

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 23, 2012

Stephen Beckham #236548
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Beckham, Stephen v. The State

Dear Mr. Beckham:

The following Order has been endorsed on your request for appointment of Elizabeth Franklin-Best as counsel in the above entitled case on appeal.

"Denied.

s/ Jean H. Toal C.J.
For the Court

April 23, 2012."

Please be advised the Division of Appellate Defense will continue to represent you purposes of this appeal. This Court has not yet been notified that any particular attorney has been assigned.

Very truly yours,

Daniel E. Shearouse
55

CLERK

DES/jj

cc: Appellate Defense
Assistant Deputy Attorney General Salley W. Elliott

THE HONORABLE DANIEL E. SHEAROUSE
CLERK - SOUTH CAROLINA SUPREME COURT
Box 11330
Columbia, S.C. 29211

Dear Clerk Shearouse,

I am currently appealing my conviction and sentence under POST CONVICTION RELIEF. DURING THE INITIAL STAGE OF MY APPEAL IN THE COURT OF COMMON PLEAS, ELIZABETH FRANKLIN-BEST CONSULTED WITH MY APPOINTED ATTORNEYS. WE ESTABLISHED A GOOD PROFESSIONAL RELATIONSHIP AND I TRUST HER.

HOWEVER, THE CHIEF APPELLATE DEFENDER, ROBERT DUDEK HAS MADE ME EXTREMELY UNCOMFORTABLE. DURING MY DIRECT APPEAL I HIRED JOHN DELGADO TO REPRESENT ME. MR. DUDEK SHOWED UP TO VISIT ME AT PERRY CORRECTIONAL UNSOLICITED. HE TRIED TO PERSUADE ME TO "CHANGE MY MIND" AND ALLOW HIM TO REPRESENT ME. I DID NOT AND DO NOT FEEL COMFORTABLE NOW HAVING HIM HANDLE MY CASE.

IT HAS COME TO MY ATTENTION THAT MS. ELIZABETH FRANKLIN-BEST IS LEAVING THE APPELLATE DEFENDERS OFFICE. DUE TO THE ESTABLISHED ATTORNEY/CLIENT RELATIONSHIP WITH HER AND THE ADVERSE RELATIONSHIP WITH MR. DUDEK I AM REQUESTING VIA THIS LETTER THAT ELIZABETH FRANKLIN-BEST CONTINUE TO REPRESENT ME BY APPOINTMENT OF THE COURT.

PLEASE LET ME KNOW IF I NEED TO DO ANYTHING ELSE.
WITH BEST REGARDS, I AM,

RECEIVED

APR 11 2012

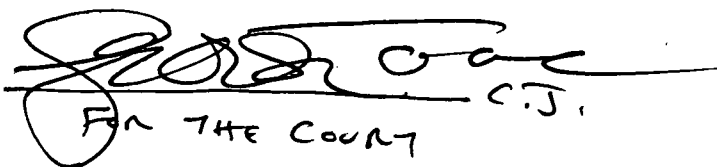
S.C. SUPREME COURT

RESPECTFULLY YOURS,



Stephen A. Beckham 236548
MCCL SIMULA 115
386 REDEMPTION WAY
MCCORMICK, S.C. 29899

DENIED.


C.J.
FOR THE COURT

April 23, 2012

EPHEN A. BECKHAM 236548
-CT SMU 2115
6 REDEMPTION WAY
-CORMICK, S.C. 29899



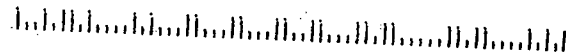
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MAILED FROM ZIP CODE 29835

*Legal
Mail*

The Honorable Daniel E. SHEAROUSE
CLERK OF THE SOUTH CAROLINA SUPREME COURT
BOX 11330
Columbia, S.C. 29211

292111330





SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

JAN 13 2012

January 12, 2012

S.C. Supreme Court

RECEIVED

JAN 12 2012

SC Court of Appeals

Mr. Michael Watkins, Sr.
Circuit Court Reporter
5116 Cressingham Drive
Indian Land, SC 29707

Dear Mr. Watkins:

Please provide us with the following transcript:

Stephen Beckham v. State of South Carolina Case #: 2000-CP-36-00051

County: Newberry Date of Trial: July 8 & 13, 2010 (Motion and Continuance Issues)

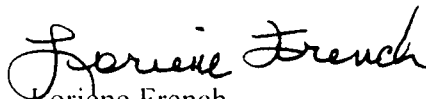
Presiding Judge: Brooks P. Goldsmith

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorie French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

JAN 13 2012

January 12, 2012

S.C. Supreme Court

RECEIVED

JAN 12 2012

SC Court of Appeals

Mr. Michael Watkins, Sr.
Circuit Court Reporter
5116 Cressingham Drive
Indian Land, SC 29707

Dear Mr. Watkins:

Please provide us with the following transcript:

Stephen Beckham v. State of South Carolina Case #: 2000-CP-36-00051

County: Newberry Date of Trial: May 20, 2010 (Discovery Issues - held in
Chester)

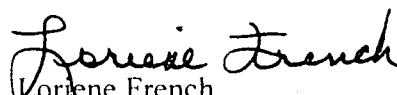
Presiding Judge: Brooks P. Goldsmith

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorlene French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

December 7, 2011

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

RECEIVED
DEC 12 2011
S.C. SUPREME COURT

Re: Stephen Beckham#236548 v. State
Case Number: 2000-CP-36-0051

Dear Mr. Shearouse:

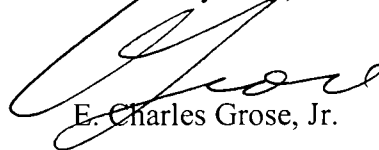
Enclosed please find Mr. Beckham's amended notice of appeal. I am filing an amended notice to correct the designation of the parties in the caption of the case. I apologize for any inconvenience.

By copy of this letter to Ms. Elliott, I am serving a copy of this notice on the state. By copy of this letter to Ms. Bowers, I am filing a copy with the Clerk of Court for Newberry County.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide you with any additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: The Honorable Jackie S. Bowers (w/ enclosure)
Diana Holt, Esquire (w/o enclosures)
Tara S. Waters, Esquire (w/o enclosures)
Salley Elliott, Esquire (w/ enclosure)
S.C. Office of Appellate Defense (w/ enclosure)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case No. 2000-CP-36-0051

Stephen Beckham, #236548, ... Appellant

v.

The State, ... Respondent.

Amended Notice of Appeal

Stephen Beckham appeals the order of the Honorable Brooks P. Goldsmith dated September 7, 2011. This appeal is taken from the order of Judge Goldsmith dated November 15, 2011, filed on November 21, 2011, and mailed to counsel on November 23, 2011 denying Mr. Beckham's Rule 59(e), SCRCP motion.

Respectfully Submitted,

Diana Holt

Diana Holt, LLC
Post Office Box 6465
Columbia, South Carolina 29260
(803) 782-1663

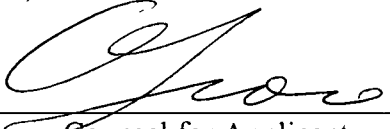
E. Charles Grose, Jr.

Circuit Defender, Eighth Circuit
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
(864) 229-9505

Tara S. Waters

Asst. Public Defender, Eighth Circuit
Post Office Box 174
Laurens, South Carolina 29360
(864) 984-8807

By:


Counsel for Applicant

December 7, 2011

Other Counsel of Record:

Salley Elliott, Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case No. 2000-CP-36-0051

Stephen Beckham, #236548, ... Appellant

v.

The State, ... Respondent.

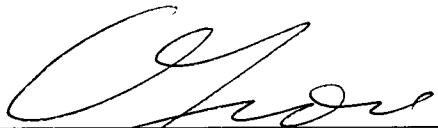
PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

Salley Elliott, Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

I also mailed a copy to the Clerk of Court for Newberry County, postage prepaid, addressed as follows:

The Honorable Jackie Bowers
Clerk of Court, Newberry County
P.O. Drawer 10
Newberry, SC 29108



E. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit

December 7, 2011
Greenwood, SC

PCR

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties

Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

December 5, 2011

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

RECEIVED
DEC 8 2011
S.C. SUPREME COURT

Re: Stephen Beckham#236548 v. State
Case Number: 2000-CP-36-0051

Dear Mr. Shearouse:

Enclosed please find Mr. Beckham's notice of appeal. Also enclosed please find copies of Judge Goldsmith's written orders dated September 7, 2011 and November 15, 2011.

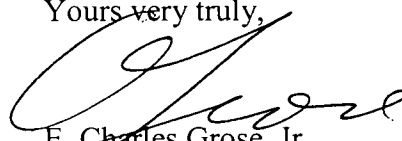
By copy of this letter to Ms. Elliott, I am serving a copy of this notice on the state. By copy of this letter to Ms. Bowers, I am filing a copy with the Clerk of Court for Newberry County.

Ms. Holt, Ms. Waters and I were court appointed to represent Mr. Beckham. We understand the Office of Appellate Defense will represent Mr. Beckham during this Appeal.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide you with any additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: The Honorable Jackie S. Bowers (w/ copy of Notice of Appeal)
Diana Holt, Esquire (w/o enclosures)
Tara S. Waters, Esquire (w/o enclosures)
Salley Elliott, Esquire (w/ copy of Notice of Appeal)
S.C. Office of Appellate Defense (w/ all enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case No. 2000-CP-36-0051

Stephen Beckham, #236548, ... Respondent-Appellant

v.

The State, ... Appellant-Respondent.

Notice of Appeal

Stephen Beckham appeals the order of the Honorable Brooks P. Goldsmith dated September 7, 2011. This appeal is taken from the order of Judge Goldsmith dated November 15, 2011, filed on November 21, 2011, and mailed to counsel on November 23, 2011 denying Mr. Beckham's Rule 59(e), SCRCF motion.

Respectfully Submitted,

Diana Holt

Diana Holt, LLC
Post Office Box 6465
Columbia, South Carolina 29260
(803) 782-1663

E. Charles Grose, Jr.

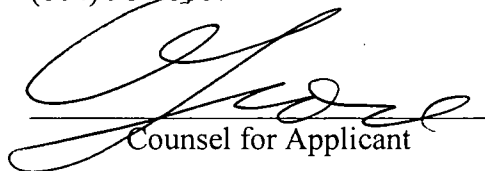
Circuit Defender, Eighth Circuit
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
(864) 229-9505

RECEIVED
DEC 8 2011
S.C. SUPREME COURT

Tara S. Waters

Asst. Public Defender, Eighth Circuit
Post Office Box 174
Laurens, South Carolina 29360
(864) 984-8807

By:



Counsel for Applicant

December 5, 2011

Other Counsel of Record:

Salley Elliott, Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case No. 2000-CP-36-0051

Stephen Beckham, #236548, ... Respondent-Appellant

v.

The State, ... Appellant-Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

Salley Elliott, Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

I also mailed a copy to the Clerk of Court for Newberry County, postage prepaid, addressed as follows:

The Honorable Jackie Bowers
Clerk of Court, Newberry County
P.O. Drawer 10
Newberry, SC 29108



E. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit

December 5, 2011
Greenwood, SC

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2000 CP-36-00051

STEPHEN BECKHAM #236548

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: JUDGE BROOKS P. GOLDSMITH

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 40(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 : MOTION TO RECONSIDER DENIED.

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 (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

139
Judge Code

11/17/11
Date

For Clerk of Court Office Use Only

This judgment was entered on the 21st day of Nov, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of Nov, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Diana L. Holt
PO Box 6454
Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ernest Charles Greese, Jr.
600 Monument St.
Box P-133

Court Reporter:

Greenwood, SC 29646

Jana Marie Schultz
600 Monument St. Box P-133
Greenwood, SC 29646

Donald G. Zelenka
PO Box 91549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

S/Jackie S. Bowers
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Stephen Beckham, #236548,)
APPLICANT,)
VS.)
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

**ORDER DENYING
APPLICANT'S MOTIONS**

CASE NO. 2000-CP-36-0051

FILED
NEWBERRY COUNTY
2011 NOV 21 A 10:42
JACKIE S. BOWERS
CLERK OF COURT

This matter comes before the Court pursuant to Post-Trial Motions of Applicant dated September 19, 2011. Applicant's motions request that this Court reconsider its Order of September 7, 2011. Applicant first requests that the Court reopen the record in this case and recuse the Office of the Attorney General. In the alternative, a new trial is requested. And finally, Applicant moves pursuant to Rule 59(e), SCRPC, to alter and amend the Order of September 7, 2011 and grant a new trial. Respondent filed a Return to Applicant's motions dated September 29, 2011. Applicant filed a Reply to the State's Return dated October 6, 2011.

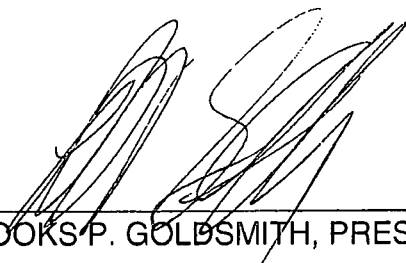
Upon receiving the notice for the motions, the Court elected to make a decision on the motions by receiving each party's memorandum of law.

After careful consideration of said motions as well as the Reply and Return submitted by the parties, the Court finds there is no basis for granting the

motions and, therefore, Applicant's Post-Trial Motions dated September 19, 2011 are hereby denied.

AND IT IS ALL SO ORDERED.

November 15, 2011
Lancaster SC



BROOKS P. GOLDSMITH, PRESIDING JUDGE

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

JUDGMENT IN CIVIL CASE
CASE NO: 2000CP36000

RECEIVED
DEC 8 2011
S.C. SUPREME COURT

Stephen #236548 Beckham vs. State Of South Carolina

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), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court;

Order Vacating Sentence for Kidnapping and Denying All Other Post-Conviction Relief Claims
Dated at Newberry, South Carolina, this 7th day of September, 2011.

Court Reporter:

S/ Brooks P. Goldsmith

PRESIDING JUDGE - Brooks P. Goldsmith

This judgment was entered on the 8th day of September, 2011, and a copy mailed first class this 8th day of September, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Diana L. Holt Diana Holt, LLC P.O. Box 6454
Columbia, SC 29260

Ernest Charles Grose Jr Attorney at Law 600
Monument St. Box P-133 Greenwood, SC 29646
Tara Marie Schultz 600 Monument St Box P-133
Greenwood, SC 29646

Salley W. Elliott S.C. Attorney General's Ofc. P.O.
Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/ Jackie S. Bowers

Jackie S Bowers - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Stephen Andrew Beckham, 236548)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHT JUDICIAL CIRCUIT
Case No: 2000-CP-36-0051

**ORDER VACATING SENTENCE FOR
KIDNAPPING AND DENYING ALL OTHER
POST-CONVICTION RELIEF CLAIMS**

FILED
NEWBERRY COUNTY
SEP - 8 A 10:25
JULIE S. BOWERS
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed February 15, 2000, and subsequently amended as further described below. The Respondent filed its Return on April 20, 2000, and subsequently amended as further described below. An evidentiary hearing into this matter was convened on September 28-30, 2010, followed by depositions in lieu of live testimony that concluded on November 11, 2010. The Applicant was present at the hearing and was represented by Diana L. Holt, Esquire, Charles Grose, Jr., Esquire, and Tara M. Schultz, Esquire. Jennifer A. Kinzeler, Esquire, and Salley W. Elliott, Esquire, of the South Carolina Attorney General's Office, were present on behalf of the Respondent.

PROCEDURAL HISTORY

Underlying Convictions

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Applicant was indicted at the January 1996 term of the Court of General Sessions for Newberry County for



murder, conspiracy, and kidnapping. Jack B. Swerling, Esquire and Richard A. Harpootlian, Esquire, represented him.

The Applicant proceeded to a jury trial before the Honorable Henry F. Floyd from September 19, 1996 through October 4, 1996¹. At the conclusion of the guilt phase, the jury returned a unanimous verdict finding the Applicant guilty of all three offenses as indicted. (Trial Tr. p. 5118). At the conclusion of the sentencing phase, the jury unanimously found beyond a reasonable doubt the existence of the following aggravating circumstances: 1) the murder was committed while in the commission of a kidnapping, 2) the murder was committed while the victim was subjected to physical torture, and 3) the defendant caused or directed another to commit murder, and, having found the aforementioned aggravating circumstances beyond a reasonable doubt, unanimously recommended the punishment of life imprisonment. (Trial Tr. p. 5724-5725). The jurors confirmed on the record this was in fact their verdict. (Trial Tr. p. 5725). The Applicant was sentenced to confinement for life for murder, thirty (30) years for kidnapping, and five (5) years for conspiracy, sentences running concurrently. (Tr. p. 5729).

A Notice of Appeal was filed and served on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's convictions and sentences. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999) (filed February 22, 1999).

Post-Conviction Relief

Applications, Returns, and Motions

The Applicant filed his first application for post-conviction relief on February, 15, 2000. Diana L. Holt, Esquire, was appointed to represent the Applicant on May 18, 2001. Thereafter, the Applicant moved for discovery pursuant to §17-27-150(A) in this non-capital post-conviction relief

¹ Jury selection took place from September 14, 1996 through September 18, 1996. (Tr. p. 1-1306). The guilt phase of the trial began on the afternoon of September 19, 1996. (Tr. p. 1307).

action on or about June 18, 2001. Over the Respondent's objections, the Honorable Gary E. Clary granted the Applicant's request by Order dated June 25, 2001. On August 31, 2001, the Honorable Wyatt T. Saunders, Jr. was vested with exclusive jurisdiction to hear and dispose of this action.

First Amended Application for Post-Conviction Relief

The Applicant filed his First Amended Application for Post-Conviction Relief on August 1, 2002, in which he raised the following allegations:

- A. Trial court error for "rebuking-with the jury present-a key witness in applicant's defense" which constituted an impermissible comment on the evidence;
- B. Trial court error for "disallowing admission of evidence offered by the Applicant to impeach the credibility of a state agent on an issue materially related to Applicant's actual innocence;"
- C. State misconduct for "failing to disclose to applicant materials as required by Brady v. Maryland, 373 U.S. 83 (1963) and Kyles v. Whitley, 514 U.S. 419 (1995)," regarding statements and evidence "concerning the existence of an identity of another suspect and the time of the victim's death;"
- D. "Applicant was deprived of a fair trial because members of the jury that sat in judgment of Applicant were exposed to highly prejudicial extraneous information and third-party contact," regarding an encounter the jurors had with a third party at a restaurant; and
- E. Alternatively to Grounds A-D, the Applicant was denied the right to effective assistance of trial and appellate counsel for failure to adequately preserve and raise the aforementioned issues.

Subsequently, the Applicant filed a Motion to Conduct Independent Scientific Testing of Physical Evidence on May 1, 2003. The Respondent filed its Return to this motion on or about January 16, 2008, to which the Applicant filed a Reply on or about January 23, 2008.

On July 9, 2006, the Applicant filed a Motion for Order of Protection for Certain Fact Witnesses, which included all of the jurors and alternates who comprised the Applicant's jury at trial, in addition to several state agents, most of whom were responsible for the jury sequestration

during the Applicant's trial. The Respondent filed its Return to this motion on July 14, 2006. Judge Saunders issued an Order of Protection as to all of the witnesses dated July 14, 2006 and filed on July 17, 2006.

By Order dated October 10, 2007, the undersigned was vested with exclusive jurisdiction to hear and dispose of this post-conviction relief matter.

On or about January 4, 2008, the Applicant filed a Motion to Request Judicial Inquiry into Clandestine DNA Testing and Other Activities by Law Enforcement and Governmental Agencies, on the ground that members of the executive branch seemingly joined with members of the legislative branch to "thwart Due Process and Equal Protection Entitlements of the Applicant." Respondent filed its Return to this motion on or about January 15, 2008.

On or about January 7, 2008, the Applicant also filed a Motion to Recuse the Office of the South Carolina Attorney General. Respondent filed its Return to the Applicant's motion on or about January 17, 2008. Respondent also filed a Motion to Conduct Discovery on or about January 14, 2008. A motion hearing was convened on February 19, 2008, to address the following motions: 1) Applicant's Motion to Recuse the Attorney General's Office, 2) Respondent's Motion for Discovery, 3) Applicant's Motion for Independent Scientific Testing, and 4) Applicant's Motion for Independent Judicial Inquiry. As further discussed below, the Respondent's Motion to Quash and for a Protective Order, filed February 13, 2008, regarding the Applicant's January 11, 2008, subpoena commanding the production of materials from the Office of the Attorney General, was also heard that same day.

The Court subsequently issued an Order granting the Respondent's motion to conduct discovery on April 2, 2008. The Court issued an Order granting the Applicant's Motion to Conduct Independent

Scientific Testing on June 6, 2008. The Applicant's Motion to Recuse the Attorney General's Office and Motion for an Independent Judicial Inquiry remained pending.

On May 20, 2010, the parties convened for a status conference before this Court. At the status conference, the Applicant formally withdrew his Motion to Recuse the Attorney General's Office and his Motion for an Independent Judicial Inquiry. (May 20, 2010 Status Conference Tr. p. 3). Counsel for the Applicant confirmed the First Amended Application for Post-Conviction Relief superseded the Applicant's initial application for post-conviction relief. (May 20, 2010, Status Conference Tr. p. 5). At the status conference, the Applicant formally withdrew Ground A, alleging trial court error for rebuking a witness in the presence of the jury, as presented in the Applicant's First Amended Application for Post-Conviction Relief. (*Id.*). The Applicant, through counsel, indicated he was still proceeding on the remaining allegations as presented in the First Amended Application for Post-Conviction Relief. While stating Grounds B and C would be further amended to include more detail in the near future, counsel for the Applicant indicated, with regard to Ground D concerning juror related issues, that this ground was supported by certain facts that included, according to counsel for the Applicant, a conversation about the juror issue at the bench between Townes Jones (one of the prosecutors), the trial court judge, and members of the sequestration team all unbeknownst to the Applicant's trial counsel' (May 20, 2010, Status Conference Tr. p. 7-8). In addition, the Applicant indicated he was proceeding on Ground E, in the alternative. The Applicant was to file his subsequent amended application for post-conviction relief on or before June 20, 2010. (May 20, 2010, Status Conference Tr. p. 11).

Second Amended Application for Post-Conviction Relief

The Applicant then filed his Second Amended Application for Post-Conviction Relief on June 2, 2010. In his Second Amended Application for Post-Conviction Relief, the Applicant raised the following allegation:

A. "Applicant was deprived of a fair trial because members of the jury that sat in judgment of Applicant were exposed to highly prejudicial extraneous information and third-party contact," regarding "break-ins" of jurors' hotel rooms, with an additional footnote that he was not waiving any grounds for relief not therein included.

Following a number of discovery depositions, Diana L. Holt filed a Motion to be Relieved as counsel on July 7, 2010. The Respondent filed its Return to counsel's Motion to be Relieved on July 8, 2010. A motion hearing was held on July 8, 2010. This Court denied counsel's motion to be relieved by written order dated July 12, 2010, but by written Order filed July 26, 2010, also appointed E. Charles Grose, Jr., Esquire, and Tara M. Schultz, Esquire, as co-counsel with the Applicant's existing counsel.

Third Amended Application for Post-Conviction Relief

Subsequently, the Applicant filed his Third Amended Application for Post-Conviction Relief on August 30, 2010, in which he raised the following allegations:

- A. "Applicant was deprived of a fair trial because members of the jury that sat in judgment of Applicant were exposed to highly prejudicial extraneous information and third-party contact," regarding a "break-in" of Juror Galbreath's hotel room that resulted in "third party contacts and impermissible information exposure" as well as "misconduct, and introduction of inflammatory and prejudicial information during Applicant's trial;"
- B. "Applicant was deprived of a fair trial because members of the jury that sat in judgment of Applicant were exposed to highly prejudicial extraneous information and third-party contact, "regarding a 'break-in' of Juror Capps' hotel room that resulted in "third party contacts and impermissible information exposure" as well as "misconduct, and introduction of inflammatory and prejudicial information during Applicant's trial;"
- C. "Applicant was deprived of a fair trial by impartial jurors and due process of law because members of the jury that sat in judgment of Applicant were exposed to highly prejudicial extraneous information and third-party contact," regarding a comment in a diner and that the "true nature" of this incident was not reported;
- D. "Applicant was deprived of a fair trial by impartial jurors and due process of law because members of the jury that sat in judgment of Applicant were exposed to highly prejudicial extraneous information and third-party contact," regarding an unknown male individual who "entered the motel room of a female member of Applicant's jury while the juror was

inside and assaulted the juror” and had to be “forcibly removed;”

- E. State misconduct in failing to notify Applicant, Applicant’s trial counsel and/or the trial court, thereby depriving the Applicant “of Due Process of law, of a fair trial,” and interfering with “Applicant’s trial counsel’s ability to protect Applicant’s rights,” in addition to the “cumulative effect of all of the issues – state and juror misconduct – security breaches – failures to disclose the information,” which deprived the Applicant of a fair trial;
- F. “Applicant was deprived of a fair trial and due process of law when a member of Applicant’s jury conducted her own investigation ‘regarding the ‘break-ins,’” including juror misconduct “by spreading the information to other members of the jury, thereby tainting them, and by failing to report the intrusion to the trial judge” or the sequestration team;
- G. The State sequestration team’s “repeated failure to notify the Applicant and his counsel of the intrusions and third party contacts with the jury” deprived the Applicant of his due process and equal protection rights such that the jury and the State sequestration team became “conspirators to withhold this information from the Applicant, trial counsel, and, perhaps, the trial court;”
- H. “Applicant was deprived of a fair trial when the trial court engaged in improper communication with the Applicant’s jury,” regarding the trial court ordering a sequestration team member “to have another State Agent, Natalie Talbert, investigate the intrusion” into juror Galbreath’s hotel room;
- I. A member of the Applicant’s jury, juror Grimes, “may have been ineligible to sit as a juror as a matter of state law,” pursuant to §14-7-820 regarding the disqualification of county officers and court employees. In addition, the “trial court failed to inquire whether or not any member of the venire was a constable;” and
- J. Applicant’s thirty (30) year sentence for kidnapping “should be vacated because S.C. Code §16-3-910 prohibits sentencing for kidnapping when someone is also sentenced for murder pursuant to §16-3-20.”

The Respondent filed its Amended Return to the Applicant’s Third Amended Application for Post-Conviction Relief on September 15, 2010.

Discovery and Subpoenas

On June 22, 2001, counsel for Applicant served a subpoena upon SLED commanding the agency to produce and permit the inspection and copying of:

any and all original materials that in any way relate to the death of Vickie

Lander and/or the investigation and/or prosecution of Stephen Andrew Beckham, including but not limited to **any and all** materials related to the investigation or prosecution of **any and all** persons, including but not limited to all witness[es] or alleged participants whether or not the witnesses were called by the prosecution or the defense either at trial, and regarding witnesses and alleged participants, whether or not materials pertain to investigations into matters unrelated to the death of Vickie Lander Beckham. (emphasis in original).

On July 20, 2001, counsel for Applicant served a subpoena upon the Newberry County Sheriff's Department commanding the agency to produce and permit the inspection and copying of:

any and all original materials that in **any way** relate to the death of Vickie Lander and/or the investigation and/or prosecution of Stephen Andrew Beckham, including but not limited to **any and all** materials related to the investigation or prosecution of **any and all** persons, including but not limited to all witness[es] or alleged participants whether or not the witnesses were called by the prosecution or the defense either at trial, and regarding witnesses and alleged participants, whether or not materials pertain to investigations into matters unrelated to the death of Vickie Lander Beckham. (emphasis in original).

On October 10, 2001, counsel for Applicant served a subpoena upon the South Carolina Department of Corrections (SCDC) commanding the agency to produce and permit the inspection and copying of "any and all materials . . . related to Richard George Anderson (Applicant's co-defendant)"

On the same date, counsel for Applicant served another subpoena upon SCDC commanding that agency to produce and permit the inspection and copying of "any and all records of the Cooper Trust Account."

On February 4, 2005, counsel for Applicant served a subpoena upon the Eighth Judicial Circuit Solicitor commanding the Solicitor to produce and permit the inspection and copying of:

any and all materials related to the investigation of the death of Vickie Lander Beckham and to the prosecution of Stephen Andrew Beckham, Richard Anderson, Michael J. Beatty, and

any other person for crimes against Vickie Lander Beckham.

On February 4, 2005, counsel for Applicant served a subpoena upon Dr. Joel S. Sexton commanding the production and copying of and an opportunity to inspect:

Any and all materials related to the investigation of the death of Vickie Lander Beckham and the autopsy of Vickie Lander Beckham including microscope slides, photographs, and any and all other materials of any type.

On January 11, 2008, counsel for Applicant served a subpoena upon the Office of the Attorney General, commanding the agency to produce and permit the inspection and copying of anything and everything in the possession of the Office or any individual within the office related in any way to the underlying case in this matter, including but not limited to :

Any communications or documents of any type, including but not limited to email and interoffice memoranda, between or among John W. McIntosh and any employee or constitutional officer of the South Carolina Attorney General's Office, **any SLED agent**, chief or commander, James Lander, any South Carolina Department of Corrections employee or Officer, including any director thereof and any legal counsel therefore, and/or **any other agency, state, local, or county, that in any way concern[s] Stephen Andrew Beckham** and/or Richard Anderson, and/or the Post Conviction Relief Action 00-CP-36-51 and/or indictment numbers 06-GS-40-1961, 96-GS-36-79. (emphasis in original)

Respondent filed a Motion to Quash or Limit this Subpoena and a Motion for a Protective Order regarding any materials deemed privileged or protected as attorney work product. Pursuant to this subpoena, counsel for the Applicant deposed Chief Deputy Attorney General John W. McIntosh on February 13, 2008. As previously stated, Respondent's corresponding motion to quash was addressed at the February 19, 2008, motion hearing.

Counsel for Applicant served another subpoena upon SLED on June 13, 2010, commanding the agency to produce and permit the inspection and copying of:

Any and all original materials that in any way relate to Stephen Andrew Beckham's trial and the jury members and SLED sequestration team members in the matter of State v. Stephen Andrew Beckham, including but not limited to the following individuals

The subpoena then enumerates 31 individuals, 16 of which are current or former SLED agents and 14 of which were jurors (or alternates) during Applicant's trial and sentencing. The other individual listed is Jolene Lander, the victim's mother. Counsel for Applicant also demanded that SLED produce the original files of the SLED agents listed:

including disciplinary records and criminal investigations of this individual related to **any case or matter**. (emphasis in original).

Counsel for Applicant also demanded that SLED produce its original files regarding each of the jurors "including ALL investigations for ANY matter" and, regarding Mrs. Lander, files including any investigation into "any potential involvement with members of the jury and SLED agents who pertain to or were involved with the jury matter and/or file No. 34-96-8002."

The Respondent filed a Motion to Quash or Limit the Applicant's June 13, 2010, subpoena, and subsequently filed an Amended Motion Withdrawing its Motion to Quash but Maintaining its Motion to Limit this subpoena on June 25, 2010. On July 7, 2010, the Respondent also filed a Motion to Set Aside the previously issued Order of Protection regarding the jurors and SLED agents. A motion hearing was held regarding both of these motions on July 13, 2010, in addition to addressing the Applicant's verbal motion for a continuance from the previously set August 16, 2010 hearing date. The Court subsequently issued an Order dated July 16, 2010 granting Respondent's Motion to Set Aside the Order of Protection in part as to the State agents, and denying Respondent's motion in part as to the non-state agents (the jurors) listed in the Order of Protection. The Court also issued an Order dated July 16, 2010, granting Respondent's Motion to Limit the June 13, 2010, subpoena that counsel for the Applicant served upon SLED. The

Court also denied the Applicant's Motions to Reconsider the orders granting Respondent's Motion to Set Aside the Order of Protection in part and Respondent's Motion to Limit the June 13, 2010, subpoena by written Orders dated August 3, 2010.

The Respondent filed its First Set of Interrogatories to the Applicant on July 2, 2010. The Applicant filed its response to Respondent's First Set of Interrogatories on August 30, 2010. The Applicant also filed his Standard Interrogatories, Request for Admissions, Supplemental Interrogatories, and Request to Produce on or about August 5, 2010. The Respondent filed its responses to the Applicant's aforementioned discovery requests on September 10, 2010, and filed a supplemental response to the Applicant's Standard and Supplemental Interrogatories on September 22, 2010.

On August 27, 2010, counsel for the Applicant served Duke Energy Carolina with a subpoena *duces tecum* commanding the production of all certification and training information regarding employee John W. Grimes.

On August 26, 2010, counsel for the Applicant served SLED with another subpoena *duces tecum* commanding the production of several items including but not limited to:

1. a list of all cases in which a jury sequestration team was assigned and/or a SLED file was created;
2. The file containing the security plan and all related documents for the trial of the State v. Stephen Beckham, including all logs of agents' activities, roles, and identities;
3. Identification of all communication devices of any kind assigned to and/or utilized by Sheriff Lee Foster, SLED agents Jim Barry, Robert Jenkins, Stacey Snow, Lamar Wiggins, Charles Rudloff, Natalie Talbert, and Charles Webber from September 1, 1996 through October 30, 1996;
4. All records in any and all formats of any and all activity of any kind on any and/or all of the communication devices described in numbered paragraph three;
5. Any and all communications of activity described in numbered paragraphs three, four, and seven of the subpoena;

6. All records and materials of any kind or type related to licensing and testing of John Robert Grimes by SLED for any purpose from 1985 through August 26, 2010;
7. A list and/or all records pertaining to any and all communication devices assigned to then-Circuit Court Judge Henry Floyd and all records of the same, from September 1, 1996 through October 31, 1996;
8. Any and all materials related to Stacey Snow, whether during his employment with any state agency or not, that in any way pertain or relate to "Smugglers," a business doing business in Horry County, South Carolina, at any time, Michael Beatty, Sr., Michael Beatty, Jr. and /or Richard Anderson at any time; and
9. Any and all materials related to "Smugglers" and/or anyone named in numbered paragraphs one through eight in any way at any time.

SLED filed a Motion to Quash or Modify that subpoena. The Applicant filed his Response to SLED's Motion to Quash Subpoena, and the Respondent subsequently filed a Return to the Applicant's Response to SLED's Motion to Quash and Supplement of Depositions. A motion hearing regarding this matter was convened on September 17, 2010. On the record, the Court granted SLED's Motion to Quash in part and denied the motion in part.

Summary Judgment and Evidentiary Hearing

The Applicant filed a Motion for Summary judgment on or about September 16, 2010, asserting he was entitled to a new trial as a matter of law because juror Grimes was a "constable" who was disqualified from service on his jury pursuant to S.C. Code Ann. §14-7-820. After learning that Grimes is not commissioned as a constable, but is rather licensed by SLED as a private security officer, the Applicant filed a Supplemental Memorandum in Support of the Applicant's Motion for Summary judgment on September 23, 2010, in which he asserted he was entitled to summary judgment on the ground that the juror is the "functional and legal equivalent of a deputy sheriff" who was disqualified from jury service under S.C. Code Ann. §14-7-820 and S.C. Code Ann. §40-18-110.

The Respondent filed its Return to the Applicant's Motion for and Memorandum in

Support of Summary Judgment on September 23, 2010. The Court heard this matter on September 28, 2010, at the Newberry County Courthouse prior to convening the evidentiary hearing into this action. The Court denied the Applicant's Motion for Summary Judgment on the record on that same day, and subsequently issued an Order denying the Applicants Motion for Summary Judgment on September 30, 2010. (PCR Transcript [hereinafter PCR]. p. 28). However, the Court granted the Applicant's unrelated verbal Motion for Summary judgment that the kidnapping sentence be vacated, presented as "Ground J" in the Applicant's Third Amended Application for Post-Conviction Relief, on the record at the evidentiary hearing. (PCR. p. 1011). These motions were further subsequently resolved by written order as further discussed below.

An evidentiary hearing into this matter was convened on September 28-30, 2010, at the Newberry County Courthouse. The Applicant presented testimony from the following jurors: John Grimes, Jack Galbreath, Alice Lamar, Kathy McGuffin, Christopher Connally; the following sequestration team members: Kenneth Mears, Linda Marsh, Charles Rudloff, and Robert Jenkins; in addition to testimony from Margaret Knox, employed with the South Carolina Law Enforcement Division (SLED). The Applicant also subsequently obtained testimony from the Honorable Henry F. Floyd (trial court judge), W. Townes Jones, IV, Esquire, (lead prosecutor), and Jack B. Swerling, Esquire (one of the Applicant's defense attorneys at trial), through post-hearing depositions in lieu of live testimony, the last of which concluded on November 11, 2010.

The Respondent presented testimony at the evidentiary hearing from the following jurors: Brandy Reid Crocker, Marjorie West, and Della Price; the following sequestration team members: Stacey Snow, James Barry, Ann Reese, Carl Alston, David Roper, George

Oliver, Irene Dukes, and Gary Martin; the following additional former or current SLED agents or employees: Lamar Wiggins, Harold Gregory, Lieutenant Ben Moore, Natalie Talbert, Cindy Dudney, and Reginald I. Lloyd, Esquire; and the three additional prosecutors responsible for prosecuting this case; Michael T. Coulter, Esquire, Betty C. Strom, Esquire, and the Honorable R. Knox McMahon.

After the hearing, the Applicant filed a Motion to Reconsider the Order Denying the Applicant's Motion for Summary Judgment on October 11, 2010, and the Respondent filed its Return to the Applicant's Motion to Reconsider on October 14, 2010. By written Order dated December 1, 2010, the Court denied the Applicant's Motion to Reconsider the Applicant's Motion for Summary Judgment. On the same date, the Court also issued an Order regarding the Applicant's Motion to Reconsider or Clarify the Granting of the Applicant's Oral Motion to Vacate the Applicant's Kidnapping Sentence, finding that the Court will issue a formal order granting the Applicant's motion regarding his kidnapping sentence at such time as the Court issues its Final Order in this case.

Also, subsequent to the hearing, the parties also submitted post-hearing briefs or memoranda and reply briefs or memoranda. The Applicant also filed Applicant's Proffer of the SLED Jury Sequestration Manual, Second Edition, February 2000 and Motion for Court to Order SLED to Provide a Copy of the SLED Jury Sequestration Manual, First Edition, February 1996 and to Reopen the Record dated January 10, 2011. Respondent made Return and Supplemental Return to the Motion dated February 11, 2011 and February 23, 2011. The Applicant also submitted a Motion to Reconsider the Order Denying Applicant's Motion to Reopen the Record dated April 1, 2011. Respondent made Return to the Motion to Reconsider on April 10, 2011. The Applicant submitted a Reply to Respondent's Return dated April 13, 2011 and the Respondent submitted a letter response on April 19, 2011. Thereafter, the Applicant submitted a Proffer

of 1996 SLED Jury Sequestration Manual, Second Motion to Re-open the Record and Motion to Recuse the Attorney General's Office dated July 22, 2011. The Respondent submitted a Return to these motions on August 5, 2011. These motions were resolved by separate orders of this Court.

FINDING OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard and considered the testimony presented at the evidentiary hearing and by deposition from three witnesses taken subsequent to the 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. This Court has also fully considered the post-hearing briefs and memoranda and reply briefs and memoranda submitted by the parties and all of the documents filed and submitted in this case, including all exhibits introduced as evidence during the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S. C. Code Ann. Section 17-27-80 (2003).

Relevant Legal Authority

The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application. Butler v. State, 286 S.C. 111, 334 S.E.2d 813 (1985); Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983); Rule 71.1(e), SCRCP.

Both the United States Constitution and South Carolina Constitution guarantee a criminal Defendant's right to a trial "by an impartial jury." U.S. Const. amend. VI; S.C. Const. art. I, § 14. The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to a trial by an impartial jury, to notice of the charges against him, to confront any witnesses against him, and to the assistance of counsel for his defense. U.S. Const. amend. VI. Further, "the right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284 (1973). State v. Hutton, 358 S.C. 622, 595 S.E.2d 876 (Ct. App. 2004); State v. Harris, 311 S.C. 162, 427 S.E.2d 909 (Ct.App.1993)(the Due Process Clause of the Fourteenth Amendment

affords criminal defendants a meaningful opportunity to present a complete defense); see also California v. Trombetta, 467 U.S. 479 (1984).

The constitution entitles a criminal defendant to a fair trial, not a perfect one. United States v. Hasting, 461 U.S. 499 (1983) (given "the myriad safeguards provided to assure a fair trial, and taking into account the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and the Constitution does not guarantee such a trial."). State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999); State v. Sweet, 342 S.C. 342, 536 S.E.2d 91 (Ct. App. 2000); State v. Whaley, 290 S.C. 463, 351 S.E.2d 340 (1986). While a criminal defendant has a constitutional right to a trial by a competent and impartial jury; he does not have a constitutional right to a trial by any particular jury. Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007); Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999).

These constitutional guarantees do not mandate that a prospective juror will be free of all preconceived notions relating to guilt or innocence. See Beck v. Washington, 369 U.S. 541 (1962); Irvin v. Dowd, 366 U.S. 717 (1961) (holding that "it is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court"); State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). Rather, it is the requirement that a jury's verdict "be based upon the evidence developed at the trial" that goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by a fair and impartial jury. Turner v. Louisiana, 379 U.S. 466 (1965). Thus, to fully safeguard this protection to a trial by an impartial jury, it is required that the jury render its verdict free from outside influences of whatever kind and nature." State v. Bryant, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003).

Regarding outside influence and third-party contact with jurors, the case law is clear. First, "extraneous" information and influences consist of information related to the parties in a case or the evidence in a case that is impressed upon a juror by an outside source. Tanner v. U.S., 483 U.S. 107 (1987) ("outside" or "extraneous" influences have included the following:

jurors hearing or reading prejudicial information not admitted into evidence such as a radio newscast or newspaper account, jurors hearing comments made by a bailiff about the defendant, a bribe offered to a juror in exchange for a particular verdict). External influence on jurors involves situations where the jury receives information about the matter pending before it from an outside source. State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005). In assessing whether outside influences potentially affected a jury, the relevant factors to consider include: 1) the number of jurors exposed; 2) the weight of evidence properly before the jury; and 3) the likelihood that curative measures were effective in reducing any prejudice. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000); see also State v. Lyles, 94 N.C. App. 240, 249, 380 S.E.2d 390, 396 (N.C. Ct. App. 1989); Lynch v. Toys "R" Us – Delaware, Inc., 375 S.C. 604, 654 S.E.2d 541 (2009); State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (2004).

Furthermore, due process does not require a new trial every time a juror has been placed in a potentially compromising situation. Smith v. Phillips, 455 U.S. 209 (1982) (it is "virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote."); See also Robinson v. Polk, 438 F.3d 350, 363 (4th Cir. 2006)(discussing the meaning of "prejudicial," finding that it "must mean at least that the information bears on a fact at issue in the case. Under any other view, the list of ingredients on the packs of coffee provided for jurors" would violate a criminal defendant's constitutional rights to confront witnesses and a trial by an impartial jury."); Billings v. Polk, 441 F.3d 238 (4th Cir. 2006).

Applicant asserts that the alleged incidents involving the jurors are "presumptively prejudicial *de jur*," or presumptively prejudicial as a matter of law; however, this Court declines to presume prejudice. This Court finds that the burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application. Butler, supra; Griffin, supra; Rule

71.1(e), SCRCP. Moreover, it is the defendant's burden to prove that any purported unauthorized communications with jurors resulted in actual juror partiality; "prejudice is not to be presumed." United States v. Pennell, 737 F.2d 521, 532 (6th Cir. 1984), *citing Smith, supra*. The remedy for allegations of jury tampering, misconduct, or bias is not an automatic new trial, but rather a hearing at which a defendant has the opportunity to prove actual bias. Smith, 455 U.S. at 215 (emphasis added); United States v. Olano, 507 U.S. 725 (1993)(rejecting the defendants' claim that the alternate jurors being present during jury deliberations constituted a presumption of prejudice automatically requiring a new trial).

Even in Remmer, *infra*, upon which the Applicant heavily relies, the Court did not grant a new trial based on a presumption of prejudice, but rather instructed the lower court - once the defendant proved an unauthorized contact occurred and was of such a character as to reasonably draw into question the integrity of the verdict - to conduct a hearing to "determine the circumstances, the impact thereof upon the juror, and whether or not [they were] prejudicial." Remmer v. U.S., 347 U.S. 227 (1954); Remmer v. U.S., 350 U.S. 377 (1956). Only after a hearing covering the "total picture" did the Court ultimately grant the defendant a new trial - significantly, on a very narrow set of facts that are not present in the instant case. Id. Thus, Remmer does not stand for the proposition that any of the alleged incidents in this case, even if true as alleged, are presumptively prejudicial as a matter of law.

Furthermore, our Supreme Court has repeatedly held that it is the defendant who must prove prejudice concerning juror misconduct cases. See State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999)(the Court rejected a presumption of prejudice analysis and held that a defendant must establish he was denied a fair trial as a result of an alternate juror's momentary participation in jury deliberations. In requiring a defendant to demonstrate prejudice, the Court reiterated that "unless the misconduct affects the jury's impartiality, it is not such

misconduct as will affect the verdict.”); See also State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998), *cert denied*, 525 U.S. 1077, 119 S.Ct. 816 (1999); State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010); State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999)(“At oral argument before this Court, the state maintained that jury misconduct in the form of premature deliberations did not warrant automatic reversal, and that the burden was on the defendant to demonstrate that such deliberations affected the jury's verdict. We agree.”)(emphasis added); State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995); State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989) (holding that the burden of proof was on the defendant to show not only error but resulting prejudice from the jurors' reading of trial-related newspaper article); State v. Bonneau, 276 S.C. 122, 276 S.E.2d 300 (1981)(holding that it is the defendant's burden to demonstrate the presence of an alternate juror denied him a fair trial); State v. Carrigan, 284 S.C. 610, 328 S.E.2d 119 (Ct.App.1985) (holding mere fact that conversation occurred between juror and witness for State did not necessarily prejudice defendant); State v. Smith, 338 S.C. 66, 525 S.E.2d 263 (Ct. App. 1999)(the general test for evaluating alleged juror misconduct is, first, whether there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence); State Covington, 343 S.C. 157, 163, 539 S.E.2d 67, 70 (Ct. App. 2000)(where a defendant seeks a new trial on the ground of impropriety involving the jury, he is required to prove both the alleged misconduct and the resulting prejudice); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). Significantly, in Pittman, our Supreme Court upheld the trial court's decision to deny the defendant's motion for a new trial where the trial court found that, even though some juror misconduct occurred, the defendant failed to meet his burden of proving prejudice. Id. at 556-57.

As set forth below and with the exception of the issue respecting the Applicant's sentence

for kidnapping as asserted in Ground J in the Third Amended Application, this Court finds that the Applicant failed to meet his burden of proving he is entitled to relief on any of the alleged grounds identified as Grounds A through I in the Third Amended Application.

Ground A

Applicant contends he was deprived of a fair trial by impartial jurors because members of his jury were “exposed to highly prejudicial extraneous information and third-party contact,” that resulted from an alleged “break-in” into juror Galbreath’s hotel room, someone going through juror Galbreath’s personal items, and a purported investigation into the matter by the State unbeknownst to the Applicant and his trial counsel. This allegation includes a claim that the Applicant was deprived of an opportunity to fully investigate and determine “the effect of the third party contact, misconduct, and introduction of inflammatory and prejudicial information during his trial,” and that the “state’s conduct in failing to notify and consult trial counsel deprived the Applicant of due process, a fair trial, and his right to counsel “due to counsel’s collective inability to “protect Applicant’s constitutional rights.”

Relevant Testimony and Evidence

Juror Galbreath testified that he travels “all the time” in the course of his employment in the construction field and typically stays in hotels or motels when he travels for work. (PCR. p. 74). He developed a habit when traveling of setting the locks on his suitcase “a certain way to ensure that [his] suitcase hadn’t been gone through,” because he has had his suitcase “gone through in several motels,” and that this had happened to him prior to serving as a juror on the Applicant’s jury. (PCR pp. 76, 86). If he believes someone has gone through his suitcase, he typically goes “straight to the manager of the motel” who usually investigates it and talks to housekeeping. (PCR. p. 77). Juror Galbreath takes other similar precautions at his home; he has security cameras at his house to tell if anyone goes through any of his materials at his home. (PCR. p.

93).

Juror Galbreath testified that in this case, upon returning to the hotel before dinner after the first day of trial (September 19, 1996), he noticed his suitcase "had been gone into" because the locks were "completely closed." (PCR p. 78). He added that he keeps his clothes folded, but noticed they were "just scattered all though the suitcase." (PCR. p. 78). Nothing was missing, and there were no broken windows or door frames jammed or any other indication of any forced entry. (PCR pp. 78, 94). While his standard response is generally to bring the matter to the hotel manager's attention so that the manager can talk to housekeeping, in this particular instance, he testified he reported the matter to Agent Barry immediately upon returning to his room after the first day of court, and asked Agent Barry if any of the agents searched his room while the jurors were at court. (PCR pp. 78, 88). According to juror Galbreath, Agent Barry responded "no," and, using a cell phone in the community room at the hotel, "called the judge and the judge sent another SLED agent from Greenwood to investigate." (PCR pp. 78, 87-88). However, when asked how he knows Agent Barry called the judge, he testified he has "no idea," and does not know if it was the judge he called or not; he testified "that is just what I was told." (PCR p. 79, 87).

Juror Galbreath stated that another SLED agent subsequently came to the hotel. He provided a description of the agent but he could not recall her name. Juror Galbreath testified that this agent "just looked at my suitcase and then asked me to open it up and just kind of questioned me about the stuff in the suitcase" and asked him how he came to believe his suitcase had been "gone through." (PCR p. 80, 89). She did not do anything else; she did not take fingerprints, she did not take photographs, she did not talk to anyone else, she did not take a written statement from him. (PCR p. 80). Juror Galbreath stated that she was in his hotel room for "thirty to forty five minutes." (PCR p. 80). He also testified it "seems like

there was somebody else there;" he recalled testifying at his discovery deposition that Agent Barry was present in his room with Agent Talbert but, at the hearing, could not specifically remember whether it was Agent Barry or not. Juror Galbreath testified that after this agent spoke with him for about 30-45 minutes, he and the rest of the jury left the hotel and went to dinner. (PCR p. 89-90). Juror Galbreath testified the agent did not discuss the Applicant's case or the trial with him. (PCR p. 89). Juror Galbreath testified he believes SLED might have gone through his suitcase because, the first night the jurors arrived at the hotel, the agents "asked for radios, cell phones, reading material that [they] might have in [their] suitcase and they wouldn't have to search it." (PCR. p. 82). Juror Galbreath testified that, apart from this initial comment at the very beginning of the trial, the agents never said or did anything to make him feel like they would have gone through his belongings. (PCR p. 90).

Juror Galbreath testified at the hearing that he felt like his "privacy had been violated," and that he did not believe the agent that came to the hotel took him seriously. (PCR p. 80). He testified that a similar incident occurred "a week or so later," and, that particular time, he "went straight to the foreman of the jury" and told her "if it happened again that [he] would be requesting to be off the jury." (PCR. p. 81). He testified that his "suitcase was more messed up on the inside than the first time." (PCR p. 82). Juror Galbreath stated he did not notify anyone about this matter other than the forelady, and that he felt he could bring the matter to the judge's attention if it happened again. (PCR pp. 81, 92).

Juror Galbreath testified that these incidents regarding his suitcase did not impact his ability to remain fair and impartial throughout the Applicant's trial. (PCR pp. 94-95).

Agent Mears testified about the report he wrote, dated September 19, 1996, regarding juror Galbreath's suitcase. (Petitioner's Exhibit 11). Agent Mears collected the information from juror Galbreath, that juror Galbreath believed someone apparently looked through his suitcase;

Agent Mears took the incident report to Agent Barry, his team leader. (Petitioner's Exhibit 11; PCR. p. 219). According to his report, the matter was reported to Captain Webber who asked Agent Talbert to come to the hotel "to investigate the alleged incident;" the report indicates her time of arrival was 7:08 p.m. (PCR p. 220). Agent Mears testified that he documented everything he did in the incident report, and that if the judge were called, he would have documented it in his report. (PCR pp. 219-220, 234). That was the extent of Agent Mears' involvement in this matter. (PCR p. 234). Any further action would be assigned by the supervisor. (PCR pp. 233-234).

Agent Barry testified that, as a team leader of the jury sequestration team in this case, he reported to his supervisor, Captain Charlie Webber, regarding any matters pertaining to the jury. (PCR pp. 436-437). In this case, Captain Webber was the individual who maintained discretion regarding what matters would be reported to the trial court judge. (PCR p. 448). Judge Floyd confirmed that the team communicated with Captain Webber and that Captain Webber would communicate with him. (Floyd Dep. Tr. p. 22-23). In reviewing the report contained in Petitioner's Exhibit 11, Agent Barry testified the procedures followed as indicated in the report are consistent with protocol for chain-of-command for a jury sequestration team member to follow. (PCR pp. 441-442). Agent Barry stated that Captain Webber was then in charge of any further handling of the matter. (PCR pp. 440, 443). If Natalie Talbert was at the hotel, she was there at Captain Webber's direction. (PCR pp. 440, 443). Agent Barry could recall seeing Agent Talbert during the trial, but could not recall whether he saw her at the hotel or the courthouse. (PCR p. 443).

Agent Barry testified the SLED agents carried pagers at the time of Applicant's trial, and he is certain he had one at that time, but the agents did not have cell phones from SLED. (PCR pp. 233, 439). Agents Alston, Roper, and Martin confirmed the agents did not have cell phones at the

time of the Applicant's trial; they had pagers. (PCR pp. 486, 588, 593). Agent Barry stated that if he had a cell phone at all, it would have been a personal "bag phone that would have been kept in the automobile," but he is not even certain that he had one. (PCR p. 439). Agent Martin explained that at that time, if an agent wanted a cell phone, he or she could "buy their own phones and install them in their cars." (PCR p. 593). Agent Barry testified that he did not pick up a phone and call the trial court judge about juror Galbreath's suitcase. (Tr. p. 113). Furthermore, he would not have spoken with a trial court judge without first speaking with his Captain unless there was no one else he could contact before contacting the judge. (PCR. pp. 437, 443, 450).

Agent Talbert testified that in 1996, she was a Special Agent with SLED in the Piedmont region and lived in Ninety Six, S.C. (PCR p. 550). Agent Talbert was not involved in either the investigation of the underlying criminal case nor was she a member of the jury sequestration team during the Applicant's trial. (PCR. pp. 550, 562). In fact, Agent Talbert did not have any knowledge about the trial or the facts or the evidence in the Applicant's case. (PCR. p. 562). The purpose of an "outside" agent coming is the outside agent's independence, neutrality, and disassociation from both the case and the jury. (PCR p. 225).

Agent Talbert testified that, according to the September 19, 1996, report (Petitioner's Exhibit 11), Captain Webber notified her about an incident involving a juror, and she came to the motel to investigate the alleged incident; according to the report, her arrival time was 7:08 p.m. (Petitioner's Exhibit 11; PCR p. 558). She specifically remembered Captain Webber calling her about a matter involving a juror, but she could not recall what the incident was nor could she recall going to the jurors' hotel. (PCR. pp. 559, 560). Agent Talbert did recall being at the courthouse on two occasions; once, she believes she went to the courthouse and talked with Captain Webber about a matter involving a juror, and then went again during

sentencing to assist with security. (PCR. p. 560). If she had responded to the jurors' hotel regarding juror Galbreath's suitcase at 7:08 p.m. as the report indicates, she would have had to travel from Ninety Six, SC to Newberry; that trip would have taken her approximately forty minutes. (PCR p. 561).

Agent Talbert could not recall speaking to any of the jurors in this case. (PCR p. 561). Agent Talbert agreed that based on her training and experience, if she investigated an incident she would document everything she did during that investigation including what witnesses she spoke with or what evidence she collected; if she did not do any investigation, she would not have any such information to document. (PCR pp. 568-571; 564). Agent Talbert testified that if she talked to a juror for thirty to forty five minutes, "not only would [she] remember it, [she] would have documented it." (PCR pp. 561-562).

Judge Floyd had no knowledge or recollection of the matter concerning juror Galbreath. (Floyd Dep. Tr. p. 34). Judge Floyd testified that Captain Charlie Webber was the head of the sequestration team. (Floyd Dep. Tr. pp. 21-22). His understanding with Captain Webber was that Captain Webber would respond to him, and the sequestration team would respond to Captain Webber. (Floyd Dep. Tr. p. 22-23). Judge Floyd expected Captain Webber to bring to his attention "anything that would affect the outcome of the trial," such as inappropriate comments, premature discussion, or an illness. (Floyd Dep. Tr. p. 23). The trial transcript confirms the trial court judge's concern was with regard to outside contact about the case. (See e.g., Trial Tr. p. 1321). Unless it affected a juror's ability to serve, Judge Floyd did not expect to be told about it. (Floyd Dep. Tr. p. 23). Judge Floyd testified the matters at issue "could have been something that the — that Captain Webber felt, for some reason, wasn't upsetting them, wasn't going to affect their ability to serve as a juror." (Floyd Dep. Tr. p. 23). Captain Webber was a "person of great integrity," and that as a "very experienced officer for a number of years

and he had a good bit of discretion about — if he thought it was a problem, he'd tell me.” (Floyd Dep. Tr. p 22-24).

Regarding the jurors, Judge Floyd testified that if either juror indicated he or she wanted the judge notified or if either juror indicated the matter would affect their ability to serve on the jury, he believed he should have been notified. (Floyd Dep. Tr. p. 38-39). He testified that, again, whether these matters should have been reported and addressed on the record would depend “on whether it would affect the jury’s ability to serve and make a decision;” he stated that “things happen, even during sequestration situations, that do not always rise to that level of — if the trial judge needs to always put everything on the record.” (Floyd Dep. Tr. p. 45). He agreed he would have to know about it first before determining whether it should be addressed on the record, but he would expect the SLED agent to make the initial inquiry regarding the impact a matter has on a juror. (Floyd Dep. Tr. p. 45). He testified further that he believed the forelady was very smart and had “lots of common sense,” and that she would have told him if she thought something was important. (Floyd Dep. Tr. p. 38-39). Further, if juror Galbreath, or juror Lamar, or anyone else believed this matter was important or “if something was really wrong,” any one of them could have and would have reported it to him. (See Floyd Dep. Tr. p. 37-p. 39). Judge Floyd also noted the implied distinction between authorized and unauthorized entry of persons in the area of the jurors’ quarters; for example, “obviously, cleaning staff would be authorized.” (Floyd Dep. Tr. p. 20). As to the sequestration team, Judge Floyd testified that he requested a team of agents who were not involved in the investigation and outside the Piedmont region “so Lander wouldn’t have any knowledge of who they were, the Beckham’s wouldn’t know, and obviously they weren’t involved in the investigation.” (Floyd Dep. Tr. pp. 25-26). Judge Floyd did not want agents who were involved in the investigation on the sequestration team because, not that they would violate their oath in terms of handling the jury, but there’s always, you know, some slip of the tongue or something could be made by an agent who knew about the case.” (Floyd Dep. pp. 60-61). The agents were not, however, prohibited from knowing

anything and everything about the case; "obviously they're going to find out what the case is about . . . there's no hiding the fact, because it was a very high profile case." (Floyd Dep. Tr. pp. 61 - 62). Judge Floyd stated that his "concern was did they have any involvement, or were they closely connected to the agents who had involvement. (Floyd Dep Tr. p. 63).

Furthermore, Judge Floyd testified, and the trial transcript confirms, that there were several opportunities for juror Galbreath to contact him directly if he believed SLED searched his luggage, and he did not do that. (Floyd Dep. Tr. p. 37-38; Tr. p. 92). He would expect a juror to say something if he felt like something impacted his ability to serve on the jury, otherwise "we wouldn't know that it would affect anything." (Floyd, Tr. p. 73).

The trial court record supports the judge's testimony, where on several occasions during the Applicant's trial, the jurors were proactive in making matters and questions known to the presiding judge, and were in fact encouraged by the trial court judge to do so. (*See e.g.* Trial Tr. p. 1316, p. 1505, p. 1572, p. 2256, p. 2516-2517, p. 3365-3366, p. 3523, p. 3361, p. 3675, p. 3904-p. 3905, p. 3940, p. 4075; p. 5090, p. 5112, p. 5115-5116). In fact, the morning after juror Galbreath reported the matter concerning his suitcase to the agents, the forelady submitted some "maintenance and support" questions unrelated to the trial in writing, per the court's instructions, for the judge to address. (Trial Tr. pp. 1505, 1572). Obviously, if this matter had any impact upon juror Galbreath's, or any juror's, ability to serve or needed to be further addressed in any way, the opportunity to speak up was clearly present. This fact is further evidenced by juror Galbreath's own testimony that he felt comfortable bringing this matter to the judge's attention if it began affecting his ability to serve on this jury. (PCR p. 92).

The evidence further establishes that neither the trial judge nor the prosecutors had any knowledge or recollection of this matter as discussed above and further below. (See also Coulter, Tr. p. 520; Strom, p. 540-541; McMahon, p. 658-660; Jones Dep. Tr. p. 21-24).

Further, the trial transcript reflects that the trial judge, prosecutors, defense attorneys, and

the Applicant, were in court on the record addressing matters and presenting argument outside the presence of the jury, which recessed at 5:34 p.m., until 7:00 p.m. on the night in question. (Trial Tr. pp. 1436, 1503). In addition, the transcript indicates the prosecutors, defense attorneys, and the trial court judge all had a meeting in chambers together to discuss ministerial matters after they went off the record at 7:00 p.m. (Trial Tr. p. 1503). There are no breaks or recesses indicated in the record from the time jury was excused until the time the parties recessed for the night at 7:00 p.m. (Trial Tr. p. 1436 - p. 1503).

To the extent any of the jurors who testified at the evidentiary hearing either knew or remembered anything about it, all of them, including juror Galbreath, testified that the issue regarding juror Galbreath's suitcase did not affect their ability to remain fair and impartial. Juror Lamar, the forelady with whom juror Galbreath spoke about his suitcase, testified that he told her he believed someone "disturbed" his belongings and that he "thought it might have been the maid." (PCR pp. 102, 126). She testified that the matter regarding juror Galbreath's suitcase did not impact her ability to remain fair and impartial. (Tr. p. 127). Juror Grimes could not recall anything regarding juror Galbreath's suitcase. He testified that "it wouldn't have had much of an impression on me, I wouldn't have thought anything of it if some maid had gone through somebody's property or something like that," given his similar experience traveling for previous employment and frequently staying in hotels. (PCR p. 66). Likewise, juror Galbreath previously testified this has happened to him before, and that he usually has the hotel manager address the matter to the housekeeping staff. (PCR pp. 76-77).

Juror McGuffin testified that she heard juror Galbreath telling other jurors "that someone had messed with his things;" she believes he bought it up in the van on the way to court and testified that "he was very upset." (PCR p. 134-135). She did not testify as to how many other jurors, or which of them if any, heard Jack's comment. She could recall a black female SLED agent coming

to the hotel, but she could not recall whether she was a member of the sequestration team or an agent uninvolved with the jury sequestration. (PCR p. 136). Agent Reese could not recall whether or not she was the only black female who served on the sequestration team during the Applicant's trial. (PCR. p. 462-463). Juror McGuffin testified that nothing about the matter regarding juror Galbreath's suitcase or his comments about it impacted her ability to remain fair and impartial throughout the trial. (PCR p. 138).

Juror Coopridier testified that he does not know anything about the matter regarding juror Galbreath's suitcase other than what he overheard when juror Galbreath reported to the SLED agent that he thought "somebody had gone through his suitcase." (PCR p. 624). He could tell juror Galbreath was upset because he was talking with a raised voice. (PCR p. 624). Juror Coopridier also testified that while there were other jurors around when juror Galbreath came out of his room and reported the matter to the SLED agent, he does not know if any of the other jurors overheard it or not. (PCR p. 627). The matter concerning juror Galbreath's suitcase did not have any impact on juror Coopridier's ability to remain fair and impartial. (PCR p. 631-632). In fact, juror Coopridier testified "it had nothing to do with it . . . it didn't have anything to do with being a juror." (PCR p. 632).

Juror Grimes testified that he was able to remain fair and impartial as a juror throughout the Applicant's trial. (PCR pp. 64, 69). Jurors Connally, Crocker, West, and Price had no knowledge or recollection of anything regarding jurors' hotel rooms, suitcases, or belongings. (PCR pp. 151, 359, 364, 365, 472). Juror West further testified she had no knowledge of any agent investigating anything at the hotel. (PCR 364).

Agents Marsh, Roper, Oliver, and Dukes had no knowledge or recollection of this matter. (PCR pp. 254; 592; 645; 682). Agents Marsh and Martin recalled seeing Agent Talbert during

the trial, although neither could recall whether they saw her at the hotel or the courthouse. (PCR pp. 245; 254; 702). Agents Rudloff, Jenkins, Snow, and Martin did not have any specific knowledge or recollection of this matter; they may have heard about it second hand although none could recall from whom. (PCR pp. 264; 322-323; p. 340; 380; 699). Agents Reese and Alston did not testify about this matter.

Findings and Conclusions

Based on the foregoing, and according to the relevant case law and the record and evidence before the Court, the Applicant has failed meet his burden of proving prejudice entitling him to relief on any of the claims encompassed in "Ground A." The evidence before this Court establishes that juror Galbreath believed someone went through his suitcase located in his hotel room while he was out of the room. While it appears there is no evidence that one or more break-ins or other unauthorized intrusions of juror Galbreath's hotel room occurred or that someone went "through" juror Galbreath's suitcase as opposed to the suitcase being innocently moved for cleaning or other purposes by individuals authorized to enter, it is not necessary for this Court to make that determination. It is also not necessary to a resolution of this issue to determine whether or not SLED agents failed to report the matter. Of the jurors with any knowledge of the incident, one testified that juror Galbreath thought it was the maid and never testified about him being distressed, another juror said that the incident "had nothing to do with being a juror, and all stated they were not impacted. While juror Galbreath testified he felt his "privacy had been violated," he also specifically testified that this matter did not affect his ability to remain fair and impartial throughout the Applicant's trial. The record is void of evidence of prejudice arising from the incidents respecting Juror Galbreath and any juror's ability to serve fairly and impartially.

As to an investigation into the matter, this Court finds that Agent Talbert had no involvement in



the underlying case investigation involving the death of Vickie Lander Beckham and was contacted about the matter because she was independent from the underlying criminal case investigation and the jurors. At most, the evidence shows that Agent Talbert spent no more than ten (10) minutes with juror Galbreath and did not discuss the case or conduct an investigation into juror Galbreath or matters relating to the trial. See Harris, supra; Tanner, supra (outside and or extraneous influences are necessarily those which consist of information related to the parties in a case or the evidence in a case that is impressed upon a juror by a source outside of the jury room). According to juror Galbreath, Agent Talbert did not talk to him about the Applicant's case or trial, and in fact only inquired of him as to what led him to believe someone went through his suitcase. (PCR pp. 88-89). Only juror Galbreath was exposed to the conversation with Agent Talbert. As to the three additional jurors who had any knowledge or recollection of suitcase, the three jurors all testified they overheard juror Galbreath mention his suitcase, which had absolutely nothing to do with the Applicant's case or the evidence or the matter pending before the jury, and all three of them testified the matter had no bearing on their ability to remain fair and impartial. See Harris, supra (relevant factor to include in considering whether an outside influence affected a jury includes the number of jurors exposed). The evidence does not show that other jurors were aware of the purpose of Agent Talbert's presence or that Agent Talbert's inquiry had any prejudicial impact on that any juror, including juror Galbreath. In short, nothing about these matters impacted juror Galbreath or any other juror's ability to serve fairly and impartially on the Applicant's jury.

As our Supreme Court recognized, the evidence presented against the Applicant at trial was overwhelming as to the Applicant's guilt. Beckham, 334 S.C. at 319. Regarding the weight of evidence properly before the jury, our Supreme Court noted the strength of the State's case and specifically noted that "Anderson's testimony and the evidence of flight were

very damning.” Id. Furthermore, the trial court judge instructed the jurors numerous times that they were required to render a verdict based solely on the testimony and evidence presented in the courtroom without an consideration of passion, sympathy, bias or prejudice, or other outside influence, not to discuss the facts of the case or allow anyone to discuss it with them, and specifically not to be affected by anything outside of the evidence presented to them and to decide the case based on the law and evidence presented in the courtroom (*See e.g.* Trial Tr. p. 1321-1323, p. 1354, 1418, p. 1437, p. 1840, p. 2026, p. 2105, p. 2325-2326, p. 2866, p. 3285, p. 3505, p. 3675, p. 3728-3729, p. 3938, p. 5055-5088, p. 5122); See Harris, 340 S.C. at 63 (relevant factors in an assessment of whether outside influences potentially affected a jury also includes the weight of evidence properly before the jury and the likelihood that curative measures were effective in reducing any prejudice). Jurors are presumed to follow the instructions of the trial court, and there is no evidence to the contrary in this case. Grovenstein, 335 S.C. at 35; State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975); Brecht v. Abrahamson, 507 U.S. 619 (1993)(a court should presume that the trial judge and jury acted according to the law).

Furthermore, the jurors confirmed on the record that their verdicts were in fact guilty of all three charges. (Trial Tr. p. 5118-5119). During the polling of the jury, each and every juror individually confirmed his or her verdict of guilty on all three charges and confirmed that guilty was in fact still his or her verdict. (Trial Tr. p. 5119-5121); See Pittman, 373 S.C. at 527 (holding that the trial court did not abuse its discretion in denying appellant's motion for a new trial based on two jurors' post-verdict testimonies where jurors were given ample opportunity to voice those concerns before the trial court accepted the verdict, where, upon receiving the jury verdict, the foreman was asked if the verdict was actually what the jury decided, and where the trial court also polled each juror, confirming that each agreed with the verdict), *citing* Green v. State, 351 S.C. 184,

196, 569 S.E.2d 318, 324 (2002) (noting that the trial court conducts a poll of the jury for the specific purpose of ensuring a unanimous verdict).

In short, the matters respecting juror Galbreath's hotel room and suitcase and Agent Talbert were incidental, were not related to the case being tried, and were not such by nature as to reasonably draw into question the integrity of the verdict. Nothing related to or alleged in this ground impacted the Applicant's trial or any juror's ability to serve on this jury, as each indicated throughout the trial and confirmed again during their testimony at the evidentiary hearing. This Court denies relief on this ground.

Ground B

In Ground B, the Applicant raises a similar allegation, claiming that he was deprived of a fair trial because members of his jury "were exposed to highly prejudicial extraneous information and third-party contact," regarding a "break-in" of juror Capps' hotel room that resulted in "stolen undergarments and other clothing, third party contacts, and impermissible information exposure" as well as "misconduct, and introduction of inflammatory and prejudicial information during Applicant's trial."

Relevant Testimony and Evidence

Juror Capps was an alternate through the guilt phase of the Applicant's trial; she was seated on the jury for the sentencing phase of the Applicant's trial when another juror was excused due to an illness. (Petitioner's Exhibit 11; Trial Tr. p. 5130-5131). According to Petitioner's Exhibit 11, juror Capps reported to Agent Rudloff on September 23, 1996, that some of her underwear and a camisole were missing from her room. Juror Capps did not testify at the evidentiary hearing.

Juror Grimes testified that, apart from vaguely recalling something about lingerie after

it was mentioned to him, he could not remember ever being aware of any matters pertaining to juror Capps' hotel room or clothing. Juror Grimes testified that he was able to remain fair and impartial as a juror throughout the Applicant's trial. (PCR p. 64, 69). Juror Galbreath could recall hearing something about another juror's suitcase and believes there were some items missing, but he could not recall who told him about it and does not know anything else about the matter. (PCR p. 82-83). Hearing about this matter did not affect his ability to remain fair and impartial. (PCR p. 95). Juror McGuffin could only remember "faintly somebody saying something" to the effect of a juror's clothing going missing, but nothing about anything she heard regarding the matter impacted her ability to remain fair and impartial. (PCR p. 139). Jurors Lamar, Connally, Crocker, Price, West, and Coopriider had no knowledge or recollection of this matter. (PCR pp. 127, 151, 359, 367, 472, 632).

At the hearing, Agent Rudloff identified the report he wrote regarding juror Capps, dated September 23, 1996. (Petitioner's Exhibit 11). Agent Rudloff testified that, although the report does not indicate what action he took, he did give the report to his team leader, Agent Barry, and he does not know what Agent Barry did regarding the matter. (PCR p. 266). He assumes Agent Barry "went up the chain of command with it." (PCR p. 266). Agent Rudloff was not asked to do any further investigation into the matter, and was not asked to talk to the judge about the matter. (PCR p. 267). It was "supposed to go up the chain of command," and his involvement in the matter ended when he reported it to his supervisor absent any further instruction. (PCR p. 267). According to his report, juror Capps never even indicated she felt as though someone entered her room, nor is there any indication of any forced entry of any kind. (Petitioner's Exhibit 11; PCR pp. 271-272). If juror Capps had told Agent Rudloff anything else regarding the matter, he would have written it down. (PCR p. 272-273).

Agent Barry testified that if a matter regarding a juror was brought to his attention, he would have reported it to Captain Webber. (PCR p. 437). He was Agent Rudloff's team leader at the time juror Capps reported this matter; he does not have any recollection of the matter apart from what is contained in the report. (PCR p. 447). While Agent Barry agreed that the report does not indicate that he or Captain Webber were notified, he testified that he would assume that Captain Webber was notified about the matter as he was regarding the matter concerning juror Galbreath. (PCR p. 447-448).

Agent Jenkins was the team leader of the second team that came in to relieve Agent Barry and the first team on the morning of September 23, 1996. (Tr p.19; Trial Tr. p. 2326, 2516). He testified that Agent Barry, the first team leader, would have briefed him when the teams transitioned about any incidents or anything else that may have happened prior to his arrival, and that briefing could have included reviewing documentation that had been generated including the report about the matter concerning juror Capps. (PCR pp. 319, 321, 326). Apart from this briefing, he did not have any knowledge of or involvement in handling the matter. (PCR p. 328). Any further action taken regarding this matter would have been carried out by Agent Barry, and that because "he was the team leader it would have been his call to report it or his responsibility to report it." (PCR p. 327). Agent Barry would have reported it to Captain Webber, who would then have made any further determination as to what further action Agent Barry should take. (PCR p. 328).

The Applicant did not present any evidence from Agents Mears, Reese, or Alston about this matter. Agents Marsh, Snow, Oliver, and Martin had no knowledge or recollection of this matter. (PCR pp. 254, 381, 645).

Judge Floyd does not recall having any knowledge of this matter. (Floyd Dep. Tr. p. 39).

He testified that whether he should have been told about the matter or not would depend on whether the juror ever indicated the matter would affect her ability to serve on the jury. He testified that if it was something he needed to know about, Captain Webber would have told him, or this juror or any one of the other jurors could have and would have spoken up. (See Floyd Dep. Tr. p. 22, p 37-p. 40). He would expect a juror to say something if he felt like something impacted one's ability to serve on the jury, otherwise "we wouldn't know that it would affect anything." (Floyd, Tr. p. 73). The trial court record reveals that on several occasions during the Applicant's trial, the jurors were proactive in making matters and questions known to the presiding judge, and were in fact encouraged by the trial court judge to do so. (See e. g. Trial Tr. p. 1316, p. 1505, p. 1572, p. 2256, p. 25162517, p. 3365-3366, p. 3523, p. 3361, p. 3675, p. 3904-p. 3905, p. 3940, p. 4075; p. 5090, p. 5112, p. 5115-5116).

The prosecutors in the underlying criminal case testified that they had no knowledge or recollection of this matter. (Coulter, Tr. p. 520; Strom, p. 540-541; McMahon, p. 658-660; Jones, W. Jones Dep. Tr. p. 21-24).

Findings and Conclusions

This Court finds that the Applicant failed to establish that the matter had any prejudicial impact on juror Capps, or any other juror, during either the guilt or sentencing phases of the trial. In addition, to the extent jurors Grimes, Galbreath, and McGuffin had any knowledge or recollection of this matter, each of them testified that the matter regarding a juror's missing clothes did not affect their ability to remain fair and impartial. This Court finds that the juror's missing clothes had nothing to do with the Applicant's case or the evidence pending before the jury. The juror's missing clothing was incidental to the trial and was not of such nature as to affect the jurors or verdict. While the Applicant may contend the agents or the jurors "withheld" this

information, the record is clear: it did not affect juror Capps or any other juror's ability to serve.

As previously stated, as our Supreme Court recognized, the evidence presented at trial was overwhelming as to the Applicant's guilt. Beckham, 334 S.C. at 319. Regarding the weight of evidence properly before the jury, our Supreme Court specifically held that in this case that "the State's case was fairly strong. Anderson's testimony and the evidence of flight were very damning."

Furthermore, the trial court judge instructed the jurors numerous times that they were required to render a verdict based solely on the testimony and evidence presented in the courtroom without any consideration of passion, sympathy, bias or prejudice, or other outside influence, not to discuss the facts of the case or allow anyone to discuss it with them, and specifically not to be affected by anything outside of the evidence presented to them and to decide the case based on the law and evidence presented in the courtroom (*See e.g.* Trial Tr. p. 1321-1323, p. 1354, 1418, p. 1437, p. 1840, p. 2026, p. 2105, p. 2325-2326, p. 2866, p. 3285, p. 3505, p. 3675, p. 3728-3729, p. 3938, p. 5055-5088, p. 5122; *See Harris*, 340 S.C. at 63 (relevant factors in an assessment of whether outside influences potentially affected a jury also includes the weight of evidence properly before the jury and the likelihood that curative measures were effective in reducing any prejudice). Jurors are presumed to follow the instructions of the trial court, and there is no evidence to the contrary in this case. Grovenstein, 335 S.C. at 35; State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975).

Again, the jurors confirmed on the record that their verdicts were in fact guilty of all three charges. (Tr. p. 5118-5119). During the polling of the jury, each and every juror individually confirmed his or her verdict of guilty on all three charges and confirmed that guilty was in fact still his or her verdict. (Trial Tr. p. 5119-5121); *See Pittman*, 373 S.C. at 527 (holding that the trial court did not

abuse its discretion in denying appellant's motion for a new trial based on two jurors' post-verdict testimonies where jurors were given ample opportunity to voice those concerns before the trial court accepted the verdict, where, upon receiving the jury verdict, the foreman was asked if the verdict was actually what the jury decided, and where the trial court also polled each juror, confirming that each agreed with the verdict), citing Green v. State, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (noting that the trial court conducts a poll of the jury for the specific purpose of ensuring a unanimous verdict).

With respect to juror Capps' role on the Applicant's jury during the sentencing phase, the record is clear that the jury's finding, beyond a reasonable doubt, of the three aforementioned aggravating circumstances was unanimous, and the jury unanimously fixed the punishment of the Applicant as imprisonment for the balance of his natural life as opposed to the death penalty. (Trial Tr. p. 5724-5725). The jurors, including juror Capps, confirmed on the record this was in fact their verdict. (Trial Tr. p. 5725).

In short, the Applicant failed to present any evidence that he was denied his right to a trial by a fair and impartial jury or his right to due process based on the allegations contained in this ground for relief. Nothing related to or alleged in this ground for relief has anything to do with the Applicant's trial or to any juror's ability to serve on this jury fairly and impartially, as each indicated throughout the entire trial and based upon the testimony and evidence presented to the Court at the evidentiary hearing. Thus, the Applicant failed to establish the requisite prejudice and this Court must deny relief on this ground.

Ground C

The Applicant further alleges that, he was deprived of a right to a fair trial by an impartial jurors where his jurors were "exposed to highly prejudicial extraneous information and

third party contact" because the "true nature" of the comment made by a patron of Bill and Fran's restaurant ("hung jury") was not disclosed at the time it was addressed on the record by the trial court; he was therefore "deprived of the opportunity to fully determine the effect of the third party contact, misconduct, and introduction of inflammatory and prejudicial information during Applicant's trial."

Relevant Testimony and Evidence

When asked to tell the court about what happened regarding the incident at the diner, Juror Galbreath testified that "a gentleman made a comment about a hung jury and they removed him from the restaurant and put him in the SLED car," and the man was then taken to the courthouse "in front of the judge." (PCR.p p. 84, 92). Juror Galbreath did not testify he heard the comment himself. Further, he testified that he did not witness the man get taken to the judge, and he has no personal knowledge or recollection of that ever actually happening. (PCR p. 92). Rather, he "was told" that it happened, although he does not know who told him. (PCR pp. 84, 92). Juror Galbreath testified he witnessed the agents who "escorted him outside." (PCR p. 92). Juror Galbreath testified that this matter regarding the diner comment and his recollection of seeing agents escort a man outside did not affect his ability to remain fair and impartial. (PCR p. 95).

Juror Connally testified that he heard the restaurant patron make a comment at the diner. (Tr. p. 150). While he testified that the man "was pounced on by the SLED agents," he explained his comment further, stating that Bobby (Agent Jenkins) and, while he could not specifically recall, "maybe one or two others . . . just walked away from us and we were taken on around to where we were going to be seated so we didn't really, we just saw the beginning and the person being led out but we didn't see, didn't hear any conversation or any of those things." (PCR pp. 150-151). He testified that the agents "escorted the gentleman out and that was the end of it.

It maybe lasted 20 seconds, maybe." (PCR p. 149). He could not specifically recall exactly what the comment was. (PCR p. 152). Juror Connally testified that his ability to remain fair and impartial was not impacted by anything he heard or saw regarding the diner comment. (PCR p. 154).

The Applicant did not offer any testimony from juror Grimes about this matter, and Jurors Price and Coopridner had no knowledge or recollection of the matter. (PCR pp. 473, p. 632). Jurors McGuffin, Crocker, and West recalled hearing that a comment had been made in the diner one morning, but they did not hear the comment themselves nor did they witness anything in relation to the comment. (PCR pp. 140, p. 357-358, 365-366). Juror West vaguely recalled that another juror may have stated she heard the diner comment while the jurors were in the van on the way to court, but she could not specifically recall. (PCR p. 365). They testified that nothing regarding this matter impacted their ability to remain fair and impartial throughout the Applicant's trial. (PCR p. 128-129, 140, 358-359, 366-367).

Juror Lamar testified that she did not see or hear anything herself regarding the diner comment, and described her entire recollection of this matter as "hearsay." (PCR. pp. 109, 128). Juror Lamar explained that, when she stated at her deposition that the agents "practically hung him from the wall," she "was being facetious," and that she did not see it happen. She testified "that phrase hung from the wall, I'm quoting one of the SLED agents who did say something about, 'with things like this we have to practically hang them from the wall.'" (PCR p. 111). Juror Lamar stated the agent was also being facetious. (PCR p. 111). Juror Lamar's recollection is consistent with what Agent Marsh wrote in her report that she "told all of the jurors in the van that at any time a comment was made to anyone of them, to let us know immediately." (Petitioner's Exhibit 11, report dated September 26, 1996).

Agent Marsh testified that she has served on approximately twenty to thirty sequestration teams during her thirty seven years of employment with SLED. She was a member of the sequestration team during the Applicant's trial; she has never served as a team leader. (Tr. p. 241). Based on her experience sequestering juries, if an incident arose concerning a juror, she would report it to her immediate supervisor. (Tr. p. 241). She testified that, from there, she assumes they (supervisors) would bring it to the judge's attention if it is a serious incident or an incident that is supposed to be brought to the court's attention. (Tr. p. 241).

Agent Marsh identified the report she wrote contained within Petitioner's Exhibit 11, dated September 26, 1996. (PCR p. 242). She recalled that she first heard about someone making a comment to a juror when the juror (Juror Capps) mentioned it in the van on the way to court. (PCR pp. 242, 244, 259). She believes she reported the matter to her supervisor, and agrees the transcript indicates she may have spoken with the judge about the matter. (PCR pp. 242-243). To her best recollection, she may have gone with her supervisor, Bobby Jenkins, to talk to the judge, or the judge may have talked to her supervisor first before speaking to her. (PCR pp. 249-250). She had a vague recollection of reporting the matter to Agent Jenkins and him handling the matter, and she agreed the transcript indicates Agent Jenkins did speak with the judge about the matter. (PCR pp. 249-250; 256-257; Trial Tr. pp. 3508-3510). In short, she reported the matter to her supervisor, and either he, or she and he together, reported the matter to the judge. (PCR p. 257). She did not hear the comment nor did she witness anything that occurred inside the restaurant. (PCR pp. 245, 257, 259). If she ever learned additional information about something occurring inside the restaurant, she would have included that information in her report. (PCR p. 257).

Agent Jenkins testified that Agent Marsh told him about the matter, he in turn

reported the matter to Captain Webber, and the judge was then notified. (PCR p. 329). Agent Jenkins testified the matter was reported up the chain of command. (Tr. p. 329). Agent Jenkins spoke with Captain Webber prior to having any conversation with the judge; he would not speak to the judge without speaking with his captain first. (PCR p. 342-343). Judge Floyd also testified that he spoke with Captain Webber about this incident, and then talked to agents Marsh and Jenkins. (Floyd Dep. Tr. p. 31-32).

The Applicant offered no testimony from Agent Rudloff regarding this matter. Agent Snow did not hear the comment made in the diner and only has a very vague recollection of it ever being mentioned or discussed. (PCR p. 382). Agents Roper, Oliver, and Martin also had no knowledge or recollection of this incident. (PCR pp. 590, 645, 682, 700).

Judge Floyd testified that he has no independent recollection of this matter apart from the trial transcript. (Floyd Dep. Tr. p. 27, p. 31). He testified that the record seems to indicate that juror Capps was the only one who heard the diner comment. (Floyd Dep. Tr. p. 28). Judge Floyd stated that while he would want to know who the man was that made the comment and "what his interest is in the case," he takes the jurors' responses at their word. (Floyd Dep. Tr. p. 28-29). "If she said she thought it was a smart aleck comment, then that's what she thought it was." (Floyd Dep. Tr. p. 29). Nevertheless, the nature of the comment, "hung jury," is the same regardless of whether the individual had any bad intentions. (Floyd Dep. Tr. p. 64).

During the Applicant's trial, Judge Floyd put this matter on the record, and inquired of the jurors if any of them felt that the incident would cause them any problem in continuing as a juror and being fair and impartial; none of the jurors raised their hand. (Trial Tr. p. 3365-3366, p. 3508-3510; H. Floyd, Tr. p. 65, 66). He specifically stated at trial in relevant part:

Also, let me remind you that when the agents are with you,

when you're coming back and forth, if anything is said to you by anyone, whether you take it seriously or not, lightly, whatever, please report that to the agent immediately so we can deal with that on the spot. I understand there was one little minor incident this morning or maybe yesterday that, my impression is that it did not cause any problem, and I'll ask you formally about that question in just a minute, but please give that information immediately so that we can deal with that.

And I would ask you, with regard to the incident, as to the statement made to one of the jurors by some passerby, does any member of the jury panel feel that that would cause them any problem in continuing as a juror and deciding this case fairly and impartially? And if so, if you will indicate by a raised hand? Nobody raises their hand, and I will place in the record at a later time what the SLED incident report was." (Trial Tr. p. 3365-3366).

Subsequently, he put the following on the record outside the presence of the jury:

The comment made at Bill and Fran's by somebody who walked by one of the jurors who is Ms. Edna Capps; I believe, who is the alternate, something to the effect, . . . he simply walked by and made the comment "hung jury." Her response to the SLED Agent, Linda Marsh, was that she felt he was making a smart remark, and none of the other jurors actually heard the remark, but Ms. Capps made a comment about it that she felt somebody was being smart. Because she did not immediately report that, we were not able to apprehend that person to find out anymore. That was the reason for my instruction this morning. The SLED Agent, Ms. Marsh tells me that, and in her report to me was that they believed it was in fact a smart remark and do not attach any significance. Now I'll be glad to give anybody any further hearing with the SLED Agent or — I've already inquired of the jury (Trial Tr. p. 3508-3509).

At that time, the Applicant indicated he "likes this jury" and wanted "to proceed with this jury if at all possible." (Trial Tr. p. 3510). Agent Marsh's report was then entered as a Court's exhibit. (Trial Tr. p. 3510; see also Floyd Dep. Tr. p. 33).

Agent Marsh's report states the following:

While driving to the courthouse this morning, Edna Capp [sic]

made a comment in the van that a young man in Bill & Fran's Restaurant made a comment as she was walking by. The comment was "hung jury." She felt he was just making a smart remark. She (Edna) said she had not told any of the SLED Agents about the comment. I told all of the jurors in the van that any time a comment was made to anyone of them, to let us know immediately. No one else (jurors in the van) had heard the comment. Judge Floyd was notified of the above incident prior to court this morning. (Petitioner's Exhibit 11, reported dated September 26, 1996).

The report indicates that juror Capps was the only juror in that van who heard the comment, and the transcript indicates that none of the other jurors actually heard the remark. Both the trial transcript and the report indicate that because juror Capps did not immediately report the matter, the man who made the comment was not apprehended. (Tr. p. 3508-3510; Petitioner's Exhibit 11).

Findings and Conclusions

This Court finds that the Applicant failed to failed to prove any resulting prejudice respecting this allegation. Butler, 286 S.C. at 442; Pennell, 737 F.2d at 532; Smith, 455 U.S. at 215; Olano, 507 U.S. at 725.

The only evidence the Applicant presented that differs in any way from the trial court record and the report is that one additional juror, juror Connally, heard the comment himself and that, according to jurors Connally and Galbreath, at least one agent "escorted" the man who purportedly made the comment outside. Juror Galbreath did not witness the man being "brought down here to the courthouse" to appear "in front of the judge," and Juror Connally stated that an agent escorted the man out and that was the end of it; it lasted "maybe twenty seconds." (PCR. pp 83-84, 148-149, 150-151). Even assuming juror Connally heard the man make the "hung jury" comment, in addition to juror Capps as indicated at trial, and even assuming either or both jurors Connally and Galbreath saw an agent escort the man outside of the diner, the judge's inquiry of the jurors - and their responses - as to whether any member of the jury panel felt as though the incident would

cause them any problem in continuing as a juror and deciding this case fairly and impartially, necessarily applied to whatever any juror heard and whatever any juror saw. Each juror responded in the negative, indicating that nothing about what any of them saw or heard had any bearing on their ability to remain fair and impartial.

More specifically, if juror Connally also heard the remark or saw an agent escort the man out of the diner, his response at trial confirming that the matter had no bearing on his ability to remain fair and impartial was necessarily based on what he saw and heard. Likewise, if juror Galbreath saw an agent escort the man out of the diner, it is necessarily something he would have seen and been aware of at the time he responded at trial confirming that the matter had no bearing on his ability to remain fair and impartial. Both of these jurors, in addition to every other juror the Applicant presented who had any knowledge or recollection of this matter at all, confirmed again that nothing about what they heard or saw had any impact on their ability to remain fair and impartial. Therefore, whether one additional juror heard the comment, and whether an agent escorted the man who made the comment out of the restaurant is not material to the contact and the comment itself, "hung jury," and to the effect on the jury.

Again, in assessing whether any outside influence affected a jury, the relevant factors include the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing any prejudice. Harris, 340 S.C. at 63, 530 S.E.2d at 627; see also Lyles, 94 N.C. App. 240, 249, 380 S.E.2d 390, 396 (N.C. Ct. App. 1989); Toys "R" Us – Delaware, Inc., 375 S.C. at 604; Galbreath, 359 S.C. at 398. In Galbreath, the Court upheld the trial court's ruling denying Galbreath's motion for a new trial where, even though the trial judge was not able to specifically address the overheard comment, the trial judge did instruct the jury regarding their oath to try the case based solely on the testimony,

evidence, and law presented and heard at trial in the courtroom. Galbreath, 359 S.C. at 402. In that case, a juror heard people at the defendant's table in a restaurant, during trial, make threats. Galbreath, 359 S.C. at 402. The juror who heard the comment referenced what he overheard to at least one other juror after the deliberations ended but prior to leaving the jury room. Id. The Court held that this allegation, even if true, did not entitle the defendant to a new trial and specifically opined that a defendant seeking a new trial on the basis of juror misconduct must prove both the alleged misconduct and the resulting prejudice. Id.; citing Covington, 343 S.C. at 163.

In this case, jurors Capps and Connally are the only jurors who might have heard the "hung jury" comment, while jurors Galbreath, Connally, McGuffin, Crocker, and West had some recollection of the comment being made. Each and every one of them confirmed at the hearing that nothing about this matter had any bearing on their ability to remain fair and impartial. Each and every juror on the Applicant's jury confirmed on the trial record during trial that nothing about the incident, whatever they saw or heard if anything, had any bearing on their ability to remain fair and impartial, as further evidenced by the jurors' confirmation on the record that their verdicts were in fact guilty of all three charges. (PCR p. 5118-5121). The comment was not made during any deliberations and was not of such nature as to affect the jurors or verdict.

As for the weight of evidence before the jury, as previously stated, our Supreme Court specifically referred to the evidence against the Applicant as "damning." Beckham, 334 S.C. at 319. Furthermore, as previously stated, the jurors were instructed numerous times to render a verdict based solely on the testimony and evidence presented in the courtroom without any consideration of passion, sympathy, bias or prejudice, or other outside influence, and specifically not to be affected by anything outside of the evidence presented to them and to decide the case based on the law and evidence presented in the courtroom. Jurors are presumed to follow

the instructions of the trial court, and there is no evidence to the contrary in this case. Grovenstein, 335 S.C. at 35; State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). The Applicant has failed to present this court with any evidence that anything about what the jurors heard or saw regarding this comment had any effect on the jurors' ability to remain fair and impartial or on the verdict.

Again, the constitution does not guarantee that a prospective juror will be free of all preconceived notions relating to guilt or innocence. Beck, 369 U.S. at 541; Irvin, 366 U.S. at 717; Turner, 379 U.S. at 472. Due process does not require a new trial every time a juror has been placed in a potentially compromising situation. Smith v. Phillips, 455 U.S. at 209. A reversal is not required anytime a juror hears anything at all about a case, and jurors are not rendered "partial" simply because they become aware of the existence of negative community sentiment. Stockton v. Virginia, 852 F.2d 740 (4th Cir. 1988). In light of these factors and the evidence and testimony before the Court, it is clear that the Applicant failed to meet his burden of proving that he was prejudiced by any alleged misconduct asserted in this ground for relief and has specifically failed to prove how the "true nature" of this incident deprived him of a trial by a fair and impartial jury or his due process rights. Accordingly, this claim must be denied.

Ground D

The Applicant also alleges he was deprived of the right to a fair trial because an unknown man "entered the motel room of a female member of the Applicant's jury while the juror was inside and assaulted the juror," and that the alleged incident is "presumptively prejudicial *de jur.*"

Relevant Testimony and Evidence

At the hearing, juror Grimes testified that some nights during trial, the jurors would leave

doors to the hotel rooms open to socialize with each other, given that there were no televisions or phones in their rooms; on some occasions juror Grimes would entertain the other jurors by playing a guitar. (PCR p. 60). The hotel was comprised of two parallel wings, facing each other across the parking lot; the jurors had a wing or a portion of a wing to themselves. (Grimes, PCR p. 49; Rudloff, PCR p. 263; Martin, PCR p. 700). One night, a gentleman staying with his wife in one of the rooms in the building across from the jury's rooms took a walk around the hotel; he was carrying with him a bottle of alcohol. (PCR pp. 49-50). Juror Grimes testified "he went up the stairs and one of the ladies up there had her door open, he walked in her room, [and] asked her if she wanted a drink." (PCR. p. 49). Juror Grimes testified that another lady yelled out to the agents, "because there [were] always agents in the parking lot," that "a man's in so and so's room." (PCR p. 49). The agents "got him out of the room," and took him back to his room where his wife was. (PCR p. 49-50). Juror Grimes testified the gentleman was attempting to be friendly and social; he was not resisting the agents when they removed him from the juror's room. (PCR pp. 62-63). As previously stated, juror Grimes testified he was able to remain fair and impartial throughout the Applicant's trial. (PCR. p. 70).

Juror Lamar testified that she did not see this matter occur, and that "it is all hearsay, I heard about it later" from another juror. (PCR pp. 112-113). She testified that she "heard that a man came into one of the jurors' rooms and that he was apparently intoxicated and that the juror, [she] believe[s], if [she] remembers correctly, she went out and called one of the SLED agents who was nearby or something and he was hustled out of there." Nothing about this matter had any impact on her ability to remain fair and impartial. (PCR. p. 129).

Jurors McGuffin,, Connally, Crocker, West, and Price had no knowledge or recollection of this matter. (PCR p. 140, 151, 357, 364, 473). The Applicant did not offer any

testimony from juror Cooprider on this issue. Juror Galbreath testified he "heard something about it," but he was not there when it happened and "didn't see any of it." (PCR p. 96). According to the evidence presented by the Applicant, juror Grimes and possibly two additional jurors witnessed this event. The Applicant has not presented any evidence to this Court establishing the identity of the other two jurors who potentially witnessed the matter.

Agents Rudloff, Snow, Barry, Dukes, and Martin had no knowledge or recollection of this matter. (PCR pp. 272, 383, 442, 683-684, 700). The Applicant did not present any testimony from Agents Mears, Marsh, Jenkins, Reese, Alston, Roper, or Oliver on this issue.

Judge Floyd testified that the purpose of the "adequate security" provision of the sequestration order (Petitioner's Exhibit 5) was "to make sure that there is no outside contact with the jurors other than what's permitted in the order that would affect the outcome of the case." (Floyd Dep. Tr. p. 18). He stated that, regarding security at the motel, he expected SLED to make sure the jurors were safe, and that they had what they needed in terms of clothing and food, and to take care of problems like that. (Floyd Dep. Tr. p. 19). He testified that while SLED was supposed to keep unauthorized persons out of the jurors' quarters, the sequestration team cannot always anticipate something happening. (Floyd Dep. Tr. p. 19-20). Obviously, even during a jury sequestration, "there's contact from time to time;" and in a motel context "people are going to run into each other. But their job was to make sure that nobody said or did anything that would affect the outcome." (Floyd Dep. Tr. p. 18).

Findings and Conclusions

In assessing whether any outside influence affected a jury, the relevant factors include the number of jurors exposed, the weight of the evidence properly before the jury, and the

likelihood that curative measures were effective in reducing any prejudice. Harris, 340 S.C. at 63, 530 S.E.2d at 627; see also Lyles, 94 N.C. App. 240, 249, 380 S.E.2d 390, 396 (N.C. Ct. App. 1989); Toys "R" Us - Delaware, Inc., 375 S.C. at 604; Galbreath, 359 S.C. at 398. Here, the evidence before the Court in fact establishes that the jury's verdict was free from any outside influence of any kind. See Bryant, supra; Turner, supra.

In this case, juror Grimes, and maybe two other female jurors whom the Applicant has never identified for this Court, are the only jurors who purportedly witnessed this event. Furthermore, this contact was in the form of another hotel guest offering a juror a cocktail in an attempt to be friendly and social. The record is void of any evidence that this individual ever communicated with any juror, directly or indirectly, about anything having to do with the Applicant's case or the trial or the matter pending before the jury. In fact, there is no indication anywhere in the record that the man who offered the juror a cocktail was even aware that the jurors were a sequestered jury or in any way related to the Applicant's trial. This contact was incidental and unrelated to the case being tried; was not an "assault" and there was no discussion about the matter pending before the jury or other prejudicial information conveyed. The encounter was not such by nature that would affect the jurors or the verdict.

It is not necessary to address the failure to report the matter as alleged by the Applicant. This Court finds the Applicant failed to make a showing of the requisite prejudice to entitle him to relief. While jurors Lamar and Galbreath had some recollection of the event, both testified that they did not witness the event. Furthermore, the only three jurors having any knowledge or recollection of this matter (Grimes, Lamar, and Galbreath) all testified that nothing about the incidental encounter had any effect on their ability to remain fair and impartial. Again, regarding the weight of evidence before the jury, as previously stated, our Supreme Court opined that the State's

case was "strong" and that evidence against the Applicant was "damning." Beckham, 334 S.C. at 319. Moreover, as previously stated, the jurors were repeatedly instructed that they were required to render a verdict based solely on the testimony and evidence presented in the courtroom without any consideration of passion, sympathy, bias or prejudice, or other outside influence, not to discuss the facts of the case or allow anyone to discuss it with them, and specifically not to be affected by anything outside of the evidence presented to them and to decide the case based on the law and evidence presented in the courtroom. See Harris, 340 S.C. at 63 (relevant factors in an assessment of whether outside influences potentially affected a jury also includes the weight of evidence properly before the jury and the likelihood that curative measures were effective in reducing any prejudice). Jurors are presumed to follow the instructions of the trial court, and the Applicant has failed to present any evidence to the contrary in this case. Grovenstein, 335 S.C. at 35; State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). Nothing about this brief, incidental matter related in any way to the jurors' status as jurors, to any juror's ability to serve fairly and impartially, or to anything having to do with the Applicant's trial or the evidence in the case. Likewise, the agents "not reporting the incident" to the trial court had no bearing on the Applicant's constitutional rights to a trial by an impartial jury or due process where, according to the trial court judge's understanding and direction, the agents were not required to notify the trial court judge of every incidental matter having no bearing on a juror's ability to serve or the outcome of the Applicant's trial and where no prejudice has been established arising from the incident. (Floyd Dep. Tr. p. 18, p. 44). See also, Stockton, 852 F.2d at 744 (specifically noting the Court's concern: the effect of a third party communication to the jury about the case.

This Court rejects Applicant's claim that the alleged incident is "presumptively prejudicial *de jur*" and finds that the Applicant must demonstrate actual prejudice. See Smith v. Phillips, *supra*

(defendant alleging improper juror contact must demonstrate actual prejudice); Olano, supra; Kilgore v. Fuji Heavy Industries Ltd., 2010 Westlaw 3448857, 3-9 (2010). Here, the Applicant has failed to meet his burden of proving that he was prejudiced by this third party contact.

Ground F

The Applicant also alleges his right to a fair trial and due process were violated as a result of the forelady conducting "her own investigation" into the "break-ins," by "spreading the information to the other members of the jury, thereby tainting them," and by failing to report the "'intrusion" to the trial judge or sequestration team members. He also asserts that the forelady "engaged in misconduct by failing to inform the members" of the sequestration team.

Relevant Testimony and Evidence

Juror Lamar was the forelady of the jury throughout the Applicant's trial. She testified that juror Galbreath approached her and told her that he believed someone "disturbed" his belongings and that he "thought it might have been the maid." (PCR pp. 102, 126). Juror Galbreath also testified that when he noticed his suitcase "had been gone into" he "went straight to the foreman of the jury." (PCR pp. 77-78, 81). According to juror Lamar, juror Galbreath told her "it was disturbed," and that "it was not exactly how he left it." (PCR p. 102). She recalled testifying at her deposition that juror Galbreath thought might have been the maid. (PCR. p. 126). Juror Lamar believes she told one of the SLED agents about it, but could not recall for certain. (PCR p. 102). Juror Lamar acknowledged that she stated in her discovery deposition that she inquired of the other jurors if they "noticed or have [they] had any problems with, anything about [their] luggage or anything of that sort," and they all said no. (PCR p. 103 - 106). Juror Lamar testified that she "may have asked them, you know, if they had had any of their

baggage disturbed or anything. I didn't elaborate as far as I know." (PCR p. 127). She did not discuss the facts of the case, nor did she discuss the specifics of what juror Galbreath told her. (PCR p. 127). Juror Lamar does not have any knowledge or recollection of any SLED agents coming to investigate anything having to do with this matter. (Tr. p. 108).

Juror McGuffin testified she never spoke with the forelady about the matter concerning juror Galbreath's suitcase. (PCR p. 137). Jurors Crocker and West had no recollection of the forelady ever speaking with them about any jurors' hotel rooms. (PCR pp. 361, 364). The Applicant did not offer any testimony from jurors Grimes, Connally, Price, Coopridier regarding this ground.

Findings and Conclusions

A defendant seeking a new trial on the basis of juror misconduct must prove both the alleged misconduct and the resulting prejudice. Covington, 343 S.C. at 163; Smith, 338 S.C. at 71; Galbreath, 359 S.C. at 398; Aldret, 333 S.C. at 315.

First, this Court finds the forelady's inquiry of other jurors was limited to whether any of them had noticed if their baggage had been "disturbed or anything." There is no evidence that juror Lamar told any other jurors why she was asking them about their luggage, or any evidence that she told any other jurors about what juror Galbreath told her, or any evidence establishing what jurors the forelady ever even spoke to. Juror Lamar did not share any information with the jurors and her brief and limited inquiry had nothing to do with the Applicant's trial, with any juror's ability to serve, or with the matter pending before the jury. There is also no evidence that she was under a duty to report the matter.

Nevertheless, this Court finds the Applicant has failed to present this Court with any evidence establishing how this brief and limited inquiry, having nothing to do either directly or indirectly with the Applicant's case or the matter pending before the jury or the failure to report the matter, resulted in

prejudice to the Applicant. It was not of such nature as to affect the jurors or the verdict. It is not necessary, therefore, to address whether actions of the forelady and failure to report constituted misconduct. Here, the Court's inquiry should end and relief on this ground should be denied. See Covington, 343 S.C. at 164 (holding that only if the court finds a juror is guilty of misconduct must the judge determine whether the misconduct affected the verdict, warranting a new trial); see also Aldret, 333 S.C. at 314, 509 S.E.2d at 814; Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., 384 S.C. 441, 682 S.E.2d 489 (2009); (Juror misconduct "does not *ipso facto* justify the grant of a new trial."); Grovenstein, 335 S.C. at 352, 517 S.E.2d at 218 (a party is not entitled to a mistrial based on juror misconduct unless the misconduct affects the verdict); State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010) (affirming trial court's decision denying defendant's motion for new trial where the issue of juror misconduct involved a juror who overheard inappropriate information about the defendant, shared the information with the other jurors). Rather, in order to be granted a new trial on grounds of juror misconduct, the alleged misconduct must relate to a material matter in dispute, must be of the nature indicating bias or prejudice in the minds of the jurors, and must have affected the verdict. Id.; Grovenstein, *supra*; Vestry, *supra*; see also Harris, 340 S.C. at 59, 530 S.E.2d at 626, (holding that defendant was not entitled to a new trial on the ground of juror misconduct when juror consulted legal dictionary for definitions of "malice aforethought" and "manslaughter"); Kelly, 331 S.C. at 132, 502 S.E.2d at 99 (holding that a juror's misconduct in sharing pro-death penalty pamphlet with other jurors during penalty phase did not violate defendant's right to fair trial); Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989) (the fact that two jurors read a newspaper article about other alleged crimes by defendant and including summaries of testimony did not entitle defendant to mistrial); Stone v. City of Florence, 203 S.C. 527, 28 S.E.2d 409 (1943) (plaintiff in an action against the city for injuries resulting from stepping into an unprotected drain-hole not entitled to a new trial where some of the jurors visited the scene of accident and stepped from the curb into the hole. Ex parte Greenville News, 326 S.C. 1, 482 S.E.2d 556 (noting the conduct at issue did

not involve the jurors' function as jurors and finding that the circuit court properly ruled the alleged juror conduct did not affect the deliberations or actual verdict in the case).

In Vestry, our Supreme Court reversed the Court of Appeals and reinstated the jury's verdict for the defendant, finding that the plaintiff was not entitled to a new trial on the ground that a juror conducted her own unsanctioned investigation *into the facts of the case pending before the jury*. Vestry, 384 S.C. at 447 (emphasis added). Significantly, the Court also held that the Court of Appeals erred in applying a general "fundamental fairness" standard, rather than the more specific standard requiring a defendant to show actual prejudice. Id. at 447. Here, the evidence establishes juror Lamar briefly inquired of other jurors if they noticed any regarding their luggage, to which, all responded "no." (PCR pp. 105-106). There is no evidence the jurors or were impacted by the inquiry. Based upon the Applicant's failed to present this Court with any evidence establishing prejudice, this Court denies relief on this ground.

Ground H

The Applicant next alleges that the trial court engaged in improper communication with the jury, thereby depriving him of a fair trial. In support of this claim, the Applicant alleged in his Third Amended Application for Post-Conviction Relief that an agent on the sequestration team notified the trial court judge of the "intrusion" into juror Galbreath's room, that the trial court judge ordered that agent to have another State agent investigate the intrusion, and that the second agent then came to interview the juror in his hotel room about the alleged incident, and the trial judge failed to inform the Applicant or his counsel. He offered State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), in his application as authority in support of his claim for relief.

This Court finds that Judge Floyd had no knowledge or recollection of this matter, nor did the prosecutors, and that the judge never ordered an investigation. (Floyd Dep. Tr. p. 34-35; Coulter, p. 518-520; Strom, p. 540-541; McMahon, p. 658; Jones Dep. Tr. p. 21-23). Even juror Galbreath testified he is not sure it was the judge that Agent Barry called. (PCR pp. 79,

87). The evidence further establishes that Agent Barry did not have a cell phone at the community room, nor did any of the other agents, and that Agent Barry did not call the trial court judge, nor did any other agent. (PCR p. 233, p. 439, p. 443, p. 486, p. 588 , p. 593). The Applicant concedes this fact and expressly waived the claim presented as Allegation H in his post-hearing brief. Accordingly, this Court finds the allegation must be dismissed based upon the Applicant's waiver of the claim. Moreover, as previously noted, the trial judge was in court or conference during the time the Applicant alleges this to have occurred.

To the extent the Applicant attempts to assert in his post-hearing brief a new and different allegation respecting the judge who presided during his trial even in the context of an abandonment of the new issue, this Court finds the Applicant never asserted the ground despite being aware of the purported facts concerning this allegation prior to filing his Third Amended Application. He cannot now present the issue to this Court by characterizing it as a claim he is expressly abandoning.

Grounds E and G

In grounds E and G, the Applicant claims that "the state's misconduct — failing to notify Applicant, Applicant's trial counsel and/or the trial court — deprived Applicant of due process of law, of a fair trial, and constituted interference with trial counsel's ability to protect Applicant's constitutional rights" In support of this claim the Applicant incorporates the allegations made in grounds A, B, C, D, F, G and H of his Third Amended Application. He also contends that "the cumulative effect of all of the issues — state and juror misconduct — security breaches — failures to disclose information — deprived" him of a fair trial. He further asserts in ground G that the sequestration teams' failure to notify Applicant and his trial counsel "of the intrusions and third party contacts with the jury" created an atmosphere so contrary to Applicant's due process and equal protection rights that the jury and the sequestration team "became conspirators to withhold this information from the Applicant, his counsel, and perhaps the trial court . . ." and deprived Applicant of the opportunity to investigate.

The evidence before the Court clearly establishes that none of the Applicant's claims, to the extent any of them are even true, had any relationship to or bearing on the jurors' ability to remain fair and impartial or the outcome of his trial. Necessarily, then, the Applicant's constitutional rights to due process and a trial by an impartial jury were not violated, and he is not now entitled to a new trial.

Findings and Conclusions

This Court notes that due process does not require a new trial every time a juror has been placed in a potentially compromising situation. As the United States Supreme Court stated in Smith v. Phillips, "it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote." Id. at 217, 102 S.Ct. at 946; Stockton v. Virginia, 852 F.2d 740 (4th Cir. 1988). The Sixth Amendment right to trial by an impartial jury is protected by several aspects of the overall trial process including *voir dire*, during which the suitability of an individual for the responsibility of jury service is examined. Furthermore, the trial court judge, counsel, and court personnel are all able to observe the jurors throughout the trial process, in addition to the fact that the jurors themselves are observable by each other and are able to report any concerning or inappropriate behavior to the court before the jury ever renders a verdict. See Tanner, 483 U.S. at 126- 27, 107 S.Ct. at 2751; Robinson, 438 F.3d at 362; McIlwain v. United States, 464 U.S. 972, 104 S.Ct. 409 (1983) (on second day of deliberations, jurors sent judge a note suggesting that foreperson was incapacitated).

A defeated party is not entitled to a new trial for every act of misconduct by or affecting the jury; juror misconduct "does not *ipso facto* justify the grant of a new trial." Vestry, 384 S.C. at 441; Grovenstein, 335 S.C. at 352 (a party is not entitled to a mistrial based on juror misconduct unless the misconduct affects the verdict); State v. Bantan, 387 S.C. 412, 692

S.E.2d 201 (Ct. App. 2010)(affirming trial court's decision denying defendant's motion for new trial where the issue of juror misconduct involved a juror who overheard inappropriate information about the defendant, shared the information with the other jurors). Rather, in order to be granted a new trial on grounds of juror misconduct, the alleged misconduct must relate to a material matter in dispute, must be of the nature indicating bias or prejudice in the minds of the jurors, and **must have affected the verdict**. *Id.*; Grovenstein, *supra*; Vestry, *supra*. (emphasis added).

First, with respect to the Applicant's allegation that "the cumulative effect" of all of the issues deprived him of a fair trial and that the purported conspiracy resulted "in a complete failure of the justice system in Applicant's trial," this Court rejects the Applicant's assertion that the cumulative error analysis applies. See Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006), citing Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002); Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008); see also Fisher v. Angelone, 163 F.3d 835 (1998).

This Court finds there must be proof of actual prejudice as to each claim. Rule 71.1(e), SCRCP, Butler, *supra*; Griffin, *supra*; Pennell, 737 F.2d at 532; Smith, 455 U.S. at 215 (specifically holding that the remedy for allegations of jury tampering, misconduct, or bias is not an automatic new trial, but rather a hearing at which a defendant has the opportunity to prove actual bias)(emphasis added). Moreover, this Court has determined that Applicant failed to show prejudice as to each any of the matters alleged in grounds A, B, C, D, F, G, and H. See State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009)(on direct appeal, noting that in order to qualify for reversal on ground of cumulative effect of trial errors, defendant must demonstrate errors adversely affected right to fair trial); State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008). Where the Applicant failed to present any evidence that the nature of any of the particular matters alleged in this action had any bearing whatsoever on his right to a fair trial, the cumulative error doctrine is necessarily inapplicable. State v. Nicholson, 366 S.C. 568, 581, 623 S.E.2d 100, 106 (Ct. App. 2005), *rehearing denied, cert. denied*.

Moreover, based on the evidence presented to this Court, this Court finds that the Applicant has failed to present the requisite evidence that any matter, action, or inaction raised in support of these grounds in his application resulted in any actual bias or prejudice to the Applicant or that any of these matters in any way deprived him of a trial by a fair and impartial jury. Butler, *supra*; Griffin, *supra*; Rule 71.1(e), SCRPC, Pennell, 737 F.2d at 532; Smith, 455 U.S. at 215; Olanow, 507 U.S. at 725; Ex parte Greenville News, 326 S.C. 1, 482 S.E.2d 556 (noting the conduct at issue did not involve the jurors' function as jurors and finding that the circuit court properly ruled the alleged juror conduct did not affect the deliberations or actual verdict in the case). Because the Applicant failed to make a showing of prejudice from any action or inaction alleged, it is not necessary for this Court to resolve questions Applicant raises respecting the conduct of the SLED sequestration agents or allegations about juror and sequestration team "conspiracy." The incidents alleged did not have any bearing on any juror's ability to serve fairly and impartially on the Applicant's jury. The sequestration agents' action or inaction respecting these matters and the composition of the teams are of no moment based upon the testimony of the jurors and the incidental nature of the matters involved.

Ground I

The Applicant further contends that he is entitled to relief based on an allegation that juror Grimes "may have been ineligible to sit as a juror as a matter of state law" pursuant to S.C. Code 14-7-820. This Court finds that this ground for relief must be dismissed where juror Grimes' status as a private security guard was addressed by the trial court during jury voir dire and where this claim is not cognizable in an action for post-conviction relief.

First, the Applicant concedes juror Grimes was not a commissioned constable and that he is not entitled to relief on this ground in light of the Applicant's supplemental memorandum in support of his motion for summary judgment in which the Applicant, after learning that Grimes is not commissioned as a constable but is rather licensed SLED as a private security

officer, claimed that juror Grimes is the "functional and legal equivalent of a deputy sheriff who was disqualified from jury service under S.C. Code Ann. §14-7-820 and S.C. Code Ann. §40-18-110.

This Court finds this allegation must be dismissed because it is not a cognizable claim in the current action pursuant to S.C. Code Ann. §14-7-1030. Section 14-7-1030 requires all objections to jurors being called to sit on a trial to be made prior to the juror being empanelled or any issue or question arising out of an action or proceeding shall be deemed waived, "and if made thereafter shall be of no effect." See also, State v. Parsons, 171 S.C. 449, 172 S.E. 424 (1934); State v. Rayfield, 232 S.C. 230, 101 S.E.2d 505 (1958); State v. Gregory, 171 S.C. 535, 172 S.E. 692 (1934)(accused who fails to exercise due diligence in discovering disqualification of juror before empanelling of jury cannot, after rendition of adverse verdict, ask court to disturb verdict); Smith Oliver Motor Co., 174 S.C. 464, 177 S.E. 791 (1935)(new trial not be allowed where juror was improperly listed on venire and was also agent of party, since objection to juror should have been taken before trial); State v. Harreld, 228 S.C. 311, 89 S.E.2d 879 (1955)(appellant will not be permitted to take his chances upon a favorable verdict, and in case of disappointment, have the verdict set aside upon a technicality).

Here, both the trial court judge and Applicant's trial counsel addressed juror Grimes' status as a private security guard for Duke Power and corresponding power to arrest on Duke Power property. The trial court judge specifically inquired of the jurors as to whether any of them were a county officer or employed within the walls of the courthouse, or whether any of them were commissioned law enforcement officers having the power to make an arrest to determine whether any of the jurors were disqualified under §14-7-820. (Trial Tr. p. 24, lines 5-11). Subsequently, the trial court judge specifically addressed juror Grimes' status as a private

security officer for Duke Power. (Trial Tr. p. 170, lines 8-24). The issue was specifically addressed again by the Applicant during juror Grimes' individual voir dire. (Trial Tr. p. 1075-1076). The record is clear that juror Grimes' status as a private security guard for Duke Power, with the power to arrest on Duke Power property, was known to the Applicant before and during jury voir dire prior to juror Grimes being selected to serve on the Applicant's jury, and that juror Grimes' status and function as a private security guard for Duke Power were clearly and adequately addressed by both the trial judge and the Applicant at trial. Therefore, the Applicant waived this allegation at the time the jury was empanelled and cannot now, after receiving an unfavorable verdict, raise this claim as a ground for relief in the instant action. The allegation must be dismissed.

Ground J

In the Applicant's final allegation he contends his thirty (30) year sentence for kidnapping should be vacated as a matter of law pursuant to S.C. Code §16-3-910 (2003).

This Court notes that this issue was addressed by the trial court as follows: "On indictment No. 96-GS-36-79, kidnapping, because a life sentence – because a murder conviction was returned and the life sentence is imposed the sentence is assumed, but it is thirty years concurrent." (Trial Tr. p. 5730). However, the Applicant's sentencing sheets and records from the South Carolina Department of Corrections indicate the Applicant is serving a concurrent thirty (30) year sentence for kidnapping and that this sentence for kidnapping should be vacated pursuant the statutory authority cited above.

At the hearing, Respondent agreed that pursuant to S.C. Code Ann. Section 16-3-910 and authority of our appellate courts, the kidnapping sentence should be vacated if the murder conviction and sentence survive. See State v. Elders, 386 S.C. 474, 688 S.E. 2d 857 (Ct. App.

2010); State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009); Owens v. State, 331 S.C. 582, 503 S.E.2d 462 (1998); State v. McCall, 304 S.C. 465, 405 S.E.2d 414 (Ct. App. 1991). Accordingly, Applicant's sentence for kidnapping is vacated.

CONCLUSION

With the exception of Ground J in the Applicant's Third Amended Application, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Applicant failed to meet his burden of proving the prejudice arising from the incidents about which he complains. As the United States Supreme Court so aptly stated in Beck:

While this Court stands ready to correct violations of constitutional rights, it also holds that "it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality. This burden has not been met." Id. at 558.

Therefore, with the exception of vacating the sentence for Applicant's kidnapping conviction, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

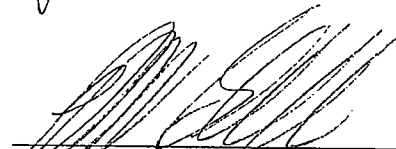
This Court notes that Applicant must serve a notice of appeal within thirty (30) days after receipt of written notice of entry of this Order by counsel to secure the appropriate appellate review. This Court also directs the attention of the parties to South Carolina Appellate Rule 243, Rule 71.1(g), SCRCP, and Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal and for appropriate procedures after notice has been timely served.

IT IS THEREFORE ORDERED:

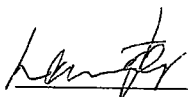
1. That the Applicant's thirty (30) year sentence for the conviction of kidnapping as included in Indictment 96-GS-36-79 is vacated;
2. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice as to all other grounds; and

3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of September, 2011.



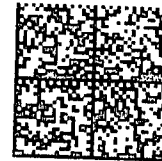
Brooks P. Goldsmith
Presiding Judge
Eighth Judicial Circuit



, South Carolina



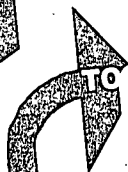
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