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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Paul M. Burch, Circuit Court Judge

FRANKIE LEE MCGEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002146

APPENDIX

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DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE

5

1 The state is present and ready to proceed. Mr. McGee
2 is present and represented by Anna Browder. There's also
3 -- pardon me -- been amendment in this case.

4 (Whereupon, Ms. Kinard and Ms. Browder conferred.)

5 MS. KINARD: It should be in your packet, Your Honor.

6 (Whereupon, Ms. Kinard and Ms. Browder conferred.)

7 MS. KINARD: It was filed November 2nd, 2015. And I
8 will turn it over to Ms. Browder.

9 THE COURT: Ms. Browder?

10 MS. BROWDER: Thank you, Your Honor. I call Frankie
11 McGee.

12 (Whereupon, the witness came forward.)

13 FRANKIE MCGEE, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BROWDER:

17 Q Can you state your name for the record?

18 A Excuse me.

19 Q Can you state your name for the record?

20 A Frankie Lee McGee.

21 Q Okay. And, Mr. McGee, you were convicted at trial in
22 August of 2011 of murder and burglary-first, correct?

23 A That's correct.

24 Q Okay. And for that case who was your attorneys
25 throughout the case?

1 A My attorney was Douglas Steven Strickler, Fielding
2 Pringle ---

3 Q Okay.

4 A --- and Jennifer Davis.

5 Q Okay. And they were all with Richland County Public
6 ---

7 A Richland County ---

8 Q --- Defender's Office?

9 A --- Public Defender's Office.

10 Q Okay. And when were you arrested on this case?

11 A I was originally charged and arrested for this crime
12 that happened March the 17th, 2010.

13 Q Okay. And this incident occurred in May of 2009,
14 correct?

15 A That is correct.

16 Q All right. So you were arrested almost a year later?

17 A That is correct.

18 Q Okay. And at the time of your arrest, were you
19 granted a bond?

20 A At the time of my arrest, I was -- I was -- I was
21 granted a bond. But I did not go up for a bond hearing
22 because of the advice of my attorney that it would be so
23 high, I would not be able to afford it.

24 Q Okay. So did you have a bond in this case?

25 A Yes, I had a bond.

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE

7

1 Q Did you bond out or were you incarcerated?

2 A I did not bond out.

3 Q Okay. So you were incarcerated from the time you were
4 arrested until the trial?

5 A That -- that is correct.

6 Q Okay. During that time, which was approximately a
7 year and a half, correct?

8 A That is correct.

9 Q About how many times did you meet with Mr. Strickler
10 or Ms. Pringle or Ms. Davis?

11 A To my memory, I believe I met with the both of them on
12 separate occasions several times.

13 Q Okay.

14 A Yes.

15 Q And did you have an opportunity to go over all the
16 discovery in your case prior to your trial?

17 A I had an opportunity to go over some of the discovery
18 that was presented to me. The part that wasn't withheld, I
19 had an opportunity to go over it.

20 Q Okay. And are you aware -- you -- you stated you were
21 withheld from seeing some discovery. Do you know what
22 discovery that is?

23 A Yes. The discovery part of when the witness had went
24 to the police department ---

25 Q Which witness?

1 A Temika Ashford ---

2 Q Okay.

3 A --- the key witness ---

4 Q Okay.

5 A --- material witness of this -- for this crime ---

6 Q Okay.

7 A --- went to the police department on the third day --
8 on -- on the sixth day after the incident happened.

9 Incident happened May 3rd, according to the police report.

10 When she went to the -- to the police department, she was
11 requested to come there on May 6th because of a
12 inconsistent statement, which was a lie about what she told
13 that had -- that had actually happened that night.

14 Q Okay. So that's the discovery you're indicating that
15 you did not have at the time?

16 A Also, the original 911 call ---

17 Q Uh-huh.

18 A --- that the witness -- the key witness, Ms. Temika
19 Ashford, made to the police department about who it was,
20 who she seen, and what happened was lost before the trial
21 started.

22 Q Okay. And just to give the judge a little background,
23 essentially, Temika Ashford was an eyewitness that saw
24 someone coming out of the home where the murder occurred,
25 correct?

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE

9

1 A No, ma'am. That is not ---

2 Q Or out ---

3 A --- correct.

4 Q --- or outside the house?

5 A Temika Ashford was an eyewitness that drove past the
6 house that was originally in the house when the incident
7 happened, but testified she didn't see anybody commit the
8 burglary or the assault or in the house. But she's
9 testified that the second time, when she circled the block,
10 she seen a black male standing in the driveway of the
11 victim yard.

12 Q And she ultimately ID'd somebody else regarding that,
13 correct?

14 A That same night, minutes after the incident happened,
15 the same key witness, Ms. Temika Ashford, she did
16 positively identify another suspect matching the
17 description of the clothing of the person she seen standing
18 in the yard. And after taking a sworn oath by the
19 investigator at the crime scene, she did positively ID him
20 in a police show-up procedure where she wrote statements on
21 him and said she got in the car and went down the street to
22 identify the subject or suspect that the police had that
23 was matching the description.

24 And in her handwritten statement, she said it was him
25 that she saw. No one else was identified that night. And

1 I was not in the neighborhood that night.

2 Q Okay. And she never identified you, correct?

3 A At no particular time in none of the photograph
4 lineups. The prosecutor told the judge before the trial
5 started that, "Your Honor, out of all the photograph
6 lineups the witness was shown over the course of the year
7 from the time the incident happened with Mr. McGee's
8 picture in it, she was not able to positively identify him
9 or anybody as a suspect."

10 But she did positively identify a suspect that night
11 and wrote statements on him that he was the person she seen
12 standing in the yard with the white, plastic gloves on his
13 hands, wearing blue jeans and white T-shirt. And he was
14 six-foot-one taller and 180 pounds.

15 Q Okay. At the time of your arrest, between then to the
16 time of trial, you said you had several meetings with Mr.
17 Strickler, Ms. Pringle, and/or Ms. Davis, correct?

18 A That is correct.

19 Q And at those meetings did you go over strategy for the
20 trial?

21 A Yes, ma'am, we did.

22 Q Okay. Did you ever discuss warrants with them during

23 ---

24 A Yes, ma'am.

25 Q --- your meetings?

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE 11

1 A We discussed the warrants. What happened was March
2 2010, the 17th day, when the Columbia City Police
3 Department came to the prison where I was at to serve
4 warrants on me, the warrants that they originally served on
5 me was dated that the incident happened May 5th. According
6 to the police reports, the incident originally happened May
7 3rd.

8 But when I went to trial, the judge, Newman -- Clifton
9 Newman, asked the prosecutor, "Which warrants are you
10 seeking to charge him with and try him on?"

11 And she said, "Excuse me?"

12 He said, "There are four warrants in the computer."
13 He said, "There is a warrant for burglary-first and murder
14 May 6th and a warrant for burglary-first and murder May
15 3rd."

16 She said, "We are seeking to try him on the May 3rd
17 warrant."

18 I was never, ever served a May 3rd warrant. They
19 tried me and convicted me on a warrant that they never,
20 ever served on me.

21 Q Okay. So they went forward on the May 3rd warrants?

22 A Yes, ma'am.

23 Q Okay.

24 A That's correct.

25 Q And you discussed this with your attorneys?

1 A I -- when my attorney came to the Alvin S. Glenn
2 Detention Center when I first accused and arrested of this
3 crime, which I did not commit, when he came to the Alvin S.
4 Glenn Detention Center, Mr. Douglas Steven Strickler, he
5 said, "Frankie, I'm going to be representing you in this
6 case."

7 I said, "What" -- I said, "What -- what are you
8 talking about?"

9 He said, "They're charging you with murder."

10 I said, "I didn't commit no murder."

11 He said, "Well, that's what they're charging you
12 with."

13 I said -- I said, "Well, what day did this happen?"

14 He said, "May 3rd, 2009."

15 I said, "Well, the police brought me from Lee
16 Corrections to Alvin S. Glenn Detention Center and read me
17 my rights and served a warrant on me that the incident
18 happened May 6th, 2009."

19 He said, "Let me see that."

20 I gave him the warrant. He said, "I'll straighten
21 this out."

22 And during the course of the time on waiting to go
23 back to trial, on the same day I stood before the judge, no
24 one ever came back to me and said, "Mr. McGee, we're going
25 to serve a newly-dated warrant with the correct date that

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE 13

1 this incident happened," which is -- according to the
2 police report, which is May 3rd. No one ever came back and
3 served me another warrant.

4 Q Okay. And is it your contention that Mr. Strickler
5 should have objected or done something with those warrants
6 during the trial?

7 A Well, I could leave Mr. Strickler, according to the
8 law. First of all, I'm charged with what they call a
9 capital murder -- high-profile capital murder. And when
10 you come to a person and I didn't commit the murder or the
11 burglary and I wasn't there that night and serve a warrant
12 on me for a high-capital-profile murder and burglary, and
13 the -- and -- and the date on the warrant is not even
14 correct and I give it to my attorney and nobody does
15 anything about it, but when I got to court, they try me on
16 a -- on -- on a warrant that they never served me --
17 according to the police report, the warrant that the date
18 that the incident happened was May 3rd. They served the
19 warrant on me, saying the incident happened May 6th.

20 Q Okay.

21 A And that was wrong.

22 Q And you're saying you think Mr. Strickler should have
23 moved to dismiss the warrants that you were convicted on
24 before the trial?

25 A I asked Mr. Strickler -- I told him -- I said, "Sir,

1 according to the law, when you charge a person with a high-
2 capital-profile murder, extradite them from a state prison
3 to a county detention center and the date is not even
4 correct on the warrant," that's a violation of a civil
5 right. The warrant must be correct to the date and the
6 time that the incident happened when they serve the warrant
7 on the suspect or the defendant that they're seeking to
8 charge for the crime.

9 But it wasn't right. And they never did come back to
10 me and serve a May 3rd warrant on me, according to the date
11 that the incident happened. But they found me guilty on a
12 May 3rd warrant. And that's wrong.

13 Q Okay. I want to get back to this witness, Temika
14 Ashford. During pretrial motions there was a motion made
15 by Mr. Strickler regarding Temika Ashford's testimony,
16 correct?

17 A That is correct.

18 Q And at the time Judge Newman decided not to rule on it
19 at that time until he heard more evidence on it ---

20 A That is ---

21 Q --- and ---

22 A --- correct.

23 Q Okay. During opening statements by the state, this
24 testimony was mentioned about what she saw that night.

25 A That is correct.

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE

15

1 Q Okay. And at that point did Mr. Strickler object to
2 that coming in, since the judge hadn't ruled on it yet?

3 A At the particular time, Mr. Douglas Steven Strickler,
4 he objected to the judge about using the key witness,
5 Temika Ashford, when she had wrote statements on another
6 suspect that night and positively ID'd him as the person
7 that was in the yard.

8 Q Right. But during the opening statements, did ---

9 A Uh-huh.

10 Q --- he object to the statements made by the solicitor
11 about Ms. Ashford?

12 A Yes, he did.

13 Q He did?

14 A He ---

15 Q Okay.

16 A --- objected.

17 Q Ultimately, at that time, to kind of get to the appeal
18 portion of that regarding Ms. Ashford -- ultimately, the
19 judge allowed her testimony in, despite the fact that she
20 never ID'd you and she actually ID's someone else, correct?

21 A That is correct. The judge -- the prosecutor, Ms.
22 Campbell, instructed the judge before the trial started
23 that the only witness that was there that night when the
24 crime happened was not going to be able to do any kind of
25 in-court identification on me, which was the defendant.

1 And the judge said the prosecutor said -- the judge
2 told the prosecutor that that witness may not be able to be
3 used. She said, "I need to use that witness so the state
4 can get a conviction."

5 Q Okay. That testimony that -- but -- but he ultimately
6 let that testimony in, correct?

7 A Yes, ma'am.

8 Q Okay. During your appeal who was your appeal
9 attorney?

10 A My -- my -- my direct-appeal attorney was Ms.
11 Katherine H. Hudgins.

12 Q Okay. And did you have any contact with Ms. Hudgins
13 during the pendency of your appeal?

14 A I didn't have any physical contact with her, due to
15 the fact that the law state when you going back to court on
16 a direct appeal, I myself is not allowed to come to court.
17 But my appellate lawyer, I can talk to her on the telephone
18 once or twice a week, when she's available to talk to.

19 Q That's my question. Did you have any type of contact
20 with ---

21 A Yes.

22 Q --- her ---

23 A I had contact on the telephone.

24 Q Okay. What type of -- the -- the telephone contact?

25 A Yes, ma'am.

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE

17

1 Q Okay. And did you bring up the issue regarding Ms.
2 Ashford's testimony being admissible to her?

3 A Yes, ma'am.

4 Q Okay.

5 A When -- when Ms. Hudgins took my case, I spoke with
6 her on the telephone. And I asked her, "What issues are
7 you going to raise on my appeal?"

8 She said that, "I'm going to raise the issue
9 concerning a lady that testified on the stand named
10 Michelle Perry"; that said she saw me attend the same
11 church that the victim attended three months before the
12 incident happened. But she's not testifying and ID'ing me
13 in court to say I committed a crime. She's saying that she
14 seen me attend the same church several months, which is
15 three months, before the incident happened.

16 And I said, "Ma'am, that's a dead issue." I said,
17 "Are you aware that a key witness that night only
18 identified one person as a suspect in the yard and
19 positively ID'd him in police show-up procedure minutes
20 after the incident happened and said he was the person she
21 saw standing in the victim yard with the blue jeans, the
22 white shirt, the white, plastic gloves, and a long stick or
23 pipe in his hand and it was David Williams?" I said, "Are
24 you aware of that?"

25 She said, "I'll -- I'll pick and choose what issues I

1 raise."

2 I said, "Well, if you raise that issue, I'm going to
3 lose this appeal."

4 She said, "Well, we're going to do it and see what
5 happen." And I lost the appeal.

6 Q Okay. And did she raise the issue as to Temika
7 Ashford's testimony being admissible ---

8 A No ---

9 Q --- in the ---

10 A --- she didn't.

11 Q Okay. And you believe if she had, you would've had
12 more of a chance at your appeal, correct?

13 A Ma'am, the truth of the matter is it's not a -- it's
14 not a -- it's not a question of what I believe. I know for
15 a fact, if she would have represented the correct, proper
16 information to the -- to -- to the appellate court
17 concerning what really happened and the erroneous
18 conviction that they convicted me on, it would've saved the
19 taxpayers a lot of money and coming up here today with my
20 case being overturned ---

21 Q And ---

22 A --- for a crime I did not commit.

23 Q And are you submitting to the Court today that she was
24 ineffective -- ineffective as your appellate counsel for
25 not bringing up that issue on appeal?

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE 19

1 A She was ineffective and insufficient.

2 Q Okay. Also during the trial, there was mention, which
3 Mr. Strickler and Ms. Pringle objected to at the time,
4 regarding the admissibility of an 18-wheeler truck,
5 correct?

6 A Yes, ma'am.

7 Q Okay. And essentially, just to give some background,
8 there was an 18-wheeler truck that was stolen somewhere in
9 Kershaw County ---

10 A That's correct.

11 Q --- that was found several miles away from this
12 incident location ---

13 A That's correct.

14 Q --- correct?

15 All right. And the state's position at trial was this
16 truck was stolen by you ---

17 A That's correct.

18 Q --- and that put you in the vicinity of the crime?

19 A That is what -- that's what they said.

20 Q Okay. At the trial, like I said, Mr. Strickler and
21 Ms. Pringle objected to the admissibility of the truck,
22 correct?

