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April 10, 2019

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
APR 11 2019
S.C. SUPREME COURT

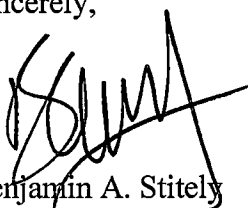
RE: Ronnie Martin vs. State of South Carolina
Case No.: 2017-CP-41-00254

Dear Mr. Shearouse:

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

- (1) Proof of Service of the Notice of Appeal on the respondent.
- (2) A copy of the Order which is to be challenged on appeal.

Sincerely,



Benjamin A. Stitely

BAS:lsc

Enclosures

cc: Taylor Z. Smith, Assistant Attorney General
Ronnie Martin, #200596

ORIGINAL

RECEIVED

APR 11 2019

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
Walton J. McLeod, IV, Circuit Court Judge

Civil Case Number: 2017-CP-41-00254

Ronnie Martin, #200596.....Appellant,

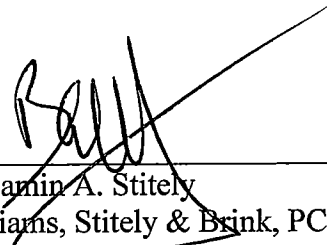
v.

State of South CarolinaRespondent.

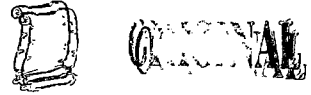
NOTICE OF APPEAL

Ronnie Martin appeals the Order issued by the Honorable Walton J. McLeod, IV, dated March 19, 2019, and received on March 26, 2019, denying Mr. Martin's PCR application. A copy of said order is attached hereto.

April 10, 2019


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Attorney for Respondent



THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
Walton J. McLeod, IV Court Judge

2017-CP-41-00254

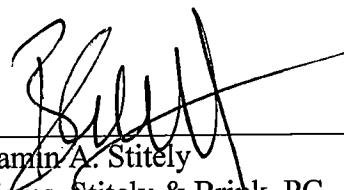
Ronnie Martin, # 200596Appellant,

v.

State of South CarolinaRespondent.

PROOF OF SERVICE

I certify that I have served the **Notice of Appeal** by depositing a copy in the United States Mail, postage prepaid, on April 10, 2019, addressed to the Clerk of Court for Supreme Court of South Carolina, the Clerk of Court for Saluda County and Taylor Z. Smith, Assistant Attorney General.



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2019 MAR 22 AM 10:45
Filed: Clerk of Court, Saluda, SC.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)
Ronnie Martin, #200596,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-41-00254

ORDER OF DISMISSAL RECEIVED
APR 11 2019
S.C. SUPREME COURT

This matter comes before this court by way of an application for post-conviction relief filed October 4, 2017, by Ronnie Martin (Applicant). The State of South Carolina (Respondent) made its return on January 8, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 25, 2019, at the Lexington County Courthouse before Judge Walton J. McLeod, IV. Applicant was present at the hearing and represented by Benjamin A. Stitely, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The record before this court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Saluda County Clerk of Court. During its February 2014 term, the Saluda County Grand Jury indicted Applicant for first-degree burglary (2014-GS-41-035). Assistant Public Defender Bennett E. Casto, of the Eleventh Circuit Public Defender's Office, represented him on this charge. On May 5-7, 2015, Applicant proceeded

to a jury trial before Judge R. Knox McMahon. Following deliberations, the jury convicted Applicant as indicted. Pursuant to section 17-25-45(A)(1)(a) of the South Carolina Code, Judge McMahon sentenced Applicant to a term of imprisonment of life without the possibility of parole (LWOP).

Applicant filed a timely notice of appeal, and Molly R. Hamilton Cawle, Esquire, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

1. Whether the trial court erred in excluding third-party guilt evidence;
2. Whether the trial court erred in admitting recorded jail calls between [Applicant] and his girlfriend;
3. Whether the trial court erred in denying a jury instruction on the lesser offense of second degree burglary;
4. Whether the solicitor's statements so infected the trial with unfairness as to make [Applicant's] resulting conviction a denial of due process; [and]
5. Whether these errors and statements, individually or in the aggregate, require reversal of [Applicant's] conviction.

Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on June 21, 2017. *State v. Martin*, Op. No. 2017-UP-246 (S.C. Ct. App. filed June 21, 2017). The remittitur was issued on July 7, 2017.

STATEMENT OF FACTS

At around 8:00 P.M. on December 13, 2013, Dianne Williams walked out of her kitchen and into the front room of her house. Tr. p. 155. Ms. Williams' dog went and sniffed the door after hearing a noise. Tr. p. 157. Ms. Williams testified, "Well it was a loud noise. The next thing I know there was a kick at the door and the next thing I know Ronnie Moe was coming through the door." Tr. pp. 157-58. Ms. Williams explained the "Ronnie Moe" she was referring to is Ronnie Martin, the Applicant in this case. Tr. p. 158. After kicking down the door, Applicant grabbed Ms. Williams' pocketbook. Tr. p. 159. When Applicant grabbed Ms. Williams'

pocketbook, she asked him, "Ronnie, what you doing with my pocketbook." Tr. p. 160. Applicant then ran outside with Ms. Williams' pocketbook. Tr. p. 161.

Applicant had been at Ms. Williams' home earlier in the day when he helped Ms. Williams' daughter bring some items into the home. Tr. p. 158. Ms. Williams testified Applicant was wearing a blue hoodie and khaki pants when he was at her home earlier in the day. Tr. pp. 158-59. When Applicant returned to the home, he was wearing the same blue hoodie, however the hood on the jacket was up. Tr. p. 159. Despite the fact Applicant had the hood on the sweatshirt up, Ms. Williams could clearly see Applicant's face and facial features. Tr. p. 160. Ms. Williams testified she was positive the intruder was Applicant. Tr. pp. 160-61. After Applicant ran away from the home, Ms. Williams immediately called 911. Tr. p. 162.

