

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

Alison Renee Lee, Circuit Court Judge

ROBERT CANNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002143

A P P E N D I X

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN JAMESON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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1 A. Yes.

2 Q. Do you have a copy of the record on appeal that was
3 provided by our office to you?

4 A. I do.

5 Q. If you could, please, turn to Page 1750.

6 A. Okay.

7 Q. Does this appear to be the un-redacted initial
8 statement your client gave law enforcement?

9 A. Let me check. Yes.

10 Q. And this was provided to you in discovery?

11 A. Yes.

12 Q. If you would briefly look at that five-page statement
13 to refresh your recollection.

14 MS. HARRIGAN: And, Your Honor, for the record, this
15 statement is in the record before Your Honor. It's Page
16 1750 through 1754 in the record on appeal.

17 A. Okay.

18 Q. In this statement, does he admit to being with both of
19 the co-defendants shortly before the murder at Sonic?

20 A. Yes.

21 Q. And does he admit to leaving Sonic with both
22 co-defendants?

23 A. Yes.

24 Q. Does he admit to then going to Wal-Mart to buy gloves
25 and ski masks?

1 A. Yes.

2 Q. Does he admit then to going to the victim's home?

3 A. Yes.

4 Q. Does he admit in great detail the assault that took
5 place on the victim?

6 A. Yes.

7 Q. Does he include details such as the Christmas tree was
8 then kicked or dropped on the victim?

9 A. He does.

10 Q. And does he include that frozen chicken was then
11 placed on the victim's head to stop the bleeding?

12 A. Yes.

13 Q. Is this statement -- based on your review of the
14 discovery and all of the photos at the crime scene, would
15 this statement appear to be accurate based on the photos
16 you saw of the crime scene?

17 A. It did seem to match what they gave me in discovery,
18 so, yes.

19 Q. Do you recall when this statement was alleged to have
20 been made by your client?

21 A. According to the -- December the 15th at 9:00 -- 9:20.

22 Q. So less than forty-eight hours after the victim's
23 death?

24 A. That's my understanding.

25 Q. Did your client deny that he made a statement to law

1 enforcement?

2 A. Yes.

3 Q. What did he tell you in regards to the statement?

4 A. He told me what he had said earlier; that he had
5 signed blank papers.

6 Q. Did you question him on the fact that his statement
7 seemed to coincide pretty accurately with the evidence?

8 A. I did.

9 Q. Did your client ever deny signing this five-page
10 document five or six times?

11 A. I can't remember if he denied signing some of it. I
12 don't remember. He had an issue with the statement and we
13 looked into it.

14 Q. When you say issue with the statement and you looked
15 into it, can you elaborate on that for the court?

16 A. He said that this wasn't -- that he hadn't written the
17 statement; that the police must have written it. So I
18 hired Mickey Dawson, who's a handwriting expert out of
19 Spartanburg. I think he's about the only guy in the state
20 that does that. And he -- we went down to the police
21 station before trial, we got the original statement. I had
22 Mr. Cannon sign his name, you know, however many times
23 Mr. Dawson asked him to. He might have written something
24 else for Mr. Dawson. He brought his kit down to the
25 sheriff's office and he we went through the original

1 version of the statement and compared the handwriting on
2 the statement to both Mr. Cannon's handwriting and then we
3 had a number of police officers who we had gotten their
4 notes in discovery and he compared it to theirs to see if
5 one of them had written it.

6 Q. And just so we're clear here, do you recall the
7 testimony of Investigator Danny Catoe during the Jackson v.
8 Denno hearing?

9 A. I don't -- I mean, vaguely. If you'd remind me, I
10 might.

11 Q. Do you recall testimony from Investigator Catoe that
12 he actually wrote the statement as Mr. Cannon orally gave
13 it? I believe his testimony was that your client was
14 eating a large bowl of cereal and asked him to write the
15 statement for him. Do you recall that?

16 A. Yes, I do. And now that you say that, I guess -- I
17 don't -- I'm not -- I guess I don't clearly remember what
18 Mr. Dawson was comparing. We -- it seems like, if you look
19 at the statement, there's written -- I'm having trouble
20 reading it, but it seems like maybe it's -- the statement,
21 if you look at it, it does look like it was written, but
22 then something else was added into it. But that's not what
23 Mr. Dawson found when he looked at it.

24 Q. After having Mr. Dawson review the statement and
25 realizing that wouldn't be helpful, what was your main plan

1 of attacking his statement at that point?

2 A. To argue that it was made in exchange for promises.

3 Q. And is that the argument you set forth at the Jackson
4 v. Denno hearing before the trial?

5 A. Yes.

6 Q. Did you also challenge the second statement that was
7 made by your client after his polygraph examination?

8 A. I don't remember. I think I did.

9 Q. If the record reflects you did, would you have any
10 reason to dispute that?

11 A. No, not at all. I just -- I don't clearly remember
12 that. That statement was much less damaging than this one.

13 Q. But in that second statement, your client admitted
14 that he did physically assault the victim for the first
15 time, correct?

16 A. Yeah, I guess. I thought he'd admitted it in this
17 one, too, but maybe --

18 Q. Do you recall any testimony that that's when he
19 admitted he had kicked the victim?

20 A. Yeah, I guess in the first one he kind of -- yeah, I
21 guess it was a little bit different, but, yes, I do -- do
22 remember that.

23 MS. SHURLING: Your Honor, we don't have a jury
24 present so I won't beat this horse to death, but
25 Respondent's repeatedly characterizing my client having

1 admitted various items that she's covering with counsel.
2 I just would remind the Court that in earlier testimony he
3 denied having made the statement in question. He -- it was
4 his testimony both in the Jackson v. Denno hearing and here
5 today that he did not author the body of those statements,
6 so I would object to the characterization of those as
7 admissions.

8 MS. HARRIGAN: And just so the record's clear, the
9 State's position -- I believe the position that was set for
10 at the Jackson v. Denno and throughout the trial was that
11 it was an oral statement that was memorialized in writing
12 by Investigator Catoe.

13 BY MS. HARRIGAN:

14 Q. Do you recall whether or not Mr. McDonald also made a
15 statement implicating that Mr. Cannon was present during
16 the attack on the victim?

17 A. I believe he did.

18 Q. Do you recall testimony from multiple witnesses who
19 saw all three co-defendants together at Sonic immediately
20 before the crime?

21 A. I do.

22 Q. And your testimony on direct, I believe, was that the
23 alibi witnesses that were provided for you or that you
24 tracked down through your investigator didn't account for
25 the entire period of time making it physically impossible

1 for him to have committed the crime, correct?

2 A. That -- that was my opinion.

3 Q. Do you recall the testimony of Cosmo Bacomo?

4 A. I do.

5 Q. And can you tell the Court who this witness was?

6 A. He was the next door neighbor.

7 Q. Do you recall the approximate amount of time that
8 Mr. Bacomo heard a commotion at the victim's house and
9 alleged that the attack had taken place?

10 A. I don't remember, but I -- I don't specifically know
11 what he said.

12 Q. Approximately around 11:30; do you recall?

13 A. That's possible.

14 MS. SHURLING: Could we have a page cite for that,
15 please?

16 MS. HARRINGTON: Certainly. Mr. Bacomo's testimony
17 begins on Page 522 and the cross-examination starts on 532,
18 so it's somewhere in that ten-page range.

19 BY MS. HARRINGTON:

20 Q. And I believe you'd said -- on direct examination said
21 the distances between Mr. Cannon's parents' home where he
22 was living, the Sonic and the victim's home were all
23 geographically pretty close together, correct?

24 A. That's what I thought, yeah.

25 Q. Did you look into that back in 2006 -- 2008 before the

1 trial?

2 A. I probably just used MapQuest or something to figure
3 it out, but I don't -- I don't remember.

4 Q. Do you have any general practice in regards to
5 presenting an alibi defense if it's flawed or not to take
6 care of physical impossibility? Is that something you
7 generally will set forth to a jury regardless?

8 A. I have not presented alibi defense before and normally
9 it's because if they don't cover all of the time, then --
10 and I can't independently verify them, then I don't know
11 they're that strong. So if it's just somebody coming in
12 and saying yeah, I saw him the same night, I guess I -- I
13 sometimes I'm concerned that that would be very helpful.

14 Q. In regards to Applicant's Allegation Number 5, your
15 failure to call Sheila or Chad Rodden as witnesses, I
16 believe you testified on direct that you didn't feel that
17 their testimony was necessary because you were able to
18 successfully impeach Melissa Davie (ph.) and the State's
19 two other witnesses on their credibility regarding finding
20 the body. Do you recall that?

21 A. I do.

22 Q. Is it generally your practice to call witnesses when
23 you don't believe they will add anything beyond your
24 cross-examination?

25 A. No.

1 MS. HARRIGAN: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MS. HARRIGAN:

4 Q. I'm gonna hand you what's been marked and introduced
5 as Petitioner's Exhibit Number 5 and you testified that you
6 recalled that document being a letter and subpoena for
7 Adrian Doran?

8 A. Yes.

9 Q. That subpoena was issued, correct?

10 A. It was issued by the Clerk, yes.

11 Q. But were you able to ever successfully serve that on
12 Mr. Doran?

13 A. No.

14 Q. And I believe you testified that your investigator
15 tried to locate Mr. Doran?

16 A. Yes, we looked at his address and then I think we had
17 figured out maybe some other places he might be and just
18 kind of hung around Kershaw looking for him.

19 Q. And you weren't able to do so before trial?

20 A. No.

21 MS. HARRIGAN: A moment's indulgence, Your Honor.

22 Q. Regarding the allegations -- the plea negotiations,
23 specifically Allegations Number 12 and 13, your testimony
24 on direct is that you refute there ever being an offer of
25 eight to twelve years?

1 A. I -- yes, there was no offer.

2 Q. And to the best of your recollection, there was never
3 a numerical offer from the State, correct?

4 A. No, there was none.

5 Q. The only offer you testified on direct was to
6 voluntary manslaughter, correct?

7 A. Yeah, but it -- I mean, it wasn't even that specific.
8 It was just we want your guy to leave. If he'll help and
9 roll, we'll -- we'll make it right, and that was as far as
10 we got, but that was -- it never got more specific.

11 Q. Did you present this to Mr. Cannon?

12 A. Yes.

13 Q. Did he express any interest in wanting to help or
14 possibly testify against his co-defendants?

15 A. No, he didn't.

16 Q. Regarding the failure to pursue an Alford plea on his
17 behalf, your testimony before is that any offer from the
18 State would have required his testimony and admitting
19 guilt, correct?

20 A. That's what I understood. I can't imagine why they
21 would offer an Alford if they wanted him to testify for
22 them.

23 Q. Regarding the allegations 17, 21, 22 and 23 regarding
24 the polygraph data, you testified that you were given this
25 during the Jackson v. Denno; is that correct?

1 A. Yes.

2 Q. And I believe your testimony was you were able to
3 review this with an expert, correct?

4 A. I was.

5 Q. What expert did you use?

6 A. Rick Johnson.

7 Q. And when did you meet with him to review this data?

8 A. It was in the morning, and I can't remember if I -- he
9 lived between my house and the Kershaw County Courthouse.
10 I cannot remember if I dropped it off with him on the way
11 home and came back in the morning and talked to him or if I
12 just came in the morning, but I came very early one morning
13 and -- and we just -- he looked over it and told me what he
14 thought about it.

15 Q. And what was his opinion?

16 A. That it -- that what they claimed it said was accurate
17 in his opinion.

18 Q. So he would not have been a favorable or a helpful
19 witness to Mr. Cannon?

20 A. No. I mean, I don't know that -- what I would have
21 used him for, but I was looking to find out whether -- I
22 mean, you know, saying you fail a polygraph is not an
23 accurate statement. I just wanted to see if the raw data
24 backed up what the report said.

25 MS. HARRIGAN: A moment's indulgence, Your Honor, to

1 make sure I've covered everything.

2 Your Honor, may I approach?

3 THE COURT: Yes.

4 BY MS. HARRIGAN:

5 Q. I'm handing you what's been introduced as Petitioner's
6 Exhibit Number 4. Those are the documents that you
7 remembered in your discovery regarding the victim breaking
8 into Mr. Doran's home, correct?

9 A. Yes.

10 Q. And you do recall having all of those in your
11 discovery, correct?

12 A. I don't know if they came in discovery or if I got
13 them on my own, but these are the documents you'd be able
14 to get just from the Clerk's office, except for the
15 statements, so. But I remember the statements, so, yeah,
16 I guess I got them somewhere.

17 Q. You recall having all those documents in your file
18 that you handed over to the State and to Mr. Cannon,
19 correct?

20 A. Yes.

21 Q. And I believe your testimony was before that numerous
22 witnesses were all asked about these charges and any sort
23 of dispute between Mr. Doran and the victim, correct?

24 A. I remember us getting into that a lot and then when I
25 re-read the transcript it seemed like we tried to at every

1 opportunity. No one stopped us from asking about it, but
2 we went into it as much as we could.

3 Q. Do you recall whether or not any witnesses testified
4 that they did know there was a dispute between the victim
5 and Mr. Doran?

6 A. I don't remember off the top of my head. I feel like
7 they did, but I couldn't cite to one.

8 Q. My notes reflect, and please correct me if I'm wrong,
9 that on direct you said you also don't know how you
10 possibly could have gotten those documents into evidence.
11 Is that still your testimony today in regards to them?

12 A. I mean, if you give me a couple of minutes, I can
13 figure out how to get anything in evidence, but, I mean,
14 you know, these were probably -- you know, I mean, I
15 guess they're public documents. I probably could have got
16 them in through one of the cops. They don't particularly
17 add a whole lot to what we were getting out through
18 cross-examination. As a matter of fact, his statement
19 seems kind of -- kind of bland, so I probably wouldn't have
20 wanted that in evidence.

21 Q. In regards to co-defendant McDonald's redacted
22 statement, I believe you testified that you'd prepared two
23 different redacted statements that either Judge Cooper or
24 the State wouldn't allow those, correct?

25 A. Well, Judge Cooper wouldn't allow them.

1 Q. The State objected, correct?

2 A. Yes.

3 Q. And ultimately the statements were redacted, just not
4 in the manner that you had originally requested, correct?

5 A. Right.

6 Q. Regarding Allegation Number 20, the gruesome crime
7 scene photos, do you recall how many photos were handed
8 over to you in discovery in this case?

9 A. I probably had a two-inch stack of photos, so I don't
10 know how many that would be. A lot.

11 Q. And they've been characterized -- characterized by the
12 Applicant as gruesome. Were a lot of the photos up close
13 of the victim's body?

14 A. Yes, and they were very gruesome.

15 Q. In your opinion, the photos that were introduced into
16 evidence, were they of a more gruesome nature out of the
17 two-inch stack or so you said?

18 A. I don't remember which ones were introduced, so I
19 couldn't -- couldn't say.

20 Q. But quite a few photos weren't-- weren't introduced,
21 correct?

22 A. Right.

23 Q. And I believe you testified before in regards to
24 Allegation Number 4, Ms. Blow, that based on your
25 discussions with your client they were together after the

1 crime occurred? Is that your recollection?

2 A. Well, yeah. I mean, I don't remember anything about
3 her, but just from what I've heard today. If it was after
4 midnight, I probably wouldn't have put a whole lot of
5 reliance on it.

6 Q. Do you recall the testimony from the pathologist in
7 this case, Dr. Joel Sexton?

8 A. Just vaguely. I looked at it a minute ago before we
9 got back in here.

10 Q. Do you recall how many hits or blows he thought could
11 have been fatal in this case?

12 A. No.

13 MS. HARRIGAN: A moment's indulgence, Your Honor.

14 Q. If you'd, please, turn to Page 1288 in the record on
15 appeal and review Page 1288 to Page 1289 to yourself.

16 A. All right.

17 Q. Particularly on Page 1288, Line 21 through 25, through
18 Line 1 through 5 on the next page.

19 A. Okay.

20 Q. Does that refresh your recollection as to Dr. Sexton's
21 testimony about how many blows could have been fatal or
22 caused death to the victim in this case?

23 A. Yes. Dr. Sexton testified six to eight blows could
24 have been fatal.

25 MS. HARRIGAN: No further questions, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. SHURLING:

3 Q. Mr. Kendrick, do you recall the testimony of
4 Dr. Sexton, and, I apologize, I couldn't hear some of
5 your testimony through the Respondent clearly, but do
6 you recall the portion of Dr. Sexton's testimony when he
7 placed the time of death at sometime after midnight, in
8 the early morning hours?

9 A. No.

10 Q. Do you have a copy of the transcript up there?

11 A. I do.

12 Q. If you'll look at Page 1137, Line 17 going over to
13 1138, using the record on appeal numbers at the bottom, I
14 believe.

15 A. I'm sorry, you said what page?

16 Q. Let's try it again. We might have to use the -- let's
17 use -- I'm sorry. Using the original numbers in the top
18 right-hand corner, 1137, starting at Line 5, going over to
19 1138, Line 7. Would you agree that that puts the time of
20 death according to Dr. Sexton in the early AM hours of
21 December 13th, sometime between midnight and six in the
22 morning?

23 A. Yes.

24 Q. And as the Respondent has punctuated quite nicely for
25 us, there were quite a few blows in this case, including

1 massive blows to the head, correct?

2 A. Correct.

3 Q. Okay. On the question of Mr. Bacomo's testimony,
4 Mr. Bacomo did testify at Record On Appeal Page 526 to
5 hearing noises at about 11:25, but was there anything else
6 specifically about his testimony that you can recall?

7 A. No. I can look at it.

8 Q. If you look at Page 527, isn't it true that he
9 indicated that he heard a couple of voices?

10 A. I'm not there yet, but I know he did say that.

11 Q. Okay. That's all I needed to know. And with
12 regard -- going back to the witnesses that would have
13 testified concerning statements made by Adrian Doran, if
14 we look at -- at Allegation Number 6 they refer to the
15 failure to make an argument for the admission of testimony
16 or to lay a foundation for the admission of testimony from
17 Dixon Barker and Joe Wilson concerning statements --
18 threatening statements made by Adrian Doran. Are you
19 familiar with that one?

20 A. Yes.

21 Q. Now I confess that that's not worded the best in the
22 world, but the bottom line is this. You -- you told the
23 Court that you'd made an effort to find Adrian Doran,
24 correct?

25 A. Yes. Yes.

1 Q. And -- and that you'd had an investigator looking for
2 him?

3 A. Yes.

4 Q. And that you had attempted to serve the subpoena and
5 had not been able to do so?

6 A. Yes.

7 Q. But you did not proffer testimony from that
8 investigator to lay a foundation for a claim that Mr. Doran
9 was an unavailable witness, did you?

10 A. I did not.

11 Q. And -- and had you done so, you would have been able
12 to argue that the testimony from both Mr. Dixon Barker and
13 Joe Wilson could have come in as statements against penal
14 interest, correct?

15 A. I could have argued that.

16 Q. And you -- you made -- you made an argument of sorts
17 concerning the fact that those statements would be an
18 admission against penal interest; that the statements
19 attributed to Doran would be an admission against penal
20 interest at trial. We pointed to those earlier before
21 lunch, remember?

22 A. Right.

23 Q. And -- but you did not make a proffer as regards
24 the evidence that would have established Mr. Doran's
25 unavailability?

1 A. I did not.

2 Q. Okay. And do you recall that the discovery materials
3 in this case included notes referencing interviews with
4 Dixon Barker and Joe Wilson in which the officer made note
5 of -- of their recalling having heard threatening remarks
6 made by Doran concerning his intention to harm the victim?

7 A. I don't specifically remember that, but I think you
8 are correct.

9 Q. Pardon?

10 A. I think you are correct. I just can't --

11 Q. Okay. And that was in the discovery material?

12 A. I believe it was.

13 Q. And so that's how you would have know about Dixon
14 Barker and Joe Wilson?

15 A. Probably.

16 Q. Okay. And, again, without a proper foundation to
17 establish unavailability under 804 you really were not in a
18 position to argue Doran was an unavailable witness, were
19 you?

20 A. No, not in the context that you're talking about.

21 Q. Okay.

22 MS. SHURLING: A moment's indulgence, Your Honor.

23 Q. Mr. Kendrick, when you were court-appointed in this
24 murder case, about how long had you been practicing law?

25 A. I guess five years.

1 Q. Did you consider yourself sufficiently experienced to
2 represent a defendant accused of murder?

3 A. Yes.

4 Q. Had you not thought that you were sufficiently
5 experienced, would you have asked the court to allow you
6 to step down and appoint someone else?

7 A. I would have either done that or asked them to put
8 someone else on the case with me.

9 Q. Do you by any chance -- well, never mind. I think
10 it's obvious from your earlier answer. And just to repeat
11 something that we covered early on, there was no physical
12 evidence tying Mr. Cannon to this crime, was there?

13 A. No, not at all.

14 Q. And to be very clear, the Respondent's talked a good
15 deal about your client admitted this and admitted that.
16 Your client has always denied authoring the body of those
17 statements; has he not?

18 A. He has always denied that.

19 Q. Pardon?

20 A. He has always denied that.

21 Q. Right. And you, in fact, presented extensive
22 testimony in the Jackson v. Denno hearing going toward his
23 assertion that he was somewhat duped into signing blank
24 statement paper that was subsequently used to create a
25 statement attributed to him, correct?

1 A. You know, I think. I mean, I -- if it wasn't that he
2 was signing a blank paper, that they tricked him -- not
3 tricked him, but they got him to sign even the written
4 statement without understanding what he was doing because
5 they promised him something.

6 Q. Okay. And there were -- well, I mean -- rephrase. In
7 the time before and after this trial, you handled many
8 cases involving motions to suppress statements; have you
9 not?

10 A. Yeah.

11 Q. Was there in your opinion more to go on in terms of
12 suspicious circumstances surround the taking of this
13 statement than there was in your typical case with a
14 Jackson v. Denno attack or tact?

15 A. Yes, there were.

16 Q. Including the fact that your client had asserted that
17 he was told that if he went ahead and signed the statement
18 that he wasn't gonna get in trouble and that -- that they
19 were gonna use him to cooperate against the others and he'd
20 get to stay home with his mom or words to that effect?

21 A. Well, they all say stuff like that. Every client says
22 stuff like that, but what was different here was that he
23 actually did get to stay home in the --

24 Q. Well -- and you anticipated the next part of my
25 question. What was different in this case from your

1 typical case is that despite supposedly having just
2 admitted being party to this brutal murder, he was allowed
3 to stay home with his momma that night, wasn't he?

4 A. Yes. That was very strange.

5 Q. Okay. And, again, you have indicated that your notes
6 say that it was a 2-10 split on the vote when the jury came
7 back deadlocked?

8 A. Yeah, I saw that when I was going over the file to
9 either give to you or to give to the Attorney General. I
10 thought I -- I could be wrong. I just thought I saw in my
11 handwriting 10 to 2 guilty, but I don't know. It's in the
12 file somewhere.

13 Q. Okay. Well, when you say 2-10, did -- did it specify
14 two for innocent and ten for guilty or just 2-10?

15 MS. HARRIGAN: Your Honor, this is outside the scope
16 of my cross-examination.

17 MS. SHURLING: I believe, Your Honor, she questioned
18 him about --

19 MS. HARRIGAN: 'I did not.

20 THE COURT: I know we could fight over it. I'll allow
21 you to finish this line of questioning and then you can
22 move on.

23 MS. SHURLING: I'll wrap it up quickly, Your Honor.

24 A. And I'm pretty sure it was 10 to 2 for guilty as well
25 what I wrote down, but I -- if you find what I wrote and

1 I'm wrong, I certainly would admit to that, but I'm pretty
2 sure it was the other way around.

3 Q. With regard to how Mr. Cannon may have been prejudiced
4 by any of the errors we've talked about here today, is
5 there any way to know what extra evidence might have made
6 the difference between those two people holding their
7 ground and caving?

8 MS. HARRIGAN: I would object. That calls for
9 speculation, Your Honor.

10 THE COURT: Repeat the question.

11 MS. SHURLING: I asked Mr. Kendrick if there was any
12 way to know what additional evidence that -- we discussed
13 failure to present proper -- various types of evidence,
14 failure to object to certain evidence that did come in,
15 and I asked him if in his professional opinion if there was
16 any way to know what, if any, of that might have made a
17 difference on the two holdouts.

18 MS. HARRIGAN: And the State's objection is that that
19 calls for speculation and that's Your Honor's role as the
20 finder of facts. You're to make that determination.

21 THE COURT: I'll sustain as to the speculation.

22 MS. SHURLING: I'll save it for argument, Your Honor.

23 BY MS. SHURLING:

24 Q. Did you ever -- you've got this little note that you
25 observed in your file. Did you, based on your recollection

1 here today, ever have any of the jurors tell you what their
2 sticking points in deliberations were?

3 A. No.

4 Q. So you don't know what their sticking points were?

5 A. Well, like I said earlier, I -- I have a -- I think I
6 do and I just don't remember how I know it. It's -- so,
7 you know, that's worth not really much of anything.

8 Q. Okay. So you have no specific recollection of being
9 made aware by anyone of exactly what the holdup was with
10 regard to the inability to reach a verdict initially?

11 A. I don't remember if I saw something on a note or if I
12 just guessed.

13 Q. Okay.

14 MS. SHURLING: A moment's indulgence. Nothing
15 further, Your Honor.

16 MS. HARRIGAN: Very briefly, Your Honor.

17 RE CROSS EXAMINATION

18 BY MS. HARRIGAN:

19 Q. Mr. Kendrick, in regard to the testimony of the
20 pathologist, Joel Sexton, as Applicant pointed out on
21 redirect Dr. Sexton testified that the time of death was
22 in the early morning hours, correct?

23 A. Well, I mean, I read what he said. I think he said he
24 couldn't really be sure when it was. He was just talking
25 about consistent versus inconsistent.

1 Q. And the State alleged at Mr. Cannon's trial that the
2 attack was around approximately 11:30 at night, correct?

3 A. That's what I remember.

4 Q. Do you recall any testimony from Dr. Sexton or any
5 other witnesses the duration between when these six to
6 eight fatal blows were struck and the actual time of death?

7 A. No, I don't remember that.

8 MS. HARRIGAN: No additional questions, Your Honor.

9 MS. SHURLING: Nothing further, Your Honor.

10 THE COURT: You may step down. Thank you.

11 (Witness excused.)

12 MS. SHURLING: Your Honor, the Applicant would call
13 Ember Blow.

14 Oh, Your Honor, I apologize. I should have mentioned
15 this earlier. Ms. Rodden that testified earlier before
16 lunch --

17 THE COURT: Yes.

18 MS. SHURLING: -- had asked whether she could be
19 excused and I forgot to ask the Court.

20 MS. HARRIGAN: I have no additional questions.

21 MS. SHURLING: You're welcome to stay if you'd like or
22 you may leave if you would like, either one.

23 MS. HARRIGAN: I would ask that Mr. Kendrick not be
24 released from his subpoena until the State -- or the
25 Applicant finishes putting up his case though.

1 THE COURT: Okay.

2 EMBER MARSHAY BLOW,

3 having been duly sworn, testified as follows:

4 THE COURT: Thank you. If you'd have a seat and state
5 your full name and spell your first name and your last
6 name, please.

7 THE WITNESS: It's Ember Marshay Blow. It's E-M-B-E-R
8 and B-L-O-W.

9 THE COURT: Yes, ma'am.

10 DIRECT EXAMINATION

11 BY MS. SHURLING:

12 Q. Ms. Blow, my name's Tara Shurling. We've spoken
13 before by phone and briefly this morning at the courthouse,
14 correct?

15 A. Yes, ma'am.

16 Q. Okay. Has anybody promised you anything or offered
17 you any kind of reward or anything for coming here today
18 and testifying for Mr. Cannon?

19 A. No, ma'am.

20 Q. At one point in history, you and Mr. Cannon were
21 boyfriend/girlfriend, correct?

22 A. Yes, ma'am.

23 Q. And you, in fact, were dating and were romantically
24 involved at the time of the incident that resulted in
25 Mr. Cannon going to the penitentiary, weren't you?

- 1 A. Yes, ma'am.
- 2 Q. Okay. When Mr. Cannon was arrested, did you at any
3 point have the opportunity after his arrest to talk to his
4 defense lawyer, Mr. Josh Kendrick?
- 5 A. No, ma'am.
- 6 Q. Did anyone that represented themselves to be an
7 investigator for Mr. Kendrick contact you and interview
8 you?
- 9 A. No, ma'am.
- 10 Q. They did not?
- 11 A. No, ma'am.
- 12 Q. Okay. Do you remember the night that this terrible
13 thing happened and the victim died?
- 14 A. Yes, ma'am.
- 15 Q. You remember that point in time?
- 16 A. Yes, ma'am.
- 17 Q. How do you remember it so clearly?
- 18 A. That was the last time that I saw him.
- 19 Q. The last time that you saw Mr. Cannon?
- 20 A. Yes, ma'am.
- 21 Q. Well, let's talk about that time, okay? That evening
22 on the day when the deceased is alleged to have been
23 murdered during a robbery, or burglary rather, did you see
24 Robert Cannon?
- 25 A. That day?

- 1 Q. Yes. Did you see him later that evening?
- 2 A. Yes, ma'am, I saw him that night.
- 3 Q. How did you see him?
- 4 A. He came to my house.
- 5 Q. He came to your house?
- 6 A. Yes, ma'am.
- 7 Q. Do you remember about what time he got to your house?
- 8 A. About 12:30, maybe a little bit before that.
- 9 Q. Somewhere around 12:30 or a little earlier?
- 10 A. Yes, ma'am.
- 11 Q. How -- when you say it could have been a little
- 12 earlier, could it have been as much as fifteen minutes
- 13 earlier?
- 14 A. It was -- I know it was after 12:00, but it was before
- 15 12:30 because I got up and I unlocked the door for him.
- 16 Q. Okay. So you know it was after 12 and before 11 -- I
- 17 mean, 12:30, but you don't know where in there it was?
- 18 A. No.
- 19 Q. Not exactly?
- 20 A. Not exactly. Not to pinpoint a time.
- 21 Q. Okay. And once he arrived, did he stay the rest of
- 22 the night?
- 23 A. Yes, ma'am.
- 24 Q. When did he leave your house after coming over between
- 25 12 and 12:30?

1 A. I took him home about 6, 6:15 because my mother got
2 off work about 7, so he had to be gone before she got home.

3 Q. So you were getting him out of the house before momma
4 got home?

5 A. Yes, ma'am.

6 Q. Okay. Smart girl. Do you still consider yourself
7 Mr. Cannon's girlfriend?

8 A. No, ma'am.

9 Q. Do you consider yourself his friend?

10 A. Yes, ma'am.

11 Q. Okay. Have you stayed in touch over the years since
12 he's been incarcerated?

13 A. I've spoken to him here and there. He just calls to
14 check on me, see how I'm doing.

15 Q. Okay. Have you been in regular contact with him
16 during his incarceration?

17 A. Not regular. Like I said, it's every blue moon.

18 Q. Okay. You don't -- I don't mean to ask embarrassing
19 questions, but I have to ask a couple. You'd never had a
20 child with Mr. Cannon, did you?

21 A. No, ma'am.

22 Q. Okay. And do you have a prior criminal record
23 yourself?

24 A. No, ma'am.

25 Q. Okay. And have you begun dating someone else at this

1 point?

2 A. Yes, ma'am.

3 Q. And how long have you been dating that person?

4 A. About a year.

5 Q. About a year?

6 A. Yes, ma'am.

7 Q. Would you characterize that relationship as a serious
8 relationship?

9 A. Yes, ma'am.

10 Q. Okay. Would you have any reason to come to court and
11 lie for Mr. Cannon?

12 A. No, ma'am.

13 Q. Does your boyfriend know you're here today?

14 A. Yes, ma'am.

15 Q. Okay. All right. And, again, nobody promised you
16 anything or paid you anything other than the basic witness
17 fee and mileage to get you to come and give your testimony
18 here today, right?

19 A. That's right.

20 Q. Okay. If Mr. Cannon's lawyer or his investigator had
21 contacted you and interviewed you back before this trial,
22 would you have been willing to come to court and be a
23 witness for Mr. Cannon?

24 A. Yes, ma'am.

25 Q. And would you have testified to the same thing at that

1 trial that you have here today?

2 A. Yes, ma'am.

3 Q. Did anybody in law enforcement -- I know you've said
4 that defense counsel didn't interview you and I think I
5 asked you if the police did, but no one from law
6 enforcement ever came and talked to you?

7 A. No, ma'am.

8 Q. Did you ever consider going to them and telling them
9 what you knew?

10 A. No, ma'am. I just assumed somebody would come talk to
11 me.

12 Q. Okay. How old were you back then? 2006.

13 A. 17, 18. It was my senior year.

14 Q. Very young?

15 A. Yes, ma'am.

16 Q. Okay. So it's your testimony that you just assumed
17 somebody in authority would come and talk to you?

18 A. Yes, ma'am.

19 Q. And they never did?

20 A. No, ma'am.

21 Q. Were you present at Mr. Cannon's trial?

22 A. No, ma'am.

23 Q. Why didn't you come to his trial?

24 A. Like I said, I just assumed somebody would contact me
25 about everything that was going on, but nobody contacted

1 me.

2 Q. Did your mom and daddy know you were dating Robert?

3 A. They knew of him.

4 Q. Okay. Did they know about him being accused of being
5 involved in this crime?

6 A. They found out through the news --

7 Q. Okay.

8 A. -- because that's when I found out.

9 Q. Did that have something to do with you not going to
10 court?

11 A. No, ma'am, because I'm very stubborn.

12 MS. SHURLING: Okay. I want you to listen very
13 carefully to the questions that the State's attorney is
14 going to ask you, if they have some, and answer them
15 truthfully, please.

16 THE WITNESS: Okay.

17 MS. HARRIGAN: Briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. HARRIGAN:

20 Q. Ms. Blow, you testified that Mr. Cannon came to your
21 house after 12 but before 12:30 in the morning, correct?

22 A. Yes, ma'am.

23 Q. How do you know that it was after 12 but before 12:30?

24 A. Because I got up to unlock the door for him and when I
25 woke up, I looked at the clock.

1 Q. Did Mr. Cannon spend the night at your house
2 frequently when your mom was at work?

3 A. Yes, ma'am.

4 Q. So how can you be certain the time he got there on
5 that particular night?

6 A. The fact that I got up and unlocked the door.

7 Q. Is that the only time you'd ever gotten up and
8 unlocked the door for him?

9 A. Yeah, usually we're already together, but that night I
10 unlocked the door.

11 Q. And that was in 2006, correct?

12 A. Yes, ma'am.

13 Q. Okay. How soon after that night did you learn that
14 Mr. Cannon had been arrested?

15 A. Whenever the news report came out.

16 Q. So you learned about it from the news report?

17 A. Yes, ma'am.

18 Q. How long had you and Mr. Cannon been dating at that
19 time?

20 A. We started dating August, September of --

21 Q. So three or four months at that time?

22 A. No, we started my senior year. We dated for like my
23 entire senior year, so.

24 Q. Do you recall what month the crime occurred in?

25 A. December.

1 Q. And you started dating August of that year or August
2 the year before?

3 A. No, we started in 2005 it seems like.

4 Q. So at the time of his arrest, you'd been dating for --

5 A. Over a year.

6 Q. -- a little over a year, a year and two months?

7 A. Yes.

8 Q. And Mr. Cannon didn't contact you to let you know he
9 was being investigated by the police or that he'd been
10 arrested? You just learned from the news?

11 A. Yes, ma'am.

12 Q. And you testified you were never contacted by
13 Mr. Cannon's attorney?

14 A. No, ma'am.

15 Q. Do you recall when he was arrested approximately? Was
16 it shortly after the crime that you learned he'd been
17 arrested?

18 A. Like I said, I learned from the new, so whenever the
19 report came out is when I found out.

20 Q. Do you recall how long it was before you learned about
21 his arrest on the news to his trial?

22 A. Say that again. I'm sorry.

23 Q. Do you recall how long it was between when he was
24 arrested and when he went to trial?

25 A. No, ma'am, I'm not sure of that.

1 Q. Were you still dating Mr. Cannon at the time of his
2 trial in 2008?

3 A. No, ma'am.

4 Q. When did you guys break up or stop dating?

5 A. Probably a little bit after he got arrested.

6 Q. So in late 2006, early 2007?

7 A. Yes, ma'am.

8 Q. And you never contacted Mr. Cannon's attorney or law
9 enforcement?

10 A. No, ma'am.

11 MS. HARRIGAN: No further questions, Your Honor.

12 THE COURT: Anything further?

13 REDIRECT EXAMINATION

14 BY MS. SHURLING:

15 Q. You just testified a moment ago that you wanted to get
16 Mr. Cannon out of your house before your momma came home?

17 A. Yes, ma'am.

18 Q. If either Mr. Cannon's lawyer or somebody from the
19 State had subpoenaed you, you would have come to court and
20 testified?

21 A. Yes, ma'am.

22 Q. But that would have involved disclosing that he'd
23 spent the night at your house, right?

24 A. Yes, ma'am.

25 Q. So you weren't about to go volunteer that information

1 unless you had to?

2 A. Yes, ma'am.

3 MS. SHURLING: Okay. Thank you. No further
4 questions.

5 MS. HARRIGAN: No further questions of this witness,
6 Your Honor.

7 THE COURT: You may step down. Thank you.

8 (Witness excused.)

9 MS. SHURLING: A moment's indulgence, Your Honor.

10 Your Honor, I don't have any further witnesses at this
11 time. I would like to state as an officer of the court
12 that my staff and I have made every effort available to us
13 to locate Dickson Barker and Joe Wilson and Adrian Durro --
14 Doran -- I'm not sure of the spelling on that one, and we
15 were unable to locate any identifying information, any
16 contact information, for any of the three of those
17 individuals. Also, with regard to the alibi witnesses,
18 Steven Coffey, Gerard Chandler and Orlando Givens, we did
19 global searches, Your Honor, and tried to locate them. We
20 checked various databases available to our office and
21 regularly use to try to locate people and we were unable to
22 locate them. I did at one point have -- received a message
23 that Steven Coffey was in South Carolina and that he was
24 willing to cooperate and testify, but unfortunately that
25 person was unable to give me contact information for

1 Mr. Coffey and he has not produced himself here today, so I
2 do not have him available as a witness.

3 Your Honor, one additional thing. My client wanted to
4 speak to me for just a second.

5 (Discussion between Ms. Shurling and Mr. Cannon.)

6 MS. SHURLING: Your Honor, I apologize. I did -- I
7 did -- I guess should have noted that I have it upon
8 information and belief from people in my client's family
9 and from my client that Gerard Chandler and Orlando Givens
10 are both in the United States military and are stationed
11 abroad at this time. With regard to Mr. Coffey, I know
12 only that someone who was trying to located Mr. Coffey
13 indicated that they had spoken with him and that he had
14 indicated that he was going to call my office and discuss
15 coming to court, but he did not show -- he didn't call me
16 and he didn't show up, so. And the individual who gave me
17 the information to the effect that he was willing to
18 cooperate and would come was not able to give me a phone
19 number or an address for him or I would have subpoenaed
20 him.

21 Beyond that, Your Honor, the only remaining thing is
22 that I have been sitting here going back through my copy
23 of Mr. Kendrick's file trying to locate and -- and have
24 not been able to do so. There is a police report, perhaps
25 Respondent is familiar with it, in which it does reference

1 interviews with the two gentlemen that are referred to in
2 connection with Adrian Doran. Those witnesses were Dixon
3 Barker and Joe Wilson, and contained in the discovery
4 material there are notations concerning interviews with
5 them in which they recounted having heard statements made
6 by Adrian Doran. I will just ask that I be allowed to --
7 I've got now probably an inch and a half more of the record
8 to go through to try to locate that document and I would
9 ask that I be allowed to go through the remainder of these
10 pages of the document and if I locate that particular
11 document submit it as an Applicant's exhibit within --

12 MS. HARRIGAN: The State has no objection as -- as
13 long as there is an assigned period of time. Certainly
14 no longer than this term of court to make sure that this
15 matter is concluded and wrapped up. And as an officer of
16 the court, I did review the file as well. It was nearly
17 700 pages and I do not recall the document Ms. Shurling
18 is talking about, but it is 700 pages and I might have
19 overseen it.

20 MS. SHURLING: And the same here, Your Honor. I have
21 been given to believe that it's there and I remember
22 something about it, but I can't lay my hands on it this
23 morning, so I would ask that I be given until -- noon
24 Thursday would be fine with me if I -- I have another
25 case before Your Honor on Thursday. If I locate it, I'll

1 bring it to court with me and, of course, provide the
2 Respondent with a copy of it at that time.

3 MS. HARRIGAN: No objection.

4 MS. SHURLING: Thank you.

5 THE COURT: That's Thursday at noon then.

6 Anything else from the Applicant?

7 MS. SHURLING: Just, Your Honor, that I believe that
8 the cumulative impact -- and I'm aware that there's --

9 MS. HARRIGAN: Your Honor, if I could, please,
10 first rest on record and we can release Mr. Cannon -- or
11 Mr. Kendrick from his subpoena.

12 THE COURT: Oh, yeah. I was just asking if there's
13 anything further in terms of witnesses and then --

14 MS. HARRIGAN: Oh, I'm sorry. I thought Ms. Shurling
15 was going into closing.

16 THE COURT: No, she was -- it sounded like she was
17 making closing argument.

18 MS. SHURLING: No, ma'am, no -- no additional
19 witnesses.

20 THE COURT: Okay. Are there any witnesses -- any
21 additional witnesses that would testify on behalf of the
22 State?

23 MS. HARRIGAN: No, Your Honor. And the State asks
24 that Mr. Kendrick be released from his subpoena at this
25 time.

1 THE COURT: No objection?

2 MS. SHURLING: I would join in that request, Your
3 Honor.

4 THE COURT: Okay. You may be excused. Thank you.

5 MR. KENDRICK: Thank you, Judge.

6 MS. HARRIGAN: Thank you, Josh.

7 THE COURT: Now, Ms. Shurling, you want to -- any
8 other evidence or anything to be presented by the State?

9 MS. HARRIGAN: Oh, no, Your Honor, nothing from the
10 State.

11 THE COURT: All right. Ms. Shurling, anything
12 further?

13 MS. SHURLING: Sorry. I was about the jump the gun
14 again, Your Honor. No, Your Honor. I just -- I would note
15 with regard to the witnesses, two statements made by Adrian
16 Doran, Mr. Kendrick recalled seeing something about those
17 individuals in the discovery and I have information as well
18 that there is such a document, so I thank the Court for
19 leave to look for that document and present it to the Court
20 before noon on Thursday.

21 Beyond that, I would argue my client has made a
22 general claim of the depravation of his Sixth Amendment
23 right to effective assistance of counsel. We believe that
24 the issues here today have met the Applicant's burden of
25 proof in demonstrating that he did, in fact, not receive

1 reasonable, professional assistance of counsel. There are
2 a number of errors and omissions that have been addressed
3 in detail today concerning both things that should have
4 been done and things that were done that were not done
5 correctly that we believe each individual would have to
6 a reasonable degree of certainty affected the outcome of
7 this trial. We would point specifically to the issue
8 concerning the gory photographs that were not -- that were
9 not objected to by Mr. Kendrick and the --

10 THE COURT: And those are the ones that are in the --
11 in the back of the transcript?

12 MS. SHURLING: Yes, ma'am, in black and white and
13 very bad photos, but the originals in all their glory are
14 available as exhibits through, of course, Mr. Truitt here
15 at the courthouse and we would, in fact, ask the Court to
16 review those originals.

17 MS. HARRIGAN: Those are at -- this is a Kershaw
18 case, so they actually are available over in Ms. McDonald's
19 courthouse.

20 THE COURT: And are the exhibit numbers -- I didn't
21 see exhibit numbers on them, so that's what I -- I know
22 that there are numbers written next to the photographs. I
23 assume that those are the numbers.

24 MS. SHURLING: Yes, ma'am.

25 THE COURT: 37, 39, 92, 111, 113, 114. There's

1 another one I can't read the number. I presume it's 115.
2 116, 117, 118 and 119.

3 MS. SHURLING: I believe that's correct, Your Honor.
4 I'm looking. Your Honor, I don't have the exact list of
5 which photographs were at issue in Appellant's Argument
6 Number 3; however, I'll be happy to go back through the
7 record and determine the exact numbers and double-check
8 it against Your Honor's list before Thursday.

9 THE COURT: Okay. And I was reading those off of
10 the -- out of the pages out of the transcript that's been
11 provided and they're also listed in the Table of Contents
12 I see.

13 MS. SHURLING: Thank you, Your Honor.

14 But, in sum, it's the Applicant's position that he
15 has met his burden of proof in demonstrating that but for
16 counsel's errors and omissions the outcome of his trial
17 would likely have been different. We do have, Your Honor,
18 in this case the unique situation of having the jury return
19 deadlocked and being firm enough about the fact that they
20 could not reach a verdict that they actually advised the
21 court that they -- the forelady advised the court that she
22 did not believe that additional deliberation would enable
23 them to reach a verdict. Only after being given the
24 Allen charge did the jury ultimately come back and find
25 the Applicant guilty. It's our position, Your Honor, that

1 it is, indeed, impossible to know what modicum of
2 difference in the evidence would have resulted in those
3 two -- and, again, I'm taking Mr. Kendrick at his word.
4 He says his notes indicate that there were two holdouts.
5 I don't think we have any clear evidence as to how many
6 holdouts there were, but however many holdouts there were
7 we have no way of knowing what additional evidence would
8 have been sufficient to cause those two jurors to stand
9 their ground and not capitulate on the vote for guilty on
10 the most serious of the crimes before the court, that
11 being murder, and given that fact we believe that that
12 in and of itself is strong evidence of the fact that
13 presentation of alibi testimony, some additional evidence
14 in support of the theory of third-party guilt, a proper
15 objection to the inflammatory and emotionally appealing
16 photographs that appeal to the passions and prejudices of
17 the jury when, in fact, they did not do anything to add
18 to the probative impact of Dr. Sexton's testimony, all of
19 those factors, Your Honor, all of them as reflected in
20 each of the issues we've raised today, we submit are all
21 factors which may have readily made a difference in
22 whether or not the holdout jurors, however many they
23 were, eventually capitulated and voted for guilt and for
24 that reason we believe the Applicant has sufficiently
25 demonstrated prejudice and ask Your Honor to grant a new

1 trial.

2 MS. HARRIGAN: Your Honor, may it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: In regards to the various allegations
5 regarding alibi, which I believe are 1, 2, 3, 4, and 9,
6 there were numer -- a number of these witnesses are not
7 here today and so, therefore, any potential alibi testimony
8 is speculative at best and, therefore, Applicant has not
9 satisfied his burden. In regards to the testimony we do
10 have from his mother, her testimony was that he was in and
11 out on the night, and from Ms. Blow that he came to her
12 house after midnight, which is after the State alleged the
13 crime was committed, so it's the State's position that --
14 and there was testimony of Mr. Kendrick that this would not
15 have created an actual alibi and that was the reason why he
16 did not set forth this defense.

17 Regarding third-party guilt, which I believe are
18 Allegations Number 6, 7, 8, 11 -- and 11, the State would,
19 again, argue that no witnesses were presented. We don't
20 have Adrian Doran here, we don't have Mr. Barker and we
21 don't have Mr. Wilson, so any testimony from them is,
22 again, speculative at best. Additionally, we have the
23 testimony from Mr. Kendrick along with the record to show
24 that this issue was successfully raised to the jury through
25 numerous State's witnesses, through the cross-examination

1 of not only Mr. Kendrick, but also through Mr. Riley as
2 counsel for Mr. Whitehead and Mr. Whitlark as counsel for
3 McDonald.

4 In regards to the allegations that no defense was
5 set forth, which I believe are Allegations Number 10 and
6 Number 18, we have testimony from Mr. Kendrick along with
7 the record to support successful cross-examination of
8 the State's witnesses; that he was able to attack the
9 credibility of the State's witnesses and actually get them
10 to concede several key points. Additionally, the record
11 will reflect in regards to Allegation Number 18, as well
12 as Mr. Kendrick's testimony, that he never set forth a
13 list of evidence that would be shown, so the State would
14 submit that the Applicant has failed to satisfy his burden
15 in regards to that allegation.

16 In regards to the two allegations, Allegation Number
17 12 and Number 13 regarding plea offers, Mr. Kendrick
18 sharply refuted the testimony of Mr. Cannon and said
19 that no numerical offer was ever made. Additionally,
20 Mr. Kendrick testified that he conveyed the State's vague
21 plea offer in exchange for his testimony or help and that
22 Mr. Cannon was adamant that he did not want to cooperate
23 with the State. Additionally, an Alford plea would not
24 have been likely here when the State wanted the testimony
25 of Mr. Cannon, which would involve him allocuting his

1 guilt, so it's not -- the State would submit it's not a
2 situation where an Alford plea would have been appropriate.

3 In regards to the allegations involving severance,
4 which are Allegations 15 and 16, the State would submit
5 that Mr. Cannon actually benefitted from being tried along
6 with his co-defendants. He had the benefit of four other
7 experienced trial attorneys. Each other co-defendant had
8 two attorneys working with them and Mr. Kendrick testified
9 that he worked closely certainly with Mr. Whitlark as
10 well as Mr. Riley in preparing a defense and there is no
11 evidence presented today to support Applicant's contention
12 that had his case been severed he would have been able to
13 successfully call Mr. McDonald to the stand and have him
14 show that Mr. Cannon was not present at the scene of the
15 crime.

16 And, finally, in regards to the allegations involving
17 the raw data of the polygraph, which are Allegations 17,
18 21, 22, and 23, we have the testimony from Mr. Kendrick
19 that he did receive these materials in time. He received
20 them during pre-trial motions. He reviewed them with a
21 polygraph expert and the expert was not able to provide
22 any beneficial testimony. He elected not to call the
23 witness, but he did have time to consult with him and,
24 therefore, there was no reason to file a rule to show
25 cause or move for a continuance.

1 And so for all of those reasons the State would
2 submit that Applicant has not met his burden of proof
3 and ask that Your Honor deny his Application for
4 Post-Conviction Relief.

5 MS. SHURLING: Your Honor, briefly in reply I
6 would note that we have demonstrated, for example, with
7 Ms. Sheila Rodden that she was available and would have
8 been willing to testify. With regard to other witnesses,
9 we have been able to establish that -- through the
10 testimony of Mr. Cannon that he made defense counsel aware
11 of these witnesses, that their whereabouts were known and
12 contact information available at the time of the trial.
13 The fact that now these many years later those witnesses
14 are scattered to the wind and no longer available for me
15 to find and bring to court, that's one of the unfortunate
16 perennial dilemmas in post-conviction relief is that we
17 run into the argument that we have not brought the witness
18 to trial to demonstrate what their testimony would have
19 been.

20 However -- and I'm certainly aware of the many Supreme
21 Court cases that rely on that factor as well. However,
22 where the Applicant is able to demonstrate that at the
23 time of his original trial he made counsel aware of the
24 witnesses, that they were around, their whereabouts were
25 known and they were available and now after the passage of

1 time they cannot be discovered through the due diligence
2 of counsel, as I have made the Court aware of my efforts to
3 find these people, that we would submit that he should not
4 be forever prejudiced by the fact that these people were
5 not found and their testimony presented at trial when they
6 should have been presented when they were available. The
7 fact that they are no longer available to be heard by this
8 court is not a factor within the control of the Applicant.

9 And with regard to the Adrian Doran issue, I would
10 submit that the record does indicate that there were a
11 number of witnesses that touched on the fact that -- that
12 this individual was angry because the victim had robbed
13 him, that there were, in fact, charges that had been
14 brought against the victim for robbing this individual;
15 however, there's a great deal of difference between a
16 jury hearing that the victim had committed -- allegedly
17 committed a robbery and that charges were pending for
18 him robbing a certain individual. There's a tremendous
19 difference between that and the jury hearing from other
20 witnesses that the victim in that robbery, Adrian Doran,
21 had, in fact, voiced his intent to take the law into his
22 own hands and physically harm the perpetrator in his crime
23 who happened to be the victim in this crime. So there's a
24 tremendous difference between a jury knowing that there had
25 been a robbery and that the victim was the defendant in

1 that case and Adrian Doran was the victim. It's a big
2 difference between knowing that and know that two people
3 had reported hearing Adrian Doran make physical threats
4 announcing his intention to physically harm the victim.
5 Those are two very distinct things, Your Honor, and we
6 would submit that it's -- it's like comparing apples to
7 oranges as the saying goes. To say that the jury was
8 aware of those charges is the equivalent of them being
9 aware that -- that Mr. Adrian Doran had threatened
10 violence against the deceased in a time period very close
11 in proximity to the time of the victim's death are hardly
12 the same thing and, again, we would ask the Court to make
13 note of that.

14 And, Your Honor, I will -- will find for the Court if
15 I am able the document that I've referenced and I will also
16 -- there was a place in the transcript that we were going
17 to look for. Now I've forgotten already what it was. Do
18 you remember? Oh, the exact numbers of the photographs,
19 the close-up, prejudicial photographs that were gory. I
20 will get those exact numbers, Your Honor. They're in the
21 record on appeal, but I'll make note of them and provide
22 those to Your Honor on Thursday when I attempt to provide
23 the other argument.

24 Lastly, Your Honor, I know that Henson is a relatively
25 new case and it certainly had not been decided at this

1 trial, but the principles upon which the Henson case is
2 predicated were certainly longstanding law. We've --
3 we've all been dealing with Bruton issues for a very long
4 time. I think the recent case in Henson makes clear that
5 the court is no longer going to tolerate redactions that
6 pay lip service to eliminating the confrontation problem.
7 That where a redacted statement still has a tendency to
8 point accusing fingers at a defendant or a co-defendant
9 that the redacted statements will be viewed as improperly
10 admitted as violative of the confrontation clause of the
11 Constitution and we submit that although the redacted
12 statements in this case predate the Henson case, they
13 certainly don't predate Bruton and that the fact remains
14 as clarified in Henson. As redacted these statements
15 still under the circumstances of this trial cast an
16 accusing finger at my client based on the testimony of the
17 statement -- introduction of the statement of co-defendant
18 McDonald. Even though it was redacted, it clearly pointed
19 a finger at my client and his co-defendant and for that
20 reason we would submit that defense counsel should have
21 moved to suppress that statement as well.

22 Thank you, Your Honor. As well as any and all of the
23 other arguments presented in the course of this lengthy
24 hearing, Your Honor, but those are the highlights.

25 THE COURT: All right. I'll wait to hear if you

1 locate the document that you're looking for in the file and
2 the pictures and then I'll need the opportunity to review
3 the record in light of the amended application, which I
4 received a copy of this morning, so I've not had a chance
5 to study the transcript in relation to that information.
6 So I'll take it under advisement and get an order to you.

7 MS. HARRIGAN: Thank you, Your Honor.

8 MS. SHURLING: Thank you, Your Honor.

9 END OF PROCEEDINGS

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1 CERTIFICATE OF TRANSCRIPTION

2
3 I, the undersigned, Stacy S. Johnson, Circuit Court
4 Reporter, do hereby certify that I transcribed the
5 proceedings in the captioned case that were reported by
6 Maryann S. Nevers, Circuit Court Reporter for the State
7 of South Carolina, in the Court of Common Pleas, in and for
8 the State of South Carolina, on the 17th of March, 2014, to
9 the best of my ability.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor have an interest to any party hereto.

14
15 January 19, 2016
16
17

18 s/ Stacy S. Johnson
19 STACY S. JOHNSON
20 CIRCUIT COURT REPORTER
21
22
23
24
25

Derrick McDonald

Name



Social Security Number

Address

12-16-06
Current Date12:24 AM
Current Time

Blythe Wood SC 29016

City, State, Zip Code

Date of Birth

786-8821

Home Phone

Work Phone

About 5:30 or 6:00pm Tuesday the 12th - 2006
 of December Chris Whitehead AND Robert
 Came to my house. And Ask IF I wanted to
 make some money. AFTER A WHILE I decided to
 go with them. We left AND WENT TO SONIC
 AND I check on trying to get my JOB BACK.
 AFTER we left the Sonic we went to WALMART
 on two notch and bought a ski mask and some
 a box of purple latex gloves. WE WERE STILL
 IN THE parking lot when Chris call Zach, and
 ask him to see if someone was AT home.
 Zach told him that he would call back in 10 min
 but Chris call him back and told him the
 situation was being handled.

THE THATS WHEN ~~THE~~ ^{THE} STARTED planning on how
 we WERE going to get into the house but you
 still didn't know whos house it was going to
 be.

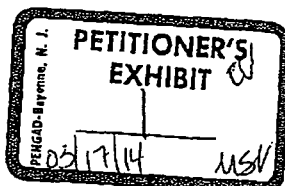
I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
 hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
 consisting of 4 pages and a true copy has been given to me this date

Derrick McDonald

Signature of Individual Giving Statement

Witness

Page 1 of 4 Pages



Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

I didn't know who's house it was until we were already there. Chris had told me that I was ~~not~~ ^{to} stay put outside to make sure no one came up. So Chris parked beside the road in front of the house and we went to the side door. The door was sturdy and we all the kicked the door on the count of (3). Chris + Robert went in and myself and I shut the door behind me and I went to another window to watch out. THATS when my name was and I went into the living Room, dinning Room AREA. CHRIS then cut on the lights and picked up a glass bowl with Flower Pedals in it picked it up over his head a hit Josh in the head with it while Josh was asleep on the couch. THEN Chris dragged Josh out the couch. ~~and~~ BUT I FIRST grabed a bat that was against the wall and I started hitting JOSH in the Body.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 24 pages and a true copy has been given to me this date.

Derrick M. Daniels
Signature of Individual Giving Statement

Rev. Danny Lake
Witness

Page 2 of 24 Pages

Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

THEN Chris tried to stop me to ask Josh a Question about where the money + Dope was, And I could stop the bat and I hit Josh in the back of THE HEAD. I also think I hit him one time in the temple area of his head. Josh then started bleeding more and I got scared. THATS when Robert + Chris started kicking and stomping Josh. Chris then told me to go get the car and pull it up. THE last thing I SAW was Chris pushing the tree over on. Josh + then Chris + Robert came out with Plastic bags of STUFF and told me to pop the Trunk I did and got in the BACK Seat. Then Chris dropped me OFF at my house a gave some AIDS and STUFF THAT I didn't want. So I burned them and my cloths in a burn Barrel AT my house. All OF my cloths + shoes and everything burned Completely up.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this date.

Derrick McDonald

Signature of Individual Giving Statement

Lawrence C. Coker

Witness

Page 3 of 9 Pages

Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

I Ask INV Danny Catoe to WRITE my
STATEMENT for me and this IS WRITTEN
in my own words.

D. Derrick McDonald
12-16-06 -

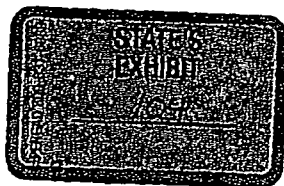
I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this date.

D. Derrick McDonald
Signature of Individual Giving Statement

INV Danny Catoe
Witness

Page 4 of 4 Pages

Witness



Derrick McDonald

Name

Social Security Number

Address

12-16-06
Current Date12:24am
Current Time

Blythe Wood SC 29016

City, State, Zip Code

Date of Birth

786-8821

Home Phone

Work Phone

About 5:30 or 6:00pm Tuesday the 12th - 2006
 of December Another Person AND Another Person
 Came to my house. And Ask IF I wanted to
 make some money AFTER A WHILE I decided to
 go with them. We left AND WENT TO SONIC
 AND I check on trying to get my JOB BACK.
 AFTER we left the Sonic we went to WALMART
 on two notch and bought a ski mask and some
 a box of purple latex gloves WE WERE STILL
 IN THE parking lot when Another Person call Zack, and
 ask him to see if someone was AT home.
 Zack told him that he would call back in 10 min
 but Another Person call him back and told him the
 situation was being handled.

THE THATS WHEN ~~THE~~ STARTED planning on how
 we were going to get into the house but you
 still didn't know whos house it was going to
 be.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
 hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
 consisting of 4 pages and a true copy has been given to me this date

Derrick McDonald

Signature of Individual Giving Statement

Witness

Page 1 of 4 Pages



Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

THEN ~~Another Person~~ tried to stop me to ask Josh a Question about where the money + Dope was, And ~~It~~ Could stop the bat and I hit Josh in the back of THE HEAD. I also think I hit him one time in the temple area of his head. Josh then STARTED bleeding more and I got scared. THATS when ~~Another Person~~ + ~~Another Person~~ started kicking and stomping JOSH ~~Another Person~~ then told me to go get the CAR and pull it up. THE last thing I SAW was ~~Another Person~~ pushing the tree over on JOSH. Then ~~Another Person~~ + ~~Another Person~~ came out with plastic bags of STUFF and told me to pop the trunk I did and got in the BACK Seat. Then ~~Another Person~~ dropped me OFF AT my house a gave some AIDS and STUFF THAT I didn't want. So I burned them and my cloths in a burn Barrel AT my house. All OF my cloths + shoes and everything burned Completely up.

have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
ope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
onsisting of 3 pages and a true copy has been given to me this date.

Derrick M. Donald

Signature of Individual Giving Statement

Page 2 of 2 Pages

Lawrence Carter

Witness

Witness

Name

Social Security Number

Address

Current Date

Current Time

City, State, Zip Code

Date of Birth

Home Phone

Work Phone

I Ask INV Danny Catoe to WRITE my
STATEMENT for me and this IS WRITTEN
IN my own words.

Derrick McDonald

12-16-06 -

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or
hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement
consisting of 4 pages and a true copy has been given to me this date.

Derrick McDonald

Signature of Individual Giving Statement

INV Danny Catoe

Witness

LT Eric Hisdale
12/14/06

Gene Wymer

Sheila Radden

348-2794
cell#

348-2497 cell#

Elgin, IL

803-408-9628

Kirk Saville

223-5967

Chad Radden - son Already home

Works with →

(U)

Sheila
got home

5:15 pm

Wine colored car →

in garage

Beige / Grayish car →

Both were

at home:

in front of house

one girl & two guys

* When Sheila got home nobody was out side.
but 2 cars were there

* 6:15 pm son got home from store

and he saw one girl and two boys

pacing back and forth on front deck

and girl was smoking cigarette and

phone in hand (she was not crying)

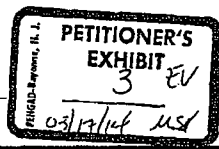
* Before 6:30 the wine colored car pulled
out of garage and don't know where

they went after that and her

son went in the house

Ten minutes later all the cops showed
up and she began crying

* Gene got home Around 3:50 pm



STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
-VS-)
Jashun Thomas Zait
DEFENDANT

ORDER SETTING/REDUCING BOND

WARRANT NUMBERS: K141639

This matter comes before the Court on September 21, 2006 for the purpose of setting/reducing bond.

The Defendant was present. The following attorney appeared on behalf of the Defendant: George Spudis

The State was represented by Don Mack of the Solicitor/SCDPPP office.

The Defendant is charged with the following offense (s):

Burglary 1st

After hearing from the Defendant and the State, the Court finds it appropriate, and IT IS THEREFORE ORDERED, that:

 Bond is denied at this time with leave for defense counsel to file a written Motion for bond.

 A Personal Recognizance Bond in the amount of \$ is set at this time.

✓ A Surety Bond in the amount of \$ 5000 is set at this time; and the Defendant Is (Is Not) (Circle One) allowed to post 10%.

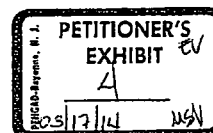
AND IT IS SO ORDERED.

SPECIAL CONDITIONS OF BOND

STAY AWAY FROM
VICTIM CONCURRENT w/ 5 THOUSAND
BOND ON GRAND JURY CASE

Dated: 9-21-06
Camden, SC

Lacey Manning
Honorable
Presiding Judge - General Sessions
Fifth Judicial Circuit



GENERAL SESSIONS DOCKET REPORT FOR KERSHAM COUNTY

REPORT RUN DATE - 09/19/2006

DOCKETMENT NUMBER: 2006GS28

DEFENDANT NAME: ZOCH, JOSHUA THOMAS

AKA:

ADDRESS: LANE

CITY: ELGIN

STATE: SC ZIP 29045

SOCIAL SECURITY NUMBER:

SEX: 1 MALE

RACE: 1 WHITE

DATE OF BIRTH

DRIVERS LICENSE STATE / NO.: SC /

VITAL STATUS:

ARRANT OR TICKET NUMBER: K141639

COUNTS: 01 OFFENSE CODE: 0079

ARRANT 0 NAME OF OFFENSE: BURGLARY / BURG

DATE OF ARREST: 09/17/2006 DATE RECD BY CLERK: 09/19/2006

JUDICIAL JUDGE:

SP DATE: 00/00/0000 DISP TYPE:

SP TYPE EXPLANATION:

Dismissed
12/30/06

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000 *****

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

Di M. [Signature]

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 09/18/2006

DOCKET NUMBER: 2006GS28

DEFENDANT NAME: ZOCH, JOSHUA THOMAS

AKA:

ADDRESS:

LANE

CITY: ELGIN

STATE: SC ZIP 29045

IDENTIFICATION NUMBER:

SEX: 1 MALE

RACE: 1 WHITE

DATE OF BIRTH:

DRIVERS LICENSE STATE / NO.: SC /

CURRENT STATUS:

WARRANT OR TICKET NUMBER: K141640

COUNTS: 01 OFFENSE CODE: 0478

WARRANT? 0 NAME OF OFFENSE: LARCENY / GRAND

DATE OF ARREST: 09/17/2006 DATE RECD BY CLERK: 09/18/2006 SUMMARY JUDGE:

3P DATE: 00/00/2000 DISP TYPE:

3P TYPE EXPLANATION:

*Dismiss
is deceased*

DGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

ATTORNEY:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

12-20-06
[Signature]

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 09/18/2006

DOCKET NUMBER: 2006GS28

INDANT NAME: ZOCH, JOSHUA THOMAS

AKA:

LESS:

LANE

CITY: ELGIN

STATE: SC ZIP 29045

FAL SECURITY

SEX: 1 MALE

RACE: 1 WHITE

3 OF BIRTH:

DRIVER'S LICENSE STATE / NO.: SC /

ITAL STATUS:

RANT OR TICKET NUMBER: K141640

COUNTS: 01 OFFENSE CODE: 0478

WARRANT? 0 NAME OF OFFENSE: LARCENY / GRAND

E OF ARREST: 09/17/2006 DATE RECD BY CLERK: 09/18/2006 SUMMARY JUDGE:

P DATE: 00/00/2000 DISP TYPE:

P TYPE EXPLANATION:

GE CODE/NAME:

COURT REPORTER:

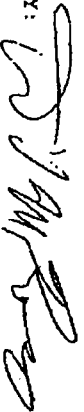
VICTIM: CTS: 00 OFFENSE: 0000

ITENCE:

ENSE ATTORNEY:

PROSECUTING ATTORNEY:

12-20-06

*Dismissed*

Adrian Doran II
 Name of Person Giving Statement

4150 RM. 9-14-06
 Current Time/Date

Elgin SC 29045
 City, State, Zip Code

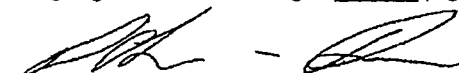
513-7945
 Home/Work/Cellular Phone

Social Security Number _____
 Date of Birth / Age _____

I Adrian Doran was told By Norman Erast that
 Jason Zach Bought Four New tires and oil change,
 trans fluid change and had a large Amount of money
 with him, He was bragging About going to the mall, this was
 on 9-8-06.

I Adrian Doran was told About my house being broken into
 at 9/06/06 at 2:30 AM by Jason Zach and two other
 white males who Robbed my girlfriend by gun point.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of
 reward or hope of reward of any kind. This is to certify that I have read or have read to me the
 foregoing statement consisting of _____ pages and a true copy has been given to me this date


 Signature of Person Giving Statement

H. Eric Firdal
 Witness Signature

 Witness Signature

Page _____ of _____ pages

JOSHUA SNOW KENDRICK, PC

ATTORNEY AT LAW
1720 MAIN STREET, SUITE 202
COLUMBIA, SC 29201
(803) 765-0717
FACSIMILE (803) 765-0817

May 1, 2008

Via hand delivery
Adrian Neal Doran, II

Elgin, SC 29045

Re: *State v. Robert Cannon, Derrick McDonald & Christopher Whitehead*

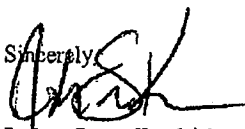
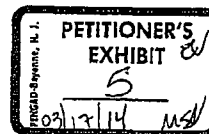
Dear Mr. Doran,

The attached subpoena requires you be present at the Kershaw County Courthouse, located at 1121 Broad Street, Camden, South Carolina, 29020 at 9:00 a.m. on Tuesday, May 6, 2008.

This subpoena is in addition to any State subpoena you have already received. If you have already received a State subpoena, you are required to follow any State instructions.

If this is the only subpoena you have received, you may call me at (803) 348-1876 to obtain additional information. I will be happy to discuss scheduling with you so you can avoid sitting at the courthouse all week.

Sincerely,


Joshua Snow Kendrick

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY KERSHAW
State of South Carolina V. Robert Cannon		CASE NO. K-142528 & K-142530
		SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: Adrian Neal Doran, II		
☒ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Kershaw County Court of General Sessions 1121 Broad Street Camden, SC 29020		COURTROOM Main Courtroom
		DATE AND TIME Tuesday, May 6, 2008 @ 9:00 a.m.
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).		
LIST DOCUMENT(S) OR OBJECT(S)		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT		DATE
(BY) DEPUTY CLERK		
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT		ATTORNEY'S NAME AND ADDRESS Joshua Snow Kendrick JOSHUA SNOW KENDRICK, PC 1720 Main Street, Suite 202 Columbia, SC 29201 (803) 765-0717

JOSHUA SNOW KENDRICK, PC

ATTORNEY AT LAW
1720 MAIN STREET, SUITE 202
COLUMBIA, SC 29201
(803) 765-0717
FACSIMILE (803) 765-0817

May 1, 2008

Via hand delivery
Chad Rodden

Elgin, SC 29045

Re: State v. Robert Cannon, Derrick McDonald & Christopher Whitehead

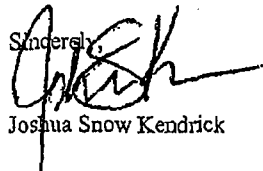
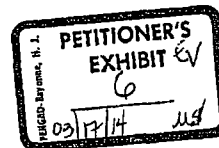
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		SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: Chad Rodden		
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(BY) DEPUTY CLERK		
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT		ATTORNEY'S NAME AND ADDRESS Joshua Snow Kendrick JOSHUA SNOW KENDRICK, PC 1720 Main Street, Suite 202 Columbia, SC 29201 (803) 765-0717

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Robert Cannon, III, #328347,

Applicant,

v.

State of South Carolina,

Respondent.

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

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

ORDER OF DISMISSAL

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

PROCEDURAL HISTORY

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

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

Applicant appealed his convictions and sentences to the South Carolina Court of Appeals. Melissa J. Kimbrough Armstrong, Esquire, represented Applicant in his appeal. Following briefing and oral argument, the Court of Appeals affirmed Applicant's convictions and sentences. State v. Robert Cannon, 2011-UP-267 (Ct. App. filed June 8, 2011). The Remittitur was issued on June 24, 2011.²

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF EVIDENCE ADDUCED AT TRIAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING

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

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

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

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

He spoke with Kendrick about possible plea offers and he recalled an offer for eight to twelve years imprisonment for the lesser included offense of voluntary manslaughter and the dismissal of his burglary charge. He testified that he rejected this offer because he is innocent. Kendrick did not explain the theory of hand-of-one, hand-of-all or accomplice liability to him and that he likely would have taken the plea offer if Kendrick had explained these concepts to him. He also testified that counsel never discussed with him the possibility of an Alford³ plea and that he would have taken a plea pursuant to Alford.

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

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

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

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

³ North Carolina v. Alford, 400 U.S. 25 (1970).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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Ineffective Assistance of Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Allegation 10. Counsel failed to present a defense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and
#29

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

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

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

*and
8/30*

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

CONCLUSION

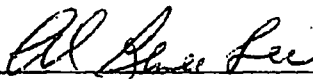
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


 ALISON RENEE LEE
 Presiding Judge
 Fifth Judicial Circuit

September 14, 2015
 Columbia, South Carolina

WITNESSES

Catoe, KCSD

ARREST WARRANT NUMBER

K142530

ACTION OF GRAND JURY

FILED

Foreperson of Grand Jury
Date: FEB 06 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-28-0017

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

February TERM 2007

THE STATE
vs.

Robert Cannon

Indictment for

BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311
CDR Code: 079
Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this Court

Joyce McDonald
Clerk of Court Kershaw County

2007 FEB 06 PM 4:10
CLERK OF COURT

16-11-311-079

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

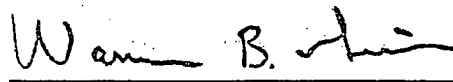
INDICTMENT

At a Court of General Sessions, convened on February 7, 2007, the Grand Jurors of Kershaw County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That Robert Cannon did in Kershaw County on or about December 12, 2006, willfully and unlawfully enter the dwelling of Joshua Zoch, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness, in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

2103

COUNTY OF KERSHAW

STATE

VS. Robert Cannon

INDICTMENT/CASE#:

2007-GS-28-00017

A/W#: K142530

Date of Offense: 12/12/06

S.C. Code §: 16-11-0311

CDR Code #: 0079

AKA: _____

Race: B

Sex: M

Age: 19

DOB: _____

SS#: _____

Address: _____

RD. _____

City, State, Zip

Columbia, SC 29229

DL# _____

SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Joanna McDuffie

Solicitor

Defendant

[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 36 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina

Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP _____

days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2111216Sentence Date: 5/13/08Court Reporter: Jenny Williams

Clerk of Court/ Deputy Clerk

ATTEST True, Correct & Certified
Copy of Original on File in this
Court[Signature]
Clerk of Court Kershaw County

DOCKET NO. 2007-GS-28-0421 *MA*

0018

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

November TERM 2007

THE STATE
vs.

Robert Cannon

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

WITNESSES

Catoe, KCSD

ARREST WARRANT NUMBER

K142528

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date: FEB 01 2007

VERDICT

[Signature]

[Signature]

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this Court

[Signature]
Clerk of Court Kershaw County

FILED
FEB 01 2007

1-0310

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

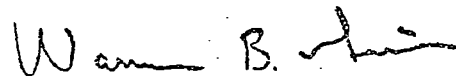
INDICTMENT

At a Court of General Sessions, convened on February 7, 2007, the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Robert Cannon did in Kershaw County on or about December 12, 2006, feloniously, willfully and with malice aforethought, kill one Joshua Zoch by means of repeatedly hitting and kicking the victim and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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


Warren B. Giese, SOLICITOR

2106
STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW
STATE VS. Robert Cannon

AKA: _____
Race: B Sex: M Age: 19
DOB: _____ SS#: _____
Address: _____ RD. _____
City, State, Zip: Columbia, SC 29229
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2007-GS-28-00018
AW#: K142528
Date of Offense: 12/12/06
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § 16-3-10, 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sanna McDuffie
Solicitor

Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus
costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina
Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation

[Signature]
Clerk of Court/ Deputy Clerk
Court Reporter: Jenny Williams

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 5/13/08

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

[Signature]
Clerk of Court Kershaw County