23 A That is correct again.

24 Q Okay. When it came to the appeal, did you bring up
25 this issue to Ms. Hudgins as well?

1 A I asked Ms. Hudgins about that issue and she overrode
2 it with using, again, Michelle Perry because of the
3 relevancy, which is the *rae gestaes* [sic] of the -- of the
4 -- of the stolen-truck part. First of all, the stolen
5 truck had nothing to do with what they charged me with,
6 which is first-degree murder and first-degree burglary.

7 The metal bar that was found across the road, a block
8 away from where the incident happened ---

9 Q Okay. And I'm going to stop you for just a second so
10 the judge has some background. This -- the -- essentially,
11 a metal bar was used to kill the victim in this case,
12 correct?

13 A That is correct.

14 Q Okay. He was beaten with a metal bar. And the
15 state's contention at the trial was this metal bar was
16 taken from a -- that semi truck and used, correct?

17 A That is correct.

18 Q Okay. Go ahead.

19 A Now, this metal bar, the state said that it was stolen
20 from the truck, off of the semi that was found parked at a
21 towing-impound yard. Now, no one was seen driving this
22 stolen truck. My DNA is not in the truck or on the truck.
23 No one was seen driving it in Columbia or in Richland
24 County.

25 The owner of the stolen truck testified that that

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE 21

1 metal bar did not come off of his truck. And the DNA on
2 the metal bar -- the DNA expert, Jay Barron, testified that
3 it does not belong to Frankie McGee. It belongs to another
4 person that they don't know who it belongs to.

5 And that metal bar has initials engraved in on it.
6 And the police went to the stolen -- to the company where
7 the truck was stolen from. And nobody there that worked
8 for that company had that initials that was on the metal
9 bar. And nobody claimed that metal bar as being missing
10 from anywhere in that company.

11 Q Okay. And due to those reasons, that's why Mr.
12 Strickler and Ms. Pringle objected to the case -- or to
13 that issues, because they didn't believe the truck
14 should've been admissible at trial, correct?

15 A That is correct.

16 Q And Ms. Hudgins, despite the fact that you brought
17 this up with her, did not bring it up on appeal?

18 A No. It was ---

19 Q Okay.

20 A --- not brought up, none of it.

21 Q Okay. And you believe that she was ineffective for
22 not bringing up that issue on your appeal?

23 A Yes, ma'am. I do ---

24 Q Okay.

25 A --- believe she was.

1 Q All right. And, in fact ---

2 MS. KINARD: And ---

3 Q --- what issues did she bring up on ---

4 MS. KINARD: Your Honor ---

5 Q --- appeal?

6 MS. KINARD: --- quickly, I'd like to bring the
7 Court's attention: I believe that's a mischaracterization.

8 That is actually Statement -- Issue No. 2 ---

9 MS. BROWDER: That's right.

10 MS. KINARD: --- on the appeal ---

11 MS. BROWDER: Okay.

12 MS. KINARD: --- was regarding the theft of the truck
13 and whether it was sufficiently linked to the trial.

14 MS. BROWDER: I didn't handle the appeal stuff, Your
15 Honor, so ---

16 Q Did she bring that up on appeal?

17 A If she brought that -- that up on the appeal, I wasn't
18 informed of it.

19 Q Okay.

20 A We only talked about the part about concerning the key
21 -- the witness, which was -- which was the main issue of me
22 being wrongfully convicted was a -- was a witness that
23 wasn't even there or -- or none of that.

24 Q And that was the Ashford witness that she did not ---

25 A No, ma'am.

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE

23

1 Q Okay.

2 A That was Michelle Perry.

3 Q And she brought up Michelle Perry, but she did not
4 bring up the Ashford ---

5 A That is ---

6 Q --- witness?

7 A --- correct.

8 Q Okay.

9 A To my knowledge, that ---

10 THE COURT: I ---

11 A --- is correct.

12 THE COURT: I have the decision of the Court of
13 Appeals in front of me, and it was No. 2.

14 MS. BROWDER: Okay.

15 Q Mr. McGee, you filed your original PCR application
16 January 2015, correct?

17 A Yes, ma'am, I did.

18 Q Okay. We've been through several issues that you and
19 I have discussed. Is there anything else you think is
20 important that you believe is an issue that the judge
21 should know?

22 A Say again, ma'am?

23 Q Is there anything else that you believe is an issue
24 that the judge should know?

25 A In this issue?

1 Q In this case.

2 A Yes, ma'am. It's -- it's a lot that I -- that I --
3 that I feel like the judge should know, ma'am.

4 Q Okay. Go ahead.

5 A Your Honor, the night that the incident happened, I
6 was not in the neighborhood, neither at that victim house,
7 first of all. Second of all, the witness that was there,
8 Temika Ashford, testified on direct that she did not see
9 who broke the door or who assaulted the victim, which led
10 to the victim dying three months later of sickness and
11 injuries.

12 My DNA -- the end -- the -- the DNA expert, Jay
13 Barron, testified that my DNA is not on the object that was
14 used and neither was it at the victim house.

15 Now, the witness, Temika Ashford, that same night took
16 a sworn oath with Investigator Pegram to tell the truth.
17 And after she did that, they took her up the street to
18 where Officer Duckett had came in the neighborhood, a
19 uniformed officer, and testified on stand that when he came
20 into the neighborhood, according to the 911 description, he
21 seen two subjects walking. One subject was matching the
22 description of the 911 call.

23 So he stopped to hail them. The one matching the
24 description started backing up -- all of this is in my
25 transcript -- started backing up. So when he exit the car

DIRECT EXAMINATION BY MS. BROWDER - FRANKIE MCGEE 25

1 to talk to him, he fled. Told the other subject stay at
2 the car. He chased this suspect a half a mile through the
3 neighborhood to what they found out was to be -- was his
4 home.

5 They struggled with the door. And eventually, he got
6 him out. Came back to his car, and the other subject that
7 was with him originally was not at the car.

8 They went to the witness, Temika Ashford, to the house
9 that she was at of the victim; got her; brought her back up
10 the street in the police car to identify this person. And
11 while sitting in the backseat of the police car, she said
12 it was him that she saw. But he was wearing different
13 clothes.

14 She testified on stand, Temika Ashford, the only
15 witness and said the police told her they found him hiding
16 in the closet; take a good look at him. That's when she
17 said it was him, but he was wearing different clothes.

18 Again, in 2010 when they came to me, they used my
19 photograph to show to the witness, Temika Ashford. She was
20 not able to give a positive identification on me as even
21 being in the neighborhood that night. There is no police
22 report or no witness to say that I was at the house or even
23 in that neighborhood that night, because I wasn't, Your
24 Honor.

25 The investigator testified on stand by reading the

1 handwritten statements that Temika Ashford wrote. And he
2 wrote -- and he read the statements where she said that
3 David Williams was the person she positively identified as
4 a suspect in the victim yard, wearing blue jeans and white
5 shirt, holding -- wearing white, plastic gloves on his
6 hand, holding a stick or a pipe and it was him. And the
7 suspect -- the description was six-foot-one taller, 180 or
8 200 pounds.

9 MS. KINARD: Your Honor, I believe this is getting
10 into evidentiary and direct-appeal issues. I understand if
11 the Court would like to hear it as a basis of background.
12 But I would ask that his testimony be limited or directed
13 toward the allegations before the Court today.

14 MS. BROWDER: And, Your Honor, just for the record, he
15 -- in his original application, he does mention several of
16 these things in his application.

17 THE COURT: Yeah. Well, what he's telling is -- is
18 clear in the record, but appears that counsel objected.
19 I'm not here to retry this case verbatim. I want to know
20 what was ineffective about his counsel. So please rein it
21 in.

22 Q Is there anything else you believe your attorneys were
23 ineffective for not objecting to or not putting into
24 evidence ---

25 A Yes, ma'am ---

1 Q --- at trial?

2 A --- there is.

3 Q Okay. And what is that?

4 A During trial the prosecutor took explicit photographs
5 of the victim with his head split open by an autopsy and
6 showed them to the jury and said, "Jury, the defendant is
7 the reason why this happened." My lawyer did not object.

8 In opening statements one of the prosecutors stood up
9 and said, "The defendant's blood" -- which was my blood --
10 "was on -- was at the crime scene." My blood was never at
11 that crime scene, according to the DNA expert, Jay Barron.

12 Q And did your attorney object to that?

13 A No one objected to it.

14 Q Okay.

15 A It's in my transcript.

16 Q Okay. And you believe they should've objected to
17 that?

18 A Yes, ma'am, they should have.

19 Q Okay.

20 A That's misleading the jury.

21 Q Okay. And is there anything else you believe your
22 attorneys should've objected to that they did not object
23 to?

24 A Yes, ma'am.

25 Q Okay. And what is that?

1 A My -- my attorneys allowed the prosecutor to stand up
2 in front of the jury and take that metal bar and held it
3 up, when I wasn't even identified as being in the
4 neighborhood or at the victim house that night -- and I
5 wasn't. She took that -- and nobody was seen committing
6 this crime. She took the metal -- and my DNA is not on it;
7 another person DNA is on it -- belong to somebody else --
8 on the handle. Another person DNA is on the handle.

9 She took the metal bar and stood up in front of the
10 jury and said, "Jury, the defendant sitting there, Frankie
11 McGee, you cannot let him get away with this murder. He
12 took this metal bar. He went down there to that man house.
13 He broke in that door, and he struck that man with that
14 metal bar like he was playing baseball, jury. You cannot
15 let him get away with this. You need to find him guilty.
16 And he committed the crime, jury."

17 And they believed the prosecutor because she's a
18 officer of the Court. And that was wrong.

19 Q Okay.

20 A Nobody was seen committing any crime.

21 Q Okay.

22 A And I wasn't in the neighborhood that night.

23 Q And you believe your attorney should've objected to
24 that during the ---

25 A Yes, ma'am.

1 Q --- closing ---

2 A They should've ---

3 Q --- argument?

4 A --- objected.

5 Q Okay.

6 A But they told me don't object. I was going to stand
7 up. They said, "Sit tight. Hold on, Frank."

8 Q Okay. And is there anything else you believe your
9 attorneys did wrong that they should've done that caused a
10 conviction?

11 A Not to my memory.

12 Q Okay.

13 A It's other things, but not to my memory, ma'am.
14 Because I'm upset. And I'm very, very hurt that I was
15 wrongfully convicted in prison of a crime I did not commit.
16 And I'm very, very distraught and mentally hurt right now.

17 And -- and I've been studying my -- my -- my -- my
18 transcript. And I know my transcript. I kept reading it
19 -- for the years I've been in prison, I kept reading it,
20 saying, "What happened? What -- why -- why would the Court
21 allow me to be convicted when there's no evidence even on
22 me connecting me to this crime to the -- to the -- to the
23 murder and the burglary?"

24 Q Okay. And you're asking today for the Court to
25 overturn your conviction and send it back to the

1 solicitor's office for a retrial?

2 A Yes, ma'am. I'm -- I'm asking that.

3 Q Okay.

4 MS. BROWDER: No further questions, Your Honor.

5 Q Please answer any questions Ms. Kinard has.

6 THE COURT: Thank you, Counsel.

7 MS. KINARD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. KINARD:

10 Q Good morning, Mr. McGee. I want to start back toward
11 the beginning of your testimony. You talked about some
12 evidence that you allege was withheld. Did your attorneys
13 have this evidence and prevent you from seeing it, or are
14 you alleging that the solicitor never gave it to you
15 attorneys?

16 A This evidence I'm speaking of, which is the recorded
17 statements that Temika Ashford made three days after the
18 incident happened, the other evidence was presumably lost
19 before the trial started. So the prosecutors couldn't
20 account for that, because they didn't have it.

21 But this recorded statement could've cleared this
22 case. And I asked my attorney -- I was at the Alvin S.
23 Glenn Detention Center. And he said, "Frank, I've got a
24 tape I want you -- I got some tapes -- some -- some -- some
25 -- some -- some -- some CDs I want you to hear of different

1 people being questioned about this incident."

2 And one of them was the key witness, Temika Ashford.
3 And she specifically told the police that she didn't see
4 who the person was in the yard and she didn't see nobody
5 commit a crime. And she had lied three times about
6 different statements that wasn't adding up.

7 Q Okay. And when you say "he," that was Mr. Strickler
8 that gave you this information?

9 A I had -- I -- during trial I asked Mr. Strickler -- I
10 said, "Remember the CDs you let me listen to about one of
11 the witness said she knew who the person was?"

12 He said, "Don't expose your hand at one time."

13 I said, "What do you mean by that?"

14 He said, "Save it later so when you go back on your
15 direct appeal or your PCR."

16 Q Okay. When you spoke with Mr. Strickler and Ms.
17 Pringle, did you talk with them about your recollection of
18 the events of that night?

19 A When I spoke -- when I spoke with them, I told them I
20 only knew what I seen on the news.

21 Q Okay. Did you tell them where you were that night?

22 A Yes, ma'am. I told them where I was at.

23 Q Did you provide them any witnesses?

24 A We had provided a witness. But for some reason, the
25 witness was my wife. They never would let her -- they

1 subpoenaed her, but they wouldn't let her take the stand.

2 Q Okay. Did you provide them any other witnesses,
3 whether they be alibi witnesses or character witnesses, on
4 your behalf?

5 A Material witnesses?

6 Q Any witnesses at all, other than your wife.

7 A No -- no, ma'am. There -- there were no more
8 witnesses.

9 Q Okay. Regarding the warrants that were served upon
10 you ---

11 A Uh-huh.

12 Q --- regardless of the date, whether they're dated May
13 3rd or May 6th, were you still aware other than crimes with
14 which you were charged?

15 A I wasn't aware of the crime. I was aware of what they
16 told me -- what I was being charged with, which was
17 inconsistent to what they had written on the paper.

18 Q Okay.

19 A Nothing was conclusive in the warrants. Everything
20 was on or about, sometime during, we believe or he did this
21 and he did that. But there was no witness to say who did
22 what.

23 Q Okay. And you testified, I believe, that there was
24 DNA testing done in this case?

25 A Ma'am?

CROSS-EXAMINATION BY MS. KINARD - FRANKIE MCGEE

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1 Q There was DNA testing done in this case?

2 A There -- there was a significant amount of DNA testing
3 done, which was a great deal. And it came out well.

4 Q "Well" meaning in your favor, do you believe?

5 A Well, first of all, the DNA expert, Jay Barron ---

6 Q Sir, I'm sorry. That was a "yes" or "no" question.
7 If you could answer: Do you believe the DNA testing came
8 out in your favor?

9 A I believe the DNA testing came out to be the truth.

10 Q Okay. And so part of that included that there were
11 socks found at the crime scene with your DNA in them?

12 A No, ma'am. The socks weren't found at the crime
13 scene. The socks were found a block away at an abandoned
14 house.

15 Q And the -- the metal rod was found next door as well;
16 is that ---

17 A The metal ---

18 Q --- correct?

19 A --- rod was found, according to the police report,
20 across the road in the neighbor's backyard inside a dog
21 fence with dogs.

22 Q Okay. Regarding the truck that you mentioned, the
23 theft of the truck ---

24 A Uh-huh.

25 Q --- how were you linked to that crime?

1 A I was linked to that crime due to the fact that my
2 sister is a police officer with the Columbia City Police
3 Department. And what happened was when the -- when they
4 had lost the -- the original 911 call, she works for the --
5 the 911 emergency department that lost it.

6 So only thing I could think of is she would testify to
7 say I stole the truck to help get a conviction, for
8 whatever reason, to cover herself, or whatever reason, to
9 get me -- or -- or -- or whatever. I -- I don't know why
10 she did it.

11 Q Okay. I'm not curious about your motives. How -- how
12 did she link you to the crime?

13 A How did she link me to the crime?

14 Q Yes, sir.

15 A My sister never linked me to the crime.

16 Q She didn't call Crime Stoppers after she saw the
17 video?

18 A She -- during trial she testified on stand that she
19 called Crime Stoppers. But there is no report of any kind
20 of record of her ever calling Crime Stoppers that year when
21 the incident happened.

22 Q Okay. Thank you, Mr. McGee. Regarding your appeal, I
23 believe you testified you weren't aware that the issue
24 regarding the truck was raised; is that correct?

25 A I -- say again, ma'am? I'm ---

1 Q You weren't aware that the issue regarding the -- the
2 -- the tractor-trailer truck was raised on your appeal; is
3 that correct?

4 A I'm -- I'm well -- yes, ma'am, I'm ---

5 Q Okay.

6 A --- aware of it.

7 Q So you did not see the final order from your appeal?

8 A If I did, I -- I -- I don't know what happened to
9 them.

10 Q Okay.

11 A But I don't know -- I don't -- I don't know as much
12 about the direct appeal, other than I lost the direct
13 appeal, based on Michelle Perry being used as a -- as a
14 witness to ID me in court ---

15 Q Okay.

16 A --- three months -- to say she seen me three months
17 before the incident happened, but not that night or that
18 month. And -- and that alone caused me to lose my -- my
19 direct appeal.

20 It's not the truck. The *res gestaes* proves the truck
21 has nothing to do with the burglary or the assault. I was
22 never charged with grand-theft auto by -- by the county
23 where the truck was stole or the county where the truck was
24 found. No one charged me with stealing a truck. And the
25 truck was not used or seen anywhere in that neighborhood or

1 by anybody driving it.

2 Q Thank you.

3 A And I was already in Columbia, according to the police
4 report that wasn't used during trial. I was already in
5 Columbia before the truck got stole on the same date the
6 truck got stole. I was in Columbia in my pickup truck.

7 And this report, where I went to the metal-recycling
8 company -- and I was turning in metal off my construction
9 job.

10 Q Thank you ---

11 A And they ---

12 Q --- Mr. McGee.

13 A --- didn't use that during trial.

14 Q Thank you. Did you discuss with your attorneys
15 whether you were going to testify at trial?

16 A Ma'am?

17 Q Did you discuss with your attorneys whether you were
18 going to testify at trial?

19 A Yes, ma'am. I discussed with my attorneys, and they
20 highly disagreed with me wanting to take the stand. And I
21 -- but I wanted to, but they told me no, don't do it.

22 Q Okay.

23 MS. KINARD: Beg the Court's indulgence.

24 (Off the record briefly.)

25 Q Thank you, Mr. McGee. I don't have any further

CROSS-EXAMINATION BY MS. KINARD - FRANKIE MCGEE

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1 questions.

2 MS. BROWDER: No further questions, Your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 THE WITNESS: Your Honor, may I say one more thing
5 before I step down?

6 THE COURT: Yes, sir.

7 THE WITNESS: I forgot to tell you, when -- when I was
8 asked by -- by my attorney, is there anything else I need
9 to tell the judge. And -- and this will be all, as far as
10 my memory. The night that the incident happened, Your
11 Honor, the witness told the uniformed police that the
12 person in the yard, whom she positively identified as David
13 Williams, was the person that went across the road in the
14 direction where she pointed the police, where they
15 discovered the evidence.

16 And the pair of socks that they used to arrest me with
17 was a pair of socks I left in the trash can at the laundry
18 mat a block away from where the incident happened. The
19 suspect, David Williams, DNA is on the socks. But when
20 they first tested the socks, that same month it happened,
21 my DNA didn't come back and his DNA didn't come back.

22 Because they use the DNA-protocol-procedure manual,
23 which is governed by United States Science Federation.
24 They are a federally-funded program that make all the rules
25 for the protocol for all the police departments in the

1 United States of America and law enforcement to go by
2 concerning extracting DNA. And the procedures of using
3 DNA, when they first tested the socks, they tested the
4 socks with the protocol-manual extracting procedures:
5 cutting, clipping, and swabbing.

6 Only thing came back was a touch of the victim blood.
7 They waited ten months later. And they used another test
8 that's not in the protocol-procedure manual, and they
9 scraped the socks.

10 And when they scraped the socks, during trial my
11 lawyer asked the DNA, "Is that -- is that protocol
12 procedure in the manual?"

13 He said, "No." He do what he want to do.

14 My -- that's when my lawyer told him, "That procedure
15 is illegal."

16 You can only determine whose DNA was in them, but you
17 can't arrest nobody because the FBI, if they wanted to use
18 it -- because that technique is not in the manual, the FBI
19 or federal government couldn't use it. So when they did
20 it, they found out that David Williams' DNA was also in the
21 socks, Your Honor. And he was the person that witness said
22 left out the yard and went across the road in the direction
23 where they were found, along with two more other people
24 touch DNA that was in the socks.

25 THE COURT: Okay.

DIRECT EXAMINATION BY MS. KINARD - DOUGLAS STRICKLER 39

1 THE WITNESS: That's all, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

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

4 MS. BROWDER: That's the applicant's case, Your Honor.

5 THE COURT: Thank you.

6 MS. KINARD: The state calls Douglas Strickler.

7 THE COURT: Come around and be sworn, please.

8 (Whereupon, the witness came forward.)

9 DOUGLAS STRICKLER, having been first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. KINARD:

13 Q Good morning, Mr. Strickler.

14 A Good morning.

15 Q Thank you for being here. You and Ms. Pringle
16 primarily represented Mr. McGee on his trial; is that
17 correct?

18 A That's correct.

19 Q Do you recall approximately how you came to begin your
20 relationship with him? where you first met him? anything
21 like that?

22 A We'll -- we'll begin my relationship with him by
23 assigning his case to myself. I did the case assignment
24 back then. He was brought up for a bond hearing. We
25 opened a file.

1 I spoke with him. I believe we waived the bond
2 hearing at that point in time after conference with him.
3 And I began representing him. That was on March 22nd,
4 2010.

5 Q So very close in time to his arrest?

6 A Best of my knowledge, yes.

7 Q Was it your practice to go meet with your clients in
8 whatever detention center they were being held?

9 A Yes.

10 Q And so you went to Alvin S. Glenn to meet with him?

11 A I've met with him on a number of occasions. Yes,
12 ma'am.

13 Q Do you recall approximately how many that was?

14 A A quick review of my contemporaneous notes says at
15 least 12 occasions, covering almost eight hours total in
16 conference with him.

17 Q Okay. On any of those occasions, did Ms. Pringle join
18 you?

19 A Not that I remember. She may have seen him
20 independently of me. I think I have one note indicating
21 that she did. She didn't necessarily enter notes in the --
22 in the case file.

23 Q Okay. How did she come to be involved in the case?
24 Did you associate her?

25 A I would -- I would have asked her to be involved in

DIRECT EXAMINATION BY MS. KINARD - DOUGLAS STRICKLER 41

1 it.

2 Q Okay. In preparing this case, did you or your office
3 file a Rule 5 motion for discovery?

4 A Yes.

5 Q Do you believe that your office received everything in
6 this case from the solicitor's office?

7 A Would I believe it?

8 Q (No audible response.)

9 A I know that we filed a discovery motion and that ---

10 THE WITNESS: Beg the Court's indulgence, Your Honor,
11 one moment.

12 A --- and that as late as -- far along as March 9th,
13 2011, which is almost a year down the line, we compiled and
14 met with the solicitor regarding 53 enumerated items, which
15 we said we should have that we did not have. And I -- I do
16 believe that we resolved the issues, as far as those items
17 went.

18 Q You were present when Mr. McGee testified?

19 A Yes.

20 Q Do you recall him testifying about two pieces of
21 information he alleged were withheld: specifically, a 911
22 tape and a statement by Ms. Ashford?

23 A I -- I heard him testify to that. Yes.

24 Q Do you have any memory of those being issues in this
25 trial?

1 A That's easy. No, I don't have any memory of that.

2 Q Okay. So you also heard him testify about alleged
3 issues with the warrants?

4 A Yes.

5 Q Do you recall him bringing that up to you during any
6 of your meetings pretrial?

7 A No, I do not. I -- I'm -- now, I'm not saying he
8 didn't. But I just -- I have no recollection of him
9 bringing it up.

10 Q Okay. Had he brought it up to you, do you think it
11 would cause a problem that the warrants were -- had
12 disparate dates on them?

13 A I suppose it could've been a basis for some cross-
14 examination of the officer. But he wasn't tried on the
15 warrants. He was tried under indictment.

16 Q Thank you.

17 A And I don't -- I -- I didn't see any problems with the
18 indictment. I would've raised those pretrial, had I seen
19 any.

20 Q Mr. McGee also testified a great deal about David
21 Williams.

22 A Correct.

23 Q Did you at any time consider using a third-party-guilt
24 defense?

25 A I'm sure we would have considered that possibility

DIRECT EXAMINATION BY MS. KINARD - DOUGLAS STRICKLER 43

1 then. I don't have an independent recollection of having
2 discussed it.

3 Q Okay. Do you recall what your emerging defense
4 theories of the case were?

5 A You got the wrong guy and -- about it.

6 Q Do you recall if there were any plea negotiations
7 before trial?

8 A I don't remember there being any plea negotiations in
9 this particular case. In -- in other words, I don't
10 remember Mr. McGee having any interest in entering a plea.
11 And I certainly don't remember Ms. Campbell having any
12 interest in accepting a plea.

13 Q So you approached this case from the beginning as if
14 it were going to trial and prepared in that manner?

15 A Yes, ma'am.

16 Q Do you believe you -- excuse me -- excuse me --
17 reviewed all of the discovery with Mr. McGee prior to
18 trial?

19 A That's my habit and practice. Yes, ma'am.

20 Q Did you discuss all of the charges that he faced and
21 the elements the state would have to prove?

22 A Yes, ma'am.

23 Q Do you believe he understood what was going to happen
24 at the trial?

25 A Yes.

1 Q And do you believe that he understood your
2 conversations in general and felt free to ask questions of
3 you?

4 A Yes.

5 MS. KINARD: Beg the Court's indulgence. I've lost my
6 papers.

7 Q Did he provide you any witnesses, whether character or
8 alibi?

9 A I don't remember any being provided that we could use.

10 Q Okay. And had they been used, you would've
11 interviewed them and -- and made ---

12 A Yes.

13 Q --- that decision?

14 A Yes.

15 Q Okay.

16 A We specifically had no alibi to present.

17 Q Did you discuss with Mr. McGee whether he should
18 testify on his own behalf?

19 A I -- I always do that. Yes.

20 Q Do you recall those specifically in this case?

21 A The specifics of the conversation, no. I mean, I -- I
22 am confident that I would agree with Mr. McGee that I
23 recommended strenuously that he not testify in this matter;
24 that it would not be in his interests to so testify.

25 Q Do you recall any issues regarding Temika Ashford and

DIRECT EXAMINATION BY MS. KINARD - DOUGLAS STRICKLER 45

1 the presentation of her testimony?

2 A I -- I remember there being some issues regarding Ms.
3 Ashford. I remember us not going into some information
4 regarding her that we had available, and that was a
5 conscious decision on our part.

6 I -- I remember what occurred with her, as far as the
7 identification, that -- that Mr. McGee has testified about,
8 I -- I believe is pretty accurate, as far as how that came
9 about. So -- and then, I -- I remember a later
10 identification on her part of him as the person who
11 committed the offense -- or -- or person she saw. Okay.

12 Q Thank you. Lastly, I'd like to specifically ask you
13 about some alleged objections that Mr. McGee feels you
14 should have made.

15 A Okay.

16 Q One was regarding explicit photos that were shown to
17 injury. As a backup question to that, did you have an
18 opportunity to review in pretrial which photos would be
19 shown to the jury and/or admitted into evidence?

20 A I -- it -- you know, the record will speak for itself
21 as whether or not I made an objection at the time the
22 photos were shown to the jury. I firmly believe that we
23 dealt with objections to the admissibility of the photos
24 prior to their admission and that they were -- we were
25 ruled against, as far as the admissibility. And again, the

1 record's going to reflect that.

2 Q Thank you.

3 A I -- if I didn't, I should have and that would be
4 wrong. All right? But I'm ---

5 Q In the ---

6 A --- confident that we did.

7 Q Thank you. Do you recall testimony by Ms. Campbell in
8 closing that he -- I believe the phrasing was used the --
9 the pipe like a baseball bat?

10 A I don't recall her words in closing. That would not
11 surprise me. I've a lot of experience with Ms. Campbell.
12 It would not surprise me. I think that's probably her
13 summation of what the evidence showed, as opposed to there
14 -- there being any testimony regarding that.

15 Q Thank you. I believe those are all the questions I
16 have at this time. If you'd ---

17 A All right.

18 Q --- answer any Ms. Browder has. Thank you.

19 A Thank you.

20 MS. BROWDER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. BROWDER:

23 Q Good morning, Mr. Strickler.

24 A Good morning.

25 Q To start with, I guess, we'll just start with Temika

CROSS-EXAMINATION BY MS. BROWDER - DOUGLAS STRICKLER 47

1 Ashford. You made a pretrial motion regarding Ms. Ashford,
2 correct?

3 A If the record reflects that, that's correct.

4 Q Okay.

5 MS. BROWDER: And, Your Honor, for your record, it is
6 page 203 where they originally make the first objection to
7 her testimony coming in.

8 Q And you have requested that essentially her testimony
9 not be admissible because she could not ID anyone through a
10 *Neill v. Biggers* hearing and that it was per se
11 inadmissible, correct?

12 A I believe that's correct.

13 Q Okay. And at that time Judge Newman did not rule on
14 the issue and decided to wait to have *Neil v. Biggers*
15 hearing when Ms. Ashford was available during the trial,
16 correct?

17 A If that's what the record reflects.

18 Q Okay.

19 A Yes, ma'am.

20 Q And ultimately, there was one done. And it was
21 determined she could not ID Mr. McGee but the judge let it
22 in, correct?

23 A Again ---

24 Q Okay.

25 A --- I reference the record. I mean ---

1 Q And ---

2 A --- I don't know.

3 Q --- why did you feel it was important to object to Ms.
4 Ashford's testimony?

5 A When she can't identify the person who committed the
6 offense, then -- then it's irrelevant as to what her
7 testimony might be.

8 Q Okay. You objected because you believed that could've
9 potentially been an issue for appeal?

10 A I would assume so.

11 Q Okay.

12 A Yes, ma'am.

13 Q Kind of along that lines, during the opening
14 arguments, Ms. Campbell mentioned Ms. Ashford testimony
15 identifying someone that matches the description of the
16 defendant, correct?

17 A Again, if it's in the record ---

18 Q Okay.

19 A --- she -- then she so argued.

20 Q And ---

21 MS. BROWDER: Your Honor, just for your notes, it's --
22 that's page 271 on the record.

23 Q You did not object at that time, despite the fact the
24 judge hadn't ruled on this issue yet, correct?

25 A Again, if I didn't object, that's reflected in the

CROSS-EXAMINATION BY MS. BROWDER - DOUGLAS STRICKLER 49

1 record and I should have.

2 Q Okay. Just to ask you about this -- the Ashford
3 recording, I guess there was a recorded tape of her
4 interview; is that correct?

5 A I don't remember

6 Q Okay. I guess, since you don't remember, though, then
7 you don't remember if Mr. McGee heard that?

8 A I -- yeah. I do not believe I played any recordings
9 for Mr. McGee at the jail.

10 Q Okay. All right. So if he had testified ---

11 A I -- yeah.

12 Q --- he had ---

13 A I -- I can ---

14 Q --- heard ---

15 A --- say that because -- excuse me. I can say that
16 because I don't think I've ever taken a computer down to
17 the jail and I have to use that to play them for him.

18 Q Okay.

19 A Okay?

20 Q Fair enough.

21 So if he had testified he hadn't heard it, that's
22 probably correct, to the best of your knowledge?

23 A Sure.

24 Q Okay. All right. Ms. Kinard had asked you regarding
25 third -- a third-party defense -- a third-party-guilt

1 defense. Why did y'all not think about a third-party-guilt
2 defense, based on the fact that there was somebody else's
3 DNA on the rod, as well as Mr. Williams being identified by
4 Ms. Ashford?

5 A Now, I didn't say we didn't think about a third-party-
6 guilt defense. I just don't remember. And -- and quite
7 frankly, the facts as related, if I had to think about it
8 at this point in time, don't rise to the level necessary
9 for ---

10 Q Okay.

11 A --- a third-party-guilt defense.

12 MS. BROWDER: And it was, for the record, page 207 of
13 the transcript, Your Honor.

14 Q It was brought up that the state wanted to argue
15 against third-party guilt, but you indicated you were not
16 going to go into that, correct?

17 A If that's what the record shows.

18 Q Okay. All right. And regarding Ms. Campbell -- I
19 think Ms. Kinard asked you this question. But you heard
20 Mr. McGee testify regarding Ms. Campbell's statement in
21 closing regarding the bar and using it like a baseball bat?

22 A Right.

23 Q You stated you couldn't recall that or ---

24 A I don't ---

25 Q --- just don't ---

CROSS-EXAMINATION BY MS. BROWDER - DOUGLAS STRICKLER 51

1 A --- recall ---

2 Q --- remember?

3 A --- what she said in ---

4 Q Okay.

5 A --- her closing argument six years ago.

6 Q Okay. And why would you have not objected to that?

7 A I mean, you're allowed to argue the facts and the law
8 and the logical inferences therefrom. And I -- I -- I
9 could only say that I would -- would assume she was arguing
10 logical inferences therefrom.

11 MS. BROWDER: Beg the Court's indulgence.

12 (Whereupon, Ms. Browder and the applicant conferred
13 off the record.)

14 MS. BROWDER: No further questions, Your Honor.

15 MS. KINARD: No redirect, Your Honor. And we ask that
16 Mr. Strickler be excused.

17 THE COURT: May the witness be excused, Counsel?

18 MS. BROWDER: Oh. Yes, sir. No objection.

19 THE COURT: Thank you, Mr. Strickler.

20 THE WITNESS: Thank you, sir.

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

22 MS. KINARD: The state calls Fielding Pringle.

23 (Whereupon, the witness came forward.)

24 FIELDING PRINGLE, having been first duly sworn,
25 testified as follows:

1 THE WITNESS: It's Fielding Pringle.

2 DIRECT EXAMINATION

3 BY MS. KINARD:

4 Q Good morning, Ms. Pringle. Thank you for being here.

5 A Morning.

6 Q Most of the questions that I asked Mr. Strickler I'm
7 afraid I'm going to have to repeat for you. How did you
8 become involved with this case?

9 A Mr. Strickler asked me to assist.

10 Q Okay. Do you recall approximately how many times you
11 met with Mr. McGee?

12 A I -- I don't. The way that we keep our database, Mr.
13 Strickler's would've been recorded in our database. For me
14 to get the exact number, it would have to go through those
15 six banker boxes over there, because I would've kept it in
16 handwritten notes.

17 I remember meeting with him quite frequently. I
18 cannot give you an exact number. But I -- I met with him
19 a number of times.

20 Q And that was individually or with Mr. Strickler?

21 A I remember meeting with him individually. I'm sure
22 Mr. Strickler -- or I suspect Mr. Strickler took me down to
23 introduce me to him. But I don't remember exactly.

24 Q Did you review the discovery with Mr. McGee? Or is
25 that your practice?

DIRECT EXAMINATION BY MS. KINARD - FIELDING PRINGLE 53

1 A Yeah. That would always be my practice. I -- I don't
2 remember exactly when I came into the case. This was not
3 my case primarily. That might've been something that Doug
4 spent more time doing.

5 I -- that's something that I would always do. I
6 would've certainly discussed the case with him: defenses,
7 what our plan was, and what the evidence in the discovery
8 showed. But if you're asking did I go through with him
9 page by page? That may have been done by Mr. Strickler
10 instead of me.

11 Q What was your role in this case, as a -- as counsel or
12 -- I hate to call it second chair, but I -- assisting
13 attorney on this case? Did you have specific assignments?

14 A To do whatever Mr. Strickler asked me to do would have
15 been my role.

16 Q Well, did you focus on preparation of certain
17 witnesses, for example, or different interviews?

18 A I believe that I handled Ms. Ashford and Ms. Perry.
19 I'm not positive about that. We would've done some kind of
20 breakdown and witness assignment that would be reflected in
21 the record.

22 Q Okay.

23 A I think I also argued the *Lyle* issue of the truck.

24 Q I'm sorry. The *Lyle* of?

25 A Regarding the theft of the truck from Camden, the *Lyle*

1 and the *res gestae* issue.

2 Q Regarding Ms. Ashford, were you aware of the 911 --
3 excuse me -- were you aware of the recorded issue that Mr.
4 McGee spoke of during his testimony?

5 A I have no recollection of that.

6 Q Had you had one, do you believe you would've reviewed
7 it with Mr. McGee?

8 A Someone would have. Yes.

9 Q Okay.

10 A Either Mr. Strickler or myself.

11 Q Do you recall your overarching theories of defense in
12 this case?

13 A I really don't. I -- I do remember discussing the
14 David Williams issue. I remember that very well. I -- I
15 have a great deal of notes of, you know, good facts, bad
16 facts, what the problems were.

17 You know, it was obviously our position that it just
18 was not him. And there was no, you know, person that --
19 you know, there was no direct evidence of somebody
20 identifying him as the perpetrator. So, you know, we were
21 working with that.

22 I don't remember why we didn't pursue third -- third-
23 party guilt. I do remember discussing that quite a bit,
24 though.

25 Q Do you remember the DNA testing that was done in this

DIRECT EXAMINATION BY MS. KINARD - FIELDING PRINGLE 55

1 matter?

2 A I remember -- the only thing I specifically remember
3 is that Mr. McGee's DNA was found on the inside of the
4 socks. I don't specifically remember -- and I'm not saying
5 he's wrong. I just don't specifically remember the issue
6 of another person's DNA on the handle. It's somewhat
7 familiar.

8 And I do not remember David Williams' DNA being on
9 those socks. But I do remember Mr. McGee's being on the
10 inside.

11 Q Do you remember an issue regarding the DNA-testing
12 procedure, as he testified?

13 A That would've been Mr. Strickler. He would -- he
14 always does the DNA in our cases.

15 Q My apologies. Do you recall, in pretrial motions,
16 identifying different pictures or different exhibits that
17 were stipulated to or -- or objected against?

18 A I don't remember. We don't tend to stipulate to very
19 much. You know, we would've been shown them, and we
20 would've reviewed them at some point. But I don't remember
21 when that happened in this trial.

22 Q Thank you. I don't have any further questions, unless
23 there's anything that you'd like for the Court to know
24 about your representation.

25 A No, ma'am.

1 Q Thank you.

2 CROSS-EXAMINATION

3 BY MS. BROWDER:

4 Q Ms. Pringle, you testified you were the one that
5 handled the truck issue and Ms. Ashford's testimony,
6 correct?

7 A I think that's right.

8 Q Okay. And you did, looking at the transcript. To
9 start with the truck issue, you brought that up because you
10 thought it was important, correct?

11 A Yes.

12 Q Okay. And ultimately, as you heard earlier if you
13 were in the courtroom, that was brought up on appeal,
14 correct?

15 A Yes.

16 Q Okay. And what is the reason that you make pretrial
17 motions regarding these things?

18 A To prevent evidence that we believe to be admissible
19 from coming into evidence.

20 Q Okay. And is it also to help preserve the record for
21 any type of appeal?

22 A Absolutely.

23 Q Okay. So that issue ultimately did go up on appeal.
24 Regarding Ms. Ashford's testimony, can you -- essentially,
25 she never identified anybody -- or identified Mr. McGee,

1 correct?

2 A That's correct, to ---

3 Q Okay.

4 A --- my recollection.

5 Q Okay. And you objected -- or had a pretrial motion
6 regarding Ms. Ashford's testimony and asked that it not be
7 admissible, correct?

8 A I believe so.

9 Q Okay. And the judge ultimately overruled you on that,
10 correct?

11 A I believe so. I don't recall moving to exclude her
12 entire testimony. I think that was -- that was Mr. McGee's
13 testimony. I think I moved to exclude any in-court
14 identification. But I -- that's just my ---

15 Q Okay.

16 A --- recollection.

17 Q Okay. As to Mr. McGee?

18 A Yes.

19 Q Okay. And ---

20 A Because I -- I think that she had -- she -- I think
21 she identified someone as a show-up ID that wasn't him.
22 And then they showed her lineups with him. And there was
23 something like she said, "I think it's him," or "I think
24 it's that one," or something like that.

25 Q Okay. But she couldn't positively ID him?

1 A I think that's right.

2 Q Okay. And why did you bring this up as a pretrial
3 motion and then object during the trial?

4 A To exclude the evidence that I thought was
5 inadmissible and preserve the record.

6 Q Okay. And so you thought that was potentially a
7 record -- or an appealable issue?

8 A Yes.

9 Q Okay.

10 MS. BROWDER: No further questions, Your Honor.

11 MS. KINARD: No redirect, Your Honor. And we'd ask
12 that this witness be excused.

13 MS. BROWDER: No objection.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: The witness is excused.

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

18 MS. KINARD: The state calls Katherine Hudgins.

19 (Off the record briefly.)

20 (Whereupon, the witness came forward.)

21 THE BAILIFF: You can set your file there.

22 THE WITNESS: Thank you.

23 KATHERINE HUDGINS, having been first duly sworn,
24 testified as follows:

25

DIRECT EXAMINATION BY MS. KINARD - KATHERINE HUDGINS 59

DIRECT EXAMINATION

BY MS. KINARD:

Q Would you spell your name for the record, Ms. Hudgins?

A It's H-u-d-g-i-n-s. And Katherine is spelled
K-a-t-h-e-r-i-n-e.

Q Thank you. Thank you for being here this morning.

Would you begin by tell us about how you came to represent
Mr. McGee?

A I was assigned the direct appeal by Bob Dudek, the ---

Q Okay.

A --- director of appellate defense.

Q In preparing this appeal, did you speak with Mr.
McGee?

A I spoke with Mr. McGee on the phone.

Q Do you recall any of the information that he relayed
to you in those conversations?

A He -- he had a lot of information that he wanted to
share with me about his case. He was very involved in --
in what he wanted.

Q Okay. Can you -- well, in those conversations, did he
bring up what he thought would be potentially meritorious
issues at trial?

A I don't specifically remember. We had a lot of
conversations. Like I said, he was very involved in -- in
-- in -- in the issues that he wanted presented.

1 I -- I agree with Mr. McGee's testimony that -- that
2 we discussed things that I did not believe would be
3 meritorious on direct appeal. I think we probably had some
4 disagreements about those issues.

5 Q And those disagreements were had during these
6 conversations, so you had an opportunity to explain to him
7 your reasoning?

8 A I ---

9 Q Is that a fair statement?

10 A I would -- I think that's a fair statement, yes.

11 Q Do you -- how do you usually come up with your issues
12 that you take up on appeal?

13 A What I do is I read through the entire trial
14 transcript first and take notes: note the objections, any
15 issues that are preserved for direct appeal. But then I go
16 back and -- and sort of weigh the issues that are
17 presented.

18 I don't always raise every single issue. I try to
19 raise the issues that I think are most likely to prevail
20 and be granted relief on direct appeal.

21 Q Now, in this case is it a fair statement that you came
22 up with two issues: one regarding admitting identification
23 testimony based on a single photo lineup, and the other
24 regarding admitting evidence about the theft of the truck?

25 A That's correct.

CROSS-EXAMINATION BY MS. BROWDER - KATHERINE HUDGINS 61

1 Q And you believe, therefore, that these were the two
2 most meritorious issues in his appeal?

3 A That's correct.

4 Q And as -- as you just testified, you believe that you
5 explained this to him and -- and you made these opinions
6 based on your professional experience?

7 A That's correct.

8 Q I have no further questions. Thank you.

9 MS. BROWDER: Thank you ---

10 THE COURT: Counsel?

11 MS. BROWDER: --- Your Honor.

12 CROSS-EXAMINATION

13 BY MS. BROWDER:

14 Q All right. So you had -- you said Mr. McGee was very
15 involved, correct?

16 A He was.

17 Q Okay. And did he bring up this issue regarding Ms.
18 Ashford's testimony?

19 A I'm sure he did.

20 Q Okay. And you just testified you read through the
21 transcript and then you note any objections, correct?

22 A That's correct.

23 Q And then that's when you go back and look at the
24 objections at that point?

25 A (Nodded head up and down.)

1 Q And you just testified you don't always use every
2 single issue, correct?

3 A That's correct.

4 Q So it's possible there are issues that could've been
5 brought up on appeal that you just chose not to bring up on
6 appeal?

7 A That's correct.

8 Q And Ms. Ashford's testimony could've been one of this
9 -- these issues, correct?

10 A Correct.

11 Q Okay. Because it was objected to on the record by his
12 attorneys?

13 A Yes.

14 Q Okay. Is there any particular reason you did not
15 bring up that issue, since it was a key issue in the trial?

16 A I know Mr. Strickler testified that he believed,
17 because she could not identify Mr. McGee, that her
18 testimony was irrelevant. I'm not sure that the appellate
19 court would have reversed the case based on irrelevance.

20 And frankly, I found her testimony was helpful. She
21 had identified another individual as the person that was at
22 the home. I -- I thought, in the grand scheme of things
23 and looking at the entire case, her testimony was more
24 helpful than hurtful.

25 Q Okay. And you heard Ms. Pringle just testify,

1 correct?

2 A I did.

3 Q All right. And she was the one that actually dealt
4 with Ms. Ashford's testimony. And she indicated, when she
5 just testified, she believes she only objected to the in-
6 court identification, not her entire testimony, correct?

7 A Correct.

8 Q All right. So if the rest of her testimony would come
9 in, which would've been helpful to Mr. McGee like you've
10 just stated, why not object to the in-court identification
11 or something of that matter when it came to her identifying
12 Mr. McGee?

13 A I -- I have to go back and look. I'm -- I'm not sure
14 she ever did make an in-court identification. If she did,
15 I -- I missed that.

16 Q Okay.

17 A But, you know, that's fodder for cross-examination,
18 the fact -- and -- and I think that trial counsel cross-
19 examined her extensively about her prior identification of
20 Mr. Williams and the wishy-washiness of the photo lineups,
21 including Mr. McGee.

22 Q Okay. Do you recall approximately how many issues
23 there were that you did not use in the appeal?

24 A No. I mean, I would've -- I would've noted them and
25 been -- you know, if the -- every objection certainly

1 doesn't merit a -- a ---

2 Q Right.

3 A --- a direct-appeal issue, you know. Frequently,
4 there'll be relevance objections or hearsay objections or
5 that sort of thing. But ---

6 Q Right. But it's fair to say in this case, there's
7 probably two or three, potentially, that you did not use in
8 the appeal?

9 A I mean, I'd be happy to -- to overlook -- I -- I
10 certainly picked the two issues that I thought were the
11 most important. If there are other issues that I didn't
12 raise that -- that should've been raised, then -- then I
13 should've raised them. I'm just not aware of what those
14 are.

15 MS. BROWDER: No further questions, Your Honor.

16 MS. KINARD: No further questions, Your Honor. We'd
17 ask that Ms. Hudgins be excused.

18 MS. BROWDER: No objection.

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

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

21 MS. KINARD: That's the state's case.

22 THE COURT: All right. Anything else?

23 MS. KINARD: I do have a motion to strike any
24 allegations that were not presented at -- that evidence was
25 not presented on. There are several, both in the original

1 application, as well as the amendment.

2 Other than that, I'm happy to provide any closing,
3 should the Court require it. And we would rest on the
4 record, as well as his testimony.

5 THE COURT: Okay. I do not require closings in
6 postconviction relief hearings. But if anybody would like
7 to make a brief statement, I certainly will hear you. But
8 I don't require it.

9 MS. KINARD: Anything?

10 MS. BROWDER: Nothing for us, Your Honor. We would
11 just stand on the record.

12 THE COURT: All right. I'm going to have to look over
13 all of these documents and the -- and the transcript and
14 the petitions and responses. Thank you very much.

15 MS. BROWDER: All right. Thank you, Your Honor.

16 MS. KINARD: Thank you, Your Honor.

17 (Whereupon, the proceeding was concluded at 10:47 a.m.)

18 --- END OF TRANSCRIPT OF RECORD ---
19
20
21
22
23
24
25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 30TH
DAY OF AUGUST, 2017.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 31, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frankie Lee McGee, #241658,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-40-0241

(Proposed)
ORDER OF DISMISSAL

2018 NOV 19 AM 11:04
JEANETTE M. HERBIE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter is before this Court on an Application for Post-Conviction Relief (PCR) filed by Applicant on January 13, 2015. The State filed its Return to the Application on June 11, 2015 denying the allegations of the Application. An evidentiary PCR merits hearing was held on August 30, 2017 before this Court at the Richland County Courthouse. Applicant was present at the hearing and represented by Anna Good Browder, Esquire. Respondent was represented by Jessica E. Kinard, Assistant Attorney General.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted in April 2010 by the Richland County grand jury for the crimes of murder (Ind. # 2010-GS-40-0121) and burglary first (1st) degree (Ind. # 2010-GS-40-0124). Specifically, Applicant was charged with the murder of eighty-seven (87) year old Reverend Tryon Eichelberger and the burglary of his home which occurred on May 3, 2009 in Richland County. Applicant was represented on the charges by Douglas Strickler, Fielding Pringle, and Jennifer Davis, Esquires. The case was prosecuted by Katherine Luck Campbell, Dolly Justice Garfield, and Nicole B. Simpson, Assistant Solicitors.

Facts

The following relevant facts were recited in the appellate court's opinion in the direct appeal in this case:

On the night of May 3, 2009, Temika Ashford was visiting Reverend Tryon Eichelberger at his home in Columbia. They heard a noise in another part of the home, and Eichelberger went to investigate. Ashford heard Eichelberger ask, "[H]ow did you get in here?" and then a "commotion" and "hollering." Because Ashford was afraid, she left the home, got in her car, and drove away. She drove around the block, and when she could not reach Eichelberger by phone, she returned to his house. She saw a husky man with a potbelly and receding hairline standing on the porch. He was dressed in a white shirt and jeans, wearing white gloves, and holding a metal pipe. She called 911, left the house, and drove down Farrow Road to wait on the police. While she was waiting, she noticed the man she had seen on the porch walking along the road, no longer carrying the pipe nor wearing the gloves. Once the police arrived at the home, Ashford returned there.

Officer Chauncey Duckett of the Columbia Police Department was dispatched to the scene. On his way there, while traveling on Farrow Road, he saw a light skinned black man walking, wearing a white or light gray t-shirt and jeans. Once at the scene, he found Eichelberger lying on the floor bleeding heavily. Eichelberger's skull was cracked, he had a brain injury, and he lost a lot of blood. He died three months later as a result of his injuries.

The police determined a metal tool had been used to pry open a side door to Eichelberger's home. Officer Duckett found a steel rod across the street from Eichelberger's home, in Larry Harp's yard. Officer Duckett also found a pair of white tube socks next to a light pole about twenty-five to thirty yards from the steel rod in the direction of Farrow Road. The socks and rod had blood on them. DNA analysis initially identified the blood on the items as Eichelberger's. Further testing revealed McGee's DNA inside the socks as well. The rod was consistent with the tool marks found at Eichelberger's home.

On the day of the attack, Harp saw a man he later identified as McGee in Eichelberger's yard at 3:00 p.m., talking on the phone and pacing. He saw him again in the yard at about 5:30 p.m. with a plate, napkin, and cup in his hand and eating, while Eichelberger worked in his garden. Harp testified McGee was wearing an athletic jersey and denim shorts and had a medium heavy build and light brown skin. Around midnight on the night of the attack, the police woke Harp because they discovered the rod in his yard. Harp informed the police the rod was not his and he did not know how it got there. The police later determined the rod was a winch rod, which is commonly used to tighten straps on a flatbed trailer.

After Ashford gave the police a description of the man she observed on the front porch, the police began looking for the suspect. Police found two men walking together, and one of them matched the description Ashford had given. Ashford said the man looked like the person she saw but he was not wearing the same clothes. However, the man was eliminated as the perpetrator through more police investigation and DNA testing. Later, Ashford was shown a series of photographic line-ups. In them, she saw two pictures she believed looked like the suspect; one of the two pictures was of McGee. She identified McGee's picture as the one that most resembled the man she saw on Eichelberger's porch.

In March 2010, officers visited Michelle Perry, who was a dispatcher with the cab company at which Eichelberger had worked. Eichelberger held church services in a building attached to the cab company's office. Officers showed Perry a picture of McGee and asked if she recognized him. She told them she had seen him two different times about a year before Eichelberger was attacked. The first time she saw him, he came to one of Eichelberger's church services too early one morning and waited about twenty-five minutes outside the office. She saw him again a few days later when he returned for a Bible study.

On May 2, 2009, the day before Eichelberger was attacked, a red Peterbilt tractor trailer truck was stolen from a business in Camden, where McGee lived. The truck was found the following day about one mile from Eichelberger's home. The theft was recorded by video surveillance, which was later broadcast on local news programs. Officer Sandra Thomas of the Columbia Police Department, McGee's sister, saw the video, recognized McGee, and contacted Crime Stoppers' anonymous tip line. The owner of the truck testified it was used to haul a flatbed trailer and would have contained a winch bar in its tool box.¹ Police learned McGee had a commercial license to operate a tractor trailer that could pull a flatbed trailer, like the one stolen.

On March 17, 2010, officers interrogated McGee while he was incarcerated on an unrelated offense. McGee denied attacking Eichelberger but admitted he had been in that area of Columbia that night. He also said he had gone by Eichelberger's house that day and been on the porch of the house. He told the police that due to an athlete's foot condition, he had taken his socks off while in the area and left them by a dumpster at a store. He then said he left the socks by a light pole. McGee denied stealing the truck from Camden but said he moved a red Mack tractor-trailer truck² while in Columbia. McGee told police he did not know what a winch rod was. He also admitted he had told his wife that after a drug dealer pointed a pistol at him, he hit the drug dealer with it on the night of Eichelberger's attack. The police were unable to locate the drug dealer McGee said that he hit.

State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014).

¹ An inventory was never performed to determine if the winch rod was missing from the truck.

² Peterbilt and Mack are both makers of trucks that are used to pull tractor trailers.

The Trial

Applicant proceeded to a jury trial on August 1, 2011 before the Honorable Clifton Newman, Circuit Court Judge. At the conclusion of the trial on August 10, 2011, Applicant was convicted as indicted. Judge Newman sentenced Applicant to life imprisonment for murder and thirty (30) years for burglary 1st degree.

The Direct Appeal

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Kathrine Haggard Hudgins, Esq. On April 30, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in a published opinion. State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014). Applicant filed a petition for rehearing on May 15, 2014, which was denied on June 19, 2014. Applicant filed a petition for writ of certiorari in the South Carolina Supreme Court and Respondent filed a return to the petition for writ of certiorari. On December 4, 2014, the South Carolina Supreme Court denied certiorari. The Remittitur was issued December 10, 2014.

First PCR Application (2014-CP-40-3323)

Applicant filed an application for Post-Conviction Relief (PCR) on May 18, 2014, alleging:

1. "Insufficient, Ineffective Counsel [sic]."
 - a. "Trial counsel [sic] failed to enter and [sic] objection to evidence presented by the solicitor. During trial."

(Am. Appl.). Respondent filed a Return and Motion to Dismiss Without Prejudice on the basis that Applicant's direct appeal was still pending at the time. On June 11, 2014, the Honorable L. Casey Manning signed an Order dismissing the application without prejudice.

The 2nd or Current PCR Application

As previously stated, Applicant filed the present PCR application on January 13, 2015 and the State filed its Return. Thereafter, this Court held an evidentiary hearing on August 30, 2017 into the allegations of the application.

This Court also had before it the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial, Applicant's records from the Department of Corrections, Applicant's prior PCR records, and Applicant's appellate records.

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

- (1) Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendment of the U.S. Constitution and South Carolina laws and as a result was prejudiced when counsel failed to object to all the inadmissible evidence introduction before and during trial in the presence of the jury.
- (2) Trial counsel failed to enter an objection when the Solicitor introduced inadmissible evidence during trial against Applicant.
 - (a) A stolen truck found parked at a towing impound yard – 1 mile away from the victim's home.
 - (b) A metal bar found across the road away from the victim's house in the neighbor's back yard inside a fenced area on the ground in the grass
 - (c) Applicant was not seen or identified as a suspect by anyone on the night the incident happen or the year and no D.N.A. from the Applicant was on the object neither at the victim's house or property.
 - (d) A pair of socks found on the ground across the road on a foot path in a field.
 - (e) During trial, counsel withheld evidence from the jury- a recorded interview on the witness at the victim's house when the incident happen 3 days later at the police department she said she did not see no one inside or outside the victim's house neither did she see anyone who committed the crime at the victim's house. She also said in the recorded interview it was dark and she did not see the person's face in the victim's yard. That night she said she only saw white plastic gloves.
 - (f) Counsel withheld evidence from the jury concerning a recorded interview on other suspects that told the police who had committed the crime and where to find the evidence used in the crime and also who had it.

- (g) Counsel failed to object to the inconsistent statements from the witness stand during trial. The incident happened on (May 3, 2009) (11:40 p.m.) the witness (Tamika Ashford) said in a police report the person she saw in the victim's yard that night at (11:45 pm) was wearing a white shirt and blue jeans during trial on stand she testified and said the suspect in the victim's yard was wearing khakis – inconsistent statements- about clothing during trial.
- (h) Counsel failed to object to the erroneous statements during trial from the prosecutor to the jury speculating on what happened, when she was not present at the crime- scene when it happened, misleading the jury.
- (i) Counsel failed to object to the statements from Investigator Thomas while on the stand for committing perjury about where the socks were found. The Columbia Police Dept. Incident Report on (5-3-09) indicated that the pictures taken of the socks when found were across the road in a vacant field on the ground next to an abandoned yellow house. During trial Investigator Thomas lied on the stand and said the socks were found next to a light pole. He committed perjury. Neither was Investigator Thomas present at the crime scene that night. SLED incident reports he was not present.
- (j) Counsel failed to object to the prosecutor using a secretly hidden tape recorder. During the interrogation of the Applicant 11 months after the incident happened, the Applicant did not know he was being secretly recorded against his will. Also during trial it was proven the tape recorder was being turned on and off only recording parts of the interrogation of Applicant.
- (k) Counsel failed to object to Investigator Reese committing perjury during trial. Investigator Reese lied and said he and Investigator Thomas was on the crime scene at the victim's house for hours on the night the incident happened on (5-5-09) at 11:45 p.m.. The Columbia Police Incident Reports that Reese was at the crime scene for 4 minutes and left. Officer Thomas was not at the crime scene until the next day. Perjury on stand during the trial.
- (l) During trial, Tameka Ashford, the witness at the victim's house, testified she did not see the burglary and she did not see the assault on the victim. She only heard a noise then she ran down the street to her car. She said she did not see no-one in the house or outside the house when she left. And ran to her car down the street on a side road
- (m) The witness (Tameka Ashford) (5-3-09) lied to uniform police at the crime scene minutes after the incident happened. She said that she was not inside the victim's house when the incident happened. False statements to Police. She was there to have sex for money. The witness (Tameka Ashford) did positively identify (David Williams) as the suspect she saw in the victim's yard wearing blue jeans

and a white shirt with white plastic gloves on his hands with a long stick or pipe. She also took a sworn oath to tell the truth and wrote a 2 page handwritten statement in detail and she said it was him she saw (David Williams). He was also arrested by the Columbia Police Department the same night matching clothes description the arresting officer testified on the stand to the police reports.

- (n) Applicant did not commit this crime. Neither was he present in the area or neighborhood when the incident happened on (5-3-09) at (11:45 p.m.). Wrongful conviction.
- (o) During trial, Investigator Reese while on the stand under oath reviewed by reading handwritten statements from the witness at the scene of the crime minutes after the incident happened. She wrote the person she positively identified as the suspect in the victim's yard wearing blue jeans and a white shirt with white plastic or rubber gloves on his hands holding a long object in his hands was arrested the same night by the Columbia Police Department after he ran home and was found hiding in the closet. She said he was wearing different clothes but it was him. His name is (David Williams). The other suspect walking with him was never identified or arrested. Inside the victim's house on the floor was a bloody shoe print. The police don't know who it belongs to. No clothing was taken from the suspect's home to be tested for D.N.A. He was found hiding at home.
- (3) During trial counsel withheld evidence from the jury concerning the stolen truck from Camden, S.C.
 - (a) The owner testified during trial that when he received the truck back nothing was reported missing inside or outside the truck. The initials on the metal bar did not belong to anyone at the company where the truck came from. Camden Police Dept. did not charge Applicant with a truck theft. Columbia Police Dept. did not charge Applicant with a truck theft. Applicant's D.N.A. was not on or in the truck when found parked at the towing company impound yard office. No one was seen in or around the truck when found in Columbia at the towing impound yard office. The police reports indicate Applicant was already in Columbia at the metal recycling plant on the same day before the truck was stolen from Camden, S.C., 1 and ½ hours away from Columbia, S.C.
- (4) During trial, counsel failed to object to the metal bar that was used against Applicant.
 - (a) The Columbia Police Dept. Incident Report on (5-3-09) indicates the only person positively identified by the witness at the scene (Tamika Ashford) was (David Williams). In a handwritten statement after she swore to tell the truth she positively identified (David Williams) that night as the suspect in the victim's yard that night at 11:45 p.m. with a long metal object in his hands wearing white plastic or rubber gloves on his hands. He was also arrested based on the clothing description given to the police from the "911" call. Also the "911" call was lost before trial started. Applicant was not identified or seen in that neighborhood the

night of the incident neither that year it happened. The uniform police testified on the stand that David Williams was wearing a white shirt and blue jeans or dark pants when he foot chased him home.

- (5) During trial, counsel failed to object to the prosecution's opening statement speculating about what happened when she was not present at the crime scene that night the incident happened. There was no police incident report and no witness to testify on the stand to prove the allegations said by the prosecutor during trial misleading the jury with false statements in opening and closing statements about what happened at the incident on (5-3-09) at the victim's house.
- (6). Counsel failed to advise the judge before trial that the Columbia Police Dept. Investigators interrogated Applicant and charged Applicant with a warrant dated May 6, 2009. Applicant was also transported from S.C.D.C. to the Richland County Detention Center on the same wrong warrant. The burglary and assault happened in Columbia on May 3, 2009-Sunday. Applicant was served with a warrant dated May 6, 2009-Wed.
- (7) During trial, counsel failed to advise the judge that on a capital murder charge the investigator must serve the suspect with the correct warrant properly dated. Columbia Police Dept. Investigators did not serve Mr. McGee with the correct warrant before nor during trial. Applicant was charged and convicted and sentenced to prison on the wrong warrant indicating the incident happened on (May 6, 2009-Wed.). Also the interrogation was concerning what happened on May 6, 2009-Wed. The burglary and assault happened on (May 3, 2009-Sunday).
- (8) Before trial, the prosecutor instructed the judge that the only witness at the crime scene the night of the incident will not be able to do any kind of in-court identification of Applicant. Also, she had already positively identified a suspect the same night at the crime scene minutes after the incident happened.
- (9) Interrogation of Applicant. The incident at the victim's house happened on May 3, 2009 in Columbia, S.C. On March __, 2010, 3 Columbia Police Dept. Investigators interrogated Applicant while incarcerated on an unrelated charge in prison at Wateree River Correctional in Sumter County, S.C. During this interrogation, Investigator Kevin Reese forged Applicant's name on the Miranda rights papers because Applicant refused to sign any papers. Also, Investigator Reese threatened to physically assault Applicant by punching his fist into the chair and table close to Applicant's face and head. Also, Reese asked Applicant to shake hands with him. While doing so, Reese squeezed Applicant's hand and twisted his arm and Reese started shouting at Applicant, confess, confess. The 2 hidden tape recorders was also turned on and off with a remote control during the interrogation.
- (10) Interrogation of Applicant- Columbia Police Dept. Investigators interrogated Applicant on March __, 2010, 11 months after the incident happened. The investigators secretly recorded the interrogation without Applicant knowing he was being recorded. They used 2 digital remote control tape recorders. Also it was proven during trial the

hidden tape recorders were being turned on and off during the interrogation only to record parts of the interrogation. Also, during the interrogation, Investigator Reese threatened to have Applicant killed while in prison.

(11) Investigator Reese called S.C.D.C. to have Mr. McGee put on solitary confinement 3-days before the interrogation. No food, no water, no mental health medicine, no blanket. Mr. McGee was threatened and forced to talk to the investigator by S.C.D.C. officers.

(12) Counsel failed to object to 4 witnesses on the stand during trial.

- (a) Tamika Ashford testified that she did not see anyone inside or outside the victim's house during the burglary or the assault. She only heard a commotion and noise. She also positively identified a suspect the same night minutes after the incident happened and she wrote statements of truth on him in detail his name was David Williams. He was wearing blue jeans and a white shirt.
- (b) Larry Harp, the next door neighbor, testified he saw Applicant at the victim's house at 3:30 and 5:30 the same day talking to the victim in his yard. Applicant was wearing a football jersey and denim shorts with a plate of food in 1 hand and a cup in the other. He testified that after Mr. McGee left then he went over to talk to the victim and nothing was wrong. The incident happened at the victim's house at 11:45 p.m. The witness, Larry Harp, testified he did not see no one at the victim's house that night at 11:45 p.m.
- (c) Ivan Moore testified on the stand to say he saw the Defendant Mr. McGee in the neighborhood the month of the incident. He lives two miles away from the victim and he did not see the Defendant at the victim's house neither did he see the Defendant the night of the incident. Ivan moore has seven convictions of drugs and guns. He also has seven more charges pending for court trial. Before he testified on the stand against Defendant for the prosecutor.
- (d) Michelle Perry testified on the stand to say she saw the Defendant attend church with the victim 3-months before the incident happened. The police showed her a single photo of the Defendant for identification purposes. She testified that she had never been in that church and the photo of the Defendant was a mug-shot picture of the Defendant. She said she had never seen the Defendant at the victim's house. She works next door to the church. No one attends the church. Cannot identify the Defendant- as being at the church. The witness did not see the Defendant the month of the incident. She said she saw the Defendant three-months before the incident happened.

(13) Counsel failed to object- During trial, there were no witnesses and no police incident reports to say Applicant committed any crime. No one testified during trial to say

Applicant was at the victim's house that night when the incident happened at 11:45 p.m. The witness, Tamika Ashford, did positively identify a suspect named David Williams, minutes after the incident happened at the victim's house. She also wrote a 2 page statement of truth in detail. She said it was him. Also a description of suspect (6 ft, 1"-Tall 180 or 200 lbs) white shirt and blue jeans wearing white plastic gloves on hands. She testified she did not see the face or could not see the face because it was real real dark and no lights to see.

(14) Applicant is 5 ft 8 " and 230 lbs. Neither was Applicant identified that night or that year of the incident as committing any crime.

(15) During trial, the witness Tamika Ashford testified that the person in the victim's yard that night at 11:45 p.m. was wearing khakis and she did not see his face or could not see a face. It was "real real" dark and no street lights on.

(16) Counsel failed to object the D.N.A extracting procedure used on the socks found across the road in a field on a foot path near an abandoned house 1 street over from the victim's residence. No one was seen with or using any socks that night. Also the D.N.A. expert testified 3 people's D.N.A. was on the socks. Also, David Williams, a suspect positively identified and arrested the same night after he ran from the police on scene, his DNA is on the socks and the witness Tamika Ashford positively identified him as the suspect in the victim's yard that night and she wrote a 2 page statement in detail and said that he was the person she saw that night in the yard.

(17) Counsel failed to object to the touch DNA extracting procedures used to extract DNA from the socks found on the ground across the road in a field. The first DNA test for touch DNA was negative on the Applicant. This was May of 2009. 11 months later (3-12-10) a procedure was used to extract touch DNA when the protocol manual for extracting procedures does not list the procedure used for obtaining touch DNA. There is no manual listed for extracting touch DNA. Also expert testified 3 people's touch DNA was present on the socks including a suspect named David Williams. He was also positively identified by the witness Tamika Ashford the same night minutes after the incident happened at the victim's house. He was also arrested that same night by the uniform police in the neighborhood funning from the police on the crime scene. Minutes after the incident happened.

(18) Counsel failed to object to the prosecutor using the Clerk of Court from Kershaw County to testify on the stand in Richland County concerning Applicant's pleading guilty to a Burglary 2nd and 3rd in Kershaw County 2 years prior before he was charged with Burglary 1st in Columbia, Richland County. Applicant did not testify at trial. Also, the burglary 2nd and 3rd Applicant pleaded guilty to in Kershaw County years before he was charged with the burglary 1st in Richland County were not connected in no way.

(19) No one was seen burglarizing the victims' house. No one was seen inside or outside at the time of the incident. Applicant's DNA is not inside or outside the victim's house. Applicant's DNA is not on the object used in the crime. Applicant was not identified by

anyone that year. Also the witness at the crime scene, Tamika Ashford, positively identified a suspect on the same night and she wrote statements on him of truth in detail on him at the crime scene.

On November 2, 2015, Applicant filed an Amended Application alleging the following grounds in addition to the prior grounds stated in the original Application:

- (1) Ineffective assistance of trial counsel – trial counsel failed to have warrants dismissed/quashed, as amended warrants were never served on Applicant;
- (2) Ineffective assistance of trial counsel – counsel failed to retain eye witness expert on defendant's behalf;
- (3) Ineffective assistance of trial counsel—trial counsel failed to object to sentencing judge's belief of facts of the case and sentence;
- (4) Ineffective assistance of trial counsel - - trial counsel failed to object to statements regarding witness Tameka Ashford in opening statements; and
- (5) Ineffective assistance of appellate counsel - - trial counsel failed to argue the appropriate issues on appeal, including witness Tameka Ashford's testimony being admissible and the admissibility of nearby truck.

At the PCR evidentiary hearing held before this Court on August 30, 2017, Applicant testified in his own behalf. Applicant's trial counsel Douglas Strickler and Fielding Pringle also testified at the hearing after being called by Respondent. Applicant's appellate counsel, Katherine Hudgins, also testified at the hearing, after being called by Respondent.

At the PCR hearing, Applicant proceeded on and offered evidence only on the following grounds:

- (1) Counsel was ineffective for not reviewing discovery, specifically the 911 tape and the audio-tape of Tamika Ashford, with him prior to trial;
- (2) Counsel should have objected when the Solicitor referenced the forthcoming testimony of Tamika Ashford in her opening statement;
- (3) Counsel was ineffective in failing to object to the arrest warrants he was served with because the wrong date for the murder and burglary, May 6th, and not May 3rd and he was never served with the warrants containing the correct date of May 3rd;

- (4) Counsel should have objected when the Solicitor argued in her closing argument that:
 - (a) Applicant caused the head injury to the victim depicted in an autopsy photograph admitted in evidence;
 - (b) Applicant wielded the murder weapon like a baseball bat; and
 - (c) Applicant committed the crime; and
- (5) The State used improper scientific DNA extraction procedures in obtaining Applicant's DNA from inside the white socks admitted in evidence;
- (6) Appellate counsel was ineffective for not raising on appeal the admissibility of Tamika Ashford's testimony *and* the admissibility of stolen truck from Camden, S.C.

III.

Testimony at the PCR hearing

At the PCR hearing, Applicant testified that his trial and appellate counsel were ineffective in representing him. Applicant testified: (1) counsel was ineffective for not reviewing discovery, specifically the 911 tape and the audio-tape of Tamika Ashford, with him prior to trial; (2) counsel should have objected when the Solicitor referenced the forthcoming testimony of Tamika Ashford in her opening statement; (3) counsel should have objected when the Solicitor mentioned in her opening statement that Applicant's blood was found at the crime-scene; (4) counsel was ineffective in failing to object to the arrest warrants he was served with because the wrong date for the murder and burglary, May 6th, and not May 3rd and he was never served with the warrants containing the correct date of May 3rd; (5) counsel should have objected when the Solicitor argued in her closing argument that (a) Applicant caused the head injury to the victim depicted in an autopsy photograph in evidence; (b) Applicant wielded the murder weapon like a baseball bat; and (c) Applicant committed the crime; (6) the State's DNA expert

used unscientific methods to extract Applicant's DNA from the white socks found near the crime scene; and (7) appellate counsel was ineffective for not raising on appeal the admissibility of Tamika Ashford's testimony *and* the admissibility of stolen truck from Camden, S.C.

Counsel, Mr. Strickler and Ms. Pringle, testified they met with Applicant numerous times prior to the trial. Mr. Strickler testified he did not remember allowing Applicant to review the tape recorded statement of Ms. Ashford given to police after the night after the crimes, because he had no recollection of taking his computer with him to the Detention Center during any of his numerous meetings with Applicant. However, at the PCR hearing, Applicant contradicted himself and testified he had reviewed with Mr. Strickler "CD's" containing at least one (1) recorded statement of one (1) witness. Ms. Pringle testified either she or Mr. Strickler would have reviewed the audio-tape of Ms. Ashford's interview with Applicant prior to his trial. Ms. Pringle and Mr. Strickler testified they obtained all of the discovery from the State, and Ms. Pringle testified they reviewed the substance of all of the discovery with Applicant prior to trial.

Mr. Strickler testified at the PCR hearing he did not object to the mention of Ms. Ashford in the Solicitor's opening statement, but he probably should have. Mr. Strickler testified he did object to the admission of her testimony pre-trial and again after a Neil v. Biggers hearing later in the trial. Mr. Strickler testified that it was his theory or belief that if Ms. Ashford could not identify Applicant her entire testimony was irrelevant and inadmissible. Both counsel, Mr. Strickler and Ms. Pringle, and Applicant testified Ms. Ashford was an eyewitness in the case. Ms. Pringle testified it was any attempt by Ms. Ashford to make an out-of-court or in-court identification of Applicant that counsel objected to; and, the State stipulated Ms. Ashford did not make a positive out-of-court identification and would not make an in-court identification, which she did not. Appellate counsel, Ms. Hudgins testified she did not agree with Mr. Strickler that

Tamika Ashford's testimony was irrelevant because she could not identify Petitioner out-of-court or in-court and that in her opinion the appellate court with not agree with Mr. Strickler's theory either.

Mr. Strickler testified he did not object to the arrest warrant dates or the fact that applicant was not served with the arrest warrant dated May 3rd because Applicant was tried on the indictments not the arrest warrants. Mr. Strickler testified he reviewed the indictments and there was nothing improper about them. Mr. Strickler testified that if there had been something improper or deficient about the indictments, he would have objected to or moved to quash the indictments.

Mr. Strickler testified he did not object to the Solicitor's statements in closing argument because the prosecutor is allowed to argue the evidence and reasonable inferences from the evidence and that is what the Solicitor did in her closing argument. Counsel testified the Solicitor was arguing all of the evidence and all the reasonable inferences from the evidence, not specific testimony of an eyewitness, when she made certain comments during her closing argument. Therefore, her arguments were not objectionable.

Appellate counsel testified she raised those issues she considered the most meritorious in Applicant's direct appeal. She did not raise the issue of the admissibility Tamika Ashford's testimony as Ashford's testimony was relevant and admissible; there was no merit to this issue on appeal; Ashford did not positively identify Applicant or make an in-court identification; and, Ashford's testimony was helpful or favorable to Applicant as she identified someone else immediately after the crime as being the perpetrator. Appellate counsel also testified she did raise the issue of the admissibility of the stolen truck from Camden on direct appeal, but the Court of Appeals ruled against Applicant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant's claims are allegations of ineffective assistance of trial and appellate counsel. Respondent contends Applicant's trial and appellate 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).

Standard of Review

In a post-conviction relief (PCR) proceeding, the Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Id.* Where ineffective assistance of trial counsel is alleged as a ground for relief, 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, 104 S.Ct. 2052, 2064 (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. 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 trial counsel. First, Applicant must prove 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 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.

Applicant also alleges ineffective assistance of appellate counsel. A criminal defendant is entitled to the effective assistance of appellate counsel; however, appellate counsel may make a reasonable strategic choice not to appeal every non-frivolous argument requested by the defendant. Jones v. Barnes, 463 U.S. 745 (1983). The Court noted "the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible." Id. at 751. See also Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990). Counsel is not ineffective for failing to file a "kitchen sink" brief. Smith v. Stewart, 140 F.3d 1267, 1274 n. 4 (9th Cir. 1988). Appellate counsel's representation will not be deemed ineffective if she makes an informed decision based on reasonable professional judgment not to pursue a particular issue on appeal. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Further under the two (2) part test of Strickland, supra, a defendant must show not only counsel's performance was deficient, but also this deficiency prejudiced his defense. Applicant must show that had counsel acted as he alleges she should have acted there is a reasonable probability he would have prevailed on appeal. Smith v. Robbins, 528 U.S. 259, 285 (2000); Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000).

A PCR applicant has the burden of proving his appellate counsel was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). Appellate counsel is not required to raise every non-frivolous issue that is presented from a review of the record, but rather has the duty to choose among potential issues according to their merit. Tisdale v. State, 357 S.C. 474, 594 S.E.2d 166 (2004); Jones, 463 U.S. at 752. In order to prove that appellate counsel was ineffective, a PCR applicant must show his appellate counsel was objectively unreasonable in failing to identify, argue, and present significant and obvious issues on appeal and, but for appellate counsel's errors,

the applicant would have prevailed on appeal. Smith v. Robbins, 528 U.S. 259, 285 (2000); Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000). This is a difficult burden for an applicant to meet, as it requires a showing that "the ignored issues are clearly stronger than those presented" during the appeal. Id.

(A) The Alleged Failure to Review Certain Discovery with Applicant

At the PCR hearing, Applicant alleged counsel was ineffective in failing to review certain discovery with him; specifically, not allowing him to listen to the 911 call of Tamika Ashford, an eyewitness, and Ms. Ashford's tape recorded statement to police given after the night of the crimes. Applicant admitted at PCR that counsel met with Applicant numerous times and reviewed all of the rest of his discovery with him. Applicant also admitted counsel reviewed the States' evidence with him prior to trial. Applicant also admitted at PCR that the 911 tape was lost by Emergency Medical Services (EMS) prior to his trial and therefore it was not counsel's fault that the 911 tape could not be reviewed with him.

Mr. Strickler testified he did not remember allowing Applicant to review the tape recorded statement of Ms. Ashford given to police after the night after the crimes, because he had no recollection of taking his computer with him to the Detention Center during any of his numerous meetings with Applicant. However, at the PCR hearing Applicant testified he had reviewed with Mr. Strickler CD's of at least one (1) recorded statement of one (1) witness.

Ms. Pringle testified either she or Mr. Strickler would have reviewed the audio-tape of Ms. Ashford's interview with police with Applicant prior to his trial. She also testified she and co-counsel reviewed the substance of all of the discovery provided by the State with Applicant prior to trial.

This Court had the opportunity to view the testimony of each witness on this issue at the PCR hearing. This Court finds credible only that portion of Applicant's testimony that the 911 tape was lost by EMS prior to his trial. Therefore, this Court finds counsel could not have been ineffective in failing to allow Applicant to review the 911 tape prior to trial. Strickland v. Washington.

This Court finds credible the testimony of Ms. Pringle that either she or Mr. Strickler would have reviewed the audio-tape of Ms. Ashford's interview with police with Applicant at some point prior to trial. Furthermore, Ms. Pringle and Mr. Strickler credibly testified they met with Applicant numerous times, went over the State's evidence against Applicant with him, and prepared with Applicant for trial. This Court finds credible the testimony of Ms. Pringle that she and co-counsel reviewed the substance of all discovery with Applicant prior to trial. This Court finds even if counsel had not allowed Applicant to actually listen to the audio-recorded statement of Ms. Ashford, counsel would have reviewed with Applicant the substance of her recorded statement. This Court finds Applicant's testimony regarding this particular issue to be not credible.

Regardless, this Court finds Applicant has failed to meet his burden of proof to show ineffective assistance of counsel. Strickland. At the PCR hearing, Applicant did not introduce the audio-tape of Ms. Ashford's interview with police. Applicant did not show through any credible testimony how counsel's not reviewing the audiotape itself with him, was deficient or prejudicial. Applicant did not show how the failure to review the audio-tape of Ms. Ashford with him prejudiced his defense at trial; or that had counsel reviewed the audio-tape with him there is a reasonable probability the result of his trial would have been different. Id. In fact, Applicant does not argue counsel did not review the audio-tape themselves, or that they did not

use it at trial, but only that they did not review the same with him. The record of Applicant's trial shows counsel did fully and completely cross-examine and impeach Ms. Ashford's testimony including bringing out her identification of a different person on the night of the crimes, her written statement to police, and her recorded statement given to police after the night of the crimes. (See Trial Tr. Aug. 8, 2011 pp. 61-132). As a result, Applicant has failed to show deficient performance or resulting prejudice in this regard. Strickland. Therefore, this ground has no merit and must be denied and dismissed with prejudice.

Alleged Failure to Object to Solicitor's Reference in Opening Statement

At the PCR hearing, Applicant alleged counsel should have objected when the Solicitor referenced the upcoming testimony of Tamika Ashford in her opening statement. (See Trial Tr. pp. 271-88). Applicant alleged Ashford's testimony was inadmissible and the trial judge had not yet ruled on the admissibility of her testimony and therefore counsel should have objected when the Solicitor mentioned her in opening statement. There is no merit to this ground for the following reasons.

Opening statements are not evidence. The purpose of an opening statement is to give the jury a roadmap or an overview of where the case or presentation of evidence is going. United States v. Dinitz, 424 U.S. 600 (1976)(Burger, C.J., concurring); State v. Brown, 277 S.C. 203, 284 S.E.2d 777 (1981); State v. Harris, 275 S.C. 463, 272 S.E.2d 636 (1980). The purpose of an opening statement is to assist the jury in understanding the presentation of evidence, and the position of each side in the case. Id. When the prosecution refers to facts in its opening statement, there is no error as long as the solicitor introduces evidence to reasonably support

statements made in an opening argument. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986). See also State v. Sims, 348 S.C. 16, 558 S.E.2d 515 (2002).

Ms. Ashford's Testimony

As set forth in the Court of Appeals' published opinion in this case, Tamika Ashford was present at the victim's residence on the night of and at the time of the burglary of the victim's home and deadly assault of the victim. See State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014). Ms. Ashford was inside the victim's residence talking with the victim [Reverend Tryon Eichelberger] in his den or living room, which was located in the front of the victim's house, at approximately 11:00 p.m. While Ms. Ashford and the victim were talking, they both heard a noise coming from the back of the victim's house. The victim went to investigate the noise and Ms. Ashford stayed in the den or living room. She then heard the victim state out loud: "How did you get in here?" Ms. Ashford then heard noises that sounded like a struggle between the victim and another person in the back of the house. Afraid, Ms. Ashford fled from the house out the front door, got in her car, and drove around the block. While she did so, she used her cell phone to call police.

She then drove back around the block and saw a man on the front porch of the victim's residence with a metal pipe in his hand and wearing white gloves. She could describe the man generally and what he was wearing. He was a husky man with a pot belly and receding hair line and he was wearing a white shirt and blue jeans. After seeing the man on the porch with the pipe in his hand, afraid, she immediately left the scene again and shortly thereafter saw the same man on foot walking down Farrow Road but no longer wearing white gloves or carrying the metal

pipe. She then waited on police and when they arrived she drove back to the victim's residence and eventually gave police a description of the man she had seen on the porch.

Later that night, she was driven to an area near the crime scene and asked to identify a man [not applicant] in a one (1) person show-up. She informed police that the person looked like the man she had seen on the victim's front porch, but he was wearing the wrong clothes. This man was later eliminated as a suspect by police through further investigation and DNA testing. Months later, Ms. Ashford was shown a six (6) person photo line-up or array. She was asked if she recognized anyone in the array. She identified two (2) photos in the line-up as looking like the person she saw on the front porch of the victim's residence the night of the burglary and deadly assault, and she identified one (1) of those two (2) photos, the photo of Applicant, as looking most like the person she saw on the front porch of the victim's residence. However, Ms. Ashford could not make a positive identification of Applicant as the perpetrator out-of-court and did not do so in-court. *Id.* She only testified Applicant's physical characteristics met the general physical characteristics of the person she saw the night of the deadly assault.

Other Relevant Evidence

On the night of the burglary and deadly assault, police responded to Ms. Ashford's 911 call. They found the victim lying on his kitchen floor in a pool of blood. He was unresponsive and unable to identify the person who broke into his home and assaulted him. The victim later died and it was determined that he died from blunt force trauma to the head from a blow to the head with a solid object inflicted at the time Ms. Ashford heard the struggle in the back of the victim's house.

The night of the burglary and assault, based on Ms. Ashford's description of the direction of travel of the perpetrator, across the street from the victim's residence, police found a metal pipe [later identified as a winch rod], with the victim's blood on it. Police also found damage to the back door of the victim's residence, the point of entry of the burglary, consistent with being caused by the winch rod. Further on from where the winch rod was found, in the direction of Farrow Road, in a vacant lot, police found a pair of white socks which were on the ground next to a tree. These white socks contained the victim's blood [DNA] on the outside of them. Applicant's DNA was found on the inside these white socks.

Another eyewitness also placed Applicant at the victim's residence the afternoon before the victim was murdered walking around the residence on foot and walking down the street. It was also established at trial through surveillance video and the testimony of Applicant's sister that Applicant stole a tractor trailer truck from Camden, S.C. and abandoned it near the victim's residence earlier *the day of the victim's murder* and that Applicant was a licensed tractor trailer truck driver who had experience using a winch rod which is contained in a tractor trailer's tool box. Applicant had also previously been convicted of two (2) prior burglaries. See State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Cl. App. 2014).

Applicant was questioned about the victim's murder while incarcerated on other unrelated charges. While Applicant denied he committed the burglary and murder, Applicant admitted he was in the area of the victim's residence on the day and night of the burglary and deadly assault. Applicant admitted he knew the victim; and, he admitted he had been to the victim's church previously and to the victim's residence the day of the burglary and assault. Applicant admitted he removed a white pair of socks from his person that same day or night and left them next to a light pole. Applicant alleged he removed the socks and left them by the pole

on the night of the victim's assault because of an athlete's foot condition. See State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014).

PCR Testimony

Both trial counsel Ms. Pringle and appellate counsel Ms. Hudgins testified at the PCR hearing that Tamika Ashford's testimony was admissible because she was an eyewitness and her testimony was relevant; but, it was any attempt by her to make an *out-of-court* or *in-court identification of Applicant* that was inadmissible or objectionable. It was for this reason that counsel did object to the admission of Ms. Ashford's testimony as far as an out-of-court or in-court identification. This Court finds the testimony of Ms. Pringle and Ms. Hudgins on this issue to be credible and supported by case law.

This Court does not find credible or valid Mr. Strickler's testimony at the PCR hearing that it was his belief or theory that simply because Ms. Ashford could not make an out-of-court or in-court identification of Applicant it made her testimony irrelevant and inadmissible. Ms. Ashford's testimony was relevant and admissible because she was an eyewitness and ear-witness to what occurred that night in and outside of the victim's residence at the time of the burglary and murder. *Rule 401, SCRE* ("Relevant evidence" means evidence having any tendency to make, the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence); *Rule 402, SCRE* (All relevant evidence is admissible, except as otherwise provided by the U.S. Constitution, the S.C. Constitution, and the statutes and rules of the S.C. Supreme Court); *Rule 403, SCRE* (Although relevant, evidence may be excluded if its probative value is substantially outweighed by the

danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence).

Her testimony, if believed by the jury established: (1) where the deadly assault took place, (2) the time of the burglary and deadly assault, (3) where the perpetrator entered the victim's home, (4) the victim died as a result of a struggle with an intruder who entered from the back of the victim's home, (5) a general description of the intruder/assailant, (6) as the intruder/assailant left the victim's residence he was holding a metal rod or pipe and wearing what appeared to be white gloves, and (7) when she saw the intruder/assailant again he was walking on Farrow Road and he no longer had the metal pipe or rod in his hand and was no longer wearing the white gloves.

Ms. Ashford, as an eyewitness could testify to what she saw and what she heard that night and to her role in the police investigation that followed. In fact, she was the *only* "eyewitness" to many of the facts she testified to or her testimony was inextricably linked to the other evidence in the case and necessary to prove the identity of the victim's killer. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991)(evidence is relevant and admissible if it tends to establish and make more or less probable some matter in issue upon which it directly or indirectly bears); State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)(evidence which assists a jury at arriving at the truth of an issue is relevant and admissible, unless otherwise incompetent); State v. Finley, 300 S.C. 196, 387 S.E.2d 88 (1989)(the evidence in question need not be sufficient in itself to establish the whole or any definite portion of a parties contention).

This Court also does not find credible Mr. Strickler's testimony that he should have objected when the Solicitor mentioned Ms. Ashford in her opening statement. The State

stipulated before opening statements that Ms. Ashford did not make an out-of-court identification of Applicant and would not make an in-court identification of Applicant. She did not. The remainder of her testimony was relevant and admissible. This Court believes it was for these reasons that counsel did not object at the time to the mention of Ms. Ashford in opening statement. (See Tr. pp. 271-88). Furthermore, the Solicitor admitted in her opening statement to the jury that Ms. Ashford identified the wrong person on the night of the crimes, and only later picked out Applicant's picture as a possible person who committed the crime. (See Tr. pp. 271-88).

The record shows Applicant was represented by trial counsel, Mr. Strickler and Ms. Pringle, who were well experienced in the trial of criminal cases in South Carolina including murder cases. Counsel was well aware of the appropriate motions to make regarding the admissibility of Ms. Ashford's testimony and made them.³

The record shows counsel raised the admissibility of Ms. Ashford's testimony as far as an out-of-court or in-court identification pre-trial and there was a hearing on this issue. (Tr. pp. 169-99; 201-07; 208-10; Tr. Aug. 3, 2011, pp. 7-43). A Neil v. Biggers⁴ hearing was conducted before Judge Newman where it was shown and conceded by the State that Ms. Ashford would

³ Where there is an issue as to whether or not an *out-of-court identification* was unduly suggestive, or whether an *in-court identification* by a witness is of independent origin based upon a witness' observations, a defendant is entitled to an *in camera* hearing to determine the admissibility of such identification. Neil v. Biggers, *supra*; State v. Simmons, 308 S.C. 80, 417 S.E.2d 92 (1992); State v. Williams, 258 S.C. 482, 189 S.E.2d 299 (1972); State v. Cash, 257 S.C. 249, 185 S.E.2d 525 (1971); State v. Cheatham, 349 S.C. 101, 117, 561 S.E.2d 618, 627 (Ct. App. 2002); State v. Smith, 336 S.C. 39, 518 S.E.2d 294 (Ct. App. 1999); Rule 104(c), SCRE. Questions regarding admissibility of identification evidence are left to the sound discretion of the trial judge and will not be disturbed on appeal absent a showing of abuse of discretion. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).

⁴ Neil v. Biggers, 409 U.S. 188 (1972).

not make an *in-court identification* of Applicant, and she had *not positively identified Applicant out-of-court*. (Tr. Aug. 3, 2011, pp. 7-43). In fact, the testimony showed she had tentatively identified the wrong person in an improper show-up [not Applicant] the night of the crime, except for stating this person was wearing the wrong clothes. This person was later eliminated as a suspect through investigation and DNA testing. And then, months later when shown a six (6) person photo line-up identified Applicant's photograph as 1 of 2 photographs in the line-up that most resembled the person who she saw standing on the porch of the victim's home after the crime and Applicant's photograph of those 2 photographs looked the most like the perpetrator she saw the night of the crime. (Tr. Aug. 3, 2011, pp. 7-43).

As Judge Newman correctly found and as the record shows, there was nothing improper or suggestive about this six (6) person photo line-up.⁵ As previously stated, trial counsel objected to the admission of the testimony of Ms. Ashford [or at least any out-of-court identification of Applicant and any in-court identification of Applicant], and a Biggers hearing

⁵ See State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987)(the reliability of an identification procedure depends upon the consideration of a totality of the facts and circumstances of each particular case); State v. Scipio, 283 S.C. 124, 322 S.E.2d 15 (1984)(same); State v. Thompson, 276 S.C. 616, 281 S.E.2d 216 (1981)(similar); State v. Johnson, 318 S.C. 372, 458 S.E.2d 49 (Ct. App. 1995)(same); Stovall v. Denno, 388 U.S. 293 (1967)(irrespective of the means by which a witness may make an identification, be it by a show up, physical line-up, or photographic line-up, the test for the admissibility of an identification is whether the method was so unnecessarily suggestive and conducive to irreparable mistaken identification that the defendant was denied due process); State v. Dixon 284 S.C. 526, 328 S.E.2d (Ct. App. 1985)(same); State v. Ford, 278 S.C. 384, 296 S.E.2d 866 (1982)(same); Manson v. Brathwaite, 432 U.S. 98 (1977)(Factors to consider in evaluating the likelihood of misidentification include: (1) the opportunity of the witness to view the accused; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description; (4) the level of certainty demonstrated by the witness at the time of the identification confrontation; and (5) the length of time between the crime and the confrontation (identification); State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980)(same); State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987); State v. Scipio, 283 S.C. 124, 322 S.E.2d 15 (1984)(similar); State v. Thompson, 276 S.C. 616, 281 S.E.2d 216 (1981).

was held before Judge Newman in camera. (Tr. Aug. 3, 2011 pp. 7-43). After hearing testimony from several witnesses including Ms. Ashford and police and the stipulations and arguments of counsel, Judge Newman eventually ruled that Ms. Ashford could testify. (Tr. Aug. 3, 2011, pp. 7-43).

However, she did not and could not positively identify Applicant out-of-court. Nor was she going to make an in-court identification of Applicant. Judge Newman ruled she could testify to what she saw and heard that night at the victim's residence at the time of the murder and shortly thereafter and would be allowed testify to exactly what occurred during the investigation as far as what she knew and what she informed police of. Thereafter, Ms. Ashford testified before the jury. (Tr. Aug. 8, 2011, pp. 61-134). And, Ms. Ashford did not make an in-court identification of Applicant at trial. She merely testified to what she saw and heard that night in and around the victim's residence, who she identified that night [which was not Applicant], and to the picking out of Applicant's picture along with another person's photograph from the 6 picture line-up as the persons most resembling the person she saw on the victim's front porch after the burglary and deadly assault and applicant's picture more resembled the person on the front porch than the other picture she picked out. And, finally that Applicant's general characteristics were consistent with the general physical characteristics of the person she saw on the front porch of the victim's residence the night of the murder. However, she readily admitted to the jury she could not positively identify Applicant as it was dark and she did not see his face clearly.

As a result, this Court finds counsel was neither deficient nor was Applicant prejudiced by counsel's *alleged* failure to object to the mention of Ms. Ashford's forthcoming testimony by the Solicitor in her opening statement. Strickland v. Washington. Ms. Ashford's testimony was

relevant and admissible because she was an eyewitness and ear-witness to what occurred that night in and outside of the victim's residence at the time of the burglary and murder. *Rule 401, SCRE; Rule 402, SCRE; Rule 403, SCRE*. Ms. Ashford, as an eyewitness could testify to what she saw and what she heard that night and to her role in the police investigation that followed. In fact, she was the *only* "eyewitness" to many of the facts she testified to or her testimony was inextricably linked to the other evidence in the case and necessary to prove the identity of the victim's killer. *Alexander*, 303 S.C. 377, 401 S.E.2d 146; *Sims*, 304 S.C. 409, 405 S.E.2d 377; *Finley*, 300 S.C. 196, 387 S.E.2d 88. As her testimony was ultimately admissible, and she did testify, counsel's choosing not to object to mention of her in opening statement was neither deficient nor prejudicial. *Strickland*. Counsel's performance did not fall below an objective standard of reasonableness. *Id.*

And, Applicant cannot show any resulting prejudice, i.e. had counsel objected there is a reasonable probability the result of his trial would have been different. *Strickland*. As Ms. Ashford's testimony was relevant and ultimately admissible on the points previously discussed, and she did testify pursuant to Judge Newman's ruling, there is no reasonable probability that Applicant would have been acquitted had counsel objected during the opening statement. *Id.* As a result, there is no merit to this ground and it must be denied and dismissed with prejudice.

Applicant further argued because Ms. Ashford initially identified the wrong person [not Applicant] at a show-up shortly after the crimes, that Ms. Ashford's testimony was inadmissible in his trial. And, because she did not positively identify Applicant from the photo-array containing his photograph, that her testimony was not admissible. As previously shown, this fact went to the weight or credibility of her testimony and description of the assailant not to the admissibility of her testimony. The jury could determine, given all of the circumstances,

whether her description of the assailant was accurate. Furthermore, a review of the trial transcript shows trial counsel cross-examined, impeached, or called into question the reliability of Ms. Ashford's description of the perpetrator through the use of her misidentification on the night of the crimes and her inconsistent statements given to police. (Trial Tr. Aug. 8, 2011 pp. 61-132). As a result, there was no ineffective assistance of trial counsel. Strickland.

As a result, this Court finds counsel was neither deficient nor was Applicant prejudiced by the opening statement of the Solicitor (See Trial Tr. pp. 271-88) or counsel's failure to object to this portion of the Solicitor's opening statement. Strickland v. Washington. Again, opening statements are not evidence. The purpose of an opening statement is to give the jury a roadmap or an overview of where the case or presentation of evidence is going. Dinitz, 424 U.S. 600 (Burger, C.J., concurring); Brown, 277 S.C. 203, 284 S.E.2d 777; Harris, 275 S.C. 463, 272 S.E.2d 636. It is to assist the jury in understanding the presentation of evidence, and the position of each side in the case. Id. When the prosecution refers to facts in its opening statement, there is no error as long as the solicitor introduces evidence to reasonably support statements made in an opening argument. Kornahrens, 290 S.C. 281, 350 S.E.2d 180. *See also* Sims, 348 S.C. 16, 558 S.E.2d 515. This is exactly what the Solicitor did in her opening statement, provided the jury with an overview or roadmap of where the evidence was going to take the jury and her statements were later supported by testimony actually introduced during the trial of the case.

Alleged Failure to Object to Reference in Opening Statement to Crime Scene

At the PCR hearing, Applicant also alleged counsel was ineffective in failing to object when the Solicitor allegedly stated in her opening statement that Applicant's Blood [DNA] was found at the crime scene. This Court has reviewed the entire opening argument of the Solicitor

(Tr. Trans. Aug. 1, 2011, pp. 271-88) and finds this ground of ineffective assistance of counsel to be without merit.

Opening statements are not evidence. The purpose of an opening statement is to give the jury a roadmap or an overview of where the case or presentation of evidence is going. United States v. Dinitz, 424 U.S. 600 (1976)(Burger, C.J., concurring); State v. Brown, 277 S.C. 203, 284 S.E.2d 777 (1981); State v. Harris, 275 S.C. 463, 272 S.E.2d 636 (1980). It is to assist the jury in understanding the presentation of evidence, and the position of each side in the case. Id. When the prosecution refers to facts in its opening statement, there is no error as long as the solicitor introduces evidence to reasonably support statements made in an opening argument. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986). See also State v. Sims, 348 S.C. 16, 558 S.E.2d 515 (2002). This is exactly what the Solicitor did in her opening statement, provided the jury with an overview or roadmap of where the evidence was going to take the jury and her statements were later supported by testimony actually introduced during the trial of the case.

The Solicitor did not state as Applicant alleges that Applicant's blood was found at the crime scene, i.e. inside Reverend Eichelberger's home. (Tr. Trans. Aug. 1, 2011, pp. 271-88). The Solicitor in her opening statement laid out a road map of what the evidence would show, including that the victim's blood was found in his kitchen, on the winch rod, on the white socks found in the vacant lot, and Applicant's DNA was found inside the same white socks. (Tr. Trans. Aug. 1, 2011, pp. 271-88). The Solicitor did misstate at one (1) point that Applicant's blood was found on the socks found in the vacant lot, but she immediately corrected herself and stated the blood on the socks came back to the victim: "I mean, I apologize, to the victim, and the blood on the winch rod bar came back to the victim. (Tr. Trans. Aug. 1, 2011, pp. 275-76). She again misstated the blood on the socks was the defendant's when explaining that further

DNA testing showed Applicant's DNA was found not on the outside of the socks but on inside the socks. (Tr. Trans. p. 277, ll. 1-14). The Solicitor continued summarizing all of the evidence in her opening statement including Applicant's incriminating statements including one (1) later admitting that the white socks were his and he had taken them off near a dumpster and then changing his story and stating he took them off near a light pole. (Tr. Trans. Aug. 1, 2011, p. 280, ll. 15-25). The Solicitor then corrected her previous misstatement again stating the blood on the white socks belonged to the victim, but Applicant admitted he had worn the white socks and sweated in them. (Tr. Trans. Aug. 1, 2011, p. 280, ll. 15-25).

Furthermore, this Court has reviewed the trial record including the testimony of the DNA analyst before the jury. During that testimony, it was fully explained to the jury that the victim's blood was found on the outside of the white socks and Applicant's DNA was found on the inside of the socks. (ROA pp. 542-59, 561-629, 629-40). This was re-emphasized in the closing argument of the Solicitor.

As a result, this Court finds Applicant has failed to show counsel was ineffective for failing to object to the Solicitor's opening argument that allegedly stated Applicant's blood was found at the crime-scene. Strickland v. Washington. As shown above, the Solicitor did not argue or state in her opening statement that Applicant's blood was found at the crime-scene [Reverend Eichelberger's house]. While the Solicitor misstated Applicant's blood was found on the white socks approximately two (2) residential lots away from the crime-scene, the Solicitor corrected herself and informed the jury it was the victim's blood that was found on the outside of the socks and Applicant's DNA that was found on the inside of the socks. The testimony of the DNA analyst at trial also fully explained to the jury that Applicant's blood was not found in Reverend Eichelberger's home, and that the victim's blood was found on the outside of the white

socks and Applicant's DNA was found on the inside of the white socks. Furthermore, the Solicitor's closing argument reflected the same correct information. As a result, Applicant has failed to show deficient performance in this regard. Strickland. Given this record, Applicant has also failed to show resulting prejudice, i.e. but for counsel's failure to object in this regard, there is a reasonable probability Applicant's trial would have resulted in a different outcome. Id.

Alleged Ineffective Assistance of Counsel for Failing to Object to Arrest Warrants

Applicant alleges counsel was ineffective in failing to object to the arrest warrants he was served with because they were dated the wrong date, May 6th, 2009 and not May 3rd, 2009 and Applicant claims he was never served with the warrants containing the correct date of May 3rd. Applicant alleges this violated his civil rights under the United States Constitution and counsel should have objected or moved to quash the arrest warrants. Applicant was not arrested for this murder and burglary in the 1st degree until approximately one (1) year after the crimes and while Applicant was incarcerated in the South Carolina Department of Corrections for a different offense.

Counsel, Mr. Strickler, testified at the PCR hearing that based on his memory he believed he was aware of the issue with the arrest warrants but he did not raise an objection to them because Applicant was tried on the indictments not on the arrest warrants. Mr. Strickler testified he reviewed the indictments prior to trial and there was nothing deficient about them. Mr. Strickler testified if there had been something wrong or deficient with the indictments, he would have objected to them or made a motion to quash them.

This Court observed the testimony of both Applicant and Mr. Strickler on this issue. This Court finds the testimony of Mr. Strickler on this issue to be credible and the testimony of

Applicant on this issue to be not credible. This Court also finds there is no legal merit to Applicant's contention.

Even if Applicant was not served with the arrest warrants containing the correct date of the burglary and murder of the victim, it makes no significant legal difference. A deficient arrest warrant or a defect in an arrest warrant will not defeat, excuse, or bar a subsequent prosecution of the defendant on an indictment. State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978); State v. Carpenter, 257 S.C. 162 184 S.E.2d 715 (1971); State v. Holiday, 255 S.C. 142, 177 S.E.2d 541 (1970); State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Swilling, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Waitus, 226 S.C. 44, 83 S.E.2d 629 (1954). It is the indictment or indictments on which the defendant is tried, not the original arrest warrants. State v. Castineira, 341 S.C. 619, 535 S.E.2d 449 (Ct. App. 2000), *affirmed on writ of cert.*, 351 S.C. 635, 572 S.E.2d 263 (2003); State v. Cody, 180 S.C. 417, 186 S.E. 165 (1936). The subsequent indictment cures any defect in the arrest warrant. State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Swilling, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958). *See also* State v. Bowman, 43 S.C. 108, 20 S.E. 1010 (1895). Further, the original warrants stated the victim was murdered *on or about* the 3rd day of the month and the subsequent warrants stated the victim was murdered *on or about* the 6th day of the same month. As a result, regardless of what warrants Petitioner was served with, Petitioner was on notice of the crime he was charged with, the murder of Reverend Tryon Eichelberger and the burglary of his home at night. *See* Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). Furthermore, the indictments correctly stated the date of the murder and burglary in the 1st degree and were sufficient. State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005);

Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000); State v. Jones, 333 S.C. 6, 507 S.E.2d 324 (1998); Granger v. State, 333 S.C. 2, 507 S.E.2d 322 (1998); State v. Wade, 306 S.C. 70, 409 S.E.2d 780 (1991); State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987); State v. Hardee, 279 S.C. 409, 308 S.E.2d 521 (1983); State v. Tabory, 262 S.C. 136, 202 S.E.2d 852 (1974); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. Perry, 87 S.C. 535, 70 S.E. 304 (1911). Therefore, even if any error in the arrest warrants, the error was cured by the indictments. State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Swilling, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958). As a result, Petitioner has failed to prove either prong of the Strickland analysis. Counsel was neither deficient for not objecting to the service of the arrest warrants nor has Petitioner shown any resulting prejudice. Strickland. Even had counsel objected or moved to quash the arrest warrants on this basis, the result of Applicant's proceeding would not have been different as Applicant was tried and convicted on the valid indictments. Strickland. The objection to the arrest warrants would have been overruled. As a result, Applicant has failed to show resulting prejudice. Strickland.

Alleged Failure to Object to the Closing Argument

At the PCR hearing, Applicant alleged counsel should have objected to the Solicitor's closing argument: (a) that Applicant caused the head injury to the victim depicted in an autopsy photograph that was admitted in evidence (b) when the Solicitor held up the winch rod before the jury and argued Applicant wielded the murder weapon like a baseball bat; and (c) when the Solicitor argued Applicant committed the crimes against the victim. Counsel testified at the PCR hearing that he did not object to the Solicitor's closing arguments above because the Solicitor is allowed to argue the evidence and the reasonable inferences therefrom; and that is what the

Solicitor was doing at these points in her closing argument. Counsel testified the Solicitor was not referencing the testimony of one (1) particular witness in this regard, as Applicant alleges, but arguing all of the evidence in the case and the reasonable inferences therefrom. As a result, counsel testified these arguments of the Solicitor were not objectionable and an objection would have been overruled.

This Court had the opportunity to observe the testimony of counsel and Applicant on this issue. This Court also had the opportunity to review the closing argument of the Solicitor. This Court finds counsel's testimony on this issue to be credible and supported by the record and case law. And, this Court finds Applicant's allegations in his testimony in this regard are not credible and without merit.

Courts must review an alleged improper argument in the context of the entire record. State v. Patterson, 324 S.C. 5, 482 S.E.2d (1997); State v. Rice, ___ S.E.2d ___, 2007 WL 2914651 (Ct. App. