a hearing. U.S.C.A. Const.Amend. 6. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007). A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial court, and such decision will not be reversed on appeal absent an abuse of discretion. Id at 147, 894. This Court finds Applicant failed to prove Counsel was ineffective in moving for a mistrial on the grounds of juror impartiality. Counsel O'Neil aptly brought the issue to Judge Cooper's attention and asked him to inquire into the alleged statement. Counsel O'Neil also properly made a motion for a mistrial which preserved the issue for appellate review as well. This Court further finds Judge Cooper acted within his discretion in finding the juror could be fair and impartial. See State v. Mercer, 381 S.C. 149, 158, 672 S.E.2d 556, 560-61 (2009) (describing the trial judge's broad discretion to determine whether a juror is qualified). This allegation is denied and dismissed with prejudice.



Applicant further alleges that Counsel were ineffective in failing to object in a timely matter when individuals in the gallery allegedly laughed, patted their feet, rolled their eyes, and made facial expression in the presence of the jury during Applicant's testimony.

The record reflects Counsel Singletary moved for a mistrial on the grounds that individuals displayed inappropriate behavior that affected the jury. Counsel Singletary testified that the gallery was misbehaving during Counsel O'Neil's direct examination of Applicant. She testified she did not object contemporaneously because she did not want to interrupt Applicant's testimony. She testified that she probably should have objected while the individuals were misbehaving.

This Court finds that while the objection was not made contemporaneously to the allegedly misbehavior, Judge Cooper found that the behavior did not rise to the level to where a mistrial should be granted. (Trial Tr. p. 860, line 13 – p. 861, line 12). Judge Cooper stated that he did not witness the same behavior as Counsel Singletary described. This Court finds that Counsel Singletary made the appropriate objection. Counsel Singletary acted reasonably in arguing for a mistrial based on her observations of individuals in the gallery. Applicant has failed to prove any deficiency. Even though the State argued that the objection was not timely made, Judge Cooper still denied the objection on its merits. Furthermore, Applicant has failed to prove any resulting prejudice from this alleged misbehavior.

Failure to effectively cross examine crime scene investigator Patricia Reed-Enzor

Applicant alleges Counsel were ineffective in failing to highlight inconsistent statements made by crime scene investigation expert Patricia Reed-Enzor. Specifically, Applicant argues Reed-Enzor's statement that she secured the scene overnight and processed the scene the next morning was inconsistent with her testimony that she released the scene to Ali Harrison, a

resident in the area. Counsel O'Neil testified that this was an example of a small detail that Applicant would get caught up on that was not pertinent to his defense.

This Court finds this allegation without merit. The manner and extent of cross-examination should not be second-guessed. See Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Marzullo not intended to promote judicial second-guessing on questions of strategy as basic as handling of a witness); United States v. Nersesian, 824 F.2d 1294, 3121 (2d Cir. 1987) ("decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature" and will not support an ineffective assistance claim).

This Court finds this inconsistent statement is not helpful or material to Applicant's case and, therefore, Counsel cannot be held to be ineffective for failing to highlight this minor inconsistency. Applicant has failed to meet his burden of proof in regards to this allegation.

Failure to object during the solicitor's closing argument where she allegedly vouched for a State's witness

Next, Applicant alleges Counsel were ineffective in failing to object to remarks made by the solicitor during closing arguments. Applicant argues the solicitor vouched for the credibility of two Richland County Sheriff Deputies. The relevant remarks are as follows: "You heard from Deputy Unger and Nathan White. And they got up here and were honest with you." (Trial Tr. p. 920, lines 8-9).

This Court finds Counsel were not ineffective for failing to object because the remarks do not rise to the level of improper vouching. A solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences. Matthews v. State, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). However, "[a] solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." Smith at 523, 654 S.E.2d at 531-32 (quoting Matthews at 276, 565 S.E.2d at 768

(2002)). “The appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). Counsel O’Neil testified that he did not object to the comment and did not think the remark merited an objection in the middle of the State’s closing. Additionally, this Court finds that Applicant has failed to establish any resulting prejudice because when looking at the entire record the remark was harmless and in no way affected the outcome of the trial. Applicant has failed to meet his requisite burden of proof in regards to this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

Failing to object to Judge Cooper’s comment when instructing the jury

Finally, Applicant alleges Counsel were ineffective in failing to object to Judge Cooper’s jury instruction on direct and circumstantial evidence. Specifically, Applicant points to the following:

Now, generally there are two types of evidence which has been described to you that are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence – and we probably had both in this case. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness.

(Trial Tr. p. 930, lines 2-8).

When reviewing jury instructions for error, the reviewing court must consider the trial court’s charge as a whole in light of the evidence and issues presented at trial. State v. Miller, 397 S.C. 630, 635, 725 S.E.2d 724, 727 (Ct. App. 2012) (citing State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct., Ap. 2003)). “Errors, including erroneous jury instructions, are subject to a harmless error analysis.” Miller, 397 S.C. at 639, 725 S.E.2d at 729. A judge’s charge to a jury is sufficient if, as a whole, it is substantially correct and covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990).



This Court finds this allegation is without merit. The remark was not a comment on the facts of the case. There was clearly both direct and circumstantial evidence presented as thirty-eight (38) witnesses testified and over one hundred ten (110) exhibits were admitted. Judge Cooper did not say that the jury was to give more weight to one type of evidence over the other. Taking the charge as a whole, it is not objectionable. Furthermore, Applicant cannot prove that the remark had any bearing on the result of the trial.

Overwhelming Evidence of Guilt

This Court finds Applicant can show no prejudice in regards to any of the allegations of ineffectiveness because there is clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt). Notably, Applicant was forcefully removed from Simmons's residence after a standoff where hostage negotiations took place. Applicant attempted to explain his actions at the PCR hearing by testifying that he did not have specific recollections from the day in question. This Court finds that testimony not credible. Applicant cannot meet his burden to prove prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.