Dianne Williams' husband, James Williams, was in another room in the home at the time of the burglary. Tr. p. 218. Mr. Williams heard the door slam and heard Dianne Williams say, "Ronnie Moe, put my pocketbook down. What you doing with my pocketbook?" Tr. p. 218. Mr. Williams also testified it was dark at the time, which prevented him from seeing anything once Applicant left the home. Tr. p. 218.

Chief Jared Goldman was less than a quarter of a mile from the Williams home when he received a call about a stolen purse. Tr. p. 181. Chief Goldman received the call from dispatch at 8:04 P.M. and arrived at 8:05 P.M. Tr. p. 182. Goldman testified when he arrived, the robbery had just happened moments before, and it was dark at the time of his arrival. Tr. pp. 185-86. Goldman received a description of the suspect from Ms. Williams and relayed to other officers to be on the lookout for a black male named Ronnie Moe, wearing khaki pants and a blue hoodie. Tr. p. 186. Goldman then set about taking photographs of the crime scene. Tr. p. 187. Almost

immediately after beginning to photograph the crime scene, Goldman received a call indicating the suspect had been spotted. Tr. p. 187.

Officer Mike Rushton was patrolling in Ridge Spring when he saw an individual wearing clothing that matched the description provided by Chief Goldman. Tr. p. 224. Upon seeing Officer Rushton's vehicle, the individual ran into the woods. Tr. p. 224. Officer Rushton and Officer Cody Cockrell eventually were able to locate the man and ascertain that it was Applicant. Tr. p. 225. Rushton, Goldman, and Cockrell had difficulty securing Applicant to place him into custody and had to physically restrain him. Tr. p. 226. Applicant was then placed under arrest for burglary and placed in the back seat of Chief Goldman's car. Tr. p. 226. Applicant did not have anything belonging to Dianne Williams on his person when he was arrested. Tr. p. 206. Once Applicant was safely in the backseat, Goldman returned to the Williams' address to gather some things that were left behind when he hurriedly left the scene to assist in Applicant's arrest. Tr. p. 192. Once Goldman exited the vehicle, Applicant became upset and began kicking the window. Tr. p. 192. Goldman immediately got back into the vehicle and transported Applicant to the Saluda County Detention Center. Tr. p. 192.

Kimberly Gantt testified at trial. Tr. pp. 231-51. Gantt and Applicant were in a relationship and lived together in December of 2013. Tr. p. 232. Gantt confirmed that on the evening of December 13, 2013, Applicant was wearing a blue hoodie and khaki pants. Tr. p. 233. At some time during the evening hours of December 13th, Gantt learned Applicant had been arrested. Tr. p. 234. After learning of Applicant's arrest, Gantt went to the jail to visit him. Tr. p. 235. Applicant asked Gantt to go and get the purse and return it to Ms. Williams. Tr. p. 235. Applicant told her she could find the purse close to The Wedding House in Ridge Spring. Tr. pp. 235-36. Gantt was subsequently able to locate the pocketbook and return it to Ms. Williams. Tr. p. 242.

Gantt testified by returning the purse, she was trying to get Applicant's charges dropped because Ms. Williams indicated she only wanted the purse returned. Tr. p. 242.

Gantt communicated with Applicant when he was in jail via telephone and in-person. Tr. p. 237. During one in-person meeting, Applicant asked Gantt to tell authorities that a man named Quinton Samuels showed her where the pocketbook was hidden. Tr. p. 236. When asked what Quinton Samuel's mental state was, Gantt replied, "He's not - - Well, he's not bright."¹ Tr. p. 236. Applicant also asked Gantt to convince Ms. Williams to tell the police Applicant did not commit the crime and Quinton Samuels was the individual who broke into her home and stole her pocketbook. Tr. p. 238. At Applicant's instruction, Gantt provided investigators with a false statement, where she told Chief Goldman that Samuels was the responsible party and he showed her where the pocketbook was hidden. Tr. p. 239. After she was unable to get Ms. Williams to place the blame for the burglary on Quinton Samuels, Gantt received threatening letters from Applicant. Tr. p. 240.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations:

1. Counsel failed to adequately meet with the [Applicant] and/or advise him sufficiently prior to trial, where the [Applicant] was handed off between multiple attorneys at the public defender's office;
 - a. Trial counsel failed to adequately meet with the [Applicant] as often or as long as necessary prior to trial. This failure was further caused by the transfer of the case between multiple public defenders.
2. Counsel did fail to adequately conduct a sufficient independent investigation and fully prepare for trial in this matter;

¹ Previously at trial, Chief Goldman testified he knew Quinton Samuels and that, "I have had some dealings with Quinton and actually know him well. Quinton is a very handicapped or slow individual." Tr. p. 204. Goldman continued, "Quinton Samuels is very child-like. He's very impressionable. He can be talked into doing things, I guess, but really he's just very child-like. I would say he was around eight or ten years old mentally in his mind." Tr. p. 205.

- a. Counsel did not conduct a sufficient independent investigation into the evidence, witnesses, and facts and circumstances relevant at trial.
3. Counsel inadequately communicated with the [Applicant] both before and during the trial; [and]
 - a. Counsel inadequately communicated crucial elements regarding his representation with the [Applicant], both prior to and during trial. To include but not limited to plea negotiations, trial preparation, witness statements, etc.
4. Counsel was inadequate when he failed to object to improper statements which caused a finding of guilt, and further failed to preserve the [Applicant's] rights upon appeal.
 - a. Counsel failed to object to numerous improper and prejudicial statements offered by the State at relevant points during opening statements, the trial, and closing arguments, said failure to object was further found to be improperly preserved by the Court of Appeals.

At the evidentiary hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failing to convey all plea offers;
 - b. Failing to enter into plea negotiations for a reduced charge;
 - c. Failing to investigate and to call witnesses;
 - d. Failing to prepare for trial;
 - e. Failing to object to the classification of Quinton Samuels as mentally ill;
 - f. Failing to object to the trial court taking judicial notice this crime occurred at night;
 - g. Failing to object to leading questions;
 - h. Failing to object to the chain of custody of the purse;
 - i. Failing to object to statements made by Kimberly Gantt that Applicant was sending threatening letters to her;
 - j. Failing to object to hearsay;
 - k. Failing to introduce the 911 tape into evidence; and
 - l. Failing to interview Quinton Samuels prior to calling him as a witness.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Assistant Public Defender Casto (Counsel). This court also had before it a copy of Applicant's trial transcript, the records of the Saluda County Clerk of Court regarding the subject

conviction, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records.

During the evidentiary hearing, Applicant testified on his own behalf. He testified W. Greg Seigler, who was the public defender for the tri-county area at the time and is now a judge, first represented him for this charge. He testified he had a fair relationship with Judge Seigler, as Judge Seigler listened to him and had also represented Applicant previously. He further testified Judge Seigler represented him at his bond hearing and also presented him with a fifteen-year plea offer. He elaborated he was told if he did not take the fifteen-year offer, then he would be sentenced to life imprisonment. Applicant further testified after Judge Seigler became a judge in March or April of 2013, Counsel was then appointed to represent him. He elaborated when Judge Seigler no longer represented him, Judge Seigler asked the State to keep the plea offer on the table.

He testified he first met Counsel approximately five to six months after Judge Seigler no longer represented him. Applicant testified he was in custody the entire time between his arrest and his trial, for approximately two years. He elaborated he met with Counsel twice at the Saluda county jail and met with Counsel one or two times at the Laurens County jail. He testified these meetings lasted approximately thirty to forty-five minutes, and the time they met did not amount to ten hours. Applicant further elaborated he and Counsel talked about "stuff" Applicant knew about, but Counsel would shake him off and not give him an answer. He testified he did not get along with Counsel.

He also testified he received his discovery materials, but he and Counsel did not review all of it. He elaborated had they reviewed everything, it would have helped. He further elaborated had they reviewed all of the discovery, he would not have received the sentence he did.

Applicant testified he gave Counsel the names of witnesses to investigate, including his brother, Ms. Williams' daughter, and Quinton Samuels. He testified Counsel did not interview his brother, and Applicant was not sure whether Counsel spoke with Ms. Williams' daughter. Applicant elaborated had Ms. Williams' daughter testified, the outcome of the trial would have been different.

Applicant further testified Counsel did not adequately prepare for trial. He testified the day before his trial, Counsel told him he was proceeding to trial. He further testified he asked Counsel about the witnesses he provided, but Counsel told him they would not call those witnesses. He testified there were things he wanted entered into evidence, such as the 911 call, but Counsel did not introduce those items. Applicant elaborated he and Counsel did not discuss trial strategy. He testified Ms. Williams never mentioned his name in the 911 call. He testified although he has the 911 recording in his Rule 5, SCRCrimP, discovery materials, he did not have the recording with him at the evidentiary hearing. He explained he cannot have tapes or CDs in the prison. He further testified his nickname is "Moe" or "Ronnie Moe," and both Ms. Williams and Mr. Williams testified Ms. Williams started screaming "Ronnie Moe" when he broke into the house.

He also testified Counsel did not enter into plea negotiations on his behalf. He testified he was never presented an offer to which he could have accepted or rejected. He elaborated no offer was extended, and he had no chance to plead guilty. He further elaborated he would have been interested in a plea. He testified he would have taken a plea and would have taken the fifteen-year offer. He also testified when Counsel was appointed, the only possible sentence was for LWOP. He testified, however, he and Counsel discussed the plea in order to remove the possibility of an LWOP-sentence. Applicant testified he was eligible for LWOP because he had prior convictions for burglary and first-degree criminal sexual conduct. Applicant also testified, however, at the

beginning of the trial, he was planning to enter into a plea. He elaborated this was an open plea though, and that was not what he was promised. Applicant testified he could have been sentenced to less than life. He further elaborated the solicitor informed the trial court Applicant had rejected the other offers, but the trial court never asked Applicant if he actually had rejected those offers. He also testified a recess was taken so that he and Counsel could discuss the plea. Applicant wanted the original offer, but Counsel told him it was no longer on the table.

He further testified Counsel refused to do anything Applicant asked him to do. He testified Counsel always said he would not do things, even though Applicant's life was on the line. He further testified he wanted Counsel removed because Counsel was getting on his nerves and Applicant was tired of it. He elaborated Counsel was texting during the trial and was not paying attention. He further elaborated because Counsel was not professional, he had no chance. Applicant also testified at the beginning of trial, he informed the trial court he did not want Counsel relieved but rather wanted the trial court to make Counsel do what he was supposed to do. He elaborated, however, he was prepared to represent himself.

Applicant testified the trial court took judicial notice this crime occurred at night, and Counsel did not object. He further testified Counsel's failure allowed the State to prove one of the elements of first-degree burglary. Applicant elaborated Ms. Williams testified it was not quite dark when this crime happened. He testified, however, this crime occurred in December around 8:00 P.M., but it was not dark yet. He testified Ms. Williams was steadfast this crime occurred at 8:00 P.M. He further testified Chief Goldman testified sunset occurred around 5:19 P.M. or 5:46 P.M. that night, to which Counsel did not object. He testified had Counsel objected, he could have been charged with second-degree burglary.

He also testified Ms. Williams' purse was returned to her several days after it was stolen, and the purse was not properly reviewed. He elaborated there was no description of the purse given and no proper identification of the purse, and Counsel should have objected on those grounds. He testified Ms. Williams knew what her purse looked like, but she did not describe the color of the purse. He further elaborated Counsel should have objected to the chain of custody. Applicant testified, however, the purse had been left out in the rain, and no fingerprints or DNA evidence was recovered from the purse.

He testified his clothes from the detention center and the blue hoodie the robber was allegedly wearing were not introduced at trial. He elaborated the inventory sheet from the detention center did not match what he was actually wearing the night he was arrested. He further elaborated Counsel should have highlighted this fact. Applicant testified Kimberly Gantt picked up the clothing from the detention center, but a blue hoodie was not in the items she retrieved. He testified, however, Gantt testified to what he was wearing on the night of this crime, and she testified he left her house that night wearing a blue hoodie. He further testified the jury was clearly concerned with the clothing, because they asked for it in a note to the court. He testified he did not have the inventory sheet.

He testified Counsel did not object to leading by the solicitor on direct examination. He further testified Counsel failed to object to Gantt's testimony Applicant had sent her threatening letters from the jail after she failed to get Ms. Williams to change her statement. He elaborated there is no evidence of these letters, and Counsel should have objected as to hearsay. Applicant testified Counsel should have objected to Mr. Williams' testimony as to what he heard Ms. Williams shout during the commission of this crime. He elaborated Counsel should have objected as to hearsay.

Applicant testified Samuels knew what was going on, but he acted like he did not know Applicant. He elaborated Samuels committed this crime, and he wanted Counsel to call him as a witness. He further testified Counsel did not interview Samuels but put him on the stand. Applicant elaborated Samuels was “not handled appropriately” and was “not properly vetted.” He further elaborated Counsel refused to ask the questions he should have. He testified his defense was Samuels committed this crime, but there were phone calls between Applicant and Gantt in which he told Gantt to ask Samuels about the location of the purse. He further testified Counsel attempted to have Applicant discuss his conversation with Samuels on the night of this crime at trial, in an effort to support their theory Samuels committed this crime. He testified he was not permitted to go into those statements

Applicant similarly testified witnesses at trial testified Samuels was mentally ill, but Counsel failed to object to that characterization, which altered the outcome of the trial. He elaborated Chief Goldman testified Samuels has severe mental disabilities, but Counsel should have objected because Chief Goldman is not a doctor. He further elaborated because Chief Goldman told the jury Samuels was mentally ill, this denied him due process. He also testified Chief Goldman knew Samuels and testified based on his experience with Samuels that he was child-like. Applicant further testified Gantt also knew Samuels and testified Samuels was not bright.

Following Applicant’s testimony, Counsel testified. Counsel testified he has been a public defender for eleven years, and he has been the public defender for the tri-county area of the Eleventh Circuit for five years. He explained he took over for Judge Seigler, when he was elected to the bench, and took over his caseload of approximately 200 cases. He further explained at the time, he still had a few cases left in Lexington County, which he was finishing up. Counsel

testified Judge Seigler had enough time to get his cases in order before Counsel took over, but there was not enough time for the two to specifically go over each case. He also testified at the time, the Public Defender's Office had fewer attorneys than it has now, but the caseload has not decreased with the increase in attorneys. He testified at one time, he might have forty to fifty clients in the detention center, and it is impossible to meet with all of his clients each week. He further testified it is a common belief among public defenders there are not enough adequate resources to give every client the amount of time they should receive. Counsel testified, however, it is not unusual for him to have several hundred cases at a time, and he is familiar with the caseload.

Counsel also testified each county has approximately four two-week terms of court per year, and McCormick County has four one-week terms of court per year, approximately twenty weeks of court per year. He testified at the time of Applicant's trial, under a different administration than is in place now, he would be scheduled for the trial docket multiple times and sometimes, he would not know what was going on until that Monday of court.

He testified he could not recall exactly when his first meeting with Applicant occurred, but he drove up to the Laurens County detention center, where Applicant was housed, to meet with Applicant. He testified he met with Applicant at least two or three times for a lengthy period of time while Applicant was in Laurens County. He further testified he would block time off just to meet with Applicant, and he did not have any other clients housed in Laurens County at the time. He explained when he would meet with Applicant, they would review everything with the case, including his constitutional rights, plea offers, and the discovery. He testified they reviewed everything extensively. He explained Applicant's case did not have many moving parts, as Ms. Williams immediately cried out "Ronnie Moe" and Applicant was arrested shortly thereafter. He

further explained it is his standard practice to tell his clients the truth, both the good and bad aspects of the base. Counsel also testified he reviews with all of his clients their constitutional rights and explains there is no wrong decision they can make.

He further testified there were no written plea offers, which was not unusual, but there was an offer of fifteen years, which he took to Applicant. He testified he presented Applicant with all offers made. He testified he and Applicant discussed this plea offer in Laurens County, well before the trial. He testified there were two choices: fifteen years or LWOP, about which he was not happy. Counsel testified Applicant did not want to take the plea offer. He further testified the solicitor had a bullseye on Applicant because a previous case with Applicant had fallen through. Counsel also testified the facts of this case did not warrant a life sentence. He explained this was merely a purse snatching, and there were no weapons or violence used nor did anyone suffer any injuries. He further explained he did not recall how entry into the home was made, but there were no weapons involved.

He testified Applicant was served with LWOP-notice a couple of months before trial, which he reviewed with Applicant. He testified he explained to Applicant realistically, his case would go to trial at the next available opportunity. He further testified by the time LWOP-notice had been served, Counsel had already hired an investigator and had already begun preparing for trial. Counsel testified he would have known Applicant's case was coming to trial at least one week in advance, and he knew before the case was called to trial, and he was prepared for trial. He also testified he was not texting during the trial, as Applicant alleged. He explained during the trial and testimony, the testimony was his only focus.

Counsel testified he hired an investigator to speak with witnesses, but the investigator did not interview Samuels. He testified the investigator touched based with all of the actual fact

witnesses in this case, and he was not sure if Applicant gave him a list of witnesses to investigate. He explained Applicant's witnesses he mentioned, however, would not have furthered the case factually, as they were not there at the time of the commission of the crime. He also testified the investigator interviewed Ms. Williams' daughter, and if she had provided any beneficial information, Counsel would have called her as a witness.

He further testified he explained to Applicant that Ms. Williams and the witnesses knew Applicant and saw him, which would be difficult to overcome. He explained they talked at length about this aspect of the case. Counsel also testified in the middle of trial, Applicant wanted Counsel to call Samuels as a witness. He explained Samuels was not on the witness list, but he appeared for the trial. He further explained he thought long and hard about whether or not to put Samuels on the stand, weighing the pros and cons of doing so. Counsel testified the trial was not going well for Applicant at that point, so he called Samuels as a witness at Applicant's insistence. He testified he did not interview Samuels before, but he would have liked to have been able to. He could not recall if Samuels was difficult to track down at the time, but explained Samuels has no permanent job and roams around town. Counsel also testified he agreed with the witnesses' assessment of Samuels, as Samuels is mentally challenged. He testified Chief Goldman testified as to Samuels' difficulties based on his experience with Samuels. He explained Chief Goldman did not need a mental health degree in order to make that assessment, particularly in light of the fact he testified about Samuels generally.

He also testified it was very difficult to get a copy of the 911 tape, approximately one year after the fact, but he had a copy of the recording. He testified the recording was not helpful to the defense because Ms. Williams knew Applicant had robbed her.

He further testified there was no question in Ms. Williams' identification of Applicant as the robber. He explained Applicant had been hanging out at Ms. Williams' home earlier in the day, left, and then came back into the house, took Ms. Williams' purse, and ran away. He further explained Ms. Williams always said "Ronnie Moe" committed this crime. Counsel also testified another person heard Ms. Williams cry out "Ronnie Moe." He testified Applicant was arrested shortly after the commission of this crime.

He testified Gantt testified Applicant was wearing a blue hoodie on the night of this crime, and Applicant was arrested wearing a blue hoodie. He further testified he had no reason to introduce the inventory sheet. Counsel also testified on jail phone calls between Applicant and Gantt, Applicant was instructing Gantt to the location of the purse. Applicant was further heard blaming this crime on Samuels. He further testified Gantt found Ms. Williams' purse and returned it to her. He testified at that time, the purse had been sitting out in the elements for several days, and nothing of evidentiary value was found on the purse. Counsel also testified Ms. Williams identified the purse as being hers. He testified he had no reason to object to testimony regarding threatening letters from Applicant.

He testified he requested a jury charge on second-degree burglary, but the trial court refused to give that charge. He testified the trial court took judicial notice this crime occurred at night, to which he did not object. He further testified Ms. Williams testified it was "mid-daylight" when this crime occurred. Counsel testified, however, this crime occurred in December at approximately 8:00 P.M. He also testified he had no reason to object to Chief Goldman's testimony about the time of sunset that night, but in hindsight, he is not sure if he should have objected. He testified a judge can take judicial notice of things, although it does not happen frequently.

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.

Applicant's allegations of ineffective assistance of counsel are as follows: (1) failure to convey all plea offers; (2) failure to enter into plea negotiations for a reduced charge; (3) failure to investigate and to call witnesses; (4) failure to prepare for trial; (5) failure to object to the classification of Quinton Samuels as mentally ill; (6) failure to object to the trial court taking judicial notice this crime occurred at night; (7) failure to object to leading questions; (8) failure to object to the chain of custody of Ms. Williams's purse; (9) failure to object to statements made by Gantt that Applicant was sending her threatening letters; (10) failure to object to hearsay; (11) failure to introduce the 911 tape into evidence; and (12) failure to interview Quinton Samuels before calling him as a witness. On these allegations, this court finds Applicant has failed to meet his burden.

Ineffective Assistance of Counsel

In a post-conviction relief action, an 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). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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. at 444, 334 S.E.2d at 815.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 442, 334 S.E.2d at 815. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Id.*, 300 S.C. at 117, 385 S.E.2d at 625 (internal citation omitted). 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." *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625 (internal citation omitted).

After careful review based on the standard discussed above, this court finds Applicant has failed to carry his burden in this action. Below are this court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to convey a plea offer

Applicant alleges Counsel was ineffective for failing to convey a fifteen-year plea offer. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009). Here, Applicant contends Counsel never informed him of the fifteen-

year plea offer. He further contends by the time Counsel was appointed to represent him, Counsel told him the fifteen-year offer was no longer available. He admitted, however, Judge Seigler presented him with this plea offer. On the other hand, Counsel testified he presented Applicant with all plea offers, including the fifteen-year offer. He further testified he and Applicant discussed the fifteen-year offer well before trial, while Applicant was housed in the Laurens County detention center. This court finds Counsel's testimony with respect to this allegation credible, whereas Applicant's testimony is not credible. Because Counsel did, in fact, convey all plea offers to Applicant, this court further finds Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. In order to establish prejudice from an alleged failure to convey a plea offer:

[A] defendant must demonstrate a reasonably probability that: (1) he "would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;" (2) "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it," and (3) "the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or sentence of less prison time."

Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Missouri v. Frye*, 566 U.S. 134, 147 (2012)). Here, Counsel testified Applicant rejected the plea offer. He explained the offer was unfair in comparison to what actually happened and Applicant was concerned with where he would go once he was released from prison, so Applicant rejected the offer. Indeed, Applicant rejected the plea offer on the record and insisted he wanted to proceed with trial. Tr. p. 40. Because Applicant chose to reject the offer and proceed to trial, after having had the offer explained to him, there is no indication he would have accepted the offer. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's failure to enter plea negotiations

Applicant similarly alleges Counsel was ineffective for failing to enter plea negotiations. Specifically, Applicant alleges Counsel was ineffective for failing to obtain a plea offer which would allow him to plead to a lesser charge than first-degree burglary. Applicant further contends this was merely a purse snatching, not a first-degree burglary. "In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). Indeed, "one of the most fundamental powers of a prosecutor" is to "bring charges against a person the prosecutor believes has committed a crime." *State v. Needs*, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998). This decision, however, is subject to constitutional constraints, in that a prosecutor may not base his decision on unjustifiable standards nor baseless threats. *Id.*, 333 S.C. at 145-46, 508 S.E.2d at 863. Furthermore, "the Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion," nor may it "dismiss a properly drawn indictment issued by a properly constituted grand jury unless a statute grants that power to the court." *Id.*

Here, Applicant was charged with first-degree burglary. "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling and . . . the entering or remaining occurs in the nighttime." S.C. Code Ann. § 16-11-311(A)(3). On December 13, 2013, at approximately 8:00 P.M., Applicant broke into Ms. Williams' home from the front door and grabbed her purse. Tr. pp. 155, 157, 163. It was dark at the time. Tr. pp. 185, 218. When law enforcement arrived shortly thereafter, the door to the home was clearly broken, and there was a mark on the door which appeared to be from a kick. Tr. p. 184. The facts as listed above warrant a charge for first-degree burglary and there is no indication

the solicitor charged Applicant with such based on constitutionally impermissible biases. Based on the foregoing, this court finds Applicant has failed to establish any deficiency on the part of Counsel, nor has Applicant shown any resulting prejudice from the alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate and call witnesses

Applicant further contends Counsel was ineffective for failing to investigate and for failing to call witnesses at trial. In particular, Applicant alleges Counsel should have interviewed, and therefore called as a witness at trial, Ms. Williams' daughter, Applicant's brother, and Applicant's mother. "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Moreover, “counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” *Strickland*, 466 U.S. at 690 (internal citation omitted). There is a strong presumption counsel’s decisions are based on tactical strategy rather than neglect. *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (quoting *Massaro v. United States*, 538 U.S. 500, 505 (2003)). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)); see also *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel); *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)).

Here, Applicant asserts Counsel failed to interview any of his witnesses. He further asserts had Counsel interviewed these witnesses, the result of the trial would have been different. Applicant fails to provide any explanation as to how these witnesses would have changed the result at trial. Counsel, however, testified he hired a private investigator, who met with fact witnesses in this case. He further testified he interviewed Ms. Williams’ daughter, and had she provided any beneficial information, Counsel would have called her as a witness at trial. Similarly, Counsel

testified Applicant's mother and brother were not there at the time of the commission of the crime and, therefore, did not see anything, so they could not have furthered anything factually in the case. This court finds Counsel's testimony with respect to this allegation credible, whereas Applicant's testimony is not credible. This court further finds Counsel investigated the witnesses provided to him and employed a valid trial strategy in choosing not to call them as witnesses, particularly in light of the fact they could not provide any beneficial information about the crime. Accordingly, Applicant has failed to show Counsel was deficient.

This court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Prejudice from counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant wholly failed to present the testimony of any of the witnesses Counsel allegedly should have called at trial. Rather, Applicant merely speculated as to how these witnesses would have benefited his case. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to prepare for trial

Applicant alleges Counsel was ineffective for failing to prepare for trial. In particular, Applicant alleges Counsel was ineffective for failing to adequately meet with Applicant, for failing

to communicate with Applicant, and for failing to review the discovery with Applicant. “There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls*, 422 S.C. at 181, 810 S.E.2d at 839.

Applicant testified he met with Counsel approximately twice. He further testified he and Counsel would talk about what Applicant knew regarding the case, but Counsel’s reaction was to “shake it off.” Applicant also testified he and Counsel did not review the discovery, and they did not review any trial strategy. Applicant further alleged he only heard about the trial the day before it was to commence. Contrastingly, Counsel testified he met with Applicant while in the Laurens County detention center approximately two or three times, for a lengthy amount of time. He further testified they reviewed everything involved in this case, including the facts, the positive and negative aspects, Applicant’s constitutional rights, and the discovery, and they discussed everything extensively. He also testified by the time Applicant was served with LWOP-notice, Counsel had already begun preparing for trial, and he made Applicant aware they could go to trial at the next available opportunity. This court finds Counsel’s testimony with respect to this allegation credible, whereas Applicant’s testimony is not credible. Based on the foregoing, Counsel thoroughly reviewed everything with respect to this case with Applicant and thoroughly prepared for trial. This court, therefore, finds Applicant has failed to establish any deficiency on the part of Counsel. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (finding trial counsel was not

deficient when he had been practicing law for a number of years and had met with the applicant, however brief, particularly in light of the fact counsel is presumed to have rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case).

This court similarly finds Applicant has presented insufficient evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this court with any evidence as to what benefit could have been realized from additional preparation by Counsel. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (“Furthermore, Harris did not offer any evidence or argument as to how counsel’s alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel’s alleged deficient performance was prejudicial to Harris.”). Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel’s alleged failure to object to testimony regarding Quinton Samuels’ mental difficulties

Applicant contends Counsel was ineffective for failing to object to testimony from witnesses at trial regarding Quinton Samuels’s mental health. Specifically, Applicant alleges Counsel should have objected to the following testimony by Chief Goldman: “Quinton Samuels is very child-like. He’s very impressionable. He can be talked into doing things, I guess, but really he’s just very child-like. I would say he was around eight or ten years old mentally in his mind.” Tr. p. 205. Applicant asserts Counsel should have objected to this testimony because Chief Goldman was not an expert in mental health.

Rule 701 provides:

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness’

testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Rule 701, SCRE. Here, Chief Goldman testified he knew Samuels well and had had some prior dealings with him. Tr. pp. 204-05. He further testified based on his dealings with Samuels, Samuels has severe mental disabilities and is “a very handicapped or slow individual.” Tr. pp. 204-05. Moreover, this line of testimony was in order to refute Applicant’s claim Samuels actually broke into Ms. Williams’ home and stole her purse. Additionally, Chief Goldman’s observations do not require any special knowledge, skill, experience, or training, as Chief Goldman never attempted to diagnose Samuels with anything, but rather testified to his perception of Samuels based on his experiences with Samuels. Based on the foregoing, this was a proper opinion or inference from a lay person and there was nothing to which Counsel needed to have objected. This court, therefore, finds Applicant has failed to establish any deficiency on the part of Counsel, nor has Applicant established any resulting prejudice therefrom. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel’s alleged failure to object to the trial court taking judicial notice
this crime occurred at night*

Applicant further contends Counsel was ineffective for failing to object when the trial court took judicial notice of the fact it was nighttime when this crime occurred. “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned.” Rule 201(b), SCRE. A court may take judicial notice of a fact, whether or not it has been requested by the parties. Rule 201(c), SCRE. When, however, the trial court is requested by a party to take notice of a fact and has been supplied with the necessary information, the trial court must take judicial notice of that

fact. Rule 201(d), SCRE. Here, the solicitor requested the trial court to take judicial notice of sunset on December 13, 2013. Tr. p. 179. In support, the solicitor supplied the court with a document from the United States Naval Observatory Astronomical Application Department, which indicated the times for sunrise, twilight, and sunset on December 13, 2013. Tr. p. 179. Clearly, the time at which the sun set on December 13, 2013, is capable of accurate and ready determination from reliable resources and was a fact of which the trial court could take judicial notice.

The court notes the failure of Counsel to object to the judicial notice of an element of the crime of burglary in the first degree may have been in error. *State v. Odom*, 412 S.C. 253, 267, 772 S.E.2d 149, 156 (2015) (providing that the State has the burden of proving beyond a reasonable doubt every element of a crime). However, this court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency and the aforementioned error was harmless. *Id.* (providing that a constitutional error can be harmless). Ms. Williams was steadfast Applicant broke into her home around 8:00 P.M. Tr. pp. 156, 157. Mr. Williams also testified it was dark when Applicant broke in to the home. Tr. p. 218. Furthermore, Chief Goldman testified it was dark when he received the call to respond to Ms. Williams' home, which was shortly after the commission of the crime. Tr. pp. 184-85. Indeed, even Applicant testified it was "good and dark" by 8:00 P.M. Tr. p. 329. This court finds that the trial court's judicial notice of the time of sunset and Counsel's failure to object to the judicial notice was harmless error in light of the properly admitted evidence and testimony. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to leading questions

Applicant alleges Counsel was ineffective for failing to object to leading questions by the solicitor on direct examination. Specifically, Applicant contends Counsel should have objected to the following testimony during direct examination of Ms. Williams:

Q: Let's talk about Ms. Gantt, Kimberly Gantt.

A: Okay. Kimberly brought it back to me.

Q: Kimberly Gantt brought you that pocketbook back?

A: Yeah.

Tr. p. 164.

“Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony.” Rule 611(c), SCRE. However, Applicant has wholly failed to establish any prejudice which would warrant a reversal. Indeed, it is extremely unlikely mere leading questions could garner the requisite prejudice to warrant a reversal here. Had Counsel objected to this line of questioning, the State simply would have rephrased its questions and still elicited the same testimony. Accordingly, this court finds Applicant has failed to meet his burden, and this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to the chain of custody of Ms. Williams's purse

Applicant further alleges Counsel was ineffective for failing to object to the chain of custody of Ms. Williams’ purse, when the purse had been handled by several people before it came into the control and custody of law enforcement. Applicant contends Counsel also should have objected because Ms. Williams did not give a description of the purse. “[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable.” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)). Where, however, “the issue is the

admissibility of non-fungible evidence—that is, evidence that is unique and identifiable—the establishment of a strict chain of custody is not required.” *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (citing *State v. Glenn*, 328 S.C. 300, 305-06, 492 S.E.2d 393, 395 (Ct. App. 1997)). Indeed:

If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition.

Id. at 134, 620 S.E.2d at 741-42.

Here, Ms. Williams identified the purse in question as being hers and further stated she was positive that purse was, in fact, hers. Tr. p. 160. Furthermore, there was nothing of evidentiary value taken from the purse. The item at issue here is non-fungible; therefore, a strict chain of custody is not required. Because a strict chain of custody was not required, this court finds there was nothing to which Counsel should have objected. This court further finds Applicant has failed to meet his burden with respect to this allegation. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to testimony Applicant was sending threatening letters to Gantt

Applicant also alleges Counsel was ineffective for failing to object to Kimberly Gantt's testimony Applicant was sending her threatening letters. Applicant contends Counsel should have objected to this because it was hearsay. A statement offered against a party, which is the party's own statement is not hearsay. Rule 803(d)(1)(2)(A), SCRE. Here, Gantt testified she received threatening letters from Applicant because he was angry she could not convince Ms. Williams to change her statement. Tr. p. 240. The statement Applicant contests here was made by Applicant himself. Therefore, this court finds this statement was not objectionable under the rule against

hearsay, and Counsel was not deficient. Because there was nothing to which Counsel should have objected, this court further finds Applicant has failed to establish any resulting prejudice therefrom. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to hearsay

Similarly, Applicant alleges Counsel was ineffective for failing to object to hearsay. In particular, Applicant alleges Counsel should have objected when Mr. Williams testified: "I hear the door slam real hard and after I hear the door slam real hard, then I hear, Ronnie Moe, put my pocketbook down. What you doing with my pocketbook?" Tr. p. 218. He further alleges Counsel also should have objected when Mr. Williams testified: "She said, you got my pocketbook. Put my pocketbook down. I know that's you, Ronnie Moe." Tr. p. 219.

Hearsay is generally not admissible, "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. However, "a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Rule 803(2), SCRE. Here, Mr. Williams testified Ms. Williams was upset when Applicant broke into the home and when she screamed Applicant had her purse. Tr. pp. 218-19. The statement was admissible under an exception to the rule against hearsay. As such, this court finds Applicant has failed to establish any deficiency on the part of Counsel and has failed to establish any resulting prejudice therefrom. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to introduce the 911 tape

Applicant further alleges Counsel should have introduced the 911 tape. There is a strong presumption counsel's decisions are based on tactical strategy rather than neglect. *Yarborough*, 540 U.S. at 8 (quoting *Massaro*, 538 U.S. at 505). "Accordingly, when counsel articulates a valid

reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith*, 386 S.C. at 567, 689 S.E.2d at 632 (citing *Caprood*, 338 S.C. at 110, 525 S.E.2d at 517); *see also Stokes*, 308 S.C. at 548, 419 S.E.2d at 779 (holding where counsel articulates valid reasons for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel); *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” *Whitehead*, 308 S.C. at 122, 417 S.E.2d at 531 (citing *Goodson*, 564 F.2d at 1071 (4th Cir. 1977)).

Applicant contends this recording would have been beneficial to his case, as Ms. Williams never said his name on the recording. Counsel, however, testified after reviewing the tape, he did not believe it would be helpful to the defense. He explained it would not have been helpful because Ms. Williams knew who Applicant was and knew Applicant broke into her home to steal her purse. This court finds Counsel’s testimony with respect to this allegation very credible, whereas Applicant’s testimony is not credible. Accordingly, this court finds Counsel employed a valid trial strategy in choosing not to introduce the 911 recording, as it did not provide anything that would have helped Applicant’s case. Based on the foregoing, this court finds Applicant has failed to establish Counsel was deficient.

This court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. “Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. at 181, 810 S.E.2d at 839 (citing *Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417). Here,

Applicant wholly failed to provide this court with a copy of this 911 recording, thereby leaving this court to merely speculate as to what the recording would have shown. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to interview Quinton Samuels prior to calling
him as a witness*

Applicant also alleges Counsel was ineffective for failing to interview Quinton Samuels prior to calling him as a witness at trial. Applicant alleges had Counsel “properly vetted” Samuels, Applicant would have been able to establish Samuels committed this crime. “[T]he accused has the ultimate authority to make certain fundamental decisions regarding the case.” *Jones v. Barnes*, 463 U.S. 745, 751 (1983) (citing *Wainwright v. Sykes*, 433 U.S. 72, 93 n. 1 (1977)). Counsel testified that during the trial, Applicant wanted Samuels, who had appeared for trial but was not on a witness list, to testify. After weighing the pros and cons of having Samuels testify, Counsel chose to call Samuels as a witness. Counsel explained he did so at Applicant’s insistence. Because Counsel made this decision based on Applicant’s insistence and because Applicant has the ultimate authority to make certain fundamental decisions regarding the case, this court finds Applicant has failed to establish Counsel was deficient.

Similarly, this court further finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. Samuels denied any involvement in this crime. Indeed, as found by the Court of Appeals, “[a]side from [Applicant’s] assertions, there is no credible evidence linking Samuels to the crime.” *Martin*, Op. No. 2017-UP-246. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

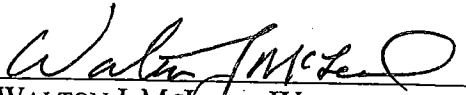
Based on all the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This court notes 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, 409 S.E.2d 395 (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 if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

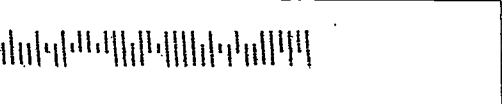
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 19th day of March, 2019.


WALTON J. McCLEOD, IV
Presiding Judge

Lexington, South Carolina



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