

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George M. McFadden, Jr., Circuit Court Judge

Case No. 20018-001224

Reco Antonio Godbolt,

Appellant

Vs.

State of South Carolina,

Respondent,

APPENDIX

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S.C. SUPREME COURT

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1 no further injuries were done towards the victims, even
2 though they be traumatized for a very long time.

3 And I -- as our family -- as Reco family, we do
4 apologize and -- for his behaviors, and I know he -- you
5 know, he would like to apologize as well.

6 So we just ask for the court to just please have
7 mercy on him, and just do whatever you see that you need to
8 do -- see fit for him as far as his punishment.

9 THE COURT: Thank you, ma'am.

10 Mr. Godbolt, is there anything you would like to
11 say?

12 THE DEFENDANT: Yes, sir.

13 First, and foremost, I want to apologize for my
14 actions and whatnot. I want the victims to accept my
15 apology, and one day find it in their heart, you know what
16 I'm saying, forgive me for what I did to them. I know they
17 traumatized and whatnot. I just hope one day they find
18 peace in their heart and they back in their home again.

19 I learned a lot from this situation, and I also
20 put my family through a lot of stress, and I hope they
21 forgive me for what I done put them through.

22 And I just hope that you find it in your heart to
23 just have mercy on me, sir. I -- I learned a lot, and I --
24 and I just want to -- I just want to apologize for my
25 actions.

1 And I want to first -- I just want to apologize to
2 Mr. Funke, and I hope he find it in his heart one day just
3 to forgive me for what I did. I never wanted to cause harm
4 to no one, sir.

5 I just been going through a lot, and I -- I -- I
6 made a lot of bad decisions. I made a lot of bad decisions,
7 sir. And I -- I know I got to face my consequences. And
8 I'm here before you and I'm ready to do that, sir. I just
9 hope that one day that Dr. Funke will find it in his heart
10 just to forgive me.

11 Thank you. Thank you, sir.

12 THE COURT: Thank you, Mr. Godbolt.

13 Mr. Smaldone, anything else?

14 MR. SMALDONE: I believe I -- I've -- I've said it
15 all, Your Honor.

16 MR. MEADORS: Judge, could I acknowledge -- I
17 forgot to mention Johanna Aleck, who is in the back, and
18 also did an outstanding job. I just missed her when I --

19 THE COURT: Yes, sir.

20 MR. MEADORS: And I want to put that on the record
21 and thank her.

22 THE COURT: Yes, sir.

23 I've only -- I probably can count on the fingers
24 of both hands, maybe a little bit more, the number of times
25 I've been in Idlewild. Back in the area where this house is

1 I guarantee you I'd get lost. I wouldn't be able to get
2 back out of there, so obviously this took some planning.
3 They'd been there before, or -- at least one of them or both
4 of them had been there, around there before. They planned
5 it out. And two words come to my mind; sheer terror.

6 I don't care whether you live in a \$2,000 mobile
7 home or a \$200,000,000 estate, somebody comes into your
8 house, in this case, broad daylight, and you are minding
9 your own business and you come home for lunch, and now you
10 can't do that in peace any more, because what's going to be
11 on the other side of that door. I don't care where you
12 live, I don't care who you are, nobody should have to live
13 like that. And in this day and age, we have these people
14 who go out and prey on others, obviously with no remorse or
15 no thought at the time of what they're doing to people.

16 I don't even go to my door any more and look
17 through my peephole. I'm afraid to do that when somebody
18 knocks on the door, and it shouldn't be that way. It
19 shouldn't be that when you go home to get a sandwich, that
20 you got to worry about somebody being in your house. I
21 don't care whether you leave the doors unlocked or not, you
22 ought not have to be worried about that. And it's folks
23 like you and Mr. Helton who make it that way.

24 No amount of time is going to give them peace.
25 You are facing life in prison because of the burglary, at

1 least. Obviously, you know, I'm sure you know that you got
2 to do eighty-five percent of the time that I give you. You
3 will get credit for the time you've served.

4 I -- I -- I struggle with this all the time
5 because I know you're probably sorry. Maybe twenty percent
6 sorry that you got caught, eighty percent sorry because, you
7 know, I really shouldn't have done this. I don't know.
8 You're the only one who knows that.

9 The only thing I know is that Dr. Funke was
10 thinking he was staring at his last minutes on this earth.

11 You know, for the most part, this is armed --
12 armed robbery and a burglary case is what this case is. The
13 two -- the -- having a gun used to take property from you
14 and somebody breaking into to your -- your castle. It can't
15 be like that.

16 The sentence that I'm going to give you is going
17 to be one that I hope sends a message out there to people.

18 I certainly don't fault you for taking a trial.
19 I'm not imposing the sentence I'm going to impose as any
20 type of penalty, because I -- I -- I fully believe everybody
21 who is charged with a crime, they would take a trial and --
22 and not feel like they're going to be punished just because
23 they took a trial, but you are going to be doing a long time
24 in jail. You are not going to be out of jail until your
25 into your forties. It's going to be a long time, but

1 sometime this stuff has got to stop.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: It's just that bad. It makes the
4 community feel unsafe and -- and it just -- it's got to
5 stop. And again, the sheer terror, nobody should be
6 subjected to that.

7 I -- I will -- in case there is any confusion on
8 on the record, these will be concurrent sentences.

9 On the criminal conspiracy, five years in the
10 Department of Corrections. That will be concurrent with
11 your other sentences, and you will get credit for the time
12 that you have served.

13 Armed robbery, twenty-five years in the Department
14 of Corrections.

15 Concurrent with that, burglary in the first
16 degree -- struggling with this. It could be easily more,
17 twenty-five years, concurrent.

18 Kidnapping, twenty-five years.

19 Possession of a weapon during the commission of a
20 violent crime, five years.

21 Again, these are all concurrent.

22 And Mr. Godbolt, I -- this gives me no pleasure at
23 all, none, because more than likely you might be a nice
24 fellow to have a conversation with, but you did some bad,
25 bad things.

1 And some may complain that the sentences are too
2 lenient, some may say that they are too heavy, but all I can
3 do is do what I think is appropriate, and I think those are
4 appropriate sentences.

5 Dr. Funke, Mrs. Funke, Sergeant Davis, I certainly
6 do appreciate your participation. I -- I hope that you can
7 move on with some peace. I don't know if you can. The
8 amount of time that -- all the amount of time in the world
9 is not going to make anybody feel any better.

10 And Mr. Godbolt, I hope you have learned
11 something.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You are not going to see your
14 grandmother out in the free world for a long time, or your
15 sister, or your aunt. I -- I sincerely wish you luck.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Thank you.

18 MR. MEADORS: Thank you, Your Honor.

19 (END OF REQUESTED TRANSCRIPT OF RECORD)
20
21
22
23
24
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for SUMTER County, South Carolina, on the 3RD, 4TH, 5TH, AND 6TH days of December, 2012.

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

I do further certify that Bonnie Kelly was the actual court reporter for this trial and I, Michael R. Watts, transcribed this same trial to the best of my ability.

October 6, 2013

Michael R. Watts

Michael R. Watts
Circuit Court Reporter



FORM 5

STATE OF SOUTH CAROLINA

SUMTER POLICE DEPARTMENT

COUNTY OF SUMTER

INTERVIEW FORM

RECO ANTONIO GOLDBOLT # 342149

Full name and prison number (if any) of Applicant.

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS. APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

YOU HAVE THE RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

INSTRUCTIONS - READ CAREFULLY

YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE

WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU

DURING THE QUESTIONING.

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 verified (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.

IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.

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 YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

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 is unable to pay the fees 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 case is pending.

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY

RIGHTS AT 1:43 A.M. (P.M.) ON 10/31/2011 AT Sumter P.D.

BY OFFICER Richbws OF THE SUMTER POLICE DEPARTMENT.

Name and location of Court which imposed sentence General Sessions Court, Sumter, SC

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I

UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT

THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

sentence was imposed:

(a) Kidnapping & Criminal Conspiracy, Indictment # 2012-gs-43-0227

(b) Burglary 1st Degree & Armed Robbery, Indictment # 2012-gs-43-0227

WITNESSES:

(c) Poss. Weapon During Com. Violent Crime, Indictment # 2012-gs-43-0227

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 6, 2012 on all counts



CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for SUMTER County, South Carolina, on the 3RD, 4TH, 5TH, AND 6TH days of December, 2012.

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

I do further certify that Bonnie Kelly was the actual court reporter for this trial and I, Michael R. Watts, transcribed this same trial to the best of my ability.

October 6, 2013

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

2016 MAY 20 PM 12:29

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

RECO ANTONIO GOLDBOLT # 342149

Full name and prison number (if any) of Applicant.

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

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 verified (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 clear 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 the fees 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 Broad River Correctional Insitutions
2. Name and location of Court which imposed sentence General Sessions Court, Sumter, SC
3. Name(s) of co-defendant(s) (if any) Jamal Helton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping & Criminal Conspiracy; Indictment # 2012-gs-43-0227
 - (b) Burglary 1st Degree & Armed Robbery, Indictment # 2012-gs43-0227
 - (c) Poss. Weapon During Com. Violent Crime, Indictment # 2012-gs-43-0227
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 6, 2012 on all counts
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty n/a
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere n/a
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 was dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 6, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2015-UP-229
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See attached page

(b) _____

(c) _____

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

(a) See attached page

(b) _____

(c) _____

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. n/a

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. n/a
- 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. n/a
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. n/a
- 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) Appellate counsel was ineffective for failing to these issue on appeal
- (b) _____
- (c) _____
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? Yes

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. Grant Smaldone, David Sullivan, Public Defender Office, Sumter, South Carolina
 - ii. Thurmond Brooker, Esq., PCR
 - iii. Susan B. Hackett
- (b) the proceedings at which each such attorney represented you:
 - i. David Sullivan, pre-trial and Grand Smaldone pre-trial and trial
 - ii. Susan B. Hackett, Appeal before Court of Appeals
 - iii. Thurmond Brooker, PCR

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

Vacate the Convictions and grant of new trial

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

Yes.

STATE OF SOUTH CAROLINA

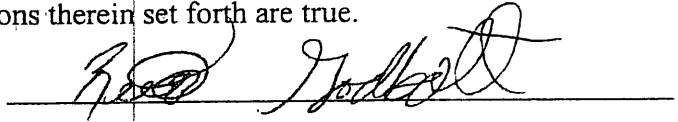
RECORDED

VERIFICATION

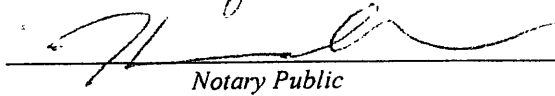
County of Richland

2016 MAY 20 PM 12: 29

I, Reco Antonio Godbolt, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that 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.



SWORN to and subscribed before me this 19th
day of May, 2016.

 (L.S.)
Notary Public

My Commission Expires: 3/30/2021

Attached to PCR Application of Reco Antonio Godbolt

1. Trial counsel was neglect in failing object to the introduction of bad character evidence in to the record were testimony was permitted regarding defendant's possession of property stolen from another residence on the same day.
2. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 156).
3. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 162).
4. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p.165-166).
5. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 169-170).
6. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 204)
7. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 218)
8. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 83-87, 256, 259-264)
9. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 328-328)
10. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 281)
11. Confrontation Clause Violation - Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant that was not made available for confrontation or cross examination at trial or before trail. (Trial Transcript, p. 341).

12. Counsel was ineffective for failing to subpoena Detective Robert Richburg at trial for cross examination. Detective Richburg was the lead detective in the case and conducted the interview with Defendant that lead to Defendant writing a statement.
13. Trial counsel was ineffective based on the cumulative errors made at trial, which compromised due process and fairness of the trial.

000518
STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CASE NO. 2016-CP-43-975

Reco Antonio Godbolt # 342149

Applicant,

Vs.

SUPPLEMENT AND AMENDMENT TO
APPLICATION FOR POST-
CONVICTION RELIEF AND
MEMORANDUM IN SUPPORT

State of South Carolina,

Respondent.

TO: THE STATE OF SOUTH CAROLINA AND ITS ATTORNEY(S):

Applicant, Reco Antonio Godbolt (hereinafter "Mr. Godbolt"), hereby
supplements and amends his Application for Post-conviction Relief to include the
following grounds for relief.

GROUND FOR PCR RELIEF

1. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of prior bad act evidence at trial.
2. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the admission of false or perjured testimony by a witness and prosecutorial misconduct for eliciting false testimony.
3. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of testimony at trial in violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution.

STANDARD OF REVIEW

In order to establish a claim of ineffective assistance of counsel offensive to the Sixth Amendment to the United States Constitution, the applicant must prove: (1) counsel's performance was deficient; and (2) applicant was prejudice by counsel's deficient performance. See, Strickland v. Washington, 466 U.S. 668. 105 S. Ct. 2052 (1984).

ARGUMENTS

1. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of prior bad act evidence at trial.

On December 3, 2012, Mr. Godbolt and his co-defendant Jamal Helton (hereinafter "Mr. Helton") were called to trial on Indictment 2012-GS-43-0227 for one count each of kidnapping, burglary first degree, attempted murder, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy, and Indictment 2012-GS-43-1314 for one count of burglary in the second degree. (Transcript or Record, The State v. Reco Antonio Godbolt and Jamal Helton, 2012-GS-43-2012, page 10; hereinafter "Tr. p. ____"). Mr. Godbolt was represent by Attorney Grant Smaldone (hereinafter "Attorney Smaldone"). Mr. Helton was represented by Attorney Jack Swerling (hereinafter "Attorney Swerling"). Attorney Swerling moved to have the indictments tried separated on the bases that the home invasions in each indictment were separate and unrelated incidents although the two homes were in the same subdivision and occurred within hours of each other. (Tr. p. 10-11) The home invasion charged in indictment ending in 0227 occurred on Canvasback Cove and the home invasion charged in indictment ending in 1314 occurred on Widgeon Way. (Tr. p. 12). Attorney

Smaldone join Attorneys Swerlings motion on behalf of Mr. Godbolt. After arguments

the court granted the defendants motion. The court ruled in pertinent part:

First of all let me put on the record the rulings that I made earlier, specifically concerning Indictment 2012-GS-43-1314. I did not ever put it on the record; but I told the attorneys up here while the jury was in the courtroom that I would not permit the State to go forward in trying both indictments. In the second indictment, 1314, it dealt with the burglary of the Davis dwelling.

I just don't see how they can be proven by the same evidence, and I know it's within my discretion to allow the indictments to be tried together; but I'm going to make - - I believe that I'm correct in stating that they should not be tried together.

(Tr. p. 78-79).

During the trial Bryan Funke, the burglary victim (hereinafter "Dr. Funke") testify before the jury that he observed in Mr. Godbolt's car, a laptop that belong to his neighbor along with stolen items from his home.

Q. And what did you do after that? I mean you saw this car that you didn't know.

A. I pulled my car into the driveway and I got out.

And as I was walking towards the house I noticed that there was a bunch of electronics in the back of that car, so I went up and took a closer look and I noticed that my television set was in there; the computer that I have in the kitchen of my house; my daughter's camera. *There was a laptop, which I initially thought, because it's the same model as my son's, but it actually belonged to the Davis couple that are neighbors of mine.*

(Tr., p. 150) Dr. Funke was referring to the home invasion charged in indictment ending in 1314, which the court has specifically ruled in pre-trial motions had to be tried separated.

Furthermore, a written statement given by Mr. Godbolt to law enforcement shortly after his arrest was published to the jury, including statements regarding Mr. Godbolt's involvement in the home invasion identified in indictment ending in 1314 and at least one other burglary that occurred months before the home invasion the subject of Mr. Godbolt's trial.

Q. And after you went over it, did Mr. Godbolt sign on the back?

A. Yes, Sir.

Q. And on the front page did he sign his name at the bottom?

A. He did.

Q. Now, Would you publish this to the jury?

A. "On today, 10-31-2011, I (Mr. Godbolt) woke up about seven o'clock a.m. I got dressed and caught a ride with my friend Shanika, unknown last name, who drives a black Maxima to my girlfriend and my baby momma mother house Jessica Hodge, unknown address, in Maysville.... I rode with Jessica in her 2006 gold Nissan Altima to drop my daughter off to Ruby J. Johnson School in Sumter.... We left there and I took Jessica to Goldkist to orientation.... Shortly after this Jamal Helton ..."called me from a 220 phone number and asked me to pick him up from Southside.... "Mall" got in the car with me wearing a black sweatshirt, unknown shoes, and a black stocking cap covering his hair....

We ended up in Idlewild subdivision and "Mall" told me to drop him off.

I dropped him off near a house with a black SUV parked in the roadway and I circled around the area (The Widgeon Way home invasion charged in indictment ending in 1314). "Mall" called me back to pick him up about twenty minutes later. When I picked "Mall" up he was walking down the road. He was still in Idlewild Subdivision. "Mall" had something under his hoodie sweatshirt. "When "Mall" got in the car he pulled a laptop from under his sweater and put in the back seat of the car. I told "Mall" I was about to ride because I had to pick my girlfriend up. "Mall" told me that he needed to make one more stop. "Mall" pointed me in the direction to go and we ended up at a house where the police got me (Canvasback Cove, the home invasion the subject of the trial).... About four months ago I dropped Javan Pearson and Jamal Helton off in Twin Lakes Subdivision on Treadmore Circle. They told me that they were going to give me money if I dropped them off. They gave me \$50 when I dropped them off. They called me about an hour later and told me to come and get them from Twin Lakes Subdivision. They were near the same area I dropped them off at. When I picked them up - - "

Q. Hold on a second, detective.

Okay.

A. " - - they had a laptop and some jewelry on them. The stuff was stashed by some bushes. When I pulled up Javan got the laptop out of the bushes. I don't know exactly which house they hit, but I knew where I

dropped them off at and it was on Treadmore Circle. When they got into the car I asked them where is my money and Javan handed me \$50. I took the both of them on Southside and dropped them off by Southside Gym and then I left."

"Generally, evidence of prior crimes is not admissible to prove the crime for which the defendant is charged." State v. Campbell, 317 S.C. 449, 450-451, 454 S.E.2d 899 (S.C. App. 1994), citing, State v. Lyle, 125 S.C. 406, 118 S.E.803 (1923). "Evidence of other crimes is admissible when that evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each that proof of one tends to establish the others; or (5) the identity of the person charged with the commission of the crime on trial." Id. (Citations omitted). "However, the evidence of prior bad acts must be relevant to prove the alleged crime." Id. at 451 (Citations omitted). "In deciding to apply the Lyle exception for the admission of prior crimes evidence, the court must always determine if the probative value of the prior acts evidence outweighs its prejudicial effect." Id. (Citations omitted).

In the case at hand, the trial court concluded that there was not sufficient connections between the home invasion charged in indictment ending in 1314 to trial the cases together; therefore, it was not admissible in Mr. Godbolt's trial. Furthermore, the statement by Mr. Godbolt that detailed his involvement in a home invasion that occurred four months prior to the invasion that is the subject of this PCR action had not relevant connect with the crimes Mr. Godbolt was on trial for, and did not fit into any of the five Lyle exceptions.

Although prior bad character evidence can be admitted under one or more of the five exceptions identified in Lyle, the court must endeavor to complete a three step analyze to determine whether a Lyle exception exist; if so, whether the exception can be proven by clear and convincing evidence; if so, the trial court must further determine whether the probative value of the bad character evidence is outweighed by its prejudicial effect to the defendant. However, a Lyle analysis was never performed because Attorney Smaldone failed to object to the admission of the evidence, which was necessary to trigger the analysis. See, State v. King, 416 S.C. 92, 784 S.E.2d 252 (S.C. App. 2016) (The trial court's failure to conduct a proper Lyle analysis of bad character evidence the defendant volunteered in a statement to law enforcement constituted reversible error).

2. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the admission of false or perjured testimony by a witness and prosecutorial misconduct for eliciting the false testimony.

Attorney Swerling informed the court that Mr. Helton and the State had reached a negotiated plea agreement and that the plea would be entered the next day. (Tr. p. 81) The court agreed, and Attorney Swerling, on behalf of Mr. Helton, withdrew from participation in all further pretrial motions.

The court requested the State to call its first witness in connection with the Jackson v. Denno motion. (Tr. p. 81). The State called detective Natalie Kelly (hereinafter "Detective Kelly"). Detective Kelly testify that she and Detective Robbie Richburg (hereinafter "Detective Richburg") interview Mr. Godbolt at the Sumter Police Department after his arrest on October 31, 2011. (Tr. p. 82-83). The attorney for the

State questioned Detective Richburg about a "Waver of Rights" form Mr. Godbolt signed before his interrogation started. (Id.) Detective Kelly testified as follows:

Q. Were y' all both together when these rights were read?

A. That's correct.

Q. And actually Detective Richburg read these rights in this case, correct?

A. That's correct.

Q. But you were present?

A. I was.

(Tr. p. 83)

Furthermore, Detective Kelly continued to testify at other times during the Jackson v. Denno hearing that it was Detective Richburg that read and explain to Mr. Godbolt the Miranda rights waiver form.

Q. Did he (Mr. Godbolt) appear to understand your words?

A. Yes, sir.

Q. Or Richburg's when these were read to him?

A. Yes, sir.

Q. After that on there is what is referred to as the Waiver of Rights?

A. That's correct.

Q. And was that also read to Mr. Godbolt?

A. It was.

Q. And were you present when they were read?

A. Yes, sir.

Q. Please read them as they were read to Mr. Godbolt on October the 31st

2011.

Q. And were you present when that was read to the defendant?

A. Yes, sir, I was.

(Tr. p. 86-87)

At the trial, Detective Kelly's testimony first affirmed her Jackson v. Denno testimony that Detective Richburg was the one whom had read and explain to Mr. Godbolt the waiver of Miranda rights form he signed before interrogation, and she was merely present to witness Detective Richburg explain the waiver of Miranda rights form to Mr. Godbolt; however, Detective Kelly changed her testimony at trial to state that she in fact had read and explain the waiver of Miranda rights form to Mr. Godbolt when she was prompted to change her testimony by the leading questions from the assistant solicitor that directed her to change her testimony.

Q. Did you have an occasion to read the Miranda - - what is known as Miranda Rights to Reco Godbolt?

A. I did.

Q. Or were you present when they were read?

A. Yes, sir.

Q. Which? Did you read them to him or where you present?

A. It was Detective Robbie Richburg, but I was in the room with him the entire time.

Q. And so you were present when they were read to him?

A. That's correct.

(Tr. p. 256)

Q. *Do you* read him these rights?

A. That's correct.

Q. Okay. *What's the first right that you read him?*

A. "You have the right to remain silent."

Q. And *when you are reading him this right*, did he indicate to you that ye understood it?

A. He did.

Q. How did you (sic) indicate that he understood?

A. He initialed it.

Q. And did he orally initialed it. Is this what this is right here, and RG, are those his initials?

A. That's correct.

Q. What's the next thing *that you read to him?*

A. "Anything you say can be used against you in court."

Q. And *when you read him that right*, did he appear to understand that?

A. Yes, he did.

Q. When the rights was read to him by Detective Richburg, you were present?

A. That's correct.

Q. And did he indicate by signing his initials that he understood it?

A. He did.

(Tr. p. 259)

Q. *What's the next right that you read to him?*

A. "You have the right to talk to a lawyer for advice before we ask you any questions and to have him or her with you during questioning."

Q. *What's the next right that you read to him?*

A. "If you decide to answer any questions now without a lawyer present, you still have the right to stop answering at any time until you talk with a lawyer."

Q. And *when you read him that*, or after it was read to him by Detective Richburg, did he appear to you to understand it?

(Tr. p. 260-61)

Q. Okay. Now, next is what's referred to as State's 42 on the Miranda Rights as the Waiver of Rights, correct?

A. That's correct.

Q. Tell the jury about that. Was the Waiver of Rights read to defendant Reco Godbolt?

A. It was.

Q. And please read it as it was read that day to defendant Reco Godbolt.

A. "Before any questioning I was furnished the above statement of my rights at 1:43 p.m. on 10-31-2011 at Sumter P.D., "which is, which is (sic) Sumter Police Department, "by officer Richburg of the Sumter Police Department."

Q. And you were present?

A. That's correct.

(Tr. p. 261)

Q. *Did he appear to understand the questions as you read him and did you understand his answers when he gave them to you?*

A. Yes, sir.

(Tr. p. 263)

Q. *At any time during the reading of these rights, Detective Natalie Kelly, or the reading of this Waiver of Rights, did you threaten, coerce, hold out (sic) any hope of reward to Mr. Godbolt in exchange for him talking to you?*

A. No, sir.

“A prosecutor’s deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.” Riddle v. Ozmint, 631 S.E.2d 70, 75, 369 S.C. 39 (S.C. 2006), citing, Giglio v. U.S., 405 U.S. 150, 92 S.Ct. 763 (1972). “The failure to correct false evidence is as reprehensible as its presentation. Id. (Citation omitted)

In Riddle, the State’s star witness against the defendant, Jason, gave a second statement to law enforcement on January 22, 2006 in reference to the murder Riddle was charged, and he had been taken to the site of the murder and questioned by several law enforcement officers, the solicitor, and an assistant solicitor three days before the beginning of Riddle’s trial. Riddle v. Ozmint, 631 S.E.2d at 75. The solicitor failed to correct Jason’s false testimony when he testified that he talked with no one about the case

after given his first statement to law enforcement. Id. The South Carolina Supreme Court held that: “[t]he PCR judge erred in concluding that the State was not obligated to correct Jason’s false testimony, and in failing to hold that this violation of petitioner’s due process rights required that he be granted a new trial. Id. The Riddle Supreme Court further stated that, “[t]he Constitution requires only that a defendant received a fair trial, not a perfect one.” Id. (Citations omitted). “Petitioner’s trial was rendered fundamentally unfair by prosecutorial misconduct.” Id.

In the case at hand, Detective Kelly specifically testify at the Jackson v. Denno hearing, and initially during trial, that it was Detective Richburg that read and explained to Mr. Godbolt his Miranda rights prior to he waiving his Fifth Amendment right to silence and Sixth Amendment right to legal counsel before giving a statement to law enforcement soon after his arrest at the scene of the home invasion. However, Detective Kelly falsely testified in response to at least ten (10) questions before the jury when she was prompted to testify in response to the solicitor’s leading question that she, not Detective Richburg, had in fact read and explain to Mr. Godbolt the waiver of Miranda rights form.

Mr. Godbolt was prejudice because prior to publishing his confession to the jury at trial it was necessary that the State proved that Mr. Godbolt had been read and explained his Miranda rights under the Fifth and Sixth Amendments to the United States Constitution and that he voluntarily and intelligently waives such rights after explanation of such rights by law enforcement. Although Detective Kelly could have testify to Detective Richburg’s reading and explanation of the waiver of Miranda rights form to Mr. Godbolt at the Jackson v. Denno hearing, because hearsay testimony is admissible at

such pre-trial suppression motions; however, the same testimony by Detective Kelly was not admissible at trial because it offended the Confrontation Clause of the Sixth Amendment to the United States Constitution and Rule 802 of the South Carolina Rules of Evidence. Because Detective Richburg was not present at trial, his statements to Mr. Godbolt reading and explaining the waiver of Miranda rights form to Mr. Godbolt before his interrogation and confession was not admissible. Therefore, the ability to publish Mr. Godbolt's confession at trial would have been substantially frustrated, if not inhibited.

3. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of testimony in violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution.

In State v. Davis our State Supreme Court thoroughly explain the jurisprudence of the Confrontation Clause to the Sixth Amendment of the Constitution of the United States. The Court explained as follows:

Among other protections, the Sixth Amendment assures: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. The Sixth Amendment was incorporated and made applicable to the states through the Due Process Clause of the Fourteenth Amendment. *Pointer v. Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L.Ed.2d 923 (1965); *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002). The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. *California v. Green*, 399 U.S. 149, 90 S. Ct. 1930, 26 L.Ed.2d 489 (1970); *State v. Gillian*, 360 S.C. 433, 602 S.E.2d 62 (Ct.App.2004). The primary interest secured by the Confrontation Clause is the right to cross-examination. *Gillian* at 450, 602 S.E.2d at 71 (citing *State v. Shuler*, 344 S.C. 604, 545 S.E.2d 805 (2001); *Starnes v. State*, 307 S.C. 247, 414 S.E.2d 582 (1991)); see also *State v. Graham*, 314 S.C. 383, 444 S.E.2d 525 (1994) (observing that specifically included in defendant's Sixth Amendment right to confront a witness is the right to meaningfully cross-examine an adverse witness).

Certain hearsay statements traditionally have been admissible against a defendant even though the declarant was unavailable at trial and even though the defendant did not have a prior opportunity to cross-examine the declarant. Under *Ohio v. Roberts*, 448 U.S. 56, 100 S. Ct. 2531, 65 L.Ed.2d 597 (1980), abrogated by *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), hearsay statements were admissible if they bore "adequate indicia of reliability" — a test that could be met by showing the evidence (1) fell within a firmly rooted hearsay exception, or (2) bore particularized guarantees of trustworthiness. *Roberts* at 66, 100 S. Ct. 2531; *State v. Sanders*, 356 S.C. 214, 588 S.E.2d 142 (Ct.App.2003). However, in *Crawford*, the United States Supreme Court broke away from *Roberts* and radically changed the Confrontation Clause landscape.

* * *

In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), Michael Crawford was convicted of assault for stabbing Kenneth Lee, who allegedly tried to rape Crawford's wife, Sylvia. At trial, the State played for the jury Sylvia's tape-recorded statement to the police describing the stabbing. Sylvia did not testify at trial due to Washington's marital privilege, which "generally bars a spouse from testifying without the other spouse's consent." *Id.* at 40, 124 S. Ct. at 1357 (citing Wash. Rev. Code § 5.60.060(1) (1994)). This privilege, however, does not extend to a spouse's out-of-court statements admissible under a hearsay exception. Whether Crawford saw a weapon in Lee's hands was a critical fact for his claim of self-defense. Because Sylvia was unable to testify at trial, Crawford claimed the admission of Sylvia's statement was a violation of his federal constitutional right under the Sixth Amendment to be confronted with the witnesses against him.

Following *Roberts*, the trial court allowed Sylvia's statement on the ground that it bore guarantees of trustworthiness. The Washington Court of Appeals reversed. The Washington Supreme Court then reinstated the conviction, and the Supreme Court of the United States granted certiorari.

Justice Scalia, writing for the seven-Justice majority, announced a fundamental change in Confrontation Clause jurisprudence:

Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of "reliability." ... To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. *Id.* at 61, 124 S.

Ct. at 1370 (emphasis added). Crucial to the Courts decision was its emphasis on testimonial hearsay. "[I]f the Sixth Amendment is not solely concerned with testimonial hearsay, that is its primary object, and interrogations by law enforcement officers fall squarely within that class." Id. at 53, 124 S. Ct. at 1365 (footnote omitted). Thus, [w]here nontestimonial hearsay is at issue, it is wholly consistent with the Framers design to afford the States flexibility in their development of hearsay law — as does Roberts, and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.

State v. Davis, 613 S.E2d 760, 764-766, 364 S.C. 364 (S.C. 2005).

In the case at hand, Detective Kelley testified that it was Detective Richburg that read and explained to Mr. Godbolt his Miranda rights and waiver of those rights before he gave a statement to law enforcement. However, Detective Richburg was not present nor did he testify at trial. To the contrary Detective Kelly testify to the content of Detective Richburg's statements to Mr. Godbolt reading and explaining the waiver of Miranda rights form to Mr. Godbolt before he gave a confession to law enforcement. Detective Kelly could have only testify to Detective Richburg's statements after proving that Detective Richburg was not available and that Defendant had a prior opportunity to cross-examine Detective Richburg under oath.

CONCLUSION

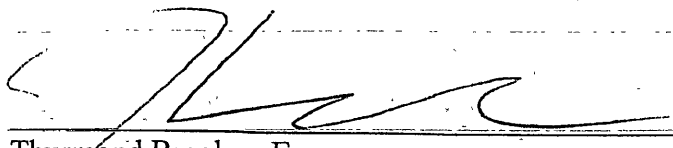
Reco Antonio Godbolt, respectfully requests that the Court grant his application for post-conviction relief.

Respectfully submitted

000534

Florence, SC

July 25, 2017



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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Reco Antonio Godbolt, #342149,

2016-CP-43-0975

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on May 20, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the January 2012 term of the Grand Jury for Sumter County for count one of Kidnapping, count two of Burglary - 1st degree, count three of Attempted Murder, count four of Armed Robbery, count five of Possession of a Weapon During the Commission of a Violent Crime, and count six of Criminal Conspiracy (2012-GS-43-0227). Applicant was represented by Grant Smaldone, Esq. and David Sullivan, Esq. Applicant was convicted of Kidnapping, Burglary – 1st degree, Armed Robbery, Possession of a Weapon During a Violent Crime, and Criminal Conspiracy. Applicant was sentenced on December 6, 2012 by the Honorable George C. James, Jr. to twenty-five years' imprisonment for Kidnapping, twenty-five years for Burglary – 1st degree, twenty-five years for Armed Robbery, five years for Possession of a Weapon During a Violent Crime, and five years for Criminal Conspiracy, to be served concurrently. While the aforementioned convictions are all Applicant challenges in his application, he also pled guilty to a separate charge of Burglary -

1st degree stemming from the same day as his other charges (2012-GS-43-1314). On February 19, 2013, Applicant was sentenced by the Honorable George C. James, Jr. to ten years' imprisonment to be served concurrently with his sentence from December 6, 2012.

Applicant filed a timely notice of appeal. An Anders brief was submitted, and the South Carolina Court of Appeals dismissed Applicant's appeal in an opinion filed May 6, 2015. State v. Godbolt, Op. No. 2015-UP-229 (S.C. Ct. App. 2015). The Remittitur was returned on May, 26, 2015.

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel

- a. "Trial counsel [failed] to object to the introduction of bad character evidence where testimony was permitted regarding defendant's possession of property stolen from another residence on the same day."
- b. "Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant not made available for confrontation or cross examination at trial or before trial."
- c. "Failing to subpoena Detective at trial for cross-examination."
- d. "Counsel was ineffective based on the cumulative errors made at trial."

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, 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, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there

is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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; SCRPC 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. SCRPC Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

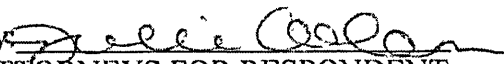
Respectfully submitted,

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By 
ATTORNEYS FOR RESPONDENT

February 28 2017.

1 State of South Carolina) In the Court
2 County of Sumter) Of Common Pleas
3 Reco Antonio Godbolt,) Case No.: 2016-CP-43-00975
4 Applicant/Plaintiff,)
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8
9

10 November 16, 2017

11 Sumter, South Carolina

12 BEFORE:

13 The Honorable George M. McFaddin, Junior, Judge
14

15 APPEARANCES:

16 Thurmond Brooker, Esquire
17 Attorney for the Applicant/Plaintiff
18

19 Julie Coleman, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 Reco Antonio Godbolt
23
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 Thereupon, the following proceedings were had,

2 THE COURT: Please be seated. All right, ma'am.

3 MS. COLEMAN: Ready to proceed on this case, Your
4 Honor?

5 THE COURT: Yes, ma'am.

6 MS. COLEMAN: This is Reco Antonio Godbolt versus
7 the State of South Carolina. Docket number
8 2016-CP-43-00975. The applicant is presently confined in
9 the South Carolina Department of Corrections pursuant
10 orders of committment of the Clerk of Court for Sumter
11 County. Applicant was indicted by the January 2012 term
12 of the Sumter County grand jury for kidnapping, burglary
13 first degree, attempted murder, armed robbery, possession
14 of a weapon during the commission of a violent crime, and
15 criminal conspiracy.

16 Applicant was represented by Grant Smaldone,
17 Esquire. John P. Meadors prosecuted the case. Applicant
18 was convicted as indicted following a jury trial and he
19 was sentenced on December 6th, 2012 by the Honorable
20 George C. James, Junior to 25 years imprisonment for
21 kidnapping, 25 years for first degree burglary, 25 years
22 for armed robbery, five years for the weapons charge and
23 five years for criminal conspiracy to be served
24 concurrently.

25 Applicant filed a timely notice of appeal and an

1 Anders brief was submitted. The South Carolina Court of
2 Appeals dismissed applicant's appeal in an opinion filed
3 May 6th, 2015. The remittitur was returned May 26th,
4 2015. Applicant filed a timely application for post
5 conviction relief on May 20th, 2016 alleging ineffective
6 assistance of counsel. The State filed its return on
7 February 28th, 2017 and he is present today and
8 represented by Mr. Thurmond Brooker.

9 THE COURT: All right. Mr. Brooker.

10 MR. BROOKER: Thank you, Your Honor. Your Honor,
11 would you like me to call my first witness?

12 THE COURT: Yes, sir.

13 MR. BROOKER: The first witness, Your Honor, we
14 would call is Reco Antonio Godbolt.

15 Thereupon,

16 RECO ANTONIO GODBOLT

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. Once you're seated,
19 state your full name spelling your last please.

20 THE WITNESS: Reco Godbolt, G-o-d-b-o-l-t.

21 DIRECT EXAMINATION

22 BY MR. BROOKER:

23 Q. Thank you. Mr. Godbolt, it is my understanding that
24 you were arrested on October 31st of 2011; is that correct?

25 A. Yes, sir.

1 Q. Of course, on that particular day you were arrested
2 for, I think, kidnapping, burglary first degree, attempted
3 murder, armed robbery, possession of a weapon during the
4 commission of a violent crime, and conspiracy, and my
5 understanding is that that arrest relates to a home invasion
6 at 227 Canvasback Cove; is that correct?

7 A. Yes, sir.

8 Q. Were you also indicted for the second degree
9 burglary for a home invasion that occurred at 1314 Widgeon
10 Way; is that correct?

11 A. Yes, sir.

12 Q. Did those two home invasions, did they occur
13 relatively on the same day or in close proximity in time to
14 each other?

15 A. Yes, sir.

16 Q. Okay. Of course, you were charged with both; is
17 that correct?

18 A. Yes, sir. That's correct.

19 Q. Now, on the day in which you were arrested do you
20 know who arrested you?

21 A. Yes, sir.

22 Q. Who arrested you?

23 A. Robert Richberg.

24 Q. Okay. And, of course, when you were arrested, what
25 happened after you were placed under arrest?

1 A. After I was placed under arrest, I went down to
2 Sumter County Police Department.

3 Q. Why did you go down to Sumter County Police
4 Department?

5 A. He was asking me question about a case.

6 Q. Well, let me make sure I understand is that you went
7 down to Sumter County Police Department because Detective
8 Richberg was asking you questions?

9 A. Yes, sir.

10 Q. Were you interrogated at that time?

11 A. Yes, sir.

12 Q. Okay. Now, during the interrogation, who was
13 present?

14 A. Robert Richberg and Detective Kelly, a female.

15 Q. I think you said that that interrogation took place
16 at the Sumter Police Department headquarters?

17 A. Yes, sir.

18 Q. Now, about how long did that interrogation take
19 place?

20 A. A few hours. Maybe two or three hours.

21 Q. Okay. Now, before the interrogation started, were
22 you Mirandized or either notified of your Miranda Rights?

23 A. Sir?

24 Q. Before the interrogation started, were you
25 Mirandized --

1 A. Yes.

2 Q. -- or notified of your Miranda Rights?

3 A. Yes, sir.

4 Q. Okay. And did you go through a waiver of those
5 Miranda Rights?

6 A. Yes, sir.

7 Q. Who took you through a waiver of those Miranda
8 Rights? Which one of the detectives that was in the room did
9 that?

10 A. Robert Richberg.

11 Q. Okay. Now, did he read that form directly to you?

12 A. Yes, sir.

13 Q. Now, while he was reading that form to you, did he
14 also at any point in time or either in the course of reading
15 that form did he stop and attempt to explain at least portions
16 of what that waiver statement meant?

17 A. Sometimes he paused and asked me did I understand
18 what he was asking me.

19 Q. Okay. And then, of course, when he paused and asked
20 you whether or not you understood what you were being asked,
21 did you respond to him?

22 A. Yes, sir.

23 Q. Did he do the complete waiver or did Detective
24 Richberg participate in Mirandizing you and obtaining a waiver
25 of those Miranda Rights?

1 A. Richberg did everything.

2 Q. Okay. So Detective Kelly was more of an observer?

3 A. She was present. She was sitting in the room.

4 Q. Okay. She was sitting in the room but did she
5 question you?

6 A. No, sir.

7 Q. Okay. Now, of course, it's my understanding that at
8 some point in time you executed a waiver of your Miranda
9 Rights; is that correct?

10 A. Yes, sir.

11 Q. And, of course, you provided them with a
12 statement?

13 A. Yes, sir.

14 Q. Now, prior to providing them with that statement and
15 I want to make sure that I get this correct and I understand
16 correctly, after you were Mirandized and had waived your
17 Miranda Rights, how long was it before that you actually gave
18 them a written statement?

19 A. I gave them a statement right after.

20 Q. Right after?

21 A. Yes, sir.

22 Q. The reason why I ask that is is that you said that
23 you were in there for hours. I'm trying to figure out --

24 A. Yes, sir.

25 Q. -- whether or not you were Mirandized and then, of

1 course, they talk with you for a period of time and then, of
2 course, after that you decide to write a statement or whether
3 or not they Mirandized you and you completely went into a
4 statement?

5 A. They read me my Miranda Rights and I went straight
6 into a statement.

7 Q. And then, of course, did you make more than one
8 statement that day?

9 A. No, sir.

10 Q. Okay. You only made one statement that day?

11 A. Yes, sir.

12 Q. Okay. I have a document here. I want you to take a
13 look at it. Take a look at that for just a second
14 (proffering)

15 A. (Witness complies.)

16 Q. Is that the Waiver of Rights Form that you went
17 through with Detective Richberg that day or that Detective
18 Richberg went through with you that day?

19 A. Yes, sir.

20 Q. Did you sign that waiver?

21 A. Yes, sir.

22 Q. Okay. And, of course, on the next page after that
23 waiver is a three page statement that starts off, "I, Reco
24 Antonio Godbolt." Is that the statement that you signed that
25 day?

1 A. Yes, sir.

2 MR. BROOKER: Your Honor, we move to enter this in
3 the record as Applicant's 1.

4 THE COURT: Admitted.

5 (Whereupon, Applicant/Plaintiff's Exhibit #1 marked
6 for identification and entered into evidence.)

7 BY MR. BROOKER:

8 Q. So for the entire, and I think you said hours, you
9 didn't say specifically how many hours, so for the entire time
10 whatever how many hours it was that you went through that
11 interrogation are you saying that Detective Richberg led that
12 interrogation and asked you questions the entire time?

13 A. Yes, sir.

14 Q. Now, at some point in time did you retain counsel?
15 Who was the first attorney that represented you?

16 A. The first? The very first?

17 Q. The very first attorney.

18 A. I was appointed David Sullivan.

19 Q. You were appointed David Sullivan?

20 A. From out of the Public Defender's Office.

21 Q. Okay. And, of course, how long did David Sullivan
22 represent you?

23 A. He probably stayed on my case for about three months
24 and I was appointed another attorney, then I contacted the
25 Public Defender's Office and they tell me they was gonna

1 appoint me another attorney and then ten months of me prior to
2 being in the county they finally appointed me Mr. Grant
3 Smaldone.

4 Q. Let me ask you about the first attorney. I think
5 you said Mr. Sutton?

6 A. David Sullivan.

7 Q. David Sutterland?

8 A. Sullivan.

9 Q. Sullivan. I apologize. David Sullivan. For the
10 three months that David Sullivan represented you did you have
11 communication with him?

12 A. No, sir.

13 Q. Did he ever come out to you and discuss your case
14 with you?

15 A. No, sir.

16 Q. Okay. Did you see any discovery as a result of Rule
17 5 and Brady within those three months?

18 A. No, sir.

19 Q. Now, I want to make sure that I understand this.
20 You said after that attorney, of course, is it that were you
21 appointed other attorneys within the Public Defender's
22 Office?

23 A. Yes, sir. I can't remember their name.

24 Q. You just don't recall their names?

25 A. Yeah.

1 Q. Did any of those attorneys come out and see you?

2 A. No, sir.

3 Q. Let me ask you this because I want to make sure it
4 is that at the time were you incarcerated?

5 A. No, sir. I was locked up in the county.

6 Q. That's what I'm talking about.

7 A. The jail. Yes, sir.

8 Q. So you never bonded out?

9 A. No, sir.

10 Q. So at any time did those attorneys come and see you,
11 talk with you, discuss your case with you?

12 A. No, sir.

13 Q. Okay. And, of course, it is I think you said at
14 some point in time Grant Smaldone was appointed from the
15 Public Defender's Office to represent you?

16 A. Yes, sir.

17 Q. And that was roughly around ten months into your
18 arrest --

19 A. Yes, sir.

20 Q. -- is that correct? And let me finish my question
21 before you answer because the court reporter is reporting us
22 and the court reporter can't report both you and me if we're
23 speaking at the same time.

24 A. Okay.

25 Q. Okay.

1 A. Yes, sir.

2 Q. Now, when was the first time that you met Grant
3 Smaldone?

4 A. I met Grant Smaldone around a month and a half after
5 him being appointed my attorney. I called him on the phone
6 and I asked him for my Rule 5. He tell me he would brought it
7 to me. A few days later he brought it to me.

8 Q. Okay. He brought you -- And when you're saying your
9 Rule 5, you're talking discovery material?

10 A. Yes, sir. My motion discovery.

11 Q. So when he brought it to you, did y'all meet at that
12 particular period of time?

13 A. No, sir. He just dropped it off and he said he
14 would be coming back later on in a few weeks to go over it
15 with me.

16 Q. Okay. Did he come back in a few weeks to go over it
17 with you?

18 A. No, sir.

19 Q. Okay. At any point in time did he come back to the
20 detention center, of course, and sat down with you and went
21 over your Rule 5 and Brady discovery with you?

22 A. No, sir. He came back to the county prior, about a
23 week before my trial and he said, he asked me did I want to
24 testify against my co-defendant. I told him no and he tell me
25 well prepare for trial and I asked him if we were gonna

1 prepare for my defense and he said he would come back and get
2 with me. I never seen him until it was time for me to go to
3 trial.

4 Q. When you said until it was time for you to go to
5 trial, just to be more specific, when was the next time that
6 you actually saw him?

7 A. December 3rd.

8 Q. December 3rd?

9 A. 2011.

10 Q. Was that the day in which jury selection was
11 supposed to begin in connection with your case or the first
12 term of court?

13 A. That was the date of jury selection.

14 Q. Did y'all go over the Rule 5 and Brady discovery at
15 that particular period of time?

16 A. No, sir. He let me listen to 911 dispatcher call on
17 a laptop.

18 Q. Okay. So at least at that particular period of time
19 what was your understanding or did you have any understanding
20 with respect to how Mr. Smaldone intended to defend the
21 charges against you?

22 A. No, sir.

23 Q. Did y'all discuss the possibility of a plea?

24 A. No, sir.

25 Q. Was any plea offer ever brought to you?

1 A. No, sir.

2 Q. Okay. All right. Now, and I want to make sure that
3 I understand this correctly. So we're at this particular
4 point in time where you are up at the courthouse on the day of
5 jury voir dire or jury selection. At that particular period
6 of time did y'all not discuss the possibility of pleading at
7 that time?

8 A. No, sir.

9 Q. Did you want to plea at that time?

10 A. I would have pled out.

11 Q. You would have pled out. Did you discuss that with
12 him? Did you go to Mr. Smaldone or say to Mr. Smaldone that I
13 would like to discuss the potential of reaching some sort of
14 plea agreement and initiated that conversation with him?

15 A. No, sir.

16 Q. Okay. But you're saying that he never initiated
17 with you?

18 A. No, sir.

19 Q. Okay. So you went to trial; is that correct?

20 A. Yes, sir.

21 Q. All right. Now, let me at least ask you this
22 question. Prior to the initiation of trial or the start of
23 trial, did you and Mr. Smaldone talk about the potential or at
24 least the possibility of any witnesses that you might have or
25 either that you thought might be helpful in connection with

1 your defense?

2 A. No, sir.

3 Q. So you didn't discuss any potential witnesses or
4 anything like that?

5 A. No, sir.

6 Q. Okay. Well, what did you think at that time? I
7 mean, if what you are saying is is that when you were
8 originally arrested, that you had a Public Defender for three
9 months, that he never talked with you or gave you any
10 discovery and then, of course, is it that you had some unknown
11 Public Defenders thereafter, that you never met with them or
12 discussed your case with them, that Mr. Smaldone came and
13 visited with you and dropped off your discovery, promised to
14 come back to see you to go over that discovery but that didn't
15 happen and, of course, on the day after trial is that the
16 first time that at least you had some sort of substantive
17 discussion with Mr. Smaldone in reference to the discovery
18 that he had received is on the day of jury selection when he
19 showed you an audio tape or is that correct?

20 A. Audio tape.

21 Q. Okay. What did you think at that time?

22 A. To be honest, I was scared. I didn't - I really
23 didn't - I didn't know what was going on because I thought I
24 was going to trial with my co-defendant but my co-defendant
25 pled guilty the second day during trial so I figured

1 eventually they would have came to me with a plea or some kind
2 of plea bargain but he never said anything to me about a plea
3 or anything.

4 Q. Okay. All right. Now, on the day of trial my
5 understanding is is that the State called two separate
6 indictments against you and, of course, is it that that was
7 for the home invasion at Canvasback Cove and then, of course,
8 also the home invasion that occurred I think on that exact
9 same day within the exact same neighborhood on Widgeon Way; is
10 that correct?

11 A. Yes, sir.

12 Q. Okay. Now, did both of those indictments, did you
13 go to trial on both of those indictments?

14 A. No, sir.

15 Q. Okay. You went to trial on one of them?

16 A. Yes, sir.

17 Q. And that was the one on Canvasback Cove?

18 A. Yes, sir.

19 Q. Okay. Now, my understanding is that your
20 co-defendant, that at particular period of time that your
21 co-defendant was at least scheduled to go to trial with you
22 and y'all were gonna be tried together; is that correct?

23 A. Yes, sir.

24 Q. And, of course, my understanding is that at some
25 point in time the co-defendant actually pled guilty?

1 A. Yes, sir.

2 Q. And then, of course, the co-defendant and his
3 attorney dropped out at least of the case at that particular
4 period of time?

5 A. Yes, sir.

6 Q. And you went forward on the charges simply for I
7 think the home invasion that occurred on Widgeon Way; is that
8 correct?

9 A. Yes, sir.

10 Q. At that particular period of time during trial did
11 you thought that y'all were prepared to try the case?

12 A. No, sir.

13 Q. Did you think that you needed a little bit more time
14 to prepare given the fact that you had not at least went over
15 the discovery, discussed potential witnesses and potential
16 strategy with your attorney?

17 A. Yes, sir.

18 MR. BROOKER: I don't have any further questions for
19 this witness, Your Honor.

20 THE COURT: Okay, sir. Ms. Coleman.

21 MS. COLEMAN: No questions. Thank you.

22 THE COURT: All right, sir. You may be seated.

23 MR. BROOKER: Your Honor, we would call Grant
24 Smaldone.

25 Thereupon,

1 GRANT SMALDONE

2 after having been first duly sworn, testified as follows,

3 THE CLERK: Please have a seat. Once you're seated,
4 state your full name spelling your last please.

5 MR. BROOKER: Your Honor, before I question Grant
6 Smaldone, can I go ahead and hand up you a supplemental
7 and amended application for post conviction relief? This
8 has already been provided to Ms. Coleman.

9 THE COURT: Ms. Coleman, have you seen it?

10 MS. COLEMAN: Yes. It should be in your packet as
11 well. THE COURT: I thought I saw it.

12 MR. BROOKER: I did not know. I wanted to make sure
13 you had it.

14 THE COURT: That's okay. That's all right.

15 THE WITNESS: My name is Grant Smaldone. Last name
16 is spelled S-m-a-l-d-o-n-e.

17 DIRECT EXAMINATION

18 BY MR. BROOKER:

19 Q. How are you doing, Mr. Smaldone?

20 A. I'm all right. How are you?

21 Q. I'm fine. I'm fine. Let me just start off at least
22 asking you briefly a couple background questions. Mr. Godbolt
23 was arrested, I think, in August of 2011; is that correct?

24 A. I believe it was Halloween of 2011.

25 Q. Yeah. October of 2011. I apologize. October of

1 2011; is that correct?

2 A. That's correct.

3 Q. And, of course, it is at that particular period of
4 time you were employed with the Public Defender's Office here
5 in Sumter County?

6 A. At the time I was not yet employed in 2011 with the
7 Public Defender's Office. I was subsequently employed. If I
8 recall correctly, I think it was July of 2012.

9 Q. Okay. July of 2012?

10 A. Right.

11 Q. And, of course, where were you employed prior to at
12 least the Public Defender's Office in July of 2012?

13 A. In July 2012, uhm, I was probably at the Rosen Law
14 Firm in Charleston, South Carolina. My job there was a
15 courier. I was not practicing law in 2011.

16 Q. Okay. So your first job as a practicing attorney
17 would have been with the Public Defender's Office; is that
18 correct?

19 A. That's correct.

20 Q. And, of course, I think you said you came onto the
21 Public Defender's Office and correct me if I'm wrong in July
22 of 2012?

23 A. I believe so. That's sounds right. Yeah.

24 Q. How long after you obtained employment with the
25 Public Defender's Office were you assigned Mr. Godbolt's

1 case?

2 A. Uhm, probably, honestly probably the same day. It
3 was not a case that I did not get it from the arrest onward.
4 I got it, I inherited it basically. It was already in a
5 filing cabinet and that was my filing cabinet so...

6 Q: So it's one of the first cases you got when you got
7 to the Public Defender's Office?

8 A. Right. I got a full case, I got someone else's case
9 load right when I started. It wasn't a situation like I don't
10 get the case assigned to me after the arrest warrant and I
11 billed it from scratch. It was just a filing cabinet of
12 cases, some new, some old. Mr. Godbolt's case was one of
13 them. Yes.

14 Q. Was Mr. Godbolt's case your first criminal trial?

15 A. No. He was not.

16 Q. Okay. About how many criminal trials that you had
17 or at least had done at least prior to trying Mr. Godbolt's
18 case?

19 A. I believe, actually I'm near certain that Mr.
20 Godbolt was my third trial in General Sessions.

21 Q. Okay. Now, I think you heard Mr. Godbolt testify
22 that is that his first communication with you was is that he
23 contacted you by telephone and to request his discovery
24 pursuant to Rule 5 and Brady. Do you remember --

25 A. I don't --

1 Q. Did -- Go ahead. I didn't mean to interrupt you.

2 A. I'm sorry. I don't specifically recall that but
3 that may very well be the case. Yes. I don't dispute it.

4 Q. Okay. And, of course, I think Mr. Godbolt said that
5 -- Well, you tell me. Other than dropping the discovery off
6 at the detention center, did you ever go down to the detention
7 center and, of course, is it that you spent a significant
8 amount of time with Mr. Godbolt and go over the Rule 5 and
9 Brady discovery with him?

10 A. Yes. I do recall doing so. I probably visited Mr.
11 Godbolt I don't know how many times. Probably between three
12 and five if I had to guess.

13 Q. At the detention center?

14 A. At the detention center. Yes. Probably between
15 three and five jail visits. That's just what I would sort of
16 estimate. I assume the first time I met with him was to drop
17 off the discovery if he hadn't received it. Generally though,
18 and I don't know firsthand, I can tell you as a matter of
19 practice and practicality generally speaking when I'm at the
20 jail, I want to visit with a client as long as possible
21 frankly because I don't want to have to come back just being
22 honest with you. So I want to be able to answer all their
23 questions so they don't call me in a week and I have to go
24 back there and burn another day. Just being honest. I don't
25 know but I think it would kind of be unlikely that I would

1 just drop it off and skedaddle right afterwards but I don't
2 have specific knowledge as to whether or not that specific
3 event did or didn't occur.

4 Q. Okay. So at some point in time, how long after your
5 first contact with Mr. Godbolt did this case show up on the
6 trial roster and, of course, is it that it came up for
7 trial?

8 A. I really can't even guess that. I don't know. I
9 wish I did but I'm really not sure at all.

10 Q. So I think Mr. Godbolt said that on the day of trial
11 that you met with him and showed him an audio tape; is that
12 correct?

13 A. Yes. It was a CD of a 911 call and the reason he
14 heard it that day was because I had just gotten it that day to
15 be honest.

16 Q. Could you tell me, what was your -- Now, obviously
17 this is the day of trial?

18 A. Mm-hmm.

19 Q. Obviously I think you said that you met with him a
20 couple of times, anywhere from three to five times. At that
21 particular period of time on that date what was your trial
22 strategy?

23 A. Really the trial strategy, and I don't know if
24 you want anyone, the Court or if anyone wants a brief
25 background, I think it's important, to know my trial strategy

1 I think one would have to know a little bit about the facts of
2 the case and why my strategy would kind of blossom from those
3 facts.

4 Mr. Godbolt was at the time alleged to have been a
5 participant in a home invasion in the Idlewild community. Him
6 as well as his co-defendant were alleged at the time to have
7 went to a house during the middle of the day, parked their car
8 there, left the keys in the car and the car running and then
9 made I think probably various trips back and forth from the
10 house to their car to kind of unload the fruits of the
11 burglary.

12 Unfortunately for Mr. Godbolt and everyone involved
13 the alleged victim at the time Dr. Funk I think he was trying
14 to save a bit of money or maybe trying to lose some weight and
15 he would come home for lunch. He started coming home for
16 lunch more and more. So he saw, he arrived for lunch,
17 wondered what a strange car was doing in his driveway, then
18 approached it and saw some stuff in the back seat. He was
19 smart for a little while because he reached in the ignition of
20 the car and took out the keys and threw the keys in the woods
21 which was a smart thing. He then called 911 which is another
22 smart thing. The street smart kind of ran out though when he
23 went into the house to approach the individuals that were
24 involved in the burglary. This is all while 911 was on the
25 line in his pocket I believe.

1 And then basically -- I'll be a little more brief
2 than I was. There was supposedly a chase involved. They got
3 to him. They might have struck him a time or two. They were
4 alleged to have shot a gun at him and presented a gun to him.
5 There was never any evidence of the gunshot. He was found not
6 guilty on the attempted murder. But they caught back up with
7 him. Might have beat him up. Might have not beat him up. We
8 don't know. Caught back up with him. Marched him back into
9 the woods to find the keys to the car. Got the keys to the
10 car, put the keys into the ignition and then sped off
11 which would have worked out well except that they ran over I
12 believe it was one of those green utility boxes that are
13 sometimes in the driveway or next to the driveway. So then
14 they basically got this car stuck and when the police arrived
15 they were still there.

16 The co-defendant Mr. Helton ran off in one
17 direction. Mr. Godbolt was at the time alleged to have ran
18 off in the other direction and due to the fact that they
19 believe one of them may have had a firearm the police didn't
20 split up. They chased the same suspect because they don't
21 want to split up if they think there's a gun involved.

22 Unfortunately for me and Mr. Godbolt he was the one that they
23 chose to run after.

24 I know this is a little long winded for the initial
25 question, but those were the facts and because he was caught

1 at the scene and later was alleged to have given a statement
2 admitting some culpability in a burglary, my trial strategy
3 was to really gun hard for a lesser included of burglary
4 second non violent and I can't remember if I asked for, I
5 think I said burglary second non violent, I believe, and I
6 asked for not guilty on everything else although I may have
7 asked for strong armed robbery. I really don't recall.
8 Probably not though because that would maybe encompass a burg
9 first if I said it was a strong armed robbery.

10 So my trial strategy was to beg for a lesser
11 included and hopefully have some credit with the judge at
12 sentencing if he was found guilty on a lesser included for
13 owning up to that right off the bat rather than deny
14 everything. So that essentially was my trial strategy.
15 Because he was caught at the scene I couldn't really deny the
16 entirety of everything.

17 Q. Okay. And then, of course, that's the burglary that
18 was at Dr. Funk's house which was the, I think it was the
19 Canvasback Cove address?

20 A. I believe so. I know all the roads in that
21 neighborhood are named after duck species. There was a
22 Widgeon Way and a Canvasback Cove. I think Dr. Funk lived at
23 Canvasback but I might have that confused.

24 Q. That's my next question. It also is that when law
25 enforcement came and, of course, is it that when they searched

1 the car that the defendants were driving, did they also find
2 evidence of a home invasion I think at Widgeon Way that may
3 have occurred that same day or hours prior to the burglary at
4 Canvasback Cove?

5 A. I believe -- Yeah. I believe there was some stuff
6 found in the same vehicle at the same time that was from
7 another house in that neighborhood. Right.

8 Q. So on the day of trial, on the day of trial the
9 prosecution not only called the case for the invasion at
10 Canvasback Cove but they also called the case for the invasion
11 at Widgeon Way; is that correct?

12 A. I believe, you know, I believe it is. I always
13 thought it was just the burg first and armed robbery but I
14 suppose, I suppose they called the other one as well. I
15 really don't recall. I prepared more for the one we're here
16 for today than the other one at the time so I don't recall but
17 I believe it's somewhere in the transcript that it did so I'll
18 defer to that.

19 Q. Okay. Do you remember at least the attorney for the
20 co-defendant making a motion to the judge to sever those two
21 cases, sever those two home invasions the one that happened at
22 Canvasback Cove and the one that happened at Widgeon Way, he
23 made a motion to separate those two trials and try them
24 separately? Do you remember joining in on that motion?

25 A. Honestly I don't specifically remember that just

1 being honest but I do see and I have read and prepared for
2 this. I do see where that did occur so I will defer to the
3 transcript again. Yes. I am sure, I feel very confident that
4 that did happen.

5 Q. Okay. But you would agree with me that the judge in
6 that particular case basically says that those two trials were
7 separate and distinct and they could not be tried together
8 and, of course, the prosecution at that particular period of
9 time elected to continue with the case or at least the home
10 invasion on Canvasback Cove; is that correct?

11 A. That's correct.

12 Q. And, of course, those charges for Canvasback Cove
13 was the kidnapping, the burglary first degree, attempted
14 murder, armed robbery, possession of a weapon during the
15 commission of a violent crime and conspiracy?

16 A. That's correct.

17 Q. That's what the trial went forward on; is that
18 correct?

19 A. That's right.

20 Q. Okay. Now, I want to now ask you at least about
21 some things specific that occurred during the course of the
22 trial.

23 A. Yeah.

24 Q. And you correct me if I'm wrong. Once the judge
25 made the ruling that the home invasion, those two home

1. invasions that occurred on the same day were separate and
2. distinct and that they could not be tried together that, of
3. course, it is that any mention at the trial that went forth on
4. Canvasback Cove, any mention of the burglary or the home
5. invasion that took place at Widgeon Way, mentioning of that
6. particular home invasion would, at least my understanding,
7. would be considered as a mentioning of a prior bad act. Would
8. you agree with me about that, if the judge had made the
9. determination that they were separate and distinct and could
10. not be tried together?

11. A. I would agree. That would certainly be my argument
12. although and I don't recall where this would be in the
13. transcript, I didn't read the entirety of it, I remember some
14. mention being made possibly adversely to that position. I
15. don't know if that was the order or not though I remember
16. because I'll be honest, I never knew the term res gestae until
17. this case. I hate to show my lack of knowledge at the time
18. but I did not know res gestae until that time. This is when I
19. learned it. So although I would certainly agree with you that
20. that is what I would argue and I would even think that that
21. would be a prior bad act, I don't know that that is
22. specifically the judge's order but again I would agree
23. with you on that but I don't know. I would agree with your
24. opinion. I'm not sure if that's the order. It very well
25. may be though.

1 Q. Would you like to take a look at the transcript and
2 refresh your memory?

3 A. Honestly, yes, I would because I'm curious.

4 Q. Okay. Give me just a second. Okay. I'm on page 78
5 of the transcript. I think specifically starting at line 22.
6 Do you have the transcript?

7 A. Yeah.

8 Q. Page 78, line 22.

9 A. All right.

10 Q. I'll read this when you're there and you tell me
11 whether or not I'm reading it accurate. And, of course, would
12 you agree with me that this is actually the judge speaking?

13 A. Yes.

14 Q. Okay. It says, and I told the attorneys also that I
15 would permit -- Give me just a second. I want to make sure
16 I'm at the right place. Indulge me for just a second. I'm
17 sorry. Let's go to page 79. Let's start with line 7 so we
18 can get directly to the point.

19 A. Line 7?

20 Q. Line 7.

21 A. Okay.

22 Q. Starting at line 7. And, of course, you would still
23 agree with me that this is the judge speaking; is that
24 correct?

25 A. That's correct.

1 Q. Okay. And it says here, "I just don't see how they
2 can be proven by the same evidence and I know that it's within
3 my discretion to allow or not to allow the indictments to be
4 tried together but I am going to make, I believe that I am
5 correct in stating that they should not be tried together."

6 So at that particular period of time when the judge
7 made a determination that those two home invasions that had
8 occurred relatively close in time the same day that they were
9 separate and distinct and could not be tried together. Would
10 you agree with me that when you went forth on the burglary at
11 Canvasback Cove then, of course, the other burglary at Widgeon
12 Way that that then would be a prior bad act and would not be
13 admissible in the trial on Canvasback Cove?

14 A. Again, most likely. But I do believe -- And I don't
15 know. I would mostly agree with you but I don't want to tell
16 you that the order was that it could not be brought up under
17 res gestae theory. I think -- I would -- You know, if I was
18 being devil's advocate may say that being tried for something
19 and mention of something during the res gestae of the event
20 might be two different things but I can -- I see where he was
21 not tried for those two burglaries together. Yes.

22 Q. And, of course, it is that, would you agree with me
23 that it is that mentioning I think at least once or at least
24 multiple mentions of the home invasion that the judge said
25 could not be tried together, the home invasion at Widgeon Way,

1 would you agree with me that at least one, maybe even multiple
2 times that there was mention of that home invasion during the
3 course of the trial?

4 A. I have seen I know at least one mention of it and I
5 believe Mr. Godbolt's alleged statement mentions something but
6 I don't remember how - I don't believe it was like a spot on
7 admission of it. I think he talked about getting a ride back
8 and forth from somewhere. But I think the main time that I
9 remember from the transcript and I remember, I believe I
10 remember from the trial there was a mention of Dr. Funk seeing
11 his neighbor's laptop in the car. So to the extent that that
12 may or may not be about another burglary then I will admit
13 that that was said and I did not object to it at the time.
14 No.

15 Q. Okay. And that's my question is that on page 50 of
16 the transcript, and if you want to follow with me, I'll read
17 it, and then, of course, this is Dr. Funk's testimony. Dr.
18 Funk says, "There was a laptop which I initially thought
19 because it's the same model as my son's but it actually
20 belongs to the Davis couple that are neighbors of mine."
21 So at that particular period of time if he was
22 testifying to a complete and separate burglary and
23 specifically the burglary that took place at Widgeon Way the
24 one in which the judge says was separate and distinct and
25 could not be tried together but you did not object at that

1 particular period of time, did you?

2 A. I'm not sure what page that is but I recall what
3 you're saying. Yes.

4 Q. I'm sorry. It's 150. It's 150 starting at line 18.
5 150, line 18.

6 A. All right. I thought you said it was 50. That's
7 the page I was on. All right. So, yeah, I do recall that.
8 And I'll admit that I did not object at the time. I recall
9 that being said and I recall not objecting.

10 Q. Why? Was there some sort of strategy in your not
11 objecting to that or why didn't you object to that?

12 A. I honestly don't recall. I do know that sometimes I
13 won't, you know, if I don't think that it's an issue that
14 would turn the case around. Sometimes especially with a
15 situation like this, I would think that would almost call more
16 attention to it. I hate to say it because it didn't
17 specifically mention - it just mentioned a laptop. It didn't
18 mention the specific burglary. At the time, especially back a
19 few years ago, I was a little more timid with objections than
20 I can sometimes be now. I very well may have done it. Either
21 I overlooked it or I did it to not call attention to it. You
22 know, I can't testify exactly what was in my mind at that
23 second but those would be, especially a few years ago, those
24 would be like, those would have been the reasons, if any.

25 Q. Now, also it is that that's not the only prior bad

1 act evidence that came into play; is that not correct? Isn't
2 it also true that Mr. Godbolt's statement was read into
3 evidence; is that correct?

4 A. I do recall his statement being read into evidence.
5 Yes.

6 Q. Okay. And, of course, it is that the home invasion
7 at Widgeon Way was included within his statement; is that
8 correct?

9 A. Uhm, I don't recall. I don't recall that -- I don't
10 recall him saying we burglarized Widgeon Way. I do recall a
11 mention about rides back and forth somewhere and girlfriends
12 and Jamal Helton involved. If I can get the page on that,
13 that would be helpful.

14 Q. Sure. 267 starting at line 15.

15 A. Okay. All right. Starting at line 15 on page 267?

16 Q. Let me make sure. Okay. I guess line 14 and, of
17 course, it is that if you would permit me, I'll read this to
18 you.

19 A. That's fine.

20 Q. And, of course, you correct me if I read it
21 incorrectly. It says, "Mal was giving me directions to drive.
22 We ended up in Idlewild subdivision and Mal told me to drop
23 him off. I dropped him off near a house with a black SUV
24 parked in the roadway and I circled around the area. Mal
25 called me to pick him up about 20 minutes later. When I

1 picked Mal up, he was walking down the road. He was still in
2 Idlewild subdivision. Mal had something under his hoodie
3 sweatshirt. When Mal got into the car, he pulled a laptop
4 from under his sweater and put in the back seat of the car. I
5 told Mal I was about to ride because I had to pick up my
6 girlfriend."

7 So that's the incident at Pidgeon -- Excuse me.
8 That's the incident that we're talking about at Widgeon Way;
9 is that correct?

10 A. More than likely from what we know about - not - not
11 on its face from that statement but we know combined with what
12 we know about the case and discovery and what was presented at
13 trial, we can certainly imply that. Yeah. Infer that.

14 Q. We certainly know that that statement was not
15 referencing the burglary, the home invasion that took place at
16 Canvasback Cove which was the subject of the trial; is that
17 correct?

18 A. That is correct. Yeah.

19 Q. So because if it was not, you know, whether it was -
20 whether it was Widgeon Way or whether or not it was some other
21 home invasion other than Widgeon Way, regardless of it, that
22 would constitute prior bad act evidence and that is not
23 admissible within the trial. Would you agree with me on
24 that?

25 A. It is very likely you're correct. Uhm, it's very

1 possible you're correct. I mean, the only reason I'm not just
2 saying yes or no, I'm not trying to give you a hard time, but
3 I don't know that that even is a bad act, just the driving
4 around a neighborhood at the request of someone else. That's
5 why I'm -- I don't want to just give you a easy yes or no on
6 that. I hate to take up more of the Court's time, but if that
7 is - if someone deems that act as bad that he admitted to and
8 it was prior to that, if it is bad, then it was a prior bad
9 act I suppose. Yes.

10 Q. Did you make an objection to that portion of Mr.
11 Godbolt's statement and ask the court to have it stricken
12 because of that reason?

13 A. I did not.

14 Q. Was there a strategy in you not making an objection?
15 Why didn't you make an objection?

16 A. Honestly I don't recall. Uhm, I don't want to, you
17 know, speculate. It may have, you know, to the extent that I
18 will speculate, it may have been the reason I just said. But
19 I don't want to give an answer because I really don't know. I
20 wish I did but I don't.

21 Q. Sure. Also contained within Mr. Godbolt's statement
22 was also statements of another prior bad act that was read
23 into evidence and, of course, I want to reference you or at
24 least ask you to go to page 269 of the transcript I think
25 starting on line 24.

1 A. 269, 24.

2 Q. Yes, sir.

3 A. Okay.

4 Q. Of course, and this is still, would you agree with
5 me that this is still Mr. Godbolt's transcript that's being
6 read into evidence; is that correct?

7 A. Yes.

8 Q. Okay. It says, "About four months ago I dropped",
9 it looks like, "Javon Pearson and Jamal Helton off in Twin
10 Lakes subdivision on Treadmore Circle. They told me that they
11 were going to give me money if I dropped them off. They gave
12 me \$50.00 when I dropped them off. They called me about a
13 half an hour later and told me to come and get them from Twin
14 Lakes subdivision. They were near the same area I dropped
15 them off at. When I picked them up" and then, of course, I'm
16 gonna skip to, we're on page 270, line 9, "they had a laptop
17 and some jewelry on them. The stuff was stashed by some
18 bushes. When I picked up Javon, got the laptop out of the
19 bushes. I don't know exactly which house they hit but I know
20 where I dropped them off at and it was on Treadmore Circle.
21 When they got into the car, I asked them where is my money?
22 And Javon handed me \$50.00. I took the both of them on the
23 south side and dropped them off by Southside Gym and then I
24 left."

25 So in that particular portion of his statement he is

1 actually confessing to being an accessory, a part of a home
2 invasion that occurred four months earlier; is that correct?

3 A. Yes. That's correct.

4 Q. Would you agree with me that that is a prior bad act
5 that has absolutely no relevancy in the trial of the home
6 invasion at Canvasback Cove that y'all were presently involved
7 in?

8 A. I probably would agree with you on that one more so
9 than the other one but definitely that one. I think you're
10 right on that one. Yes.

11 Q. Yet you still did not make an objection?

12 A. No. I didn't.

13 Q. Okay. Do you know, was it a part of some sort of
14 strategy that you decided not to make an objection? Do you
15 know why you didn't object to that even if it was prior bad
16 act evidence?

17 A. Uhm, you know, I hate to speculate, uhm, as to what
18 I didn't do, you know, five years ago. If you would like me
19 to speculate, I would, uhm, but I don't recall specifically.

20 Q. Okay. Well, and I don't. If you don't recall or
21 don't know, it's okay to say you don't know.

22 A. Right. Yeah. So I can't tell you what was going
23 through my mind at the time and again now I don't remember. I
24 can think of reasons it could be strategic but again, I don't
25 want to just blurt them out.

1 Q. In hindsight today if you were trying the case all
2 over again and under those exact same circumstances, do you
3 think it would have been prudent to make an objection at that
4 particular period of time so that the jury would not hear that
5 the defendant who is on trial for burglary to hear evidence
6 where the defendant is confessing to being involved with
7 another burglary four months earlier? Do you think it would
8 be prudent to object to that so that that sort of information
9 was not heard by the jury?

10 A. Uhm, probably. Yes. I believe I probably would
11 hopefully make that objection at this point.

12 Q. Now, I also want to ask you at least about one of
13 the other grounds in which the post conviction relief is based
14 on and that is that at the start of trial, on the day of trial
15 and after the jury had been selected it is that you made a
16 motion to suppress Mr. Godbolt's statement; is that correct?

17 A. Yes.

18 Q. And, of course, a Jackson v. Denno hearing was held

19 --

20 A. Right.

21 Q. -- as a result of that motion; is that correct?

22 A. I do recall that.

23 Q. And then, of course, it is that, it's my
24 understanding that Detective Richberg was not present at the
25 Jackson v. Denno hearing but actually it was Detective Kelly;

1 is that correct?

2 A. I believe that is correct. Yes. From the
3 transcript. Yes.

4 Q. She's the one who testified?

5 A. Yes.

6 Q. Okay. Now, it is that I want to direct your
7 attention to the transcript if I may again.

8 A. Mm-hmm.

9 Q. I'm looking at page 83. Please turn to page 83 of
10 the transcript.

11 A. Mm-hmm.

12 Q. And specifically I'm gonna start at line 6.

13 A. Mm-hmm.

14 Q. And, of course, you would agree with me that this is
15 Detective Kelly's testimony on direct examination by
16 Mr. Meadors; is that correct?

17 A. Mr. Meadors. Yes.

18 Q. Mr. Meadors. I apologize. On line 6 Mr. Meadors
19 asks, "Were y'all both together when these rights were read?"
20 Of course, the answer to that is "That's correct." And then,
21 of course, it is that Mr. Meadors asked, "And actually
22 Detective Richberg read these rights; is this correct?" And,
23 of course, she said, "That's correct." And, of course, the
24 next question was, "But were you present?" And, of course,
25 the answer was, "I was."

1 So in that particular statement Detective Richberg
2 basically says that it was -- Excuse me. Detective Kelly said
3 that it was Detective Richberg that actually had read - that
4 actually had led, you know, this waiver of Miranda Rights and
5 actually had led that interrogation at that particular stage
6 would you agree with me based upon at least that testimony?

7 A. Yes.

8 Q. Okay. All right. And so is it that -- And would
9 you also agree with me is that during a Jackson v. Denno
10 hearing on the rules of evidence with respect to hearsay
11 doesn't apply so that Detective Kelly during a Jackson v.
12 Denno hearing can testify to what Detective Richberg said; is
13 that correct?

14 A. That's correct.

15 Q. Okay. Would you also agree with me is that during
16 trial, during trial the rules of evidence and specifically the
17 rule pertaining to hearsay does apply and that although
18 Detective Kelly can testify to what Detective Richberg said
19 during the Jackson v. Denno hearing, she cannot do that at
20 trial? Would you agree with me on that?

21 A. I hate to disagree with you but I probably would be
22 inclined to disagree with you on that point pertaining
23 certainly depending on what the statement is. I guess we
24 haven't gotten specifically into that. But I probably would
25 be inclined to say, to disagree with you on that.

1 Q. Okay. So it's your understanding of the law is that
2 at trial Detective Richberg - excuse me - Detective Kelly
3 would be able to testify to things that Detective Richberg
4 said?

5 A. Well, possibly. You know, it would be brought
6 through a hearsay lens and also a confrontation clause lens
7 and if they filter through those lenses, then the answer is
8 yes. Obviously if they don't, then the answer is no.

9 Q. I understand. And, of course, it is that I know we
10 just talked about hearsay. And, of course, I think you
11 understand hearsay. And would you agree with me that
12 basically it is that just kind of a rough definition of
13 hearsay is that, is that hearsay is any out of statement -
14 any out of court statement that is made by someone else, you
15 know, other than the person who is making the statement? So
16 that's pretty much what a hearsay statement is. And so if I
17 make any statements within court but, of course, it is that
18 I'm making a statement that is attributable to someone else,
19 that would be hearsay unless it fits into an exception. Would
20 you agree with me about that?

21 A. No.

22 Q. Okay. It would not?

23 A. No.

24 Q. You tell me what your definition of hearsay or what
25 hearsay is?

1 A. An out of court statement used to prove the truth of
2 the matter asserted.

3 Q. Okay. And I think I know what you're referring to
4 is is that I think is that, and often attorneys will basically
5 say, as an exception to the hearsay attorneys will sometimes
6 say, well, judge, I'm offering it not for the truth of the
7 matter asserted.

8 A. Right.

9 Q. Okay. But, of course, it is that when you're
10 offering, at least at trial when you're offering Mr. Godbolt's
11 statements and waiver of his Miranda Rights, would you agree
12 with me that in order for those, in order for that statement
13 to be admitted that the jury has to conclude that he was
14 informed of his Miranda Rights and that he voluntarily after
15 being informed of those rights that he knowingly and
16 intelligently waived them?

17 A. Beyond a reasonable doubt I firmly believe in that.
18 Yes.

19 Q. Okay. And so is it that, and so is it that the
20 statements that are being made about the waiver, those
21 statements are being made and, of course, the jury are being
22 asked to believe the truth of those statements as they were
23 made?

24 A. Do you mean the statements -- I don't want to --

25 Q. The statements regarding his waiver of his Miranda

1 Rights?

2 A. The statements that the, I can't remember, the
3 female detective made saying what Richberg made?

4 Q. Yes.

5 A. Okay. And again, I hate to disagree with you. I
6 don't know that they are used to prove the truth of the matter
7 asserted. And they might be. I wouldn't think that but it's
8 your hearing, you know.

9 Q. So it's your legal opinion that Mr. Godbolt's -
10 Mr. Richberg's statements regarding waiver of Miranda Rights
11 and Mr. Godbolt's response to those statements regarding
12 waiver of his Miranda Rights, that those statements are not
13 being said for the truth of the matter asserted? Is that what
14 your position is?

15 A. Well, it depends. I hate to be too nitpicky. I
16 just don't want to, you know, I don't want to be overbroad but
17 I hate to be too nitpicky but I'll error on the side of
18 nitpickiness over, you know, saying the wrong thing and
19 screwing up everyone's case and sounding stupid. So I'm
20 curious. What individual -- I'm curious. What individual
21 statements? Because certainly his, obviously Mr. Godbolt's
22 statement, of course, is used to prove the truth of the matter
23 asserted. Well, actually maybe not because there's a bit of
24 minimization there. But it's used for something.

25 The waiver section and I don't want to, you know, I

1 don't want to sound like a law professor, I am, but the waiver
2 section I would say probably isn't, I would say is not used to
3 prove the truth of the matter asserted. Like if I said, you
4 know -- In the Miranda section I don't know that you're using
5 it to prove the fact that he had the right to remain silent.
6 Uhm, I think you would use it to show that Mirandization
7 occurred but I don't know that on its face that is the truth
8 of what the Miranda statement would assert.. I wish I could
9 think of a more simple way to explain or to say that but maybe
10 you will. I don't know.

11 Q. And I'll just ask this last question and I'll move
12 on to my next point. And so what you're saying is is that if
13 Detective Richberg was the one who basically discussed and
14 read the Miranda form, waiver of Miranda Rights to
15 Mr. Godbolt, then, of course, also given an explanation of
16 those waivers as Mr. Richberg testified that he did during
17 that day in which he was interrogated, it's your position that
18 at trial is that anyone who is in the room at the time in
19 which Mr. - Detective Richberg goes through that
20 interrogation, anyone that hears that interrogation by
21 Detective Richberg can be substituted in place of Detective
22 Richberg at trial and can repeat what Detective Richberg said
23 without violating hearsay or either without violating the
24 confrontation clause? Is that your position?

25 A. Honestly probably yes. I hate -- I wish it wasn't.

1 My understanding of the law, I wish we had more protections
2 for statements. Lord knows I do, uhm, and I hate to say that
3 but that is kind of my understanding that if there was a
4 witness to that, uhm, you know, they can testify to that.
5 Yes. I wish it wasn't though.

6 Q. All right. Thank you. Let me move on at least to
7 the next issue. Let me ask you this: Do you remember a
8 detective, I'm sorry, an agent, and I hope I don't misspell or
9 mispronounce his name, I think it's Agent Hugh Tang with SLED,
10 T-a-n-g that testified during the course of the trial?

11 A. I vividly remember him. Yes.

12 Q. And it's my understanding is is that he was, and you
13 correct me if I'm wrong, is that he was a trace analyst at
14 SLED and then, of course, it is that I guess he was one of the
15 individuals or one of the chemists that analyzes gun powder
16 residue samples; is that correct?

17 A. That's correct. Yes.

18 Q. Okay. And I direct your attention to page 341 of
19 the transcript.

20 A. Mm-hmm. Yeah. I'm there.

21 Q. Okay. And I'm gonna at least read very quickly an
22 exchange between Mr. Meadors and Agent Tang starting at line
23 3. "Question: Let me ask you specifically about your
24 involvement in this case. Do you know Agent John D. Roberts?"
25 And, of course, Agent Tang answered, "Yes, sir. I

1 do.

2 "Question: Who is he?

3 "Answer: He's my co-worker. He's another trace
4 analyst at SLED.

5 "Question: And did he actually perform the
6 examination on the gunshot residue kit involving one Reco
7 Godbolt?

8 "Answer: Yes, sir. He did.

9 "Question: Is it part of what you are accredited,
10 correct?" I'm sorry. "Is it part of what you are accredited,
11 correct? You being SLED? Yes, sir. As a part of that in
12 your field of expertise are examinations conducted by you and
13 your fellow special agents peer review? That's correct."

14 So it's my understanding is is that what Agent Tang
15 is saying is is that he was not the analyst that actually
16 analyzed the chemical analysis of the gunshot residue kit that
17 was performed on Reco Godbolt; is that correct?

18 A. That is what -- Yeah. That sounds correct.

19 Q. So basically he's basically saying is is that he
20 does -- Of course, I'm familiar with this. I have had this
21 previously. He did what's called peer review and that is that
22 you have one analyst that will perform the analysis and then,
23 of course, they will hand it off to someone else and then
24 they will look at it and check it to see whether or not it's
25 accurate but they don't actually go through the steps, the

1 procedures and the process of performing the analysis. Is
2 that your understanding?

3 A. That is my understanding of how the people at SLED
4 usually work. Yeah.

5 Q. Okay. And if my memory serves me correctly, is it
6 that the gunshot powder residue kit that was performed on Mr.
7 Godbolt, did it come back positive?

8 A. No.

9 Q. Okay. I couldn't remember but indulge me for just a
10 second.

11 A. Mm-hmm. I don't believe so. If you recall
12 differently, you probably read this more recently than I have
13 so I recall no gunshot residue being found.

14 Q. Okay. And I don't want to waste the Court's time.
15 I'm going to move on. You know, I cannot locate that. I
16 don't want to waste any further time. But this gets back to
17 at least to my same issue. Okay. And, of course, I have had
18 this in a case before and that's why I'm uniquely familiar
19 with this is that can for purposes of the confrontation
20 clause and also for purposes of the hearsay rule when an
21 analyst, a chemical analyst performs a chemical analysis on a
22 sample that's submitted to SLED, collects that item, performs
23 the analysis on it, does all the work on it and then, of
24 course, it is that he doesn't show up for trial but sends
25 someone what they refer to as someone that does peer review

1 that did not do the analysis, is it your position that that
2 person then can step in and substitute for the person who
3 actually performed the analysis and testify for that person at
4 trial?

5 A. Uhm, no. Not without a stipulation. They cannot
6 testify not without an agreement between the attorneys which I
7 have entered into before depending on the weight of that
8 expert's evidence or what the testimony may be and there was
9 certainly no -- I don't recall an agreement being made in this
10 case. So, yes. I would agree with you. I don't believe --
11 My understanding of the rules of evidence is that a person
12 cannot talk about someone else's report. They can talk about
13 their own report once they're qualified as an expert and rely
14 on that report. I don't believe that they can rely on someone
15 else's report though. So you are correct. I wouldn't say
16 it's a confrontation clause issue but you're smart so you're
17 probably right. More hearsay than confrontational but I'm
18 probably wrong.

19 Q. I wanted to ask you. This is not a major thing but
20 I still wanted to at least mention it and put it on the record
21 so I can at least get your response to it. If I could direct
22 your attention to page 156, line 16 on the transcript.

23 A. 156, line 15?

24 Q. I'm sorry. 156 starting at line 11. I apologize.

25 A. Mm-hmm. 11?

1 Q. Yes, sir.

2 A. Okay. Yeah. There.

3 Q. And, of course, this is the testimony of Dr. Funk;
4 is that correct?

5 A. That's correct.

6 Q. Dr. Funk is testifying. And, of course, it is that
7 his answer to a question on direct examination is, well, I
8 just want to get away from my house to safety and at that
9 point I heard, I was in front of the - I was in front of the
10 next house over and I heard a gunshot behind me and I looked
11 back and there was two black males chasing me and one of them
12 yelled we got a gun. The other one yelled we're going to kill
13 you.

14 So basically it is that what Dr. Funk is saying is
15 that there was two assailants and, of course, it is that one
16 of the assailants yelled, get a gun, and then, of course -
17 excuse me - We got a gun. The other assailant yelled we are
18 going to kill you. Now, the two assailants that Dr. Funk is
19 referring to in those, in that statement would be the two
20 co-defendants that were arrested and charged with burglary of
21 his home; is that correct?

22 A. That's right.

23 Q. Okay. Then, of course, one of them whom was
24 represented by I think Jack Swerling and then, of course, that
25 co-defendant subsequently testified - excuse me - subsequently

1 pled and dropped out of the trial?

2 A. That's right.

3 Q. Okay. So that individual was not a defendant within
4 this particular trial; is that correct?

5 A. He was not on trial. I'm not sure what stage, you
6 know, regarding Fifth Amendment Rights and what stage, all of
7 that, I'm not sure what stage he was convicted. I don't
8 remember if the judge accepted the plea at the time. If what
9 you are asking is was he on trial also? No. Absolutely Jamal
10 Helton was not on trial. I wasn't sure what you were asking
11 so I wanted to be clear.

12 Q. Yeah. And that's what I'm asking you. What I'm
13 asking you is it doesn't matter whether or not he was
14 convicted, or whether or not he had accepted his guilty plea
15 at the time and had actually pled. The question is is that
16 was he a defendant in this trial?

17 A. No.

18 Q. Okay. And because he was not a defendant within
19 this trial it is that and, of course, because he was not at
20 least made available or at least was not put on the stand to
21 testify, then, of course, it would have been hearsay for Dr.
22 Funk to say what the co-defendant who is not a part of the
23 trial said; is that correct?

24 A. Uhm, I don't want to get into that whole analysis
25 but it is possible that one may view that as possible

1 hearsay.

2 Q. Okay. Well, how do you view it?

3 A. You know, I can't remember my rules too well. I
4 hate to -- You know, I want to help you out. I don't want to
5 argue with you but I think one may say it's a statement by a
6 co-conspirator or something of that nature. I don't recall.
7 I don't recall what I was thinking at the time. I'm sorry.

8 Q. I know one exception to the rule is the party
9 defendant exception. So if you are a party defendant to the
10 action, of course, it is that your statements can be made.
11 But he is not a party defendant to this action, is he not? He
12 was actually dropped out of this action and, of course, it is
13 that the action went forth only with Mr. Godbolt; is that
14 correct?

15 A. Yes. I'm not sure when -- Again, I don't know when
16 that -- I don't know anything. I don't know the exception as
17 to when it does and doesn't apply. But I certainly agree he
18 was not on trial. I agree.

19 Q. On page 165 --

20 A. Mm-hmm.

21 Q. -- I'll move this quickly because I'm almost done.
22 I'm looking at page 165, and, of course, line 15. Again, I
23 just want to get this on the record. Of course, this is still
24 Dr. Funk testifying. Would you agree with me on that?

25 A. Yeah. If you say it is, I believe you. Yes. I

1 don't want to go back up to the page but it sounds like it and
2 you're telling me that so yes.

3 Q. Does it indicate at the top of the transcript that
4 this is Brian Funk on direct?

5 A. You're right. I didn't see that. You are correct.
6 It is definitely Dr. Funk's testimony.

7 Q. Okay. And, of course, it is that starting at line
8 15 it says, that they got very irritated and very angry and
9 started yelling and again threatening me and they said show
10 us, show us or else.

11 When he's making the reference that both defendants
12 are making these statements, it's pretty much the same thing
13 is that because one of the defendants has dropped out of the
14 case and is not a party defendant to the action. Pretty much
15 the same thing is that why didn't you object at that
16 particular stage?

17 A. Why didn't I object?

18 Q. Yes. Because my understanding would be is that
19 obviously he can say what Mr. Godbolt said because Mr. Godbolt
20 at that particular period of time is a party defendant to the
21 action but, of course, the defendant who had dropped out was
22 no longer, you know, a party to that trial is is that unless
23 that defendant is available for cross examination it would be
24 inadmissible to say what that defendant said. So could you
25 explain to us why you didn't object there?

1 A. Yeah. Uhm, I hate to say it but I think it would be
2 worse if Dr. Funk said Reco Godbolt said show us or else and
3 said all those things. I mean, honestly probably a lot worse
4 for the case if he pointed out just Reco said them. That
5 would be why. And again, I haven't read the rule on all the,
6 you know, hearsay exception statement of co-conspirator and
7 all of that nonsense and maybe it does or doesn't apply. I
8 don't know. But that would be - that would be why I probably
9 wouldn't have objected to it at the time because I don't want
10 to say, okay, forget Jamal. Let's just say Reco said it. I
11 wouldn't want that for him.

12 Q. Okay. And, of course, on the same page 165 and, of
13 course, it is that, and I'll start at line 23 and, of course,
14 this is still Dr. Funk, would you agree?

15 A. Yes.

16 Q. One of the defendants let - one of the defendants
17 let go of my arm and began searching the ground for the keys
18 and in a few minutes that he found the key ring and he yelled
19 to his partner let's get out of here before the cops get here.

20 So Dr. Funk is talking about a conversation as
21 occurring between the two co-defendants; is that correct?

22 A. That's correct.

23 Q. Okay. And again, like I said, it's calling for
24 being petty but, of course, it is that you didn't object
25 there?

1 A. I didn't.

2 Q. Okay. Is there a strategy for not objecting at
3 least during that particular period of time?

4 A. Uhm, that one, you know, probably not. I would just
5 say that, you know, I would think it would be unlikely that
6 Judge James would just not allow any statements by anyone to
7 come in if they didn't know specifically who said it and maybe
8 I'm wrong. Maybe I could have objected but I didn't see the
9 need for it at the time.

10 Q. Yes. And that's at least one of the points is is
11 that, and I'm glad you said that and reminded me of that is is
12 that if the judge can't determine whether or not the statement
13 is coming from the party defendant and, of course, if there's
14 confusion with respect to the statement and who it's coming
15 from then, of course, it is that if you make an objection
16 based upon the grounds we don't know whether or not this is,
17 what statement is coming from the defendant and what statement
18 is coming from, you know, the defendant who is not present or
19 a party defendant then, of course, it is that that can't be
20 determined and then, of course, the statement doesn't come in.
21 Would you agree with me?

22 A. Probably. But again it would probably go through
23 additional hearsay lenses. I don't know that the statement
24 let's get out of here before the cops come, I don't know that
25 that would be, I don't know that that's really asserting

1 anything. But again, I could be wrong. I don't want to...

2 Q. Yeah. I understand. On page 170, line 6, and of
3 course, this is Dr. Funk again, and he said, they had me by
4 each arm and told me that they had a gun - they had a gun in
5 my back and would kill me.

6 So basically when he's using, at least the word
7 they, is that he is not making a distinction with respect to
8 whether or not this is a statement that's made by Reco Godbolt
9 or whether or not this is a statement that's made specifically
10 by the defendant who is not present in the action. Would you
11 agree with me is if you can't make a determination as to
12 whether or not the party defendant is making the statement
13 versus the other person who is not a party defendant, then
14 that may be grounds for the judge to exclude that statement?

15 A. I'll go narrow on the admission by a party opponent
16 exception, then sure, you may be right.

17 Q. Okay. Did you even attempt to make an objection?

18 A. I didn't.

19 Q. Okay. Was there some sort of strategy there for not
20 making an objection?

21 A. Uhm, probably -- With that statement being a little
22 more damning probably not. No.

23 Q. If you could turn to page 281 looking at line 16.

24 A. 16?

25 Q. Yes, sir. And I think this is, this is the

1 testimony of Carol Funk, Dr. Funk's wife and, of course, it is
2 that, would you agree with me that she is actually on this
3 page is actually testifying on direct; is that correct?

4 A. Uhm, yes. Direct testimony. Yes.

5 Q. Okay. And, of course, it is that on line 16 this is
6 a question that's being asked by the prosecutor and he says,
7 "And then they called back and said he hadn't been shot and
8 you said, well, he must have said shot at, right?"

9 And then, of course, she answered "Right."

10 So in that particular statement with the prosecutor
11 at least in my opinion is is that is both leading Ms. Funk and
12 then also is that he is making, you know, a statement that is
13 attributable to someone that Dr. - excuse me - Mrs. Funk was
14 having a telephone conference with. Would you agree with me
15 that is, that that question is kind of leading?

16 A. Yes. There's definitely some leading there.
17 Correct.

18 Q. You didn't make an objection to that?

19 A. I didn't.

20 Q. Was there a strategy there?

21 A. No. There was a little bit of leading in this trial
22 so I tried to -- I can't remember the times that I may have
23 objected to leading or if I did at all. Typically I'll just
24 say my kind of guideline is if generally if I hear a witness
25 who supposedly on direct answers yes or no to a question more

1 than three times in a row, generally I'll tend to make an
2 objection because generally the questions are leading so I
3 don't recall why I didn't object to leading at that point.
4 Maybe --

5 Q. Sure. That's all right. And then, of course, it is
6 that the question also said is that they called you back and
7 said he hadn't been shot. And, of course, it is that when the
8 prosecutor is saying they called you back that then, of
9 course, it is that, do you know who the prosecutor is
10 referencing?

11 A. I would infer. I don't recall but I assume it's
12 911. I didn't know they called people but I guess it was 911.
13 I think. Is that correct?

14 Q. Yeah.

15 A. Okay.

16 Q. Possibly it was 911. Possibly law enforcement. It
17 could have been anyone.

18 A. Right.

19 Q. But, of course, it is that, you know, regardless of
20 who, you know, who he was referencing is is that he made a
21 specific quote of someone who was not making the statement on
22 the stand subject to cross examination. So that again would
23 be hearsay for that statement to come in; is that correct?

24 A. Yeah. I believe so. Probably. There was more
25 specific -- I think there was a big, if I recall there was a

1 motion outside the presence of the jury about the statements
2 just like these exact statements and I believe Judge James let
3 most of it in. Now, I think it's different when you say he
4 must have been shot at. I agree with you that that -- Because
5 the other ones, I think one issue was they're not used to
6 prove the truth of the matter asserted. Now, when we get to
7 what he said, must have been shot at, then it's possible that
8 that could be used to prove the truth of the matter asserted.

9 So I don't recall why I didn't object at the time.
10 I probably just -- When you're trying a case, there's a lot
11 going on in your mind. Sometimes your defendant is whispering
12 in your ear and you're trying to concentrate. So I don't
13 remember why I didn't object. I probably was deferring to
14 Judge James' earlier ruling about this broad topic of
15 questioning and then didn't catch that the one thing was
16 corrected so sure.

17 Q. Okay. I have a last line of questioning and this is
18 gonna take us back to Detective Kelly and then, of course, I
19 will be finished and I apologize for belaboring this but it's
20 important. I think we have already established I think
21 previously and you testified to the fact is is that -- Well,
22 let me rephrase that question. Were you in the courtroom when
23 obviously Reco Godbolt testified and Reco Godbolt said that
24 during his interrogation with Detective Kelly and also with
25 Detective Richberg that it was Detective Richberg that led the

1 investigation or led the interrogation and it was Detective
2 Richberg that asked all of the questions including going
3 through his, the Miranda Rights Form and explaining that
4 Miranda Rights Form to him and that conversation occurred
5 between himself and Detective Richberg. You were in courtroom
6 when he testified to that?

7 A. Yes.

8 Q. And, of course, I think we also established
9 previously that during the Jackson v. Denno hearing that
10 Detective Kelly stated when she was asked on direct
11 examination by the prosecutor, you know, and she indicated
12 that it was actually Detective Richberg that had taken Mr.
13 Godbolt through his Miranda Rights and led him through that
14 portion of the interrogation and that she was simply an
15 observer, do you remember when we went through that earlier?

16 A. I do. Yeah.

17 Q. Okay. Now, Detective Richberg didn't testify at
18 trial; is that correct?

19 A. That's correct.

20 Q. And, of course, it is that, would you agree with me
21 that in order for the State to get Reco Godbolt's confession
22 in that they have to establish to the jury, they have to
23 establish to the jury that, one, that Reco was informed of his
24 rights? You have a right to remain silent. Anything you say
25 can and will be used against you. Anything that you say can -

1 anything that you say can and will be used against you. You
2 have a right counsel. If you can't afford counsel, you know,
3 that one will be appointed to you at no expense of your own.
4 Any time during the course of this interrogation, you know, if
5 you change your mind, you can withdraw your authorization.
6 Would you agree with me that those are important
7 constitutional rights that a defendant must have or - excuse
8 me - important constitutional rights that a defendant must
9 understand?

10 A. Absolutely. 100 percent.

11 Q. And would you also agree with me is that before a
12 statement can come in, that there's two requirements that have
13 to be satisfied during that Jackson v. Denno hearing, and that
14 is that one, that the statements were intelligently given
15 which means is is that the defendant understands the
16 instructions or the waivers that were, understands the rights,
17 that were mentioned to him and, of course, it is that it's a
18 voluntarily and intelligently made decision to waive them,
19 okay? So there has to be, the understanding has to be
20 intelligent and the waiver has to be voluntary; is that
21 correct?

22 A. That is correct.

23 Q. Okay. So that is an important part of, that waiver
24 of Miranda Rights is an important part of getting a statement
25 in. It can't get in unless you can prove that that defendant

1 understood his rights, intelligently understood his rights and
2 then, of course, voluntarily waived those rights after an
3 intelligent understanding of what those rights were?

4 A. Yes.

5 Q. Okay. And that's important?

6 A. That is important.

7 Q. Otherwise the statement can't come in. Would you
8 agree with me?

9 A. Yes. Unless -- Yes. For the most part, yes. I
10 wish it was absolutely yes. Unfortunately the State has some
11 ways occasionally around that. But yes. 99 percent of the
12 time yes.

13 Q. Okay. Give me a second. I'm going to direct your
14 attention at least to a particular page and, of course, I'll
15 be entering my wrap up phase. Can I get you to go to page 256
16 of the transcript please?

17 A. Yes.

18 Q. Line 10. I'm going to read a little bit of this and
19 ask you some questions in reference to it. And, of course, if
20 you look at the top of the page, would you agree with me that
21 it says that this is Detective Natalie Kelly that's testifying
22 on direct examination; is that correct?

23 A. Yes.

24 Q. And, of course, the question is, "Did you have an
25 occasion to read the Miranda, what is known as Miranda Rights

1 to Reco Godbolt?"

2 And, of course, the answer is, "I did."

3 Okay. Now, if you believe Detective Richberg's

4 testimony during the Jackson v. Denno hearing where she said

5 that she did not, she was not responsible or did not went over

6 the waiver of his Miranda Rights but that was done by

7 Detective Richberg, do you remember that?

8 A. Yes.

9 Q. Now, so when she said in response to the

10 prosecutor's questioning did you have an occasion to read the

11 Miranda, what is known as Miranda Rights to Reco Godbolt and

12 she answered I did, that wouldn't be accurate, right?

13 A. That's correct. Yeah.

14 Q. Okay. Because she was not the one and, of course,

15 she testified at the Jackson v. Denno hearing that she was not

16 the one who went over those waiver of Miranda Rights?

17 A. That's correct.

18 Q. And, of course, it goes on to say or were you

19 present when they were read. And, of course, she says yes; is

20 that correct?

21 A. That's right.

22 Q. And then it says which. Did you read them to him or

23 were you present? She says it was Detective Richberg but I

24 was in the room with him the entire time. So at that

25 particular period of time she is again stating that I am not

1 the one who did the questioning in connection with waiver of
2 Miranda Rights; that Detective Richberg is the one who did the
3 questioning in reference to waiver of Miranda Rights; is that
4 correct?

5 A. That's right.

6 Q. So when she is now testifying to what Detective
7 Richberg says, again, the same as when we talked about I think
8 Agent Tang substituting for another analyst and testifying to
9 what another analyst did or said so that same principle would
10 apply here, would it not?

11 A. Again, I hate to disagree with you. I don't want to
12 be difficult. I would put a little bit of distinction between
13 those two things just me personally and maybe I'm wrong and
14 part of me hopes I'm wrong but I would personally put a
15 distinction between those two things.

16 Q. Okay. And it goes on to say on page 556, and so you
17 were present when they were read to him and she said that's
18 correct?

19 A. Right.

20 Q. And, of course, it is that I'm now going to refer to
21 page 259 an exchange. Page 259. We're almost finished. I
22 promise. 258 starting at line 24, would you agree Natalie
23 Kelly is testifying on direct examination; is that correct?

24 A. That's correct.

25 Q. The question being asked her is do you read him

1 these rights?

2 "Answer: That's correct.

3 "Question: Okay. What's the first right that you
4 read him?

5 "Answer: You have the right to remain silent.

6 "Question: And when you are reading him this right,
7 did he indicate to you that he understood it?

8 "Answer: He did.

9 How did you indicate that he under -- How did he
10 indicate that he understood? He initialed it. And did he
11 orally tell you I understood it? That's correct.

12 Of course, it goes on to say, "Okay. And then he
13 said, then you said he initialed it. Is this what - is this
14 what this is right here, an RG? Are these his initials?
15 That's correct. What's the next thing that you read him, read
16 to him? Anything you say can be used against you in a court."
17 It then says, "And when you read him that right, did he appear
18 to understand that? Yes. He did. Did he tell you that he
19 understood it? He did. Okay. When the right was read to him
20 by Detective Richberg, you were present? That's correct."

21 Now, there is a whole series of questions in which
22 the prosecutor is saying to Detective Richberg you read this.
23 You did this. You did that. You're the one who is leading
24 the examination or at least leading the questions or the
25 explanation in reference to the waiver of Miranda Rights.

1 Would you agree with me about that? That there's a series of
2 questions in which the prosecutor is saying you, Detective
3 Kelly, did this. You, Detective Kelly, did that. You,
4 Detective Kelly, did this. That would be accurate, would it
5 not?

6 A. Right. Well, it says "you", but it says "you", not
7 you Detective Kelly, just to split hairs but you're right. It
8 does say "you."

9 Q. When he's saying "you", he's referring to Detective
10 Kelly?

11 A. That's right.

12 Q. Because Detective Kelly is the one who's
13 testifying?

14 A. Right.

15 Q. But Detective Kelly was not the one who did those
16 things; is that correct?

17 A. That is correct.

18 Q. Okay. So why in the world would you not object?

19 A. Honestly I did not notice that at the time just with
20 switching out pronouns or whatever was the case. So I didn't
21 notice just to be frank with you. Uhm, that's the best
22 answer. I did not catch that there was the switching of "you"
23 with Richberg. I didn't catch that at the time.

24 Q. And it wasn't just one time or two times. It
25 happened a lot --

1 A. Right.

2 Q. -- did it not?

3 A. Yeah.

4 Q. And, of course, would you agree with me that that
5 could have probably given the jury the impression that it was
6 actually Detective, it's actually blurring the lines,
7 potentially blur the lines and possibly give the jury the
8 misleading belief that it was actually Detective Kelly that
9 had went over these rights with Detective - excuse me - went
10 over these rights with Reco Godbolt?

11 MS. COLEMAN: Objection. That's speculation.

12 THE COURT: Sustained.

13 MS. COLEMAN: Thank you.

14 THE COURT: Sustained.

15 BY MR. BROOKER:

16 Q. And then, of course, I understand, and I think I
17 have already read this, I think on line 20 he says when these
18 rights were read by Detective Richberg, were you present?
19 That's correct. And did he indicate by signing his initials
20 that he understood it? He did.

21 And, of course, it goes on to say on page 60,

22 "What's the next right that you read to him?

23 You have the right to talk to a lawyer for advice
24 before you ask - ask any questions, before you ask any
25 questions and to have him or her with you during questioning.

1 When that was - when that was read to Mr. Godbolt,
2 did you appear to - did he appear to understand it? He did.

3 Of course, it goes on to say, "Did he tell you he
4 did and did he initial it?

5 "He did."

6 And, of course, line 12, number 60, the next
7 question is that, "What's the next right that you read to
8 him?"

9 Am I reading this correct?

10 A. Yes.

11 Q. And, of course, Detective Kelly's response is, "If
12 you cannot afford a lawyer, one will be appointed for you
13 before any questioning, if you wish." And, of course, the
14 next question, did he understand -- Did he indicate to you
15 that he had read that -- Excuse me. I apologize. Let me
16 rephrase that. Did he indicate to you that had he been - had
17 that had been read to him and that he understood it? I think
18 that's just a typo in the transcript. And, of course, she
19 answers that's correct. Did he tell you - did he tell you,
20 too, he understood it? That's correct. What's the next right
21 that you read to him? And it goes on to say, if you decide to
22 answer any questions now and without a lawyer present, you
23 will still have the right to stop answering at any time until
24 you talk with a lawyer.

25 "Question. And when you read him that or after it

1 was read to him by Detective Richberg, did he appear to you to
2 understand it?

3 "He did."

4 And, of course, we are on page 260. "Did he sign
5 his initials that he understood that right?

6 "He did.

7 "And did he orally tell you I understand?

8 "He did."

9 Okay. So again, from all of that body would you
10 agree with me that Detective Kelly is testifying to the jury
11 and everything that I just read that she's testifying to the
12 jury is that she is the one who actually went through the
13 waiver of his Miranda Rights?

14 MS. COLEMAN: Objection, Your Honor. That calls for
15 speculation.

16 THE COURT: Say your question again, sir. I was
17 writing.

18 MR. BROOKER: Okay. I'm asking him does he agree
19 with me based upon the transcript that Detective Kelly
20 testified to the jury that she was the one who went over
21 the waiver of Miranda Rights, you know, to Mr. Godbolt.

22 THE COURT: You're asking him if he thinks the jury
23 thought that?

24 MR. BROOKER: No. What I'm asking him is if he
25 would agree with me that based upon what's contained in

1 the transcript that Detective Kelly told the jury from
2 what we just read, Detective Kelly told the jury that she
3 was the one that went over the Miranda Rights and waiver
4 thereof with Mr. Godbolt.

5 MS. COLEMAN: And I think he might be asking for a
6 legal conclusion, Your Honor.

7 MR. BROOKER: No. I'm asking --

8 THE COURT: You're asking him if he thinks that the
9 jury thought that?

10 MR. BROOKER: No.

11 THE COURT: No?

12 MR. BROOKER: No. That's not what I'm asking.

13 THE COURT: Okay. Try me again. Try me again.

14 MR. BROOKER: Okay. And I'm sorry. I apologize
15 because I'm probably asking in a complicated way
16 something very simple.

17 THE COURT: That's all right.

18 MR. BROOKER: I'm asking him whether or not he would
19 agree with me that based upon what we just read that
20 Detective Kelly told the jury that she is the one who
21 went over his Miranda Rights with him.

22 THE COURT: Well, earlier in this same transcript
23 that was made it was clear that she did not do that? Am
24 I right? Or was that in the Jackson v. Denno hearing?

25 MR. BROOKER: No. That was at -- At the Jackson v.

1 Denno hearing is that she testified that I am not the one
2 that went over his Miranda Rights with him. It was
3 Detective Richberg. Then at trial then, of course, is
4 that she testifies to the jury that she did. And my
5 theory, Your Honor, is that the reason why she did that
6 is is that because if Detective Richberg was the one who
7 went over his Miranda Rights, then, of course, although
8 she can testify to what Detective Richberg did at the
9 Jackson v. Denno hearing because hearsay doesn't apply
10 and confrontation doesn't apply but hearsay and
11 confrontation does apply at the trial and so Detective
12 Richberg would have to be there and testify to what he
13 said in order to get that statement in.

14 THE COURT: Overruled, Ms. Coleman. Go ahead;
15 sir.

16 BY THE WITNESS:

17 A. All right. If you need to ask it again, you can.
18 For the record I'm prepared to answer, if you don't need to
19 ask it.

20 BY MR. BROOKER:

21 Q. Certainly.

22 A. I could -- Reading the transcript one could infer
23 that. As to her motives or whether she was - whether it was a
24 misstatement or a lie I don't know. I don't want to imply
25 that, you know. I don't want to imply that. Certainly cops

1 lie. I don't know that this is the case or isn't the case
2 so... But to answer your question, one could infer that from
3 the use of the pronoun "you" that "you" refers to Detective
4 Kelly when we know that "you" should refer to Richberg. We
5 could infer that and the motives are unclear. But certainly,
6 yeah. I agree with you for the most part. Yeah.

7 Q. And I don't want to go back and count the number of
8 times that she did, but would you agree with me that it
9 happened a lot?

10 A. Yeah. It seems so. Yeah.

11 MR. BROOKER: I have no further questions, Your
12 Honor.

13 THE COURT: All right. May we all take a break, 10
14 to 15 minutes? If I say 10, it won't be that. It will
15 end up being 15. So let's take 10 to 15 please. You are
16 a live witness. You know under the rules you can't talk
17 to anybody and I will caution you to not even speak to
18 anybody. If I speak to you, you only speak to me, all
19 right?

20 THE WITNESS: Yes, Your honor.

21 THE COURT: Thank y'all.

22 (Short break.)

23 THE COURT: All right. We're back on the record.

24 Ms. Coleman.

25 MS. COLEMAN: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MS. COLEMAN:

3 Q. Mr. Smaldone, how are you?

4 A. I'm all right. How are you doing?

5 Q. Fine. Thank you. Now, Mr. Brooker has already

6 covered most of my questions in good detail --

7 A. Right.

8 Q. -- so I shouldn't be too lengthy with you. I just

9 wanted to go back and clean up a couple things. Were there

10 any plea offers from the State?

11 A. There was never -- to my recollection there was never

12 any kind of solid plea offer. I think some things were

13 discussed between me and Mr. Meadors. There was no, I'll say

14 there was no hard plea offer. You know, nothing set in stone.

15 I believe, actually I'm sure I recall one conversation me and

16 Mr. Meadors had maybe the week before trial about a 12 to 20

17 range and I recall, I vividly recall discussing that with Mr.

18 Godbolt.

19 Q. The applicant testified earlier today about how a

20 conversation that he had with you where you asked him if he

21 was willing to testify against his co-defendant. Was that

22 ever something that was on the table, the opportunity for him

23 to testify against his co-defendant?

24 A. I really don't recall that. It probably -- I

25 probably would have approached him about that. Even without

1 an offer I would want to know that so I could bring them
2 something so it's very possible and, in fact, likely that we
3 talked about that. And I'm sorry. I want to correct
4 something. It's possible that the offer that I talked about,
5 the kind of soft offer that we discussed, it may have been 12
6 to 25. I don't want to misstate it. It was either 12 to 20
7 or 12 to 25 but it was nothing set in stone and I can't recall
8 whether or not that was dependent on testimony or not.

9 Q. Okay. Thank you. Were you prepared for trial in
10 this case?

11 A. Yes.

12 Q. Was there any question that you had all the
13 materials that you needed and you had investigated and you
14 were ready to go forward?

15 A. Yes. The only thing, the only asterisk to that was
16 I didn't get the 911 tape I think until the day of jury
17 selection. But everything else I had and I was prepared
18 for.

19 Q. But you got that tape before the trial and you were
20 able to review it with your client, right?

21 A. Yes.

22 Q. Okay. How would you characterize the State's
23 evidence in this case? Would you describe it as strong or
24 overwhelming?

25 A. You know, I don't know. I mean, he was found guilty

1 beyond a reasonable doubt unfortunately. I wanted to win but,
2 you know, as a lawyer who has had many cases and I do almost
3 nothing but criminal defense, I would say that the evidence
4 was very strong on the charges he was convicted of. The
5 attempted murder there really wasn't much there and a big
6 issue on this case was the, really a lot of this case depended
7 on the presence of a gun or not and in all candor a gun wasn't
8 found so, you know, that was something the jury considered
9 but, you know, I think they infer that Mr. Helton got away
10 with it is my understanding.

11 Q. They never found a gun; is that right?

12 A. Right.

13 Q. They never found shell casings from the gun; is that
14 correct?

15 A. Yeah. That was another big issue in the case.

16 Yeah. They did not find any shell casings.

17 Q. And they did not find any gunshot residue on Mr.
18 Godbolt; is that right?

19 A. That's correct.

20 Q. Okay. You testified earlier your strategy was to
21 have him convicted of a lesser included offense?

22 A. Unfortunately we kind of had to go that route. We
23 played the cards we were given but that was the strategy, you
24 know, going to trial. It was clearly burg second and again, I
25 can't remember if I asked for strong armed robbery or not but

1 burg second and probably conspiracy. But yes.

2 Q. And that's because he gave a statement putting
3 himself at the crime, correct?

4 A. Right. At the crime? I can't remember. The
5 statement was not I went in. I stole stuff and I'm a burglar.
6 You know, the statement was a little bit, you know, I was
7 there, dropped him off, came back. But my strategy
8 unfortunately even under the statement he accidentally, you
9 know, kind of probably admitted to hand of one hand of all or
10 maybe accessory before which is the same thing as the
11 principal so the statement was tough. Yeah.

12 Q. And there was a Jackson v. Denno hearing before the
13 trial which determined, the judge ruled that that statement
14 was admissible, right?

15 A. That's right.

16 Q. Okay. As far as the statement goes while we are on
17 the topic, the prior bad acts that the applicant has alleged
18 or admitted through the statement that he gave about his
19 involvement in the other robberies or the robbery which took
20 place several months earlier, does it make a difference that
21 that came in through a statement that he gave to law
22 enforcement himself in your opinion?

23 A. You know, honestly I would have to fire up my
24 Westlaw for an answer like that. It very well may have but it
25 very well may not have. Honestly I don't know. I really

1 don't know. I don't want to tell you yes or no because I
2 don't know the answer to that. I have to do some research.

3 Q. Detective Kelly's testimony, we have already talked
4 about that in good detail but I believe you testified you just
5 missed it or you weren't paying attention and that's why you
6 didn't object; is that right?

7 A. I mean, I'm sure I was paying attention. I don't
8 remember saying I wasn't paying attention. But yeah. I think
9 -- I missed the -- Basically there was a switching of pronouns
10 so I didn't catch that. No. I do admit that. Yeah.

11 Q. Okay. And the English language is an interesting
12 thing. Would you agree with me that the word "you" can have
13 multiple meanings if you refer to one person or multiple
14 people?

15 A. Right. Generally. Yeah.

16 Q. Is it possible that in this case the Solicitor might
17 have been referring to when he said "you", did you read him
18 these questions, he could have been referring to Detective
19 Kelly and Detective Richberg?

20 MR. BROOKER: Objection. Calls for speculation.

21 THE COURT: Well, he's already answered the question
22 about the "you" part so I'll sustain that.

23 MS. COLEMAN: Thank you.

24 BY MS. COLEMAN:

25 Q. Is that a possibility? Do I need to repeat the

1 question?

2 A. I thought it was sustained. I'm sorry.

3 THE COURT: It was.

4 MS. COLEMAN: Did you say sustained? I'm sorry.

5 It's the end of the day.

6 THE COURT: That's okay. That's okay.

7 BY MS. COLEMAN:

8 Q. I apologize. Okay. And I'll get into that more
9 with the Solicitor. That's fine. But as far as you know at
10 the time of the trial you testified you did not really catch
11 that specific use of pronouns and you didn't see a reason to
12 object at the time; is that right?

13 A. Uhm, at the time, no. I mean, I didn't analyze it
14 as to whether or not to object because I didn't catch, nothing
15 was kind of flagged in my mind. You know, when I catch
16 something suspicious, I think about it for a second and then I
17 object. It never even got to that kind of first mental phase
18 for me so that's just to clarify. That's correct.

19 Q. Do you believe that this testimony from Detective
20 Kelly changed the outcome of the trial?

21 A. No.

22 MR. BROOKER: Objection. Calls for speculation.

23 THE COURT: I'll allow it.

24 MS. COLEMAN: Thank you.

25 BY MS. COLEMAN:

1 Q. And I asked this based on the evidence presented
2 from the State based on the totality of the circumstances if
3 Detective Kelly had not been allowed to testify about this one
4 specific Miranda Right incident, do you believe the jury still
5 would have found him guilty?

6 A. Well --

7 MR. BROOKER: I'm gonna object.

8 THE COURT: I understand, sir, but there's nobody
9 sitting over there, all right? I got you. I'll let it
10 in.

11 BY THE WITNESS:

12 A. Honestly, you know, maybe because Miranda is very
13 important to our country and to me so because I would argue
14 that if those prongs were met, then that statement wouldn't
15 have come in at all. I would have certainly argued that at
16 the time, uhm, but I think even without the statement, I hate
17 to say it but I think he would have been convicted without the
18 statement. I think there was some debate as to even whether
19 or not the Solicitor was going to introduce the statement.

20 BY MS. COLEMAN:

21 Q. Even without the statement he was still caught and
22 arrested at the scene of the crime, correct?

23 A. Right.

24 Q. As far as is the gunshot residue analyst who
25 testified, the applicant has alleged that this is not the

1 person who actually conducted the test or reviewed or
2 generated the report himself and shouldn't have testified.
3 Did this change the outcome of the trial in your opinion?

4 A. No. Not at all.

5 Q. Okay. Because no gunshot residue was found on Mr.
6 Godbolt; is that right?

7 A. Right. He was the defense's best witness so...

8 Q. Right. So it doesn't matter what he has to say
9 about the gunshot residue test, right?

10 A. Right. I even tried to get it -- I remember
11 Mr. Meadors being a little mad at me. I tried to get it in
12 earlier through another witness in case they wouldn't call
13 someone from SLED. I think he was a little upset by that at
14 the time. I tried to get it in through another witness just
15 to make sure it was out there and I was glad when Mr. Tang
16 testified.

17 Q. So that actually helped your case?

18 A. Well, I guess not but...

19 Q. At least concerning the attempted murder charge, do
20 you think that helped your case?

21 A. True. I forgot. Yes. Yes. You're right. Yes.

22 Q. The victim's testimony, and I'll start with the
23 hearsay statements. The applicant alleged that these
24 statements were hearsay coming from Mr. Godbolt and from his
25 co-defendant. He was just telling what happened; is that

1 right? He was just telling the story of what happened when he
2 was robbed?

3 A. Uhm, that's my understanding.

4 Q. Okay. At the time that this was testified to did
5 you see any reason to object to it?

6 A. Uhm, no. I mean, I wanted to object to that because
7 a gun, a mention of that but I didn't see a legal reason for
8 it.

9 Q. And the statements specifically that he went into
10 were statements such as we have a gun. We're gonna kill you
11 and the applicant was found not guilty of attempted murder so
12 did those statements affect the case in your opinion?

13 A. Here is why I pause a bit. There was an issue. I
14 don't remember where in the transcript it was. I successfully
15 argued that the State is bound by their indictment in this
16 case. The State was too specific in their indictment in
17 regards to the burglary first. The State only alleged that
18 there was a gun involved on the face of the indictment and
19 there could have been burg first for a few different reasons
20 to be honest possibly to be honest with you I think, but they
21 were bound by that gun. So to get to the burg first they
22 needed, to be honest with you, they needed the presence of the
23 gun. So I can't answer that they were completely, uhm, you
24 know, superfluous to the case and I haven't like flagged the
25 transcript every time that a gun is mentioned either because I

1 think unfortunately that the victim saw, testified that he may
2 have seen a gun or at least saw the outline of one in a
3 sweatshirt so that was also there. But, you know, who knows?

4 Q. And his statements, his alleged hearsay statements
5 about the things that these co-defendants were saying, it
6 wasn't clear in these statements which defendant was saying
7 what; is that right?

8 A. Right. The ones that we brought up, I think there
9 was one point that we didn't get into but the ones that we're
10 discussing today it was never clear which one was which.

11 Q. So it would have been difficult for you to object
12 based on what was said by your client and what was said by the
13 co-defendant, right?

14 A. Yeah. I don't -- I'm still thinking of a way to
15 have objected to it at the time. I'm not -- Nothing is coming
16 up unfortunately.

17 Q. Just going back to what you just said a moment ago
18 about the burglary first and requiring a gun in this case, I
19 just want to clarify. I just had another case that was
20 similar to this. I just want to get this on the record while
21 we're at it.

22 A. Sure.

23 Q. You couldn't have moved for a new trial based on an
24 inconsistent verdict, right, because South Carolina does not
25 recognize or prohibits inconsistent verdicts?

1 A. Right. Yeah. I have been a victim of that myself.

2 No. I could not have.

3 Q. Thanks. Just in case. The victim's testimony about
4 he made a statement about a laptop in the car that belonged to
5 his neighbor which the applicant has alleged was evidence of a
6 prior bad act which was allowed in and severed as part of a
7 separate trial, do you believe that this specific statement
8 about the laptop belonging to the neighbor affected the
9 outcome of the trial?

10 A. I hate to say it but I don't believe so at all.

11 No.

12 MS. COLEMAN: I think that's everything. Thank you
13 very much.

14 THE COURT: Mr. Brooker.

15 MR. BROOKER: Just very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BROOKER:

18 Q. So I know that there has been, I think you were
19 asked at least on cross as to whether or not that had the
20 statement, had Mr. Godbolt's statement not come in, whether or
21 not that you believe or in your opinion that would have made a
22 difference on the outcome of the trial; is that correct?

23 A. Uhm, yeah. That's correct.

24 Q. Okay. Would you agree with me that probably, and I
25 have been - you said that you have done predominantly I think

1 or just about all criminal defense law. Would you agree with
2 me that probably one of the most powerful pieces of evidence
3 that a prosecutor can have in his possession is a defendant
4 actually confessing to the crime?

5 A. I do agree.

6 Q. So it does have some significant impact?

7 A. A confession does. Yes.

8 Q. Yes. So yeah. It is important?

9 A. Yes.

10 Q. Okay. Now, and I'll ask you this question. And, of
11 course, if you don't want to answer it or - I don't want to
12 say if you don't want to answer it.

13 A. I'll answer.

14 Q. If you can't answer, just say that you don't. I
15 know that you said that it may, that certain things that may
16 have occurred that may possibly have not been objected to, you
17 know, the testimony by Detective Kelly, the substitution of
18 Agent Tang for the actual analyst who, you know, actually
19 analyzed the gun powder residue kit, the prior bad acts that
20 came in through the statements and also came in through some
21 of Dr. Funk's testimony, and then you said, well, you don't
22 think this would make a difference. But would you also agree
23 with me is is that due process, due process requires -- Let me
24 put it this way: Do you agree with me that we have all of
25 these rules for a very important reason? That we have the

1 rules of evidence, that we have the confrontation clause and
2 we have all of these structural rules that governs the
3 operations of these trials, that all of these rules are there
4 for a very important reason?

5 A. Yes. Very much so.

6 Q. Okay. Would you agree with me that that very
7 important reason is because those rules are there to ensure
8 the fundamental fairness of the trial?

9 A. Very much so. Yes. I agree.

10 Q. Regardless of whether or not you, one might I guess
11 would speculate with respect to what sort of effect it may
12 have had on a jury?

13 A. (Witness nodding head.)

14 Q. Okay. And would you also agree with me is is that,
15 well, that this is common sense, that our verdicts in criminal
16 cases have to be unanimous?

17 A. That's right.

18 Q. And would you also agree with me is that you can't
19 say specifically whether or not one of those jurors may have
20 been affected by, you know, some of the errors that may have
21 occurred in connection with this case, that one of those
22 errors that we mentioned, you can't say for certain that it
23 would not have made a difference to at least one of those
24 jurors?

25 A. That's correct.

1 MR. BROOKER: No further questions, Your Honor.

2 MS. COLEMAN: Nothing further.

3 THE COURT: You may step down, sir.

4 MS. COLEMAN: I have no objection to him being
5 released.

6 THE COURT: All right. Have a good day, sir. Mr.
7 Brooker.

8 MR. BROOKER: Yes, Your Honor. We call Mr., I hope
9 I pronounce your name correctly, is it Meadors?

10 MR. MEADORS: Meadors.

11 MR. BROOKER: I'm sorry. Mr. Meadors. I apologize.
12 Thereupon,

13 JOHN MEADORS

14 after having been first duly sworn, testified as follows,

15 THE CLERK: State your name for the record and spell
16 your last name please.

17 THE WITNESS: John Meadors, M-e-a-d-o-r-s.

18 DIRECT EXAMINATION

19 BY MR. BROOKER:

20 Q. Mr. Meadors. I got it right that time, didn't I?

21 A. You did.

22 Q. Good. Good. I'm sorry. I have probably butchered
23 your name a little bit I think a couple of times. Sometimes I
24 said Meadors instead of Meadors.

25 A. I forgive you.

1 Q. Thank you. It wasn't meant out of disrespect. Mr.
2 Meadors, I want to go ahead and at least talk with you about I
3 think the prior bad acts. We don't need to go through them
4 specifically. You were sitting in the courtroom and at least
5 heard the questions and the testimony I think of Mr. Smaldone
6 when we talked about the introduction or the publication of
7 Mr. Godbolt's statement to the jury; is that correct?

8 A. I was.

9 Q. Of course, it is that you would agree with me, I'm
10 pretty sure, that you had a transcript and would agree with me
11 that wherein Mr. Godbolt's statement where Mr. Godbolt talked
12 about, you know, four months prior to, you know, the incident
13 at was it -- prior to the incident at -- let me make sure that
14 I get the name right -- at Canvasback Cove that Mr. Godbolt
15 talked about an incident in which he and two other
16 individuals, that he actually assisted two other individuals
17 in I think what he said is in conducting a hit on a house in
18 which a laptop and some jewelry and that sort of stuff was
19 taken from that home; is that correct?

20 A. That was at the end of the statement. That is
21 correct.

22 Q. That testimony was read to the jury; is that
23 correct?

24 A. That's correct.

25 Q. Okay. Now, is that would you agree with me that

1 that would be a prior bad act?

2 A. At that point I don't even know if that was an
3 issue. I think it might be a prior bad act. At that point we
4 were, Mr. Swerling was out of the case. There was
5 conversation about Bruton. Once Mr. Swerling decided that his
6 client was going to plead, it was not a Bruton issue and
7 that's what we had all focused on primarily and at that point
8 there was no objection to the entire statement coming in. The
9 case was overwhelming evidence. I really don't think that was
10 a factor at all in the case but that did come in. Yes.

11 Q. Okay. But, of course, it is that, would you agree
12 with me that at least the substance of that burglary or home
13 invasion that took place four months earlier, that that didn't
14 have any bearing at least on the case that was being tried
15 that day?

16 A. I think if he hadn't given a statement, he would
17 have been convicted. I don't think that last paragraph in
18 there had any effect whatsoever on the case. No. I do not.

19 Q. And I understand that. You may not --

20 A. Respectfully I don't.

21 Q. I didn't mean to talk over you. And I understand
22 that you may not think that it had any effect on the outcome,
23 you know, but I still at least want to know is whether or not
24 you believe that the substance of that particular burglary or
25 home invasion that occurred four months ago, that it had some

1 sort of relationship or importance to the burglary that y'all
2 were trying on that day?

3 A. Not in my mind. No, sir. I don't know why there
4 was no objection. Maybe because if you redact it, it might
5 look worse. He admitted in his statement to being there. He
6 admitted to seeing Dr. Funk. He admitted to being there. He
7 gave up and he even admitted totally to being at the incident
8 so that last paragraph again, it might have looked worse if
9 something was redacted. I don't know but I don't think that
10 that had an effect at all when he was caught at the residence
11 and he admitted to being there. He minimized. He tried to
12 minimize but he certainly put himself there.

13 Q. Now, you would also agree with me is is that in a
14 situation where if there is bad character evidence or either
15 evidence of some sort of prior conduct that the defendant was
16 engaged in and you thought that that evidence was important to
17 this particular case, then there are Lyle exceptions that
18 allow you to be able to get it in; is that correct?

19 A. You know that as well as I do. Yes.

20 Q. Okay. And then, of course, it is if you want to get
21 that in, then, of course, it is that the Court has to do, I
22 guess, what they call a Lyle analysis to make the
23 determination as to whether or not it's being used for motive
24 or intent or either absence of mistake or accident and then,
25 of course, it is that the final analysis is that whether or

1 not that the, whether or not the probative value of the
2 evidence outweighs its prejudice. But that's the analysis
3 that normally you would have to go through in order to get in,
4 you know, evidence of a prior crime or prior bad act; is that
5 correct?

6 A. That's generally. It's not exactly, but that's
7 generally the law. Usually that deals with prior crimes. I
8 know it doesn't have to actually be convicted or not
9 convicted. But they are prior bad acts usually that aren't
10 related to the trial that the State's trying to bring in.

11 Here was an incident that in his confession that he
12 brought up which made it a little different still can be
13 characterized as a prior bad act but this was his statement.
14 It wasn't objected to. I think there's good reason. Once
15 it's all coming in I don't see how it really hurt him that
16 that came in since he was caught at the scene. So there
17 wasn't a traditional prior bad act attempt to get this in in
18 front of the judge. No. Because there was no objection to
19 it. And I think that -- I didn't think there would be an
20 objection to it.

21 Q. Okay. And, of course, it is that also that you were
22 in the courtroom when there was also -- Well, and I think we
23 went over this and, of course, you may know about this better
24 than I do is that at the outset of the trial you called, you
25 intended to call the home invasion that happened at Canvasback

1 Cove and also the one that happened at Widgeon Way; is that
2 correct?

3 A. I think, and you said, I looked at the transcript
4 today for the first time so I have not reviewed it all but I
5 believe I tried to call both because in my opinion joinder was
6 the issue. We thought there were similar facts, similar
7 evidence that we were attempting to try them both. His
8 Honorable, Now Justice James ruled that he did not believe
9 there was enough similar evidence to try both and he did not
10 allow us to go forward on both.

11 Q. Okay. And even though he didn't allow you to go
12 forth on that is is that you were in the courtroom when there
13 was testimony that was brought out during at least the trial,
14 you know, of Canvasback Cove about the home invasion that
15 occurred at Widgeon Way; is that correct?

16 A. I really don't know what you're talking about.

17 Q. I apologize. Is that even though that the judge
18 said that Canvasback and Widgeon Way could not be tried
19 together, that they were separate and distinct in his opinion,
20 and so he prohibited you from trying them together --

21 A. Correct.

22 Q. -- even with that being done and then, of course,
23 would you agree with me and I think you were in the courtroom
24 when, of course, we brought out testimony that during the
25 course of the trial that the home invasion at Widgeon Way was

1 mentioned during the trial?

2 A. Are you talking about the same last paragraph?

3 Q. I'm sorry. Say that again.

4 A. Where are you talking about? Can you just reference
5 me where you're talking about? Are you talking about in his
6 statement?

7 Q. In his statement and I think also it is in Dr.
8 Funk's testimony.

9 A. Are you talking about when Dr. Funk saw a laptop in
10 the back of the car?

11 Q. Yes. Dr. -- I think that's one of the times when
12 Dr. Funk saw --

13 A. I'm with you now. Yes, sir. I'm aware of that.
14 That's real live testimony. He saw a laptop in the back of
15 his car. He also saw some of his other items. I think that's
16 one hundred percent admissible. He didn't say this is from
17 another burglary. He said, look, I saw my car. Some of my
18 stuff was there and I think that's my neighbor's laptop. How
19 does that not come in respectfully as res gestae and what
20 happened? I mean, how can he not testify to his observations?
21 I do not think that was a prior bad act.

22 The other incident you say I think when he said he
23 dropped them off somewhere in the neighborhood maybe right
24 before this incident, that again is my opinion is part and
25 parcel of this event. It didn't talk about another burglary.

1 What they did. It talked about what he did prior to going to
2 this particular burglary and I don't know how you can tell the
3 whole story without telling -- Again, the co-defendant wasn't
4 on trial. We don't have a Bruton issue anymore. So all of
5 that I do not think that was a problem. No, sir.

6 Q. Of course, it is that you said it would, that it
7 could have potentially come in underneath the theory of --
8 What is it? -- res gestae? It could come in underneath that
9 theory anyway potentially?

10 A. Potentially. But it's --

11 Q. But, of course -- I apologize. I cut you off.

12 A. No. You go ahead. I cut you off.

13 Q. But, of course, it is that, and you might be right
14 but, of course, it is that if it does have to come in, if it
15 can potentially come in underneath that theory, isn't it true
16 it is that an objection would have to be made and, of course,
17 the judge would then have to go through, you know, an analysis
18 to make a determination as to whether or not it would come in
19 underneath that, you know, that exception?

20 A. I have been doing this 30 years and I don't know of
21 a defense attorney that would have objected to Dr. Funk saying
22 his neighbor's computer was in the car. Number 1, I think
23 it's clearly relevant. Number 2, I think it would have made
24 it worse on their client. I think it would have been
25 ineffective if they had objected to that.

1 Q. Okay. Obviously you just mentioned, I wouldn't have
2 objected to it. Let me move on. And, of course --

3 A. Because I think the judge would have overruled them
4 based on what he saw. You can't cut and paste all the way
5 through when you're trying respectfully to tell a story.

6 Q. And I understand that but, of course, wouldn't you
7 agree with me is that the judge would have at least had to
8 went through that res gestae analysis to make a determination
9 as to whether or not it would come in underneath that
10 exception?

11 A. I think he would have not that quickly. Yes.

12 Q. Yes. But, of course, it is that the judge is not
13 prompted to do that analysis if no objection is made; is that
14 correct?

15 A. If a lawyer doesn't think an objection is proper, I
16 don't think it's ethical for them to make an objection. I
17 don't think it's ethical to make an objection just to make it.
18 If you do it for that reason, that's not proper.

19 Q. Now, I think the other issue I want to take you to
20 and touch upon very briefly and, of course, it is that would
21 have been the issue of Detective Kelly. And I think you were
22 in the courtroom, I think, when we talked about Detective
23 Kelly and her testimony and I think during the Jackson v.
24 Denno hearing and when she testified during the Jackson v.
25 Denno hearing is actually that she did not conduct the, you

1 know, waiver of Miranda Rights. That was actually conducted
2 by Detective Richberg; is that correct?

3 A. That's correct.

4 Q. Okay. And, of course, were you also in the
5 courtroom when Mr. Godbolt testified that during the
6 interrogation that led to his statement that it was actually
7 Detective Richberg that led and conducted the entire
8 interrogation and that Detective Kelly was in effect a witness
9 to what took place?

10 A. If he testified earlier that Detective Richberg
11 conducted the entire interrogation, I didn't hear that. That
12 is not what I believe happened. They both were involved in
13 the interrogation. I thought what he testified to earlier was
14 that Detective Richberg read him his rights, his Miranda
15 Rights and I am one hundred percent in agreement with that.

16 Q. Okay. I know you said that's what your
17 understanding is that Detective Kelly did participate in the
18 interrogation but we don't have the testimony of Detective
19 Kelly here today saying what parts of the interrogation, if
20 any, that she actually performed; is that correct?

21 A. I have no idea. It's in the transcript. You will
22 never have an exact idea of who asked what unless you have a
23 recording. They have a written statement the defendant gave.
24 He acknowledged that he had waived his rights. That's on the
25 advice - the Miranda form plus at the top of his statement

1 form, I believe, and then I think both Natalie Kelly and
2 Richberg signed the form as he did.

3 Q. Okay.

4 A. And in his words and they all signed it.

5 Q. Yes, sir. And I agree with you it is that and, of
6 course, this statement, this interrogation was not recorded;
7 is that correct?

8 A. That's correct.

9 Q. And because it wasn't recorded it is that
10 unfortunately, and I wish that there was a law that required
11 all interrogations to be recorded, but unfortunately because
12 it was not recorded then, of course, it is that the only way
13 that we will know what happened during the interrogation is
14 relying on the words of the three people that was there during
15 the interrogation?

16 A. Credibility is what the system is based on. Yes,
17 sir.

18 Q. Okay. Now, and, of course, it is that I'm assuming
19 that you have looked over the transcript?

20 A. Yes, sir. I did. Like I said, I saw it right
21 before lunch. Have not looked over it entirely at all.

22 Q. Okay. And I have. And could you, and like I say is
23 that, and I think I know what your answer is based upon the
24 answer you just gave, did you find anywhere within that
25 transcript where Detective Kelly basically testified to what

1 portion of the interrogation she did? The transcript is void
2 of that, isn't it?

3 A. Say your question again.

4 Q. Isn't it true that the transcript is void of any
5 testimony from Detective Richberg -- excuse me -- Detective
6 Kelly testifying to what portions of the interrogation she
7 conducted?

8 A. I have not read the transcript. I can tell you what
9 my practice is as I did that she was present when he read the
10 rights and they both conducted the interrogation and that he
11 gave a statement and I think that's pretty clear in the
12 transcript. Detective Richberg was no longer with the
13 department I think so he did not testify. Obviously she
14 couldn't testify as to what he said. That would be hearsay.
15 So I'm sure Mr. Smaldone would have objected to that as far as
16 specific things but there was interrogation and then the
17 statement was taken. So I don't think she would have been
18 allowed to say what Richberg said as far as the substance
19 which is totally different from Miranda and the Miranda
20 Warnings which I did take notes of that of how many times

21 Detective Richberg was identified in the transcript as having
22 been the one who read the Miranda Rights.

23 And respectfully you have accused me of
24 prosecutorial misconduct implying that I intentionally said
25 did you read it to Detective Kelly. I take professional and

1 personal offense at that. I have been doing this 30 years. I
2 care about what I do. I have not done that, would not mislead
3 a jury without questioning everybody in this courtroom know
4 that, knew that Detective Richberg had read their rights. And
5 when I say "you", I'm referring to you, y'all, the department.
6 There wasn't any question in here that Detective Richberg read
7 the rights. If you look at page 256, lines 13 through 19,
8 it's specified. If you look at page 259, line 20, it's
9 specified as to that Detective Richberg did it. If you look
10 at page 260, line 24, it's again mentioned in front of the
11 jury all these that Detective Richberg read the rights. And
12 261, line 21, the Miranda form is in evidence which says on
13 the Miranda form that Detective Richberg read the rights.

14 Q. Okay. But yet there was ten instances. On page
15 258, line 24; page 259, line 1; page 259, line 3; page 259,
16 line 6; page 259, line 13; page 259, line 15; page 260, line
17 1; page 260, line 12; page 260, line 20; page 260, line 24;
18 there was at least ten instances in which there was reference
19 in the questioning or at least the questions indicated to
20 Detective Richberg was is that --

21 A. It's Kelly. You said Richberg. It's Detective
22 Kelly.

23 Q. I apologize. Detective Kelly that you read this or
24 that you conducted this part of the Miranda interrogation.
25 Would you agree with me about that?

1 A. And all of those or some of those were followed up
2 either before or afterwards with Detective Richberg did the
3 reading. It was clear that Detective Richberg did the rights.
4 I don't know how many cases you have tried, but if you have
5 watched me try a case, my procedure is when I say you a lot, I
6 mean you, the department. It's obvious to everybody in here
7 who we're talking about. I know you weren't there and I'm not
8 trying to be funny but you're implying that I did that on
9 purpose for some reason. That's not true. I wouldn't do
10 that. You're saying that I would do that on purpose. That
11 offends me. I would not do that. And you've claimed
12 prosecutorial misconduct. I don't think that's fair. And I
13 think under the rules you need to have a basis for doing that.
14 I didn't do that. And it's clear in here that Detective
15 Richberg without question read the rights. If you read it,
16 did you think he didn't read the rights after you read through
17 it?

18 Q. And I don't know if I can answer that.

19 THE COURT: You don't have to answer that. Go
20 ahead, sir.

21 BY MR. BROOKER:

22 Q. I'll answer it afterwards to you. But at least on
23 those ten plus occasions at least where it indicated that, am
24 I correct in stating that it happened at least ten times?

25 A. You're correct with the understanding that before

1 and after those it was clear that Richberg was the one who did
2 it and it was clear to everybody in the courtroom when I said
3 "you", I meant you as in you in Richberg or you as in the
4 department. It was clear that I didn't mean that she read
5 them. There's no question about it.

6 Q. And I understand that that's your interpretation.
7 But, of course, it is that are you in a position, are you in a
8 position where you can say with respect to each and every
9 juror that is sitting within the jury box with respect to how
10 they interpret that?

11 A. If they had common sense, yes, because I said it
12 enough. And if you are in here and heard it and read the
13 transcript, common sense, it told you that Richberg did it.
14 There was never an implication that she did it and everyone in
15 that courtroom knew it.

16 Q. Okay. And, of course, that's your opinion, right?

17 A. It's common sense if you were here.

18 Q. Have you interviewed, have you had an opportunity to
19 talk to any of the jurors I think after the trial?

20 A. No, sir.

21 Q. Okay. So you didn't have an opportunity to ask them
22 any questions as to whether or not that your reference or
23 suggestion to Detective Richberg that she was actually the one
24 that conducted the Miranda waiver rights, you didn't actual
25 question them to see whether or not that they were misled at

1 least by those ten incidences in which is was suggested that
2 she performed the Miranda waiver; is that correct?

3 A. You have to have at least a sixth grade equivalent
4 and if you listen to the testimony and read the Miranda form
5 where it said that he was read it, yes, that was in evidence.
6 I don't think there's any doubt that they understood it was
7 Detective Richberg.

8 Q. Now, let me ask at least one more question with
9 respect to -- And I'm almost finished here. I promise, Mr.
10 Meadors.

11 A. It's Meadors.

12 Q. I apologize.

13 A. I know you didn't mean to do that.

14 Q. I'll get it right again for you. Meadors. Mr.
15 Meadors, with respect to I think it was Agent Tang I believe.
16 I think it's T-a-n-g.

17 A. Wahta (phonetic) Tang.

18 Q. Yes, sir. And that was the gunshot residue analyst
19 that testified. My understanding is is that actually the
20 person who actually performed the gunshot residue test on the
21 samples that were produced that that individual --

22 A. John Roberts.

23 Q. Yes, sir. John Roberts. That individual was not
24 available for trial because he had to take a class; is that
25 correct?

1 A. That's correct.

2 Q. And, of course, it is that I think Agent Tang came
3 and testified --

4 A. That's correct.

5 Q. -- in his place. Okay. Now, and like I say, we may
6 have different opinions about this. I have actually had this
7 situation once before and have dealt with it successfully once
8 before. But is it your opinion that one chemical analysis can
9 be substituted in the place of another when testifying at a
10 trial?

11 A. A chemical analysis?

12 Q. An analyst.

13 A. We're talking about expert opinions. And can one
14 expert opinion be substituted for another? Yes. I think.
15 And I have had it done successfully numerous times. Yes. An
16 expert is allowed to, in this case he had actually peer
17 reviewed it but he is an expert and is allowed, if accepted by
18 the judge, to review documents and give an expert opinion on
19 it. He had actually reviewed the actual documents. So yes.
20 I do think in certain circumstances they're admissible.

21 In this case it wasn't objected to and I remember
22 the reason it wasn't objected to and I think it would have
23 been ineffective assistance if he had objected to it. I
24 remember that I talked to Mr. Smaldone who did an outstanding
25 job in this case with what he obtained. Outstanding. He

1 obtained a not guilty on an attempted murder. He did a
2 remarkable job. He's a fine attorney.

3 But I remember we didn't have Roberts and I remember
4 talking and I had forgot until he said it that he tried to get
5 it in through another witness. I said, look, we have Dr. Tang
6 coming. This helps you. It doesn't do anything but help you.
7 I'm sure you don't have an objection to this coming in and he
8 didn't. I do remember us having that conversation and that
9 evidence helped him. I wanted to get it in to show that we
10 had done everything we could do. It helped him because it
11 showed no gunshot residue on his client's hands. So for this
12 case I think it was a benefit to his client that it came in.

13 Do I think there's some other things when it is
14 admissible? I guess we can talk about that outside when we
15 talk about the other thing.

16 Q. Certainly. Certainly. But, of course, it is that
17 that is not something, and I understand it is that there's a
18 distinction between, and you correct me if I'm wrong, and I
19 think this gonna be my last question and I'm gonna let this go
20 because I don't want to get into an intellectual debate about,
21 you know, about this, but would you agree with me it is that
22 there's a difference between an expert who actually reviews
23 the work of another expert and then, of course, comes in and
24 testifies, that testifies based upon his, testifies to his own
25 opinion, you know, based upon, you know, an analysis that he

1 made a conclusion that he may reach based upon many different
2 factors including the work that may have been performed by a
3 completely different expert? So that can be a part of at
4 least, you know, a factor or one of the factors of information
5 or sources of information that that expert can take into
6 consideration in reaching his own opinion; is that correct?

7 A. Yes.

8 Q. Okay. But, of course, it would be improper for that
9 expert to come in and not render an opinion based upon his own
10 analysis at least considering multiple sources including the
11 other expert's opinion but actually come in and testify to the
12 other expert's opinion without doing an independent analysis
13 of his own. That would be two different things; is that
14 correct?

15 A. It's two different things but I think both of them
16 could be admissible depending on the facts and circumstances.
17 In this case Dr. Tang had actually peer reviewed it so I do
18 think there are occasions when that could be admissible. That
19 wasn't explored here. It wasn't argued. I'm not going to
20 concede that that would not be admissible. No. Now, the
21 opinion I think would be admissible. The second question
22 would be would the report be admissible. So I think there
23 might be another analysis there. Of course, none of that's at
24 issue here because I think it benefited the defendant.

25 Q. And would you also agree with me because I have had

1 this in another case, it also creates chain of custody issues
2 as well, too, because the chemist or the analyst who actually
3 performs, you know, the analysis on the substance, that
4 represents a significant part of the chain of custody? If the
5 expert or the substituting expert that comes and testifies and
6 was not present when the analysis was done, then that expert
7 cannot testify with respect to everything that happened with
8 that sample, you know, during the time in which he analyzed it
9 and, of course, it is that in my experience and with trials it
10 is that it creates problems with chain of custody, does it
11 not?

12 A. That would have to be looked at on a case by case
13 basis. In this case I don't know why an attorney would have
14 objected to a chain of custody of a witness that helped their
15 client. Without question it may have been the best witness
16 for their client quite frankly.

17 MR. BROOKER: No further questions, Your Honor.

18 MS. COLEMAN: I have one question on one topic he
19 hasn't covered yet.

20 THE COURT: Okay.

21 CROSS EXAMINATION

22 BY MS. COLEMAN:

23 Q. The victim, Dr. Funk testified about statements that
24 Mr. Godbolt and his co-defendant made about how they had a gun
25 and they were going to kill him. Part of the reason you

1 wanted him to testify about that is to tell about his mental
2 state to the jury; is that right?

3 A. Sure. I think those were relevant and admissible
4 statements also about what happened. There was no way to
5 separate them. In my opinion I didn't think you could do
6 that.

7 Q. And you wanted to show the jury that he was afraid
8 for his life and he thought that they had a gun and they were
9 going to kill him; is that correct?

10 A. I wanted what happened to come out. What happened,
11 Dr. Funk? This is what he experienced and it was real and
12 yes, I thought the jury should hear that without question.

13 MS. COLEMAN: Thank you. Nothing further.

14 MR. BROOKER: I don't have any follow up questions,
15 Your Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 MR. BROOKER: Your Honor, we rest. We have nothing
19 further to present.

20 MS. COLEMAN: The state has no witnesses.

21 THE COURT: Okay. Mr. Brooker, do you have court
22 anywhere tomorrow, sir?

23 MR. BROOKER: I have court, Your Honor, in Marion
24 County. I may have General Sessions down there. Of
25 course, I'm scheduled to appear in General Sessions

1 tomorrow.

2 THE COURT: I'm in chambers next week. I would like
3 to ask each lawyer, Ms. Coleman and Mr. Booker, pick your
4 two best cases from the past and send them to me. I
5 don't want memorandum. I'm not the law review type. I
6 don't want to read all of that stuff. Send me the two
7 best cases. Yours, Ms. Coleman, probably about
8 overwhelming evidence type issues. And, Mr. Brooker, the
9 two best you want to send me also from PCR hearings, not
10 trials, okay?

11 MR. BROOKER: Okay.

12 THE COURT: Just fax them to me or scan them to me
13 and then I'll get you a ruling out the very first part of
14 next week.

15 MS. COLEMAN: Thank you, Your Honor.

16 MR. BROOKER: Thank you, Your Honor.

17 THE COURT: Thank you all very much.

18 WHEREUPON, THE HEARING WAS CONCLUDED AT 5:30 P.M.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 16th day of November, 2017.

11 I FURTHER CERTIFY that the forgoing 107 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 6th day of October, 2018.

17

18

19

20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2016 MAY 30 AM 9:11
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
2016-CP-43-0975

Reco Antonio Godbolt, #342149,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 20, 2016. Respondent submitted its Return on February 28, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Thurmond Brooker, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Grant Smaldone, Esquire ("Trial Counsel") and Solicitor John P. Meadors ("Solicitor"). This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, Applicant's records for the Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the January 2012 term of the Grand Jury for Sumter County for kidnapping, first-degree burglary, attempted murder, armed robbery, possession of a

weapon during the commission of a violent crime, and criminal conspiracy (2012-GS-43-0227). Applicant was represented by Grant Smaldone, Esquire. John P. Meadors, Esquire, prosecuted the case. Applicant proceeded to a jury trial before the Honorable George C. James, Jr. and was convicted of kidnapping, first-degree burglary, armed robbery, possession of a weapon during a violent crime, and criminal conspiracy. Judge James sentenced Applicant on December 6, 2012 to twenty-five years' imprisonment for kidnapping, twenty-five years for burglary, twenty-five years for armed robbery, five years for possession of a weapon during a violent crime, and five years for criminal conspiracy, to be served concurrently.¹

Applicant filed a timely notice of appeal. An Anders brief was submitted, and the South Carolina Court of Appeals dismissed Applicant's appeal in an opinion filed May 6, 2015. State v. Godbolt, Op. No. 2015-UP-229 (S.C. Ct. App. 2015). The Remittitur was returned on May, 26, 2015.

II. 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 [failed] to object to the introduction of bad character evidence where testimony was permitted regarding defendant's possession of property stolen from another residence on the same day."
 - b. "Trial counsel was ineffective in failing to object to the admissibility of statements of a declarant not made available for confrontation or cross examination at trial or before trial."
 - c. "Failing to subpoena Detective at trial for cross-examination."
 - d. "Counsel was ineffective based on the cumulative errors made at trial."

¹ Applicant also pled guilty to a separate charge of first-degree burglary stemming from an incident the same day as the current charges (2012-GS-43-1314). On February 19, 2013, Applicant was sentenced by the Honorable George C. James, Jr. to ten years' imprisonment to be served concurrently with his sentence from December 6, 2012. Applicant does not challenge in this conviction in his current application.

Applicant filed an amended application on November 16, 2017, adding the following allegations:

1. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of prior bad act evidence at trial.
2. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the admission of false or perjured testimony by a witness and prosecutorial misconduct for eliciting false testimony.
3. Counsel for Applicant rendered ineffective assistance to Applicant in violation of Applicant's Sixth Amend right to counsel, and Applicant was prejudice at trial as a result of counsel's ineffective assistance, where counsel for Applicant failed to object to the introduction of testimony at trial in violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he was arrested by Robert Richburg for two burglaries, and he went to the Sumter County Police Department, where he was questioned about the case. He stated he was questioned for two or three hours, and Detective Kelly, who testified at his trial, was present during the questioning. He stated before his interrogation, he was read his Miranda rights and he waived his right to remain silent and his right to an attorney. He stated Richburg read him his rights, and he did all the questioning. Applicant testified he gave a written statement to law enforcement right after the interrogation, and he only made one statement. He testified that, although Richburg did everything at his interrogation, he was not present to testify at his trial; instead, Detective Kelly testified at trial about the interrogation. He stated it was improper for Kelly to testify about what happened because she was not the person who Mirandized him or asked the questions.

Applicant testified David Sullivan represented him for three months on his charges. He stated he had no communication with Sullivan and had no discovery at that time. He testified Trial Counsel was finally appointed ten months after his arrest. Applicant testified he met with Trial Counsel a month and a half later; Trial Counsel called him on the phone and brought him his discovery a couple days later. Applicant stated Trial Counsel came to the county jail a week before trial and asked if he would testify against his codefendant. Applicant told him he would not, so Trial Counsel told him to get ready for trial. He stated Trial Counsel never brought him a plea offer from the State. He stated Trial Counsel let him listen to the 911 call recording on his laptop before the trial. He testified there was no discussion of potential witnesses. Applicant testified his codefendant pled guilty on the second day during the trial. He stated he thought they might get a plea offer, but he never got an offer from the State.

Trial Counsel's testimony

Trial Counsel testified he was appointed to this case through the Public Defender's Office in July 2012. He stated he inherited this case from another Public Defender, but it was not his first criminal trial; it was at least his third criminal trial. He stated he visited Applicant three to five times at the detention center. He could not recall the amount of time he spent with Applicant on each visit, but he stated he would have been there long enough to answer all Applicant's questions. Trial Counsel testified he had just received the CD audio tape of the 911 phone call recording that day, before the trial began, and he played it for Applicant to hear before the trial. Trial Counsel testified Applicant was arrested for a home invasion and was caught at the scene of the crime and arrested. He stated Applicant gave a statement to law enforcement admitting some involvement in the crime.



Trial Counsel testified his strategy was to request the lesser-included offense, and he had asked for second-degree burglary, non-violent. He stated law enforcement found a laptop stolen from another house in the car Applicant and his codefendant were driving, and he joined in the codefendant's motion to sever the charges about the two different robberies, and the charges were severed. He stated that, because the charges were severed, the parties should not have mentioned any evidence from the other offense. However, he stated the victim testified about the laptop at trial. ROA 150, line 18-21. Trial Counsel testified he could not recall why he did not object to this testimony, but in this situation it would only call more attention to it to object. He stated he either overlooked the comment or he did not want to call any more attention to it by objecting, but he does not know which it was.

Trial Counsel testified Applicant's statement was read into evidence at trial and included a comment that was probably about the other robbery, but it did not specifically say this in the statement. ROA 267, line 15. He stated he did not know if this was evidence of a prior bad act, but he could not recall why he did not object or ask to have it stricken from the record. He later stated saw no reason to object to the statement because Applicant did not implicate himself in the other robbery in the statement, and it was a statement *he* had made to law enforcement, so he could not object to its admission based on those grounds.

Trial Counsel testified he saw no reason to object to Detective Kelly's testimony about Applicant's interrogation because it was not hearsay testimony. He stated it was not given to prove the truth of the matter asserted, and Kelly was present during the questioning and properly testified about what she saw and heard while there. Trial Counsel testified Hue Tang testified at trial about the gunshot residue test, but he did not perform the test. He stated he did not believe Tang's testimony was a violation of the confrontation clause, but possibly more of a hearsay

issue. However, he stated no gunshot residue was found on Applicant. Trial Counsel testified he did not object to statements the victim testified Applicant and his codefendant made while they were chasing him, such as "We got a gun," and "We are going to kill you," because they were proper under the doctrine of *res gestae*.

Trial Counsel testified there was never a solid plea offer from the State, but there was a "soft offer" for a range of twelve to twenty or twenty-five years if Applicant would testify against his codefendant, and Applicant chose not to testify. Trial Counsel opined the evidence of Applicant's guilt was very strong for the charges of which he was convicted, but there was not much strong evidence of attempted murder, of which he was acquitted.

Solicitor's testimony

Solicitor Meadors testified he believed Applicant would have been convicted of the crime even if the last paragraph of his statement had not been admitted into evidence, even if it were a prior bad act. He stated the victim's comment about the neighbor's laptop in the car was completely admissible because it was *res gestae*, not evidence of a prior bad act, it was just part of his story. He opined that no defense attorney would have objected to the comment about the laptop. Meadors testified he had been practicing law for thirty years and from his experience he knows it is unethical to make an improper objection. Solicitor Meadors testified Detective Kelly was present when Richburg read Applicant his Miranda rights and questioned him, and she took part in the investigation on the case. He stated her testimony was proper because she testified about her personal knowledge and did not misrepresent the information. He testified he was not misleading the jury by having Kelly testify at trial instead of Richburg. Solicitor Meadors testified that Trial Counsel did an outstanding job on this case.



IV. APPLICABLE LAW

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. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).



V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied.

The record before the Court and the testimony presented show Trial Counsel was fully prepared for trial, he made the proper objections, and properly argued the case according to his trial strategy. Before the trial, he met with Applicant, reviewed the discovery and evidence with him, and offered him the opportunity to testify against his codefendant to attempt to negotiate a plea offer from the State. Trial Counsel's actions were well within reasonable professional norms, and his representation was not ineffective. Each individual allegation is addressed below.

Failure to object to testimony about neighbor's laptop

Applicant alleges Trial Counsel was ineffective for failing to object to the victim's trial testimony about a laptop from a neighbor's house inside the car Applicant and his co-defendant had parked in the driveway of his home while they were burglarizing his house. He claims the comment was evidence of a prior bad act, which was inadmissible under the South Carolina



Rules of Evidence, because it suggested the laptop had been stolen from another house in the neighborhood.

At the evidentiary hearing, Trial Counsel testified he did not feel the need to object to this testimony because he believed it was proper under the doctrine of *res gestae*, and he may have believed that if he objected to it, his objection would draw more attention to the testimony in front of the jury. "Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy." State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rules 401 & 402, SCRE). "The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. McGee, 408 S.C. 278, 287, 758 S.E.2d 730, 735 (Ct. App. 2014) (citing State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999)). "The evidence admitted must logically relate to the crime with which the defendant has been charged." Id. (citing Wiles, 383 S.C. at 158, 679 S.E.2d at 176).

This Court finds the victim's testimony regarding the laptop was admissible as *res gestae*, and there was a sufficient nexus between the laptop and the burglary occurring inside the victim's home. See McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014). Accordingly, this Court finds Trial Counsel was not deficient in failing to object. This Court further finds no prejudice to Applicant from any failure to object based on the strength of the evidence against him. Applicant was arrested at the scene of the crime after a police chase on foot. The victim identified him as one of the two people who broke into and robbed his home, then chased him from the home, shooting at him as he ran. Applicant also gave a statement to law enforcement admitting at least some involvement in the crime. Accordingly, Applicant has failed to prove deficiency or prejudice, and this allegation is denied and dismissed with prejudice.

Failure to subpoena Detective Richburg or object to Detective Kelly's hearsay testimony

Applicant alleges Trial Counsel was ineffective for failing to object to Detective Kelly's alleged hearsay testimony regarding his interrogation and for failing to subpoena Detective Richburg to testify at trial about the interrogation. The evidence shows Richburg conducted the interrogation and advised Applicant of his Miranda rights, which he waived and proceeded to give a statement to law enforcement in which he admitted his involvement in the crime. Detective Kelly did not Mirandize Applicant or ask him questions in the interrogation, but she was present throughout the entire interrogation and observed Richburg's interactions with Applicant. At trial, she testified that she was present at the interrogation and she observed Richburg Mirandizing and questioning Applicant.

This Court finds Kelly's testimony was not improper hearsay testimony. Kelly did not state anything Richburg directly said in the proceeding, and none of her testimony was used to prove the truth of the matter asserted. She merely explained to the jury that she was present and observed Applicant being read his Miranda rights, waive them, and answer questions. Accordingly, this Court finds Trial Counsel was not ineffective for failing to make a hearsay objection to her testimony. This Court further finds Trial Counsel did not deprive Applicant of his constitutional right to confront witnesses under the confrontation clause of the United States constitution by failing to object to Kelly's testimony or subpoena Richburg to testify about the interrogation. Applicant was given a full opportunity at trial to confront and cross-examine Detective Kelly about her testimony and the proceedings at the interrogation that she observed. Applicant has failed to prove either prong of the Strickland test or any violation of his constitutional rights that would entitle him to post-conviction relief, and this allegation is denied and dismissed with prejudice.



Failure to object to false or perjured testimony

Applicant alleges Trial Counsel was ineffective for failing to object to the false or perjured testimony of Detective Kelly at trial, and that she improperly testified that she Mirandized Applicant and questioned him at his interrogation, when these things were actually done by Detective Richburg. This allegation is meritless. Kelly's testimony is clear that she was present and observed these parts of the interrogation. At no point does she falsely testify about her involvement or intentionally mislead the jury about her involvement in the proceeding. Taken as a whole, her trial testimony is clear about her involvement in the proceeding, and she does not give perjured testimony. Accordingly, Trial Counsel cannot be ineffective for failing to object to the testimony. Applicant has failed to meet his burden of proving this allegation, and the claim is denied and dismissed with prejudice.

Failure to object to GSR analyst testimony

Applicant alleges Trial Counsel was ineffective for failing to object to the testimony of Special Agent Hue Tang, who testified at trial as an expert in trace evidence and gunshot residue. Tang testified about the gunshot residue test of Applicant taken at the crime scene. Tang did not conduct or administer the test, but he testified that he peer reviewed the examinations and the results that John Roberts, who took the test, got from his examination. ROA 341, line 19-22. Roberts did not testify at trial. Tang testified that the results of this test did not indicate the presence of gunshot residue on Applicant's hands. ROA 344, line 12-17.

Applicant claims that, because Tang did not administer the test but only peer reviewed the results, it was improper for him to testify at trial about the test, and the testimony from Tang instead of Roberts violated his constitutional rights under the confrontation clause. This Court finds Tang's testimony was proper, as he testified about his personal knowledge from reviewing

the results of the specific test. He testified in general about how tests are typically administered and the evidence is usually gathered. He did not testify about how this specific test was collected, but only what the results from the lab showed, which is has proper knowledge and background to do.

This Court finds Trial Counsel was not deficient for failing to object to his testimony. Furthermore, even if Tang's testimony were improper, this Court finds no prejudice for a failure to object, because the results of the gunshot residue test showed Applicant had no gunshot residue on his hands, and Applicant was acquitted of the attempted murder charge. Accordingly, none of Tang's testimony harmed Applicant at trial or affected the result of his convictions on the other charges. Applicant has failed to meet his burden of proving either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Applicant alleges prosecutorial misconduct for presenting false or perjured testimony. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant failed to carry his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed. Applicant's assertion that Solicitor Meadors knowingly presented perjured testimony from Detective Kelly at trial regarding her participation in the interrogation of Applicant during her investigation is meritless. The record shows Detective Kelly was present in the room during the interrogation and observed Detective Richburg advise Applicant of his Miranda rights and question him. Her testimony properly recounted her personal knowledge of the proceedings at the interrogation and was not presented to mislead the jury. Applicant has failed to prove Kelly's testimony was misleading or false, and that Solicitor Meadors acted improperly in presenting her testimony. He has further

failed to prove the violation of any constitutional right regarding this witness. Accordingly, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

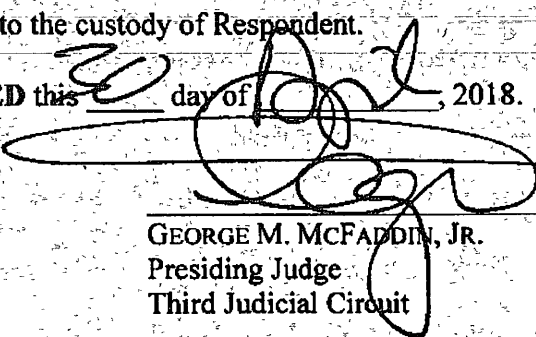
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20 day of April, 2018.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

 _____, South Carolina