

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

TIMOTHY DONALD DINGLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000103

APPENDIX

JOHN H. STROM
Appellate Defender

KATHRINE H. HUDGINS
Appellate Defender

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

ALAN WILSON
Attorney General

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Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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NOV 13 2017

S.C. SUPREME COURT

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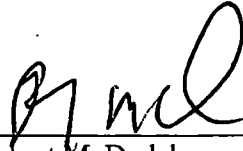
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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 22nd, 2014.



Robert M. Dudek
Chief Appellate Defender

RECEIVED

OCT 22 2014

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

DOCKET

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Sumter County

OCT 22 2014

George C. James, Jr., Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

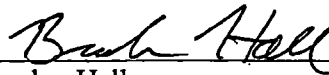
TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

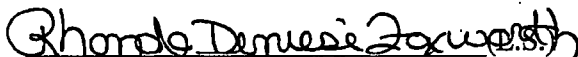
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 22nd day of 2014..



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of October, 2014.



Notary Public for South Carolina
My Commission Expires: October 17, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing witness Dyshunn Hunter to testify that after the apartment fire another man was beating appellant and telling him, "You want to burn people up? You want to burn people up?" since this was highly prejudicial hearsay which indicated the third party aggressor had reason to believe appellant was guilty of arson?

STATEMENT OF THE CASE

Appellant was indicted for two counts of murder and two counts of arson in the first degree as a result of an apartment fire in Sumter County in which two minors were killed. R. p. * Appellant's case was called to trial on August 12, 2013 before the Honorable George C. James, Jr. and a jury. Timothy W. Murphy represented appellant. Ernest E. Finney, III, John P. Meadors and Tyler Brown represented the state. Tr. 1.

At the conclusion of the trial the jury found appellant guilty on each of the four counts. Tr. 43, ll. 14-24. Judge James sentenced appellant to life imprisonment for the murder counts, and imposed a consecutive thirty-year prison term for the arson counts. Tr. 491, l. 16 – 492, l. 2.

This appeal follows.

ARGUMENT

The court erred by allowing witness Dyshunn Hunter to testify that after the apartment fire another man was beating appellant and telling him, "You want to burn people up? You want to burn people up?" since this was highly prejudicial hearsay which indicated the third party aggressor had reason to believe appellant was guilty of arson

Introduction

Two children were killed in an apartment fire in this case. The state maintained appellant, who was in a relationship with the mother of the children, Liz Young, deliberately set the fire at Apartment 62, Lantana Apartments in Sumter.

Relevant Facts

Shauntee Williams testified that Liz Young came to her nearby apartment on the evening of March 27, 2012. Tr. 106, l. 18 – 108, l. 9. Young asked to use the restroom and Williams said she noticed that Young was upset. "So I asked her to sit down and talk to me." Tr. 108, l. 8 – 109, l. 10.

Young told Williams she had been arguing with her boyfriend, appellant, that evening and that he had "threatened to burn the house down." Tr. 109, ll. 4-23. Williams said Young was crying at the time but Young agreed to stay at her apartment long enough to have a piece of chicken that Williams was cooking. Tr. 110, ll. 1-7.

While they were waiting for the chicken to finish cooking they "heard the siren and she [Young] left the house." Tr. 110, ll. 3-13. Williams said then received a phone call telling them that Young's apartment was on fire. Tr. 110, ll. 11-17; Tr. 126, l. 8 – 133, l. 5.

SLED Agent Sterling Seals testified that the apartment fire had three points of origin. The first was at the top of the bedroom stairs. The second point was in the master bedroom. And the third area of origin of the fire was in a folding chair. Tr. 181, ll. 5-18.

Seals opined that no accelerants were used in the fire but that it was deliberately set. Seals offered the fire could have been set with a match, a cigarette lighter or a candle. Tr. 181, l. 1 – 182, l. 18. Over objection, Seals testified in his opinion the fire at various places in the apartment was twelve hundred degrees Fahrenheit, and in another place five hundred degrees Fahrenheit. Tr. 195, l. 12 – 196, l. 23.

Anastasia Young was the daughter of Elizabeth Young, and the two minor victims in the fire, Robert Jackson and Aliyah Jackson were her brother and sister. Tyrmaine Young was her other brother. Tr. 207, ll. 9-18. She testified her mother, her two brothers and sister lived with appellant in Apartment 62, Lantana Apartments in Sumter. Tr. 209, ll. 3-10.

Young said she put the two minor children to bed in their bunk beds that night, and then she “went back downstairs and watched TV.” Tr. 215, l. 24 – 216, l. 6.

Young remembered that her mother, Liz, and appellant were arguing that evening when they got home after the children were already in bed. Tr. 216, l. 18 – 217, l. 5. Young claimed appellant said: “He’d kill all of us.” Tr. 217, ll. 23-24.

She also maintained appellant was supposed to stay at the apartment after her mother left but that he followed her and her mother part way towards Williams’s apartment saying, “fuck you all, fuck you,” and he said “he would burn the house down.’ Tr. 218, l. 18 – 219, l. 2. Anastasia continued with went with her mother to Shauntee Williams’ apartment, and appellant went elsewhere. She remembered they sat down for a short time waiting for the

chicken to be cooked and then heard a siren. The children were at Apartment 62 alone. Tr. 220, l. 11 – 221, l.8.

Dyshunn Hunter had two children with Anastasia Young. Tr. 234, l. 14 – 235, l. 9. Hunter got into an argument with his mother, Anna, and he said that Liz Young told him he could stay with her and find a job. Tr. 238, ll. 8-17. This was the fateful March 27, 2012 day. Tr. 242, ll. 11-23.

Hunter remembered that appellant and Liz Young were drinking that evening. He remembered an argument between appellant and Young where appellant told Young: “Fuck you bitch, fuck you bitch, I’m going to burn this mother-fucker up, fuck you bitch.” Tr. 242, ll. 11-23.

Hunter testified they were driving to the hospital after the apartment fire and one of the family members spotted appellant. Hunter said he chased after appellant and his best friend, Trymaine Young, caught appellant and started beating him. Hunter said Trymaine was telling appellant as he beat him: “You want to burn people up? You want to burn people up?” Defense counsel’s hearsay objection was overruled. Hunter then added that he was dragging appellant on the ground while Trymaine continued to hit appellant. Tr. 253, l. 21 – 255, l. 8.

Trymaine Young was the son of Elizabeth Young and the brother of the deceased minors in the fire. Tr. 267, l. 7 – 268, l. 3. On cross-examination Trymaine admitted that appellant did not want to move into his mother’s apartment but wanted his mother and the two deceased children to move into a house with him. Trymaine also acknowledged appellant did not want Trymaine to move in with them. Tr. 275, l. 22 – 276, l. 5. Trymaine

also admitted that he was beating appellant following the fire because he had been told appellant was responsible for the fire. Tr. 277, ll. 7-12.

Elizabeth Young testified she had dated appellant for about a month prior to the fire, and appellant had begun to move into her apartment. This would contradict other testimony that appellant and Young had known each other for a long time, and that they had a very volatile "on and off" relationship. Tr. 321, ll. 1-14.

Young claimed that on the March 27, 2012 night of the argument that appellant had threatened to burn her apartment down. Young said this was not the first time appellant had made such a threat but they did not take him seriously on the prior occasion. "No one really paid it any attention." Tr. 339, l. 23 – 340, l. 2.

Young acknowledged appellant was receiving a social security disability check but she denied he ever paid partial rent on her apartment. She did acknowledge that appellant signed over the authority to cash his checks to her. Tr. 343, ll. 3-11.

Henry Dingle, appellant's younger brother, claimed appellant had "an off and on relationship" with Liz Young for about ten years. Henry claimed on the night of the fire that appellant came to his apartment, and said that he was in trouble. Henry claimed appellant told him that he had been shot in the leg, and that he had done something "really bad and that he was going to jail for a long time." Tr. 379, ll. 2-15.

Henry maintained that when he asked appellant what he had done, appellant responded: "Don't you hear the fire trucks and ambulance?" Henry claimed appellant admitted he "burned Liz's apartment down with all the children in it and I know at least two or three of them were babies." Tr. 379, ll. 2-15.

Appellant called two witnesses, Betty Smalls and Rosa Kelley. Smalls was the sister of Timothy and Henry Dingle, and she testified that Henry Dingle was “a pathological liar.” Tr. 414, ll. 2-5.

Rosa Kelley was a cousin of appellant and Henry. She also opined that Henry Dingle was a “habitual liar.” Tr. 418, ll. 1-4.

Discussion

Rule 801(c), SCRE provides that “hearsay” is a statement other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.

In State v. Caulder, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986), the defense offered the testimony of a neighbor that she received three phone calls from an unidentified caller regarding the location of the body. The question was whether this testimony was offered to prove its truth which was that someone other than the defendant committed the crimes.

The defense argued that the testimony was offered to prove something other than the matter asserted. This Court determined that the testimony was offered to prove that someone other than the defendant knew something about the location of the body, which was essentially the truth of the matter asserted. Collins, South Carolina §16.3 B.6 at p. 479 (2d ed. 2000).

Here, the judge ruled that Hunter’s testimony that another man, Trymaine, was beating appellant following the fire and telling appellant that is what he deserved for “burning people up” was not inadmissible hearsay. The court reasoned that the testimony

was not offered to prove the truth of the matter asserted. Essentially, the judge ruled the testimony was not offered to show that appellant set the fire. That was incorrect.

In State v. Sims, 387 S.C. 557, 694 S.E.2d 9 (2010), the Court dealt with hearsay testimony which the state alleged was properly admitted under the co-conspirator exception. The victim in the Sims case was Juan Anderson. Davis and Ruff acknowledged helping Sims hide Anderson's body and destroy evidence. Davis testified extensively regarding the events that followed Anderson's death. Davis testified that at about 3:00 in the morning appellant Sims and Natalie Englis showed up at her doorstep. Davis claimed she was unaware of Anderson's death at the time, or that her friends were planning to help Sims dispose of Anderson's body. Davis said she asked Englis what had happened and *Englis told her that Sims had murdered someone*. As in this case, defense counsel's hearsay objection was overruled. The Supreme Court held that this testimony about what Davis claimed Englis told her was inadmissible hearsay.

As seen above, in this case, Hunter testified that Trymaine was beating appellant and telling him this is what he deserved for setting the fire. This testimony was offered for the truth of the matter asserted, and it was highly prejudicial hearsay and should have been excluded.

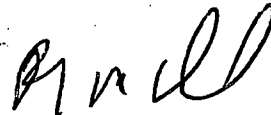
The defense's case consisted of attacking Henry Dingle as a "pathological liar" and a "habitual liar" where he had claimed that appellant had admitted his role in starting the fire. The remainder of the state's case against appellant largely consisted of the fact that appellant and Young had been arguing that night, and that appellant allegedly threatened her. The defense clearly attempted to show the jury that young children were improperly left alone in the house that night when the tragic fire started, and that

appellant was being used as a scapegoat for their unlawful act of leaving the young children alone. As such, the error in admitting this hearsay evidence was not harmless beyond a reasonable doubt. Harmless error is a doctrine that should be “employed guardedly ... and on a case by case basis.” State v. Morris, 289 S.C. 294, 297, 345 S.E.2d 477, 479 (1986). Error is only harmless when it could not reasonably have affected the result of the trial. State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985).

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of October, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

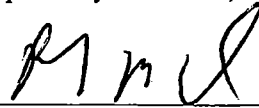
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy D. Dingle states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge George C. James, Jr., which was held on August 12-14, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Timothy D. Dingle.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 22nd day of October, 2014.

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Entire trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 22nd, 2014



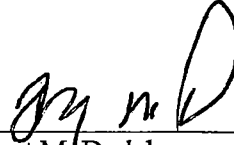
Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 22, 2014.



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

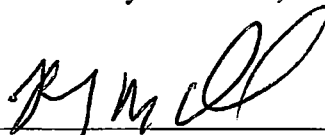
TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

CERTIFICATE OF SERVICE

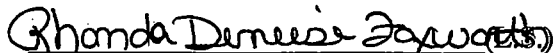
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Timothy D. Dingle, #298989 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22nd day of October, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of October, 2014.



Notary Public for South Carolina
My Commission Expires: October 17, 2021

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy D. Dingle, Appellant.

Appellate Case No. 2013-001785

Appeal From Sumter County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-272
Submitted March 1, 2015 – Filed June 3, 2015

APPEAL DISMISSED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia; and Solicitor Ernest Adolphus Finney,
III, of Sumter, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, LOCKEMY, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

Timothy D. Dingle 298989
Full name and prison number (if any) of Applicant,

v.

State of South Carolina

FORM 5

RECORDED

2015 JUN 24 PM 3:32 IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

2015-CP-43-1519

BEING A TRUE COPY
OF ORIGINAL FILE

Bolton APPLICATION FOR
DEPUTY CLERK OF COURT

FOR POST-CONVICTION RELIEF
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make cl~~r~~ to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay th~~fe~~es and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution.
2. Name and location of Court which imposed sentence Court of General - Gen Back
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-43-07739
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 14, 2012, Sentence to Life and 30 Years
 - (b) _____

RECORDED

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty After a plea of not guilty.
 - (c) after a plea of nolo contendere _____

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

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of appeals.
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed.
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Date filed June 3, 2015
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Anders V. California, 386 U.S. 738 [1967]
 - ii. _____
 - iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) Trial Attorney Ineffective assistance of Counsel.
- (b) Failure to adequately investigate case.
- (c) Perjury.

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

- (a) Trial Counsel representation fell below - [on Back]
- (b) Counsel failure to investigate crime scene [on Back]
- (c) Prosecution knowingly used perjury evidence.

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

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

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

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

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

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

No

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

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

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

- (a) Ineffective assistance of counsel could not - over-
- (b) counsel failed to adequately investigate case -
- (c) Perjury could not be raised in direct appeal.

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
 - i. Timothy W. Murphy - 103 North Main St. Sumter S.C. 29150
 - ii. Robert M. Oudek [Address on back]
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Timothy W. Murphy - Trial Counsel
 - ii. Robert M. Oudek - Appeal Attorney
 - iii. _____

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

A New trial

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

NO

STATE OF SOUTH CAROLINA

County of

RECORDED
2015 JUN 24) PM 3:32
JAMES C. CAMPBELL
CLERK OF COURT
SUMNER COUNTY, SC

VERIFICATION

2015-CP-43-1519

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

Timothy D. Quisenberry

SWORN to and subscribed before me this 19th
day of June, 2015

Ludreon Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2010

2015-CP-43-1519

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

RECORDED
2015 JUN 24 PM 3:32
CLERK OF COURT
SUMTER COUNTY, S.C.

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

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

Timothy D. O'Connell
Applicant

SWORN or affirmed to and subscribed before me this
19th day of June, 2015

Ludraan Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Timothy D. Dingle, # 298989,)	2015-CP-43-1519
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 24, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the May 2012 term of the Sumter County Grand Jury for two counts of arson-first degree and two counts of murder (2012-GS-43-0773). Timothy Murphy, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable George C. James, Jr. Applicant was convicted as indicted on April 14, 2013. Judge James sentenced Applicant to thirty year term of imprisonment for each count of arson-first degree running consecutive to a sentence of life without parole for each murder count. Applicant did not appeal his guilty plea or sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. In an unpublished opinion filed June 3, 2015, the South Carolina Court of Appeals dismissed the appeal. State v. Dingle, 2015-UP-272 (Ct. App. June 2015). The Remittitur was issued on June 23, 2015.

Attached herewith and incorporated herein are the records of the Bamberg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel
 - a. Trial counsel representation fell below standards.
 - b. Failure to adequately investigate case.
2. Perjury.
 - a. Prosecution knowingly used perjured evidence.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

September 30, 2015.

State of South Carolina)	In the Court of Common Pleas
County of Sumter)	Third Judicial Circuit
	2015-CP-43-1519

Timothy Donald Dingle,)	
)	
Applicant,)	
)	
vs.)	Transcript of Record
)	
State of South Carolina,)	
)	
Respondent.)	
)	
_____)	

March 15, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

A P P E A R A N C E S:

Lance S. Boozer, Esquire
Attorney for Applicant

Daniel F. Gourley, II, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits were marked during proceeding.

TRANSCRIPT OF RECORD

1
2 (Whereupon, the proceeding was commenced at 9:38 a.m.)

3 THE COURT: Mr. Gourley?

4 MR. GOURLEY: Thank you, Your Honor. We're going to
5 do Timothy Dingle first, Docket No. 2015-CP-43-1519. He is
6 presently confined in the South Carolina Department of
7 Corrections pursuant to orders of commitment of the Sumter
8 County Clerk of Court.

9 He was true-bill indicted at the May 2012 term of the
10 Sumter County Grand Jury for two counts of arson in the
11 first degree and two counts of murder. Mr. Murphy
12 represented him.

13 He proceeded to a jury trial before the Honorable
14 George C. James, Jr., and was convicted as indicted on
15 April 14th, 2013. Judge James sentenced the applicant to a
16 30-year term of imprisonment for each count of arson in the
17 first degree, running consecutive to a life sentence
18 without parole for each count of murder.

19 A timely notice of appeal was filed on applicant's
20 behalf, and an *Anders* brief was submitted. The South
21 Carolina Court of Appeals dismissed the appeal. And the
22 remittitur was issued on June 23rd, 2015.

23 He filed a timely application for postconviction
24 relief on June 24th, 2015, alleging ineffective assistance
25 of trial counsel for failing to adequately represent him

1 and investigate the case and perjury -- prosecution
2 knowingly used perjured evidence. Mr. Dingle through his
3 counsel filed an amended -- amended application on March
4 3rd, 2016, for failing to object to improper jury
5 instruction, failure to objected to witnesses they met the
6 defendant at Kershaw, failure to testify under the
7 erroneous advice of counsel, failed to -- and failed to
8 adequately cross-examine the witness; and then, also a
9 claim of ineffective assistance of appellate counsel.

10 The state filed its return on October 1st, 2015. And
11 he's represented in this matter by Mr. Boozer.

12 MR. BOOZER: Thank you, Your Honor. If it pleases the
13 Court, we would call Mr. Dingle to the stand.

14 THE COURT: All right, sir.

15 (Whereupon, the witness came forward.)

16 (Whereupon, Mr. Boozer and Mr. Gourley conferred.)

17 TIMOTHY DINGLE, having been first duly sworn,
18 testified as follows:

19 THE COURT: Excuse me.

20 (Off the record briefly.)

21 THE COURT: Excuse me again. You may proceed.

22 DIRECT EXAMINATION

23 BY MR. BOOZER:

24 Q Good morning, Mr. Dingle. How are you?

25 A Good morning. I'm fine.

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE

6

1 Q And if you would, just -- I know you -- you don't
2 speak too terribly loudly. So just keep your voice up so
3 madam court reporter can take everything down that you're
4 saying today. Okay?

5 A Yes, sir.

6 Q All right. Mr. Dingle, do you know why you're here
7 today?

8 A I'm here on my PCR, trying to get a -- a -- the courts
9 to listen to my side of the story, sir.

10 Q And are you asking this Court to grant you a new
11 trial?

12 A Yes, sir, I am.

13 Q All right. And what are -- you're currently serving
14 -- what's your current sentence, and what were your
15 convictions?

16 A I was convicted for arson in second degree twice and
17 two counts of murder.

18 Q And what sentence did you receive?

19 A Life and 30 years.

20 Q Life with a consecutive 30 years?

21 A Yes, sir.

22 Q Okay. Who was your trial attorney?

23 A Mr. Timothy Murphy.

24 Q Now, before -- you've got a number of allegations, and
25 we'll go through those in just a moment. But tell me:

1 When were you first -- were you appointed -- was Tim --
2 excuse me -- was Timothy Murphy appointed to represent you?

3 A Yes, sir.

4 Q Do you know about when he was appointed to represent
5 you?

6 A It was in April 2012.

7 Q Okay.

8 A And at PCR is when I first met Mr. Murphy.

9 Q Do you know about how many times you met with Mr.
10 Murphy to discuss your case?

11 A It wasn't that many times when I met with Mr. Murphy.
12 Plus, we didn't get to -- to speak to each other that long.

13 Q Well ---

14 A And ---

15 Q ---, I -- I understand you say it wasn't that many
16 times. Do you have any guess about how many times it may
17 have been that you two met?

18 A Five or six times.

19 Q And tell me and -- and tell the Court what you and Mr.
20 Murphy would discuss during your meetings.

21 A Well, every time up until the last time he came to see
22 me, we always discussed that we was waiting on a motion of
23 discovery. Whenever I try to talk to Mr. Murphy about
24 building a defense, he always say wait till we get a motion
25 of discovery. When we finally got a motion of discovery,

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE 8

1 it was 17 months prior to my preliminary. And at that time
2 -- at that time we never really built a client and attorney
3 relationship because I always mostly talked to
4 investigator.

5 Q Okay. Well, when you said 17 months, you mean 17
6 months after you were arrested or ---

7 A Well, from the arrest date and the preliminary date,
8 the -- the preliminary hearing should've been about a few
9 weeks behind. So it was 17 months period -- close to
10 mostly 17 months.

11 Q Okay. I got you. You mentioned about an
12 investigator. Was there an investigator that you spoke
13 with that was working with Mr. Murphy?

14 A Yes, sir. Mr. Harden, I think it were.

15 Q All right. How many times did you meet with the
16 investigator?

17 A I met with him around about -- about six to eight
18 times.

19 Q And we're talking about a private investigator that
20 was assisting you with the case?

21 A Yes, sir.

22 Q All right. What would you two discuss?

23 A The only thing me and him had discussions were stuff
24 out of the investigator report, like who could he go see to
25 -- to bring up to testify in my behalf. And I gave him

1 seven people -- well, six -- six, not counting the -- the
2 phone company. And he never get to -- seemed to find none
3 of them.

4 So only thing we talk about was the few people that he
5 did talk to that he found at -- at my house at the present
6 time that was in the yard, a couple of people like that.

7 Q Did -- did you ever have any discussion with either.
8 Mr. Murphy or the investigator about what they thought
9 about your case?

10 A The only time I really talked to any of one of those
11 men about my case was after we got a motion of discovery.
12 And I talked to Mr. Murphy twice during that period: once,
13 when he brought it down there to present me with a motion
14 of discovery; and a couple weeks later or so, about a week
15 later, he came back and went over with me the -- the stuff
16 in it. And -- and at that time Mr. Murphy stated that if
17 he was -- if he was on the jury, he would found me guilty.

18 Q Okay.

19 A And ---

20 Q He stated ---

21 A But an investigator -- an investigator, he said that
22 he could never -- never find the people that I wanted to
23 have to testify against me. And he came in, raising Cain
24 and trying to make me tell him that I was guilty.

25 Q When did that occur?

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE 10

1 A That occurred about a week before Mr. Murphy brought
2 my motion of discovery. Because the investigator came to
3 see me first and told me that -- that they had my -- my
4 motion of discovery and that Mr. Murphy will be coming to
5 see me within that week.

6 Q Okay. What -- when he told you that, as you've
7 stated, what did you think?

8 A At the time I went back -- I went back to my -- my
9 living area. I tried to get the -- the C.O. to -- to get
10 me some paperwork to file a motion. But ---

11 Q A motion for what?

12 A To -- to see what I could do about the investigator
13 trying to force me to -- into saying I was guilty.

14 Q Okay.

15 A And then, Sumter County don't have a law library, so I
16 never got to do that.

17 Q All right. Tell me what you and Mr. Murphy --
18 obviously, you -- you had a trial. Did you know what your
19 defense strategy or your trial strategy would be prior to
20 trial?

21 A At the time Mr. Murphy came to see me and brought my
22 motion of discovery and told me that we had ten days, then
23 we was going to be coming to trial. So I asked Mr. Murphy
24 about our defense. So Mr. Murphy told me to take my motion
25 of discovery back to my cell and try to come up with my own

1 defense.

2 And every time I tried to talk to Mr. Murphy about one
3 of the witnesses I thought that would've had a lot of
4 bearance [sic] on my case, was Mr. Henry Dingle. He said,
5 "Don't worry about Mr. Dingle. We'll take care of Mr.
6 Dingle."

7 But when we got to trial, the only defense that I had
8 in my trial was two witnesses that was trying to discredit
9 Mr. Dingle.

10 Q Who -- who was Mr. Dingle?

11 A Mr. Dingle was my brother.

12 Q All right. And what was -- what did you feel was so
13 relevant about Mr. Dingle and his testimony?

14 A Well ---

15 Q He testified at trial, right?

16 A Yeah.

17 Q Okay.

18 A At the time about Mr. Dingle, he was drinking the
19 night the -- the incident occurred when he's trying to
20 state it that I came and told him that I commit the crime.
21 And -- and one my brothers came down from California to try
22 to see what -- what was going on and about to get me a
23 lawyer. Say that my brother Henry told him that he was so
24 drunk that he didn't know what -- what I told him or what
25 he told the detectives. But he still wrote a statement.

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE 12

1 So -- so now when -- when I try to build a defense for
2 Mr. Dingle -- Mr. Henry Dingle in the statement that I had
3 in my -- my investigator report and -- and the detective
4 didn't go by and see none of the witnesses. I tried to get
5 to get him to go through the neighborhood to try to show
6 that my brother wouldn't -- he wouldn't be a credible
7 witness. They -- they couldn't seem to find him.

8 So I didn't have a defense for Mr. Dingle. Plus, Mr.
9 Dingle -- Mr. Dingle claim in his trial testimony that I
10 was on drugs and stuff so bad and drinking stuff. But he
11 the one that had two records depending -- he -- he was
12 pending two counts of drug charges at the prior time.

13 Q When -- when your attorney told you not to worry about
14 Mr. Henry Dingle, did he tell you what he was going to do
15 to refute his testimony?

16 A No, sir. He never came out and gave me a statement of
17 whatever -- what -- what kind of defense he might've
18 would've have.

19 Q Now, let's -- let's get into your allegations, okay?
20 Now, you filed an application. And in -- and in the
21 original application you filed, stating that trial
22 counsel's representation fell below standards. Is that one
23 of your allegations?

24 A Yes, sir.

25 Q You also indicated or alleged that he failed to

1 investigate the case, as well as a claim for perjury that
2 you believe the prosecution knowingly used perjured
3 evidence. That was your original application?

4 A Yes, sir.

5 Q All right. Walk the Court through what you mean by
6 each of those allegations. And we'll begin with the first
7 one, where you feel like your lawyer's representation fell
8 below standards.

9 A Okay. First of all, I think that when Mr. Murphy put
10 in for a -- a -- for a -- a investigator to investigate the
11 case, Mr. Murphy told me hisself -- he said, "Mr. Dingle, I
12 really need to put in for a fire investigator, because I
13 want to know how this fire occurred, how the fire started."
14 He said, "I'm going to put the petition to try to get the
15 funds for that."

16 So we never got a fire investigator. And if you
17 charged with -- to my -- to -- for me personally, I feel if
18 I'm charged with an arsoning [sic] crime, that I should've
19 had a fire investigator before I had a -- before I had a --
20 a private investigator. Because the state -- the state
21 brought up witnesses that -- that described the way the
22 fire occurred.

23 And -- and Mr. Wilcox, Mr. Geddings of the Sumter Fire
24 Department, and Mr. Sterling Seals, I think, of SLED, they
25 all describe how the fire occurred. So my defense -- I

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE 14

1 didn't have a defense for these three witness because I did
2 not have a fire investigator.

3 Q All right. What else do you think under that
4 allegation that your lawyer failed to do?

5 A He failed to -- he failed to investigate each
6 witnesses that -- that gave testimony at trial and also
7 gave, in the investigative report, statements. Like, one
8 lady claimed that she saw me and my girlfriend walking past
9 the landlord office, arguing. Then we went inside the
10 house. Then five minutes later or two minutes later or so,
11 I came back out and got on the phone and stand beside my
12 apartment building and called and threatened her, if she
13 don't come home, I'm a kill everybody and burn the house
14 down.

15 Now, if I had a defense, if -- if Mr. Murphy had
16 investigate, I would've had a phone records to -- to -- to
17 prove whether I call her or not. Nobody never went -- the
18 -- the -- a detective for the state never went and got a
19 phone record, nor did my defense attorney got a phone
20 record. That would've have some kind of outcome on that
21 witness testimony. Because at that time, I never even had
22 minutes on my phone.

23 Q Let -- let me ask you this: You've also got the --
24 you feel like -- and this kind of dovetails with some of
25 your other allegations -- but that your lawyer failed to

1 investigate the case.

2 A Yes, sir.

3 Q I think you've touched on that already. But if
4 there's anything you need to expand upon, please do so.

5 A Each -- each witness -- each witness gave -- gave
6 testimony that could've easily been investigated. Like,
7 Mr. Hunter -- Mr. Hunter ---

8 Q These are ---

9 A --- stated ---

10 Q --- all witnesses that testified at trial?

11 A Yes, sir.

12 Q Okay.

13 A Mr. Hunter stated that he saw me coming through the
14 path. And -- and it's -- in the trial statement, he stated
15 that they saw -- he saw me coming down Carolina Avenue or
16 either up Carolina Avenue. And in his investigator report,
17 he stated that he saw me coming through the path. So he
18 ran and football-tackle me from behind and got me by my
19 collar and drag me.

20 Nobody never asked me how far or how many feet on
21 asphalt why Mr. -- Mr. Tyrone -- Mr. Young -- Trymaine
22 Young -- why Mr. Trymaine Young repeatedly beat me. So
23 they supposed to -- and dragged me to the police officer,
24 but nobody never asked whether any scars was on me.
25 Because I had on a short-sleeve shirt. And they supposed

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE 16

1 to been repeatedly beating me for certain many feet. And
2 nobody investigate that.

3 When the detectives took all my clothes at the Sumter
4 County Jail, they took all of my clothes. Everything --
5 they took everything I had on -- my wallet, everything.

6 So now when we got to trial, nobody never brought up
7 no evidence to -- to say whether these witnesses actually
8 football-tackle me and drag me certain many feet on asphalt
9 to a police officer, nor did no one got the police officer
10 and brought to trial to testify how did I look when -- when
11 he took me downtown to be questioned by a detective. Three
12 different detective questioned me. And no detective never
13 was asked was Timothy Dingle beat up; was his clothes
14 looked like he was dragged through concrete, asphalt.

15 And another -- another officer took me from the
16 department to the Sumter County Jail. And nobody never
17 brought him to trial and asked him whether I was beat up,
18 nor did they brought the nurse, nor the people that booked
19 me in. And there wasn't no evidence of none of these --
20 these witnesses' allegations against me.

21 Q Let me ask you this: In your allegation where you're
22 alleging perjury and prosecution knowingly using perjured
23 evidence, explain to the Court what you mean by that.

24 A Well, on Mr. Dingle -- in Mr. Dingle ---

25 Q You're talking about your brother?

1 A My brother, Mr. Dingle -- Henry. Yeah.

2 Q Okay.

3 A In Henry investigator report he claim that I came to
4 his house and told him that I commit this crime and that we
5 went to the store, which was on the corner of Miller Road
6 and Broad Street. It's about a block from where we were
7 staying at.

8 He claimed that we went to the -- to the Pantry store
9 to got beer; that he couldn't go in the store until after
10 12 because he wasn't posed to be at the store. So when the
11 person who knocked off at 12 left, he went in and purchase
12 the beer and -- and -- and I was posed to be outside.

13 He stated I was outside on the camera. Because at
14 that store they got a bunch of cameras around there. So if
15 I was at the store with Mr. Dingle -- Henry, I would've
16 been on the camera. So when I tried to get the detective
17 to go by there to -- to verify that I wasn't at the store
18 or to get the detective to go down to the courthouse here
19 in Sumter to get the records where the judge say for me not
20 to be 100 feet to -- prior to that store, nobody went and
21 did that.

22 And that would've -- that would've had some outcome on
23 my case if they could've proved that Mr. Dingle couldn't
24 possibly -- he couldn't possibly went to the store. And in
25 his -- and in his -- and in his trial testimony, he said

DIRECT EXAMINATION BY MR. BOOZER - TIMOTHY DINGLE 18

1 that when I came to his house and told him I commit the
2 crime, he told me to go jump cross the fence in some other
3 people yard who just move and wait till he come back from
4 the store. And nobody never went to see whether Mr. Dingle
5 was at the store or not.

6 So I figure if the state had to have went and see
7 whether that man was at the store, then they would've find
8 out that I wasn't -- I wasn't at the store. And if they
9 didn't -- if they didn't go to the store and see if they
10 had any evidence that I was at the store, they should've
11 been in my motion of discovery. So I would've -- I
12 would've had exculpatory evidence that would've helped my
13 case.

14 Q What -- at trial were -- were a couple of folks called
15 to testify in your defense?

16 A The only defense I had was two witnesses to -- to --
17 to try to credit Mr. Henry Dingle.

18 Q And -- and who were they?

19 A My sister, Ms. Betty Smalls; and my cousin, Ms. Rosa
20 Kelly.

21 Q And they were both related to Mr. Henry Dingle?

22 A Yes, sir. We -- we -- we the same related to him.

23 Q What was the purpose of their testimony?

24 A The only purpose I know for their testimony we
25 could've possibly be is that Mr. Henry Dingle is a big

1 liar, sir.

2 Q And that's -- is that ---

3 A That's ---

4 Q --- what they testified to: that they -- in their
5 opinion, they ---

6 A One ---

7 Q --- felt that Mr. Dingle ---

8 A One ---

9 Q --- was a ---

10 A -- said ---

11 Q --- a liar?

12 A --- a -- well, I can't quite pronounce, but one said
13 telepathical [sic] liar and one said a -- a -- another
14 word. I don't -- like a hypatallica (phonetic) or
15 something.

16 Q Okay. Well, let me ask you this: Did you know that
17 those two folks were going to be testifying at your trial?

18 A Well, when we start this -- when I -- when I start to
19 talk to the judge about -- about me being -- to testify for
20 my own self, we had these two witness scheduled for
21 testimony. But when the judge got me up to the desk and
22 asked me about whether I'm a testify or not, that he was
23 going give me time to think about it and go talk to my
24 lawyer about it.

25 When we went back and talk a little while, Mr. Murphy

1 said that he wanted to have last argument. In order for
2 him to have last argument, that I couldn't testify in my
3 behalf and that the two witness wouldn't been called to
4 testify in my behalf.

5 So when we got to -- to talk about that, I decide not
6 to testify because of my -- my attorney say, "It's up to
7 you, but I prefer to have last -- last -- last -- he wanted
8 to be the last person to speak at the trial, the -- the --
9 the last testimony."

10 Q Okay. Did you understand that if those other two
11 witnesses who testified about your brother testified, then
12 you would not have ---

13 A Okay. So ---

14 Q --- the last argument?

15 A So after we decide for me not to testify and I came to
16 sign the papers not to testify, I signed the papers under
17 the -- under the -- under the understanding that we was
18 going to have last argument. So when I signed the papers
19 and then after I signed the papers Mr. Murphy did call the
20 two witnesses, so that part of my defense for last argument
21 was out.

22 Q And had you known that the witnesses were going to be
23 called and that you would then not have had the last
24 argument, would you have chosen to testify?

25 A I would've chosen to testify because I've only -- I

1 would've been the only witness I had to tell my story at
2 trial.

3 Q And what would your story have been?

4 A I would've been not guilty. I -- I would've told them
5 that I wouldn't -- I wouldn't have been able to be at all
6 these same places that people claim that I would've been --
7 I been at. I couldn't be in all these places at the same
8 time.

9 I couldn't have been with Henry at six o'clock. I
10 couldn't have been with Ms. Liz Young at six o'clock.
11 Plus, she claims she was at work up until 5:30 or so. She
12 said she babysitting one minute. Then, next minute she at
13 work.

14 And the daughter -- the daughter said that the mother
15 came over there by herself to get the children. The other
16 -- other witness all them -- all them all -- all been
17 jumbled up. I couldn't possibly be at all these places at
18 the same time.

19 Q Well, where -- where would you have told the Court you
20 would've been at the time of the crime?

21 A At my house. Because when we left -- when we left --
22 when we left the apartment arguing, we left the apartment.
23 Me and Mr. -- me and Mr. Hunter was already outside,
24 standing outside. When Ms. Young came downstairs, she was
25 the last one out. When her daughter came downstairs, we

1 was already out.

2 All three of them went outside. She locked the doors.
3 And I don't have a key to the house. And then -- then they
4 say I was supposed to stay home and babysat. But if I'm
5 doing all this threatened to kill everybody, how could you
6 ask me to babysat?

7 Q Is that everything that you would've told the Court,
8 had you testified?

9 A I would've answer any question the Court would've
10 asked me, sir.

11 Q Okay. It -- you've also got an allegation. This -- I
12 won't ask you too many questions about it. I'll probably
13 ask your lawyer a little bit about it. But in your amended
14 application, you've got counsel failed to object to
15 improper jury instructions. And just for the Court's
16 information, I'm referring to page 475 of the -- of the
17 record. And beginning specifically at -- at line 13 of the
18 -- of the jury instructions, where it says: "The State of
19 South Carolina and the defendant are both entitled to --
20 and they both certainly expect a fair and impartial verdict
21 at your hand," did your lawyer object to that?

22 A Not that I can recall, sir.

23 Q Okay. And I'll ask your attorney about that. You've
24 also got the allegation that counsel failed to object to a
25 witness indicating he met you at Kershaw.

1 A Yes, sir.

2 Q And -- and what I'm looking at is did a fellow named
3 Darnell Getter testify?

4 A Yes, sir.

5 Q And for the Court's information, this is beginning on
6 page 357. Who was Mr. Getter?

7 A Mr. Getters [sic] was a guy I met at Kershaw
8 Penitentiary when I was doing a five-year bit earlier --
9 earlier in -- in 2000s.

10 Q You had previously been in the Department of
11 Corrections at Kershaw?

12 A Yes, sir.

13 Q Okay. And that's where you met Mr. Getter?

14 A Yes, sir.

15 Q What was the purpose -- or let me ask you this before
16 that. Did you know that Mr. Getter was going to testify at
17 your trial?

18 A Well, I never -- when -- when I met Mr. Getter, I
19 never knew Mr. Getter as his real name. I only know him as
20 "New Jersey." So when the name came through to me on -- on
21 my investigator report, when I saw the witness there, I
22 didn't even know who he were. So I couldn't have -- I
23 couldn't have say nothing about him to my attorney because
24 I didn't know him by name. I only know him by face and --
25 and "Jersey."

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1 Q When he began testifying, did you -- did you ---

2 A When ---

3 Q --- then realize who he was?

4 A When he walk into the courtroom, I notice him right

5 off the bat. So I told Mr. Murphy about him. And Mr.

6 Murphy asked me -- he said -- he said, "Why you ain't tell

7 me about this man before now?" And I told him I didn't

8 know -- I didn't know him by -- by Mr. -- Mr. Getters.

9 Q What was -- you sat there and listened to Mr. Getter's

10 testimony. What was Mr. Getter -- why was he there to

11 testify, to your understanding?

12 A To my understanding, going by the investigator report,

13 Mr. Getters was going to testify that he saw me and Ms.

14 Young and her daughter and Mr. Hunter and a little baby

15 walking down Carolina Avenue, arguing, and that we were

16 threatening each other and that I turn around and went back

17 the other way. But he couldn't see whether I went all the

18 way back down unless and -- or -- or either I take that

19 left turn right beside where his house he was setting on

20 the porch at. And at the house he couldn't see -- from

21 where he's setting at, he couldn't see whether I turned or

22 went straight down. So he was trying to -- to me, he was

23 trying to get back at me because I testify -- I was going

24 testify against him in a -- in a prior incident years

25 before.

1 Q During the trial -- and -- and specifically, on 363 of
2 the -- page 363 of the record on appeal, which is 362 of
3 the transcript -- the -- the prosecution asked Mr. Getter:
4 "And how long had you known Mr. Timothy Dingle?"

5 And he responded: "For about five or six years,
6 somewhere up in there."

7 And then the question was asked: "Where did you first
8 meet him from?"

9 At which point he responded: "I first met him at
10 Kershaw."

11 A Uh-huh.

12 Q And then the solicitor asked if they could approach
13 and, apparently, a bench conference was held. There was no
14 objection at that point. Kershaw, was that referring to
15 him meeting you at -- in the South Carolina Department of
16 Corrections at ---

17 A Yes, sir. To me that were -- was referring to the
18 penitentiary that where I first met him at.

19 Q At Kershaw Correctional?

20 A Yes, sir.

21 Q Okay. Do you feel like that prejudiced your -- your
22 case?

23 A Yes, sir. I feel that the jury -- I feel that the
24 jury would -- would -- would have a general idea that I was
25 done been convicted before.

1 Q Did you have an opportunity to discuss any of that
2 with your attorney?

3 A At the time -- at the time when Mr. Getter first
4 moving -- came in the courtroom, we had a minute -- we had
5 a minute or two that we -- that I bent over and told Mr.
6 Murphy I knew about Mr. Gettings [sic]; I knew who he were;
7 and -- and the reason why he was there to testify that I
8 thought he was testifying to try to get back at me or
9 something because I was going testify against him if he
10 didn't plead guilty to a charge.

11 Q Now, one of your other allegations -- I think we've
12 already covered it, but let's just make sure. And that's
13 that you failed to testify under the erroneous advice of
14 your lawyer. And ---

15 A Yes, sir.

16 Q --- earlier you mentioned that you thought you were
17 going to have last argument and that's why you didn't
18 testify.

19 A Yes, sir.

20 Q Okay. Have we covered that already?

21 A Yes, sir.

22 Q All right. You've also got an allegation that your
23 lawyer failed to adequately cross-examine witnesses. Tell
24 -- tell the Court ---

25 A Well ---

1 Q --- what you mean by that allegation.

2 A The main witness -- the main witness I'm referring to
3 is -- is actually the -- the medical examiner. At the time
4 -- at the time I didn't know whether -- for my lawyer not
5 cross-examine her, that it would've been that important in
6 the case. So now he asked me -- he said -- he said, "Mr.
7 Dingle, I don't have no questions for her. What do you
8 think?"

9 So naturally, I'm going follow my lawyer. I said,
10 "Fine with me, if you don't cross-examine her."

11 But after -- after Ms. -- I think it was Ms. Burris --
12 after Ms. Burris testify to all the stuff that she did,
13 saying that she saw the kids in the window -- or at least
14 Robert in the window -- that the testimony gave -- Ms.
15 Burris gave went all the way against what -- what the
16 medical examiner say. The medical examiner say for a kid
17 to be -- to be able to be unconscious, it would take 30
18 seconds for -- for a kid to stand up at a window and --
19 before they pass out.

20 When -- when the witnesses testified that she saw the
21 kid after she heard the glass popping and busting, so if it
22 take that long for the glass to pop and bust where she
23 could hear it, so when she look out the window to see the
24 smoke, how long was it -- how long was the house on fire
25 for the kids to be still fumbling around. And then, now

1 the kid -- if -- if the kid been at the window, it had to
2 been more than five minutes.

3 Q Well, the witness you're talking about, are you
4 talking about Dr. Ross?

5 A Yes, sir.

6 Q Okay. And you're saying that your lawyer did not ask
7 -- cross-examine Dr. Ross at all?

8 A No, sir. And ---

9 Q All right.

10 A --- I'm ---

11 Q And is that -- that on page 292 ---

12 A Yeah. I ---

13 Q --- of the record on appeal?

14 A After ---

15 Q All right.

16 A --- I studied my -- after I studied my trial stanstip
17 (phonetic) -- transcript, I see that witness would've been
18 very important in my case.

19 Q And ---

20 A Because ---

21 Q --- you feel ---

22 A --- the witness ---

23 Q --- like your lawyer ---

24 A Yeah.

25 Q --- should've cross-examined her?

1 A Yeah. Ms. -- Ms. -- Ms. Burriś say she -- she see the
2 kids at the window, saying -- saying she saw Robert at the
3 window, asking for help. And if it take that long -- if it
4 take that long for a house to be on fire for it to get hot
5 enough to bust and shatter the windows, to me, it's
6 impossible for that kid to get out the top bunk, go to the
7 window -- she got downstairs after -- after that. The --
8 the house would've been already five minutes in flames.

9 And the -- and the -- and the witness -- what the --
10 Ms. -- Ms. -- the -- the cross -- not crossing examine a
11 medical examiner stated that it takes 30 seconds for a kid
12 that size to come -- to become unconscious.

13 Q Who else do you feel like your lawyer failed to
14 adequately cross-examine?

15 A I think Ms. Sharon -- Ms. Sharon Williams -- I think
16 her name is Williams. I think Ms. Williams should've never
17 been allowed to even testify, sir.

18 Q Okay. And -- and we'll get to that. Are you talking
19 about Shonte Williams?

20 A Yes, sir.

21 Q Well, other than her not being allowed to testify,
22 what is it that you feel like your lawyer could've done
23 differently in his examination of Ms. Williams?

24 A The -- Ms. Williams only heard hearsay evidence. She
25 stated that Ms. Young told her that we got in a argument

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1 and I threatened her. And then, that's -- to me, that's
2 hearsay evidence. To me, a witness -- a witness shouldn't
3 be allowed ---

4 Q Well, we're ---

5 A --- to testify ---

6 Q We're going to talk about that in a second, because
7 you have an -- an issue about your appellate lawyer, with
8 regard to that, okay? But I'm talking about as far as just
9 cross-examination of Ms. Williams.

10 A Well, I -- I think he failed to investigate -- failed
11 to investigate her -- her a little bit better.

12 Q And this is on page 132 ---

13 A Yeah.

14 Q --- of the ---

15 A Yeah.

16 Q --- record on appeal.

17 A If -- if -- if he had investigated her a little bit
18 better, from the time -- from the time that we left the
19 house, arguing, and the time that she got the -- the -- Ms.
20 Young got to her house, we was already down the road,
21 arguing, because someone called 911. The 911 calls occur,
22 they say, around about 11:30 -- approximately 11:30.

23 From my house to -- to her house, I stop halfway
24 between. So by the time I stop halfway between where Mr.
25 Getting saw me -- where Mr. Getting say he saw me, it was

1 already -- it was already 11:30. The -- the -- the -- the
2 fire department was being called at the time. So I think
3 if he had've studied -- if he had've studied the timing it
4 take to walk from A to B, then he would've -- he would've
5 find that I was street, arguing.

6 I wasn't never down the -- I was -- I never went back
7 to the house. I never break in. The -- the law say it
8 wasn't no -- no forced entries except for where the firemen
9 or the police kick the front door in. They didn't never
10 even check to see whether the door was open.

11 Q All right. Were there any other witnesses you feel
12 like he did not cross-examine adequately?

13 A Mr. -- Mr. Hunter -- Mr. Hunter gave so much -- so
14 much perjury testimony. If -- if Mr. Murphy had've -- had
15 let the investigator investigate the motion of discovery
16 and put together a -- a -- a defense from the motion of
17 discovery and the incident report, they would've see --
18 they would've see that he was lying all the time.

19 Q All right. Let's -- your -- you started to talk about
20 this a moment ago. But you -- you've got a claim that your
21 appellate lawyer -- and you had an appeal, correct?

22 A Yes, sir.

23 Q All right. Who was your appellate lawyer?

24 A Mr. -- Mr. -- Mr. Dubedek (phonetic) -- Mr. Bedek
25 (phonetic).

1 Q Was it Mr. Dudek?

2 A Yeah.

3 Q Okay. All right. And did you ever speak with your
4 appellate lawyer while he represented you on appeal?

5 A I talked to him on the phone a couple of times.

6 Q Do you know what issues he raised on your appeal?

7 A He raised hearsay evidence and something about --
8 something about -- I can't quite remember. I -- I can't
9 remember all that, sir.

10 Q Well, let me ask you this: You -- you were referring
11 to Ms. Williams testifying earlier. And you were starting
12 to ---

13 A Uh-huh.

14 Q --- discuss what ---

15 A Yeah.

16 Q --- you felt ---

17 A Yes.

18 Q --- like was some hearsay testimony ---

19 A Yeah. That's ---

20 Q --- that she ---

21 A --- the hearsay ---

22 Q --- testified to ---

23 A That's the ---

24 Q --- okay?

25 A --- part on the same -- I remember.

1 Q All right. And -- and specifically, we're looking at
2 page 131 and 132 of the -- of the transcript. Now, did
3 your appellate attorney filed what's called an *Anders* brief
4 ---

5 A A *Anders* ---

6 Q --- brief or appeal?

7 A --- brief. Yeah.

8 Q Okay.

9 A Yes. I -- I remember that.

10 Q All right. Do you recall at the -- at the trial Ms.
11 Williams stating that she -- excuse me. Do you recall Ms.
12 Williams stating that you -- they referred to you as
13 "Julio"?

14 A Yes, sir.

15 Q Is that -- is that a name that you go by?

16 A Yes, sir.

17 Q That Mr. Julio had threatened to set the apartment on
18 fire. And the question was: "When you say 'Julio,' who is
19 Julio?"

20 The answer is: "Mr. Dingle, Timothy Dingle."

21 "And that's why she said she's upset?"

22 "Yes, sir."

23 Now, let me -- let me back up. At -- at the top of
24 131, when they're questioning this witness, they're asking
25 her: "Could you see the tears?"

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1 And she says: "Yes, sir. I could see the water, but
2 I didn't no tears didn't roll down her face."

3 And question: "You saw the water in her eyes?"

4 Answer: "Yes, sir."

5 "She went to the bathroom?"

6 Answer: "Yes, sir."

7 "When she came back out, what did she say to you?"

8 And then your lawyer objected, right?

9 A Yes, sir.

10 Q Okay. And then, the question -- the objection was
11 overruled. And the witness said: "Well, when -- when she
12 came out, I asked her, 'What's wrong?' Sat down. I said,
13 'Sit down. You want to talk about it?' She sat down and
14 talked to me. She said she was arguing, and the argument
15 led -- led to a threat of the apartment being set on fire.
16 Mr. Julio had threatened to set the apartment on fire."

17 And then, they go on to ask the question: "When you
18 say 'Julio,' who was Julio?"

19 Answer: "Mr. Dingle, Timothy Dingle."

20 So your lawyer actually objected to what she was
21 testifying to that someone else said, right?

22 A Yes, sir.

23 Q All right. Did your appellate lawyer raise that
24 issue?

25 A Yes, sir.

1 Q Are you sure your appellate lawyer raised that?

2 A He -- he raised -- he raised the issues that -- what
3 you just say before with ---

4 Q The *Anders* brief?

5 A Yeah. He raised the *Anders* brief.

6 Q Okay.

7 A Now, I never -- I never been to -- I never been to
8 court -- I never been to court when -- when the appeal was
9 going on.

10 Q Okay. We -- we've covered a lot of information. Is
11 there anything else that you want to bring to the Court's
12 attention with regards to your allegations that you're
13 claiming in your -- in your PCR application?

14 A When a man -- when a man facing two counts of murder
15 and two counts of arsoning [sic], he should have more
16 defense than just two people trying to discredit one
17 witnesses, sir. One witness trying -- two -- two -- two
18 people trying to discredit one witness out -- out of to --
19 to being a liar don't have no burden on innocent or guilt
20 of my trial. So I feel I -- I came into trial with no
21 defense at all.

22 The state -- the state bring witnesses that -- that
23 implicate me. But it never was no hard evidence to place
24 me at the scene of the crime. No eyewitnesses seen nothing
25 made round. And all witnesses -- Ms. Young and her

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1 daughter, Mr. Getters, and Mr. Hunter -- said I was down
2 the road, arguing, around the time the fire occur.

3 And the state -- the state said that the police came
4 in and -- and -- and kicked the front door in. Nobody
5 never tried to find out whether the door was locked or
6 open. They say they found an iron in there that was on the
7 floor. But then -- then, they couldn't figure out whether
8 it was on the on or the off position.

9 It's a whole bunch -- it's a whole bunch of -- it's a
10 whole bunch of allegations and implicatingment --
11 implicating me and stuff, but no proof, sir.

12 Q So you feel like you didn't have a ---

13 A So I ---

14 Q --- defense?

15 A --- didn't have a defense.

16 Q Okay. Other than that and other than what we've
17 already covered, is there anything else that you feel like
18 we have not gone over with regard to your allegations?

19 A No, sir.

20 Q Okay.

21 MR. BOOZER: Your Honor, that's all the questions I
22 have at this time.

23 THE COURT: All right. Cross-examination?

24 MR. GOURLEY: Judge, I don't have any questions.

25 THE COURT: All right. Thank you, sir. You may step

1 down.

2 (Whereupon, the witness exited the witness stand.)

3 THE COURT: You may call your next witness.

4 MR. BOOZER: No other witnesses, Your Honor.

5 THE COURT: Applicant rests.

6 MR. GOURLEY: Your Honor, we call Mr. Murphy to the
7 stand, please.

8 (Whereupon, the witness came forward.)

9 TIMOTHY MURPHY, having been first duly sworn,
10 testified as follows:

11 MR. GOURLEY: And please the Court, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. GOURLEY:

14 Q Mr. Murphy, how long have you been practicing law?

15 A Almost 30 years.

16 Q And you were appointed in this case?

17 A I -- I recall -- I believe I was appointed. Yes.

18 Q Okay. And how many times did you meet with Mr. Dingle
19 prior to trial?

20 A Prior to the week before trial, about half a dozen
21 times. And then, in the week leading up to trial, probably
22 another two or three times.

23 Q And you hired an investigator in this case?

24 A Yes. We hired -- or I hired Mr. Glenn Harrell. He's
25 a private investigator, former police officer in Sumter

1 County.

2 Q Okay. And did you file for *Brady* and Rule 5?

3 A Yes.

4 Q And ---

5 A That's the first thing we do when we're appointed. So
6 I filed for discovery right away.

7 Q Okay. And did you have an opportunity to review that
8 material with Mr. Dingle prior to trial?

9 A Yes. I also provided him with a copy of the discovery
10 we had.

11 Q Did y'all have the opportunity to discuss his version
12 of events that took place that night?

13 A At length. And on multiple occasions. Mr. Dingle
14 advised me -- the -- there were -- the -- the discovery --
15 looking at the statements in the discovery, they're -- the
16 basic facts were that there was an argument in the home and
17 that the mother of the deceased children and a few of her
18 other relatives were leaving a -- their home to, I think,
19 get some chicken or have some -- have a chicken dinner at
20 somebody else's house that was right down the street and
21 that Mr. Dingle was observed -- and they -- they, in their
22 statements, indicated that he was somewhat intoxicated and
23 was following them, yelling and screaming, and multiple
24 times was yelling that he was going to burn -- if she
25 didn't come back, he was going to burn their house down and

1 -- or similar words to that effect.

2 There was also a -- a witness that was sitting on a
3 porch across the street who -- I -- I can't remember his
4 name, but he's the individual that knew Mr. Dingle from
5 Kershaw -- Getter, I think his last name is.

6 Q It is.

7 A He also provided a statement in the discovery to that
8 effect. There were some time line issues that I noticed in
9 regard to the timing. But shortly after Mr. Dingle, my
10 client, was observed heading back into the direction -- he
11 wasn't heading back directly to the direction of the
12 apartment. He -- he had -- he had taken a -- Mr. Getter
13 indicated -- it was either in his statement -- and I
14 believe he confirmed it in his direct examination. He was
15 -- he was heading in a direction that was a little bit -- a
16 little bit away -- not -- not directly away from the
17 apartments, but angled where, if you -- if you continued
18 down that path, you would not necessarily hit the
19 apartments.

20 And so -- but within a period of time -- and I really
21 don't recall the period of time; it was a relatively short
22 period of time -- there were sirens and the apartment was
23 on fire and the two children were killed.

24 Q Did Mr. Dingle confirm this version of events to you?

25 A What Mr. Dingle advised me was that he -- he indicated

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1 to me that there was some sort of argument at the house.
2 He indicated to me that he had followed the -- the woman he
3 was dating at that point.

4 I asked him specifically -- and this gets into the
5 reason I advised him not to testify. I asked him
6 specifically whether he made the statement, you know, are
7 you going to burn -- you know, I'm going to burn this house
8 down. And he -- his words to me were: "I was so mad. I
9 -- I'm -- I probably did make that statement or -- or
10 something similar."

11 And then at that point, I told him, "Well, you -- I
12 don't see where your testimony is any value added." And
13 that was the reason why he didn't -- he -- he took my
14 advice not to testify.

15 He told me that after his exclamation, he walked down
16 a path towards -- you know, away from the -- the apartment.
17 He said he was -- he was going to meet his brother, Mr.
18 Henry Dingle. At some point while he was walking on that
19 path, an individual who he had never seen before and he
20 couldn't identify, just some random guy that we tried to --
21 we tried to find, approached him and said, "Hey, there's a
22 -- there's a -- the -- there's a fire going on at those
23 apartments."

24 Q Uh-huh.

25 A And then he continued and he admitted to me that he

1 had a conversation with his brother. Now, he disputed
2 aspects of the conversation that his brother testified to.
3 He -- he denied making any admissions about setting the
4 fire or -- or killing anyone.

5 But -- and then he said he -- he came back and, you
6 know, when he came back, that's when he saw that, you know,
7 the fire trucks were there and everything and that he was
8 basically attacked by some of the family members at the
9 scene. And my understanding was he was -- he was, you
10 know, beaten a little bit.

11 Q Okay. Mr. Dingle's alleged that you did not -- or you
12 were ineffective for failing to secure a fire investigator.
13 Did you, in fact, have one?

14 A Yes. I consulted with a -- an individual that Mr.
15 Harrell recommended to me, a Mr. Huggins ---

16 Q Uh-huh.

17 A --- who used to work for SLED. Mr. Huggins and I had
18 one consultation. He did it for free. The -- the purpose
19 of looking at the fire -- I -- I -- I actually did a lot of
20 independent research on fires.

21 Q Okay.

22 A And, you know, my reading of the -- of the fire report
23 kind of confirmed that it had to have been arson. It
24 couldn't have been started naturally by, like, an
25 electrical short or something.

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1 Q Right.

2 A So I went over -- I went over everything, you know, on
3 the phone with Mr. Huggins. And he basically confirmed
4 what I had suspected: that it was arson.

5 Q Okay. And then, you actually cross-examined fairly
6 thoroughly Sterling Seals, the SLED arson expert?

7 A Right. There's certain standards, and I wanted the --
8 you know, the -- I mean, I wanted the jury to be aware --
9 one of the tactics you take when you cross-examine an
10 expert is to try to know at least a little bit as much as
11 the expert does. And ---

12 Q Right.

13 A --- and there were some things in regard to standards
14 that -- that apparently weren't done, and I tried to point
15 those out.

16 Q Including one of those, I believe, was the fact that
17 the inspector, prior to doing his examination, knew that
18 there was a witness in custody, so on and so forth.

19 A Right. Right. Right. Uh-huh.

20 Q Okay. Another allegation that Mr. Dingle has alleged
21 is that you failure -- failed to investigate the witnesses,
22 one witness being -- I'm sorry; I lost her name -- the
23 neighbor that was -- observed Mr. Dingle out on the phone,
24 talking on the cell phone?

25 A No. That's not true. That -- that would've been the

1 -- I -- I don't know what he's talking about in regard to a
2 cell phone. I mean, what I recall is Mr. Dingle gave Mr.
3 Harrell a list. And I -- and I -- we actually went back to
4 the judge for additional funds, as I recall.

5 I -- I -- I -- every time -- every name that Mr.
6 Dingle gave us, we tried to track down. Every single one.
7 And we -- we were able to speak to most of them. But one
8 person that -- you know, that we -- that probably quite
9 frankly didn't exist was the -- the guy who -- who Mr.
10 Dingle described as coming up to him and advising him on
11 the path that, "Hey, there's a fire going on," who --
12 because obviously, if -- if that would've been a person
13 that we could've identified and was a person that was real
14 and corroborated that, that probably would've -- would've
15 helped with the time line and given Mr. Dingle something of
16 a -- of an alibi.

17 In response to Mr. Dingle's testimony regarding he was
18 at home when this happened, that -- he never told me that.
19 I mean, what he told me was he left the scene, walked to
20 his brother's; this guy on the -- on the path had this
21 conversation with him; he goes to his brother. I believe
22 what he -- what he told me was he expressed concern because
23 he knew what he -- you know, he knew he had been in a fight
24 with the -- the mother of the individual. And -- and then
25 he went back to the apartment and saw what was going on.

1 And then at that point, he was identified and assaulted.

2 Q Okay. Mr. Dingle also alleged that you were
3 ineffective for failing to investigate whether or not he
4 was assaulted by the victims' family members. Was there
5 any question that he was or was not assaulted?

6 A He was. I mean ---

7 Q Okay.

8 A --- I don't think there's any question. I mean, I
9 don't know that it made much of a difference. I think it
10 was pretty understandable under the circumstances.

11 Q Mr. Dingle also alleged that you were ineffective for
12 failing to secure the camera footage at the convenience
13 store that he and his brother went to the night of the
14 incident.

15 A I have no recollection of that at all.

16 Q Okay.

17 A And, you know, quite frankly, they only keep that
18 camera footage for a day or two.

19 Q Right.

20 A And that was -- I -- I know camera footage was not
21 something we discussed. He -- the -- my recollection of
22 what Mr. Dingle told me is the -- is the path story: that
23 he went and talked to his brother; walked right back.

24 Q Okay.

25 A That's my recollection of what he told me.

1 Q Okay.

2 A And . . .

3 Q Was it ever your trial strategy to try to secure the
4 last closing argument in this case?

5 A No.

6 Q Okay. What was your trial strategy?

7 A Mr. Dingle -- Mr. Henry Dingle, Mr. Timothy Dingle's
8 brother, was clearly an important witness.

9 Q Uh-huh.

10 A Because, you know, the -- the primary admission was
11 made to -- was made to him ---

12 Q Right.

13 A --- I mean. And he -- as I recall, his testimony was
14 that, you know, Mr. Dingle basically admitted to him what
15 he had done and said he was going to go to prison for the
16 rest of his life.

17 Mr. Henry Dingle also stated in his -- in his
18 statement that was in discovery, as I recall, that he
19 called his sister that -- that Mr. Timothy Dingle, my
20 client, was so upset that he called his sister, Alma Mack,
21 to talk to Timothy Dingle and try to calm him down and that
22 there were -- there were at least -- there was something of
23 an admission to -- to Ms. Mack.

24 Now, we spoke to Ms. Mack. It was clear to us, she
25 didn't want to get involved. And we weren't going to poke

1 the bear, so to speak. I mean, you know, if -- if push
2 came to shove and she had to testify, I'd -- I was -- I
3 didn't think she would be very helpful.

4 So we kind of let that alone. Ms. Smalls and the
5 other young lady who testified for the defense were very,
6 very strong witnesses, I -- I believe, in trying to attack
7 Mr. Henry Dingle's character. Now, you know, obviously,
8 the rules of evidence limit what you can get -- get into on
9 a -- when you're trying to attack a person's credibility.

10 But we had those two witnesses. One was the sister.
11 And so, you know, Henry -- the -- the -- you know, to some
12 degree, I kind of tried to go after the time line. To some
13 degree, obviously, Mr. Dingle was -- Mr. Henry Dingle was
14 an important witness.

15 So I -- you know, he kind of -- the cross-examine
16 didn't -- cross-examination -- you know, quite -- didn't go
17 the way I actually wanted it to too much. But he kind of
18 like blew up and was saying all this stuff. But I -- at
19 least at the time, I thought, Well, look, it shows the
20 level of his animosity towards ---

21 Q Uh-huh.

22 A --- Timothy Dingle. And that's what I argued in my
23 closing argument was, you know, he -- this guy was loaded
24 for bear when he was up here and you heard all sorts of
25 things about Timothy Dingle.

1 So I -- you know, I tried to use that to our
2 advantage. And -- and -- I mean, you go with what you got.
3 I mean, it was a strong case from the -- from the
4 prosecution's point of view. So, you know, I -- Mr. -- but
5 I thought Mr. Henry Dingle's testimony was probably the
6 most damaging. And that's what I tried to discredit.

7 Q Why did you feel it was a strong case for the
8 prosecution?

9 A Well, you know, they -- as I -- as I expressed to Mr.
10 Dingle -- Mr. Timothy Dingle on multiple occasions, what
11 are the odds -- what are the odds -- I mean, first of all,
12 you have a situation where the two victims are children.
13 So automatically, there's a lot of emotion attached to
14 that. I mean, they were both small children.

15 And what are the odds that an individual is going to
16 stand in the middle of a neighborhood, screaming, "I'm
17 going to burn this effing house down," and within ten
18 minutes or so, that happens and you're not the guy that did
19 it? I mean, it -- it -- it -- it almost -- you know, it --
20 you know, what was more likely, that somebody else -- that
21 -- that -- that this was just some sort of, you know,
22 coincidence or that somebody else did it and -- and -- or,
23 you know, one plus one equals two?

24 So there was no question it was an arson. I tried to
25 discredit that statement to some degree, that, you know,

1 Mr. -- that's why I suggested Mr. Dingle not testify,
2 because ---

3 Q Uh-huh.

4 A --- you know, you got to be careful when you're going
5 after the mother of two children who were -- were killed in
6 a -- in a fire. And, you know, I tried to press a little
7 bit on her credibility. But, you know, basically, what I
8 -- what I tried to argue in -- in that scenario was what
9 mother would allow some guy who's screaming "I'm going to
10 burn your effing house down" to go back to the house.

11 And -- and what I tried to reason with the jury was,
12 Well, look, you know, that probably didn't happen. You
13 know, it's -- it's -- it -- you know, we're -- we're
14 pointing fingers at Mr. Dingle, but that ---

15 Q Right.

16 A --- statement didn't ---

17 Q Right.

18 A --- occur. So that's what I tried to -- to argue.
19 But that was the reason why Mr. Dingle didn't testify. It
20 wasn't -- had -- had nothing to do with the final argument.

21 Q Okay. Mr. Dingle also has alleged you were
22 ineffective for failing to object to Mr. Getter testifying
23 that he met Mr. Dingle at Kershaw. Do you have any
24 specific recollection as to -- to that?

25 A What I recall is at some point, John Meadors told me

1 -- and I think it was in regard to this witness -- that --
2 that answer was not something he elicited. And he
3 apologized. But our -- our -- I mean, in all honesty, I
4 didn't view it as that -- that, you know, big a deal. I
5 mean, it was -- he didn't get into his record and ---

6 Q Right.

7 A --- you know, I -- I just didn't view it as that big a
8 deal.

9 Q Is it your opinion that if you would've objected to
10 it, it would've been brought even more attention to it to
11 the jury?

12 A Yes.

13 Q All right.

14 A And even in retrospect, looking at it now. I mean, I
15 can't say -- I can't say with specificity what my thought
16 process was at the time. But I do remember at the bench
17 Mr. Meadors telling me that -- you know, he apologized; he
18 wasn't expecting that answer.

19 Q Okay. Mr. Dingle has also alleged that you failed to
20 object to the improper jury instruction. Do you recall
21 anything about that?

22 A No.

23 Q Okay. If you felt it was improper, would you have
24 objected?

25 A Yes.

DIRECT EXAMINATION BY MR. GOURLEY - TIMOTHY MURPHY 50

1 MR. GOURLEY: Beg the Court's indulgence, Your Honor.

2 THE COURT: All right, sir.

3 Q Mr. Murphy, do you feel you were prepared for trial?

4 A I was very prepared.

5 Q Okay.

6 A One other thing I -- I think I want to make clear is
7 we -- we had -- we had discovery well in advance of trial.

8 Q Yes, sir.

9 A All right. There was some testimony that he only got
10 it ten days before trial. That's not true. I mean, I -- I
11 -- my -- looking at my notes and everything, I believe we
12 got discovery either in late 2012 or what -- the trial
13 occurred in August.

14 So it was either the December before or that January.
15 But we had plenty of time to prepare. There was no -- no
16 rush for preparation.

17 Q And again, your overall trial strategy was to attack
18 the time line and attack the credibility of Henry Dingle?

19 A Yes.

20 Q And in order to accomplish that, you called Mrs. Kelly
21 and Mr. Dingle's sister to attack his credibility, correct?

22 A Yes.

23 Q Okay.

24 MR. GOURLEY: Your Honor, I don't have any other
25 questions.

1 Q Thank you, Mr. Murphy.

2 A Thank you.

3 THE COURT: Redirect?

4 MR. BOOZER: Thank you, Your Honor. Just briefly.

5 CROSS-EXAMINATION

6 BY MR. BOOZER:

7 Q Mr. Murphy, you had indicated you hired a private
8 investigator?

9 A Yes.

10 Q Did -- did you or the private investigator ever have
11 any conversation with Mr. Dingle where -- whereby y'all
12 expressed to him that -- that you felt or the private
13 investigator felt that he was guilty?

14 A No. What -- what -- what I do -- and -- and what I --
15 what I do with all my clients is short -- I -- I -- I told
16 him very specifically, "Look, this is an extremely tough
17 case. We have a hard road to hoe. And it's -- it's not
18 looking very good."

19 I do -- you know, I -- but I owe that to them, as part
20 of my assessment -- objective assessment of the evidence.
21 I don't -- I don't want my clients thinking -- getting
22 blindsided by the result. I mean, I -- I was very frank
23 with him about -- but as far as me personally -- he -- he
24 never told me he did it.

25 So I'm not in a position to say "I think you're

1 guilty." I would never do that to a client. I -- I don't
2 do that. That's not my practice. And I know that's not
3 Mr. Harrell's practice.

4 Q What was the strategy for trial? And what did you, I
5 guess, tell Mr. Dingle prior to trial that -- that the
6 strategy of the case would be?

7 A Attack the time line, to some degree. And Mr. Dingle
8 had gone through -- actually, Mr. Dingle was helpful, to
9 some degree, both in the time line and he would write out
10 these questions on cross-examination. And some of them --
11 some of them were actually pretty good. I mean, you know,
12 I -- I incorporated them into my cross-examination.

13 So try to attack the time line, to some degree.
14 Gently, attack the notion that that statement was made,
15 okay, because the vast majority of that came from the
16 victim -- the -- the two children's mother. And then, I
17 think Mr. Henry Dingle -- that the most damning statement
18 was Henry Dingle's statement. So try to mitigate that to
19 the best we could.

20 Q And ---

21 A And then -- and then, the other thing that was
22 actually very helpful was -- was -- and I argued in closing
23 -- was one of the reasons why I didn't go after Mr. Getter
24 too much -- I -- and I did elicit from him that he -- that
25 Timothy Dingle had turned him in and was going to testify

1 against him. We had -- Mr. Harrell had actually gone out
2 to the jail to prison and spoken to Mr. Getter before. So
3 we were well aware of what he was going to testify to.

4 But what Mr. Getter -- one of the things -- and I try
5 to emphasize it in -- in closing -- was that Mr. Getter's
6 last view of -- of Mr. Dingle is walking, you know,
7 diagonally in a -- in another direction away from where the
8 -- the most direct route to the apartments. So -- and I
9 tried to emphasize that to look -- say, "Hey, look, this
10 was -- this is the government's own witness that's
11 testifying to this. That in and of itself is reasonable
12 doubt."

13 Q Did you or your private investigator ever hand Mr.
14 Dingle the discovery and indicate to him, "You need to
15 figure out a defense or come up with a defense"?

16 A No. I gave him the discovery. But no. I mean, that
17 -- it's not up to him to come up to a -- with a defense.
18 My practice is to -- my practice is -- first of all, my
19 investigators don't give discovery to the -- my clients. I
20 do.

21 My practice is to give them discovery; say, "Look,
22 this is what I've seen. Go through it and then I'll come
23 back and we'll go over it in detail." And that's what I
24 did in this case. And that's what I do in every case.

25 Q Did -- how much of a discussion did you have with Mr.

1 Dingle prior to trial and even at trial about him actually
2 testifying?

3 A I -- I had some discussion with him but -- before
4 trial. I did tell him that I didn't think he was a very
5 credible person. I -- I didn't find his story about the
6 guy coming up to him on the road that he'd never seen
7 before -- and -- and, you know, part of my process -- I
8 hate to use that word. But part of the process is pushing
9 back on my client's version of events so that they can
10 hopefully appreciate what they're going to be up against if
11 they become -- if they cross-examine -- it -- you know,
12 under cross-examination.

13 So, you know, here's a guy. He's saying that the -- I
14 mean, this is -- I -- this is the key defense witness.
15 He'd never seen him before. He didn't know his name. He
16 -- the way he -- he -- he articulated it -- it, the guy
17 knew him, because the guy say, you know -- called him by
18 whatever his nickname is.

19 And I pushed back on that. And I said, "You know,
20 this isn't -- I -- I don't think this is a believable --
21 you know, your -- your -- in my judgment, a good -- a good
22 prosecutor is going to make mincemeat of you on this story
23 of yours."

24 And, you know, he said he understood. And then, so I
25 said, "Now, but you -- you know, obviously, it's your

1 call." And -- and it always is the client's call.

2 And -- and then, we -- when we talked about it before
3 the colloquy regarding his testimony, we went back there.
4 And I -- I said, "Well, you know, what do you want to do?"

5 And he was kind of on the fence. And then I said,
6 "Well, look," I said, "the things you're going to have to
7 address are this guy." And I said, "And -- and I want an
8 answer -- I want a specific answer on this statement."

9 And did you -- and he said, "Did you say, 'I'm going
10 to burn your effing house down?'"

11 And that's when he said, "Well, I was so mad, I
12 probably did."

13 And then I -- I told him -- I said, "Well, look," I
14 said, "at this point, if you -- if you get up on the stand
15 and say that, then it's going to hinder my argument
16 regarding that that statement was never made. So my advice
17 to you is -- is, you know, you're probably better off not
18 testifying. I don't" ---

19 Q Did he ---

20 A --- "I don't think you're going to be all that
21 helpful." And he -- and he agreed.

22 Q Did he ever express to you that he wanted to testify?

23 A Not -- not specifically. No.

24 Q The two witnesses that were called for the defense's
25 case, what -- did you have any conversation with Mr. Dingle

1 prior to trial about those witnesses ----

2 A Yeah. He knew ---

3 Q --- testifying?

4 A --- he knew we were calling them. Yeah. Uh-huh.

5 Q Now ---

6 A And -- and -- and I'll say again, this last-argument
7 thing, that's just not true. That was never a factor,
8 ever. I mean, I knew from the very beginning I was going
9 to -- I -- I was going to call these character witnesses.
10 So that was just not a factor.

11 Q Do you recall Ms. Williams -- Shonte Williams
12 testifying ---

13 A Yes.

14 Q --- at trial?

15 And do you recall the objection you made with regard
16 to ---

17 A I -- I know I made an objection. I -- I believe it
18 was a hearsay objection. She testified, I believe, that
19 when the mother came down to her house -- I believe Ms.
20 Williams was at the -- was the person that was cooking the
21 chicken. And when the mom came down, she said the -- she
22 -- she would testify that the mom's -- told her, you know,
23 Timothy said he would, you know, burn the house down and
24 she was upset.

25 The significance of that was I don't think that the

1 mother -- if I recall correctly, that wasn't in the
2 mother's statement. Although the mother did say that he
3 said that, I don't think she repeated it in her statement.

4 But anyway, I -- I objected to that. I mean, I
5 thought it was classic hearsay and I didn't think it fit
6 the rule.

7 Q And -- and along those same ---

8 Q Exceptions ---

9 A --- lines ---

10 Q --- I should say ---

11 A --- because ---

12 Q --- the exception.

13 A --- you objected, I mean, did you feel like that
14 coming in could have a prejudicial effect on -- on his
15 trial, where you've got this other witness vouching and
16 saying what another witness is -- is claiming?

17 MR. GOURLEY: And, Your Honor, I'm going to object to
18 that -- that question. Whether or not that statement was
19 prejudicial goes to the ultimate conclusion. And that's
20 for you to decide, not Mr. Murphy.

21 MR. BOOZER: I certainly think he can give his opinion
22 as -- as a lawyer and trying the case.

23 THE COURT: Overruled. Go ahead.

24 THE WITNESS: All right.

25 MR. BOOZER: Thank you.

1 A I mean, I wouldn't have made the objection if I didn't
2 think it was prejudicial. I will say this, though: I
3 thought the way they wanted to elicit that so early in the
4 trial concerned me. I think there -- there was probably a
5 way that testimony would come in anyway.

6 But I -- I -- I was concerned about the manner in
7 which it was -- it was laid out. I mean, it was, like, I
8 think she was either the first or second witness. And that
9 was -- that was troublesome.

10 Q Did -- did you have any communication with Mr.
11 Dingle's appellate attorney?

12 A No.

13 Q Okay. Going back to the jury instructions, do you
14 recall the -- the -- the judge instructing the jury that
15 the State of South Carolina and defendant are both entitled
16 to and they both certainly expect a fair and impartial
17 verdict at your hand?

18 A I don't have any recollection of that.

19 Q I'm sorry?

20 A I -- I don't recall the instructions. I recall the --
21 the process.

22 Q Okay. And if you didn't make an objection on the
23 record, would you agree that no objection was obviously
24 made?

25 A Well, I would agree with that. Sure.

1 Q Okay.

2 A Uh-huh.

3 Q Are -- are you aware that -- that judges in courts
4 have been instructed to remove language regarding fair and
5 impartial ---

6 A I am ---

7 Q --- verdicts?

8 A --- now. Sure. Uh-huh.

9 Q Okay. Is that something now, if -- if it were in a --
10 a charge, you would -- you would object to it?

11 MR. GOURLEY: Again, Your Honor, I would object to
12 that. That calls for hindsight.

13 THE COURT: I sustain.

14 MR. BOOZER: Okay.

15 Q In the future, if that were in a -- in a charge, would
16 you object to it?

17 MR. GOURLEY: Object, Your Honor. That calls for
18 speculation.

19 THE COURT: Sustained.

20 Q We'll move on. And -- and your reason for not
21 objecting to the statement about Mr. Getter meeting or
22 knowing Mr. Dingle from Kershaw or at Kershaw was what?

23 A I don't have too specific a recollection of that. I
24 mean, what I recall is -- is being at the judge's bench and
25 Mr. Meadors apologizing that that was not something he --

1 he -- he fought and -- or -- or that he -- he was not
2 specifically eliciting that. He -- he wasn't prepared for
3 that.

4 And -- and then, we discussed -- I believe Mr. Finney
5 was going to take the rest of the -- direct. So I -- that
6 -- that's the only thing I recall.

7 And then, at the time, I mean, I didn't want to
8 highlight it. I mean, he -- it's not like -- it's not like
9 the witness said, "I met him at Kershaw Correctional
10 Institute when he was serving prison time with me."

11 I mean, in the big scheme of things, I -- I didn't
12 think it was that -- let me put it to you this way: In the
13 -- in the mountain of evidence that was there, I don't
14 think that one thing was all that significant. I -- so I,
15 you know, if I -- if they -- if -- if he would've started
16 getting into prison, then I would've -- I mean, I was key
17 to object at that point.

18 But I -- I don't recall enough about that back and
19 forth. And I've tried to remember by looking at my notes
20 and looking at the transcript. But I -- the only thing I
21 do remember is Mr. Meadors apologizing to me.

22 Q In -- in your cross-examination of Mr. Getter -- and
23 this is on 373 of the record on appeal -- you -- you asked
24 (As read): "Isn't it true that Timothy Dingle reported you
25 for one of the convictions you received of B&E auto?"

1 "Yes."

2 "And you served about four years for that?"

3 "Yes."

4 Do you know if that was when he was at Kershaw that he
5 served those four years and that's where he knew Mr.
6 Dingle, or do you know when that time line may have been?

7 A No, I don't. I mean, what happened was -- a -- a
8 couple things about Mr. Getter: My investigator told me
9 Mr. Getter was incredibly believable. So when I prepared
10 the cross-examination, I was focused more on where he
11 observed -- I mean, I didn't want to beat him up too much
12 because he was an important witness.

13 I was going to use him to -- for that aspect of his
14 testimony regarding where Mr. Dingle was heading after this
15 exclamation that he allegedly made. When Mr. Getter came
16 out -- but -- and I don't -- I think they may have been
17 before the judge came to the bench. It was at that point
18 Mr. Dingle -- and he -- his recollection of it is -- is
19 pretty solid.

20 It was at that point Mr. Dingle looked at me and said,
21 "I know that guy. He -- his name is" -- and he gave me
22 some, you know, street name -- and, you know, "I set him --
23 I -- I was going to testify against him."

24 And I did -- I -- I do recall saying, "Well, why
25 didn't you tell me this awhile ago?"

CROSS-EXAMINATION BY MR. BOOZER - TIMOTHY MURPHY 62

1 And he goes, "Well, I didn't know his name."

2 And I said, "All right. Well, what" -- and then I
3 asked him very specifically. "Okay. What was the charge
4 and everything?"

5 So then, at that point I incorporated that into my
6 cross-examination.

7 Q All right.

8 MR. BOOZER: Court's indulgence, Your Honor?

9 THE COURT: Certainly.

10 (Whereupon, Mr. Boozer and the applicant conferred.)

11 (Off the record briefly.)

12 Q Mr. Murphy, when was it again you think you provided
13 the discovery to Mr. Dingle?

14 A As soon as I got it.

15 Q Okay.

16 MR. BOOZER: No further questions.

17 Q Thank you, Mr. Murphy.

18 A Thank you.

19 MR. GOURLEY: I have no further questions, Your Honor.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Yes, sir.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 (Whereupon, the witness exited the witness stand.)

25 THE COURT: You may call your next witness.

1 MR. GOURLEY: Your Honor, I don't have any additional
2 witnesses.

3 THE COURT: Anything in reply?

4 MR. BOOZER: No reply, Your Honor.

5 THE COURT: All right. Then, argument?

6 MR. BOOZER: Just briefly, Your Honor. Mr. Dingle has
7 quite a number of issues. And I'll certainly let those
8 issues stand with the testimony that was presented today.

9 I think, based on the testimony that -- that Mr.
10 Dingle has -- has submitted, as well as the testimony from
11 -- from Mr. Murphy, I believe that my client's argument is
12 that -- and that he has proven that he has proved -- shown
13 ineffective assistance of counsel and that he was
14 prejudiced from certain things his lawyer failed to do and
15 did not do. And -- and for those reasons, he deserves a
16 new trial in this case, Judge.

17 THE COURT: All right.

18 MR. GOURLEY: Your Honor, I believe Mr. Murphy
19 provided reasonable -- representation well within the
20 reasonable professional norms. I would ask that you deny
21 this application. Thank you.

22 THE COURT: All right. The Court agrees with the
23 position and argument set forth by the state in this case.
24 And for those reasons, the Court is compelled to deny
25 applicant's motion for postconviction relief. And would

1 you please prepare an order for me?

2 MR. GOURLEY: Yes, Your Honor. I certainly will.

3 (Whereupon, the proceeding was concluded at 10:58 a.m.)

4 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 15TH
DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 14, 2017

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
 Timothy D. Dingle, # 298989,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-43-1519

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 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

ORDER OF DISMISSAL

RECORDED
 2017 JAN -3 PM 9:50
 SUMTER COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 24, 2015. Respondent made its return on October 1, 2015. An evidentiary hearing into the matter was convened on March 15, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the May 2012 term of the Sumter County Grand Jury for two counts of arson-first degree and two counts of murder (2012-GS-43-0773). Timothy Murphy, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable George C. James, Jr. Applicant was convicted as indicted on April 14, 2013. Judge James sentenced Applicant to thirty year term of imprisonment for each count of arson-first degree running consecutive to a sentence of life without parole for each murder count.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. Robert M. Dudek, Esquire, represented Applicant on appeal. In an unpublished opinion filed June 3, 2015, the South Carolina Court of Appeals dismissed the appeal. State v. Dingle, 2015-UP-272 (Ct. App. June 2015). The Remittitur was issued on June 23, 2015.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. Trial counsel representation fell below standards.
 - b. Failure to adequately investigate case.
2. Perjury.
 - a. Prosecution knowingly used perjured evidence.

Applicant filed an amended application on March 3, 2016 alleging he was being held unlawfully based on the following allegations:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to improper jury instruction.
 - b. Counsel failed to object to witness indicating he met defendant "at Kershaw."
 - c. Applicant failed to testify under the erroneous advice of counsel.
 - d. Counsel failed to adequately cross-examine witnesses.
2. Ineffective assistance of appellate counsel
 - a. Appellate Counsel failed to raise the issue of whether the trial court erred in allowing hearsay testimony of witness, Shaunte Williams.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Timothy Murphy, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's

South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he received a sentence of thirty years for arson, first degree and life for each count of murder. Applicant stated that Trial Counsel was appointed on April 2012. Applicant stated that they did not meet many times. He stated that he received discovery about seventeen months prior to trial. Applicant testified that he met with Trial Counsel's investigator several times. Applicant stated that he reviewed discovery with Trial Counsel and Trial Counsel informed him that the State's evidence made him look guilty. Applicant claimed Trial Counsel's investigator attempted to force him to admit his guilt.

Applicant stated that their overall trial strategy was to discredit Henry Dingle. Applicant explained that Henry Dingle stated that Applicant told him that he burned the victim's house down with the two minor children inside. Applicant claimed Trial Counsel should have called Harry Dingle to discredit Henry Dingle. Applicant claimed Harry Dingle knew that Henry Dingle was a "drunk and liar."

Applicant testified that Trial Counsel should have called a fire investigator to testify on his behalf. Applicant stated that Trial Counsel should have gotten phone records because a witness claimed that she saw him on a cell phone shortly before the fire. Applicant stated Trial Counsel was ineffective for failing to investigate whether or not he was actually beaten by various witnesses. Applicant stated that several state witnesses testified that Applicant was beaten up and dragged to the police after the fire had occurred. Applicant claimed that he had no scratches, bruises, or torn clothing.




Applicant stated Trial Counsel was ineffective for failing to secure footage from a convenience store where he and Henry Dingle were allegedly at after the fire occurred. Applicant claimed that the camera footage would have shown that they were not present at the store. Applicant stated that Trial Counsel told him that he could not testify because he wanted the last closing argument at trial. Applicant stated Trial Counsel called two defense witnesses and lost the last closing argument. Applicant stated that he would have testified had he known that Trial Counsel was not seeking last closing argument.

Applicant stated Trial Counsel was ineffective for failing to object to improper jury instruction. Applicant claimed Trial Counsel was ineffective for failing to object to a State witness testifying that he met Applicant at "Kershaw." Applicant claimed that this implied that Applicant was incarcerated. Applicant stated Appellate Counsel was ineffective for failing to brief whether the Trial Court erred in allowing hearsay testimony based on the excited utterance exception.

Following Applicant's testimony, Trial Counsel was called to testify. Trial Counsel stated that there were multiple witnesses and statements in this case. Trial Counsel stated victim and relatives were walking down the street to Shaunte Williams's house to eat some chicken. While walking to Ms. Williams's house, Applicant followed them down the street. Applicant was highly intoxicated, yelling and screaming at Victim. Trial Counsel stated Applicant repeatedly told Victim that he was going to burn her house down. Trial Counsel stated Mr. Getter, an unbiased third party, recited a similar version of events.

Trial Counsel testified that he asked Applicant for his version of events. Applicant testified that he recalled there being a heated argument. Applicant stated that he probably did make the statement that he was going to burn down Victim's house. Trial Counsel stated that



Applicant claimed that he walked down a path towards his brother's house after the altercation with Victim.

Trial Counsel testified that Applicant ran into an unknown third party. Trial Counsel stated Applicant did not recognize the third party, but the third party recognized Applicant. Trial Counsel stated that the unknown third party told him that there was a fire at Victim's house. Trial Counsel stated that, in their investigation, they searched the entire area to try to locate this third party, but were unsuccessful in their search. Trial Counsel opined that Applicant's story about a mysterious third party was not credible.

Trial Counsel further stated that Applicant admitted to having a conversation with Henry Dingle, but denied ever admitting his guilt. Trial Counsel stated that Applicant's testimony was not going to add much and would not be favorable.

Trial Counsel stated that Applicant went towards the Victim's house and observed the fire. Trial Counsel stated that Applicant left the scene on foot. While walking on foot, Applicant was jumped and beaten by various family members of the victims. Trial Counsel stated that the family members dragged Applicant towards the police.

Trial Counsel stated that he attempted to establish a timeline in the case. Trial Counsel stated Applicant was seen walking back from Ms. Williams's house in a non-direct path to Victim's house. Trial Counsel stated that victim and various witnesses recalled hearing sirens shortly after arriving at Ms. William's house. Trial Counsel stated that he consulted with a fire expert and did some independent research. Trial Counsel stated that he did not call the fire expert because he was able to elicit all testimony needed on cross-examination of the State's expert.



Trial Counsel stated that he could not specifically recall any witness stating that Applicant was on a cell phone. Trial Counsel stated Applicant never requested that he retrieve any cell phone records. Trial Counsel stated that he could not recall whether he looked into recovering the camera footage at the convenience store. Trial Counsel stated that the footage is usually only kept for a very short period of time.

Trial Counsel testified that it was their strategy to discredit Henry Dingle. Trial Counsel stated Henry Dingle claimed that Applicant confessed to him. Trial Counsel stated that Henry Dingle called Applicant's sister Emma Mack to attempt to have her calm Applicant down. Trial Counsel stated that they did not want Emma Mack involved with the trial because Applicant made another admission to her. Trial Counsel stated Emma Mack would not have been a helpful witness. Trial Counsel stated that they attempted to discredit Henry Dingle by calling two defense witnesses. Trial Counsel stated both defense witnesses claimed that Henry Dingle was a pathological liar.

Trial Counsel stated that it was a strong case for the State. Trial Counsel pointed out that there was a very slim chance that Applicant did not start the fire. Trial Counsel noted that Applicant was yelling to the victim that he was going to burn her house down. Shortly thereafter, Victim's house was burnt down. Trial Counsel stated that he attempted to press on Victim's credibility because she allowed her children to be around Applicant. Trial Counsel noted that it was delicate situation and he could not press on Victim's credibility in front of the jury too much because she had just lost both of her children.

Trial Counsel stated that he did not believe the State's witness stating that he met Applicant at Kershaw was detrimental to Applicant's case. Trial Counsel stated that the State did not intend to elicit the comment. Trial Counsel stated that he did not object because he did



not want to bring more attention to it. Trial Counsel testified that had the State's witness stated that they met at "Kershaw Correction Institution" he would have objected. However, Trial Counsel opined that merely stating they met at "Kershaw" was not a harmful statement.

Trial Counsel testified that he told the Applicant that this was a tough case, but never told him that he was guilty of the charges. Trial Counsel stated that his investigator would never require Applicant to admit his guilt. Trial Counsel stated that Applicant never stated that he wanted to testify. Trial Counsel stated that it is always the client's choice on whether they are going to testify or not. Trial Counsel stated that Applicant was well aware that the defense witnesses were going to testify. Trial Counsel stated that they never discussed the need to preserve the last closing argument.

Trial Counsel stated that he did object to Shaunte William's hearsay statement. Trial Counsel stated that the trial judge overruled the objection and allowed the hearsay testimony in under the excited utterance exception. Trial Counsel opined that the trial judge made the correct decision. Trial Counsel further opined that the hearsay testimony was not prejudicial. Trial Counsel stated that he had no specific recollection of the jury instruction. Trial Counsel opined that it was a fair and impartial jury instruction.

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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. 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).



INEFFECTIVE ASSISTANCE OF COUNSEL

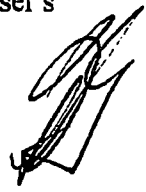
In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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.

1. Ineffective assistance of counsel failing to obtain a fire investigator to investigate the case.

This Court finds that Applicant's allegation that Trial Counsel was ineffective for failing to obtain a fire investigator to investigate the case is meritless. This Court finds Trial Counsel's



action fell well within the reasonable professional norms. Trial Counsel credibly testified that he consulted with a fire investigator and conducted his own independent research. Trial Counsel further stated that the testimony of the fire investigator would have been cumulative to what he was already able to elicit on cross examination of the State's arson expert. This Court finds Trial Counsel thoroughly cross-examined the State's arson expert. See Frasier v. State, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991) (holding trial counsel's failure to procure an expert witness was not unreasonable under prevailing professional norms where counsel vigorously cross-examined and attacked the accuracy of the evidence). Based on the foregoing, this Court finds Trial Counsel was not deficient in his representation of Applicant on this issue.

Furthermore, Applicant can show no prejudice due to Trial Counsel's failure to obtain an arson expert's testimony at trial. Notably, Applicant failed to produce any expert testimony on this very issue. As a result, this Court will not speculate as to what potential testimony could have been elicited from such an expert. See Dempsev v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative"). As a result, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

2. Ineffective assistance of counsel for failing to object to improper jury instructions.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the jury instructions is meritless. This Court finds Trial Counsel's actions fell well within the reasonable professional norms. Applicant has failed to meet his burden in proving that Trial Counsel was ineffective and that he was prejudiced by Trial Counsel's actions, and this allegation must be denied and dismissed with prejudice.



3. Ineffective assistance of counsel for failing to object to a witness stating that he met Applicant "at Kershaw."

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the State's witness Darnell Getter testifying that he met Applicant "at Kershaw" meritless. This Court finds Trial Counsel's representation was well within reasonable professional norms. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Trial Counsel noted that a bench conference was held immediately following the comment and he determined that he did not want to object to the comment for fear of bringing more attention to it. This Court agrees with Trial Counsel's strategy and finds nothing deficient about Trial Counsel's decision. Furthermore, this Court finds Applicant can show no prejudice as the statement that witness met Applicant "at Kershaw" was ambiguous to the point of irrelevancy. Therefore, this allegation must be denied and dismissed with prejudice.



4. Ineffective assistance of counsel for giving Applicant erroneous advice causing him not to testify.

This Court finds Applicant's allegation that Trial Counsel was ineffective for giving him erroneous advice causing him not to testify is meritless. This Court notes Applicant claimed that Trial Counsel told him he could not testify because he wanted to preserve last closing argument. This Court finds Applicant's testimony is not credible. This Court finds very credible Trial Counsel's testimony that he never told Applicant that he could not testify at trial. Trial Counsel stated that Applicant was well aware they were prepared to call two defense witnesses in attempt to discredit Henry Dingle. This Court finds nothing deficient in Trial Counsel's advice regarding Applicant's ability to testify.

Furthermore, Applicant can show no prejudice as he was fully advised of his Fifth Amendment rights. A review of the record reveals that Applicant told the trial court that he did not want to testify. (App. p. 409-410). Based on the foregoing, this Court finds that this allegation should be denied and dismissed with prejudice.

5. Ineffective assistance of counsel for failing to adequately cross-examine witnesses.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to properly cross-examine the State's witnesses meritless. This Court finds Trial Counsel's representation was well within reasonable professional norms.

Here, Trial Counsel's cross-examination and argument that he advanced at trial fully set forth enough information so that the jury could properly assess the witness' credibility and counsel could demonstrate the supposed lack of it. See, e.g., Fugate v. Head, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one well within the discretion of a defense attorney.... Absent a showing of a single specific instance



where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a[n] [applicant] is unable to show prejudice necessary to satisfy the second prong of *Strickland*”) (citations and internal quotation marks omitted); Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (per curiam) (“the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish”) (emphasis in original); Mills v. Singletary, 161 F.3d 1273, 1288 (11th Cir. 1998) (defendant’s Sixth Amendment right to confront witnesses is satisfied where the cross-examination permitted exposes the jury to facts sufficient to evaluate the witness’ credibility and “enables defense counsel to establish a record from which he can properly argue why the witness is less than reliable”).

Trial Counsel thoroughly cross-examined the State's arson expert to elicit the proper testimony. Trial Counsel also called two witnesses to discredit the testimony of Henry Dingle. This Court finds that Trial Counsel's strategic decisions of how to cross-examine witnesses were proper and reasonable.

Furthermore, Applicant has failed to show exactly what information should have been elicited if the witnesses were properly cross-examined. "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). This Court cannot speculate as to what testimony could have been elicited upon a different strategy of cross-examination, and thus Applicant cannot meet his burden of proving prejudice.

Because Applicant has failed to meet either prong of the Strickland test, this allegation must be denied and dismissed with prejudice.



6. Ineffective assistance of appellate counsel for failing to brief the issue of whether trial court erred in allowing hearsay testimony of witness Shaunte Williams.

This Court finds Applicant's allegation of ineffective assistance of appellate counsel to be meritless.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every nonfrivolous issue that is presented by the record." Id. (citing Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990)) (emphasis supplied). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy...." Jones v. Barnes, 463 U.S. 745, 754, 103 S.Ct. 3308, 3308 (1983).

This Court finds that Applicant has failed to present credible evidence to meet his burden in proving that Appellate Counsel was ineffective in his representation. Therefore, this allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

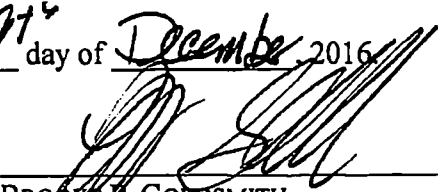
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19th day of December, 2016.



 BROOKS P. GOLDSMITH
 Presiding Judge
 Third Judicial Circuit


 _____, South Carolina

WITNESSES

Irene Culick
Dept.

Sumter Police

DOCKET NO. 2012-GS-43-0773

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

May TERM 2012

THE STATE

vs.

TIMOTHY DONALD DINGLE

ARREST WARRANT NUMBER

M936064 M936065 M936075

M936076

ACTION OF GRAND JURY

TRUE BILL

Indictment for

Arson – First degree (2 counts)

Murder – (2 counts)

Claude Hendrix

Foreperson of Grand Jury

Date: *01/17/12*

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Arson - First degree (2 counts)
Murder (2 counts)

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Stegmaier
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on May 17, 2012 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE - ARSON FIRST DEGREE

That Timothy Donald Dingle did in Sumter County on or about March 27, 2012, willfully and maliciously cause an explosion, set fire to, burn, cause to be burned, or aided, counseled or procured the burning of 861 Carolina Avenue Apt #62, resulting in the death of Aalyah Jackson, a minor in violation of Section 16-11-0110(A), S. C. Code of Laws, 1976, as amended.

*Amended by
consent
8/14/13
(sp)*

COUNT TWO- ARSON FIRST DEGREE

That Timothy Donald Dingle did in Sumter County on or about March 27, 2012, willfully and maliciously cause an explosion, set fire to, burn, cause to be burned, or aided, counseled or procured the burning of 861 Carolina Avenue Apt #62, resulting in the death of Robert Jackson, a minor in violation of Section 16-11-0110(A), S. C. Code of Laws, 1976, as amended.

COUNT THREE - MURDER

That Timothy Donald Dingle did in Sumter County, on or about March 27, 2012, willfully, feloniously, and intentionally kill the victim Aalyah Jackson, with malice aforethought, either express or implied, by means of result of smoke inhalation and thermal injury, and the victim did die as a proximate result thereof on or about March 31, 2012 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

*8/14/13
Amended by consent (sp)*

COUNT FOUR - MURDER

That Timothy Donald Dingle did in Sumter County, on or about March 27, 2012, willfully, feloniously, and intentionally kill the victim, ~~Aalyah~~ Jackson, with malice aforethought, either express or implied, by means of result of smoke inhalation and thermal injury, and the victim did die as a proximate result thereof on or about March 31, 2012 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

*8/18/13
Amended by consent
to correct name to
"Robert"
(sp)*

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

Solicitor

Ernest A. Finney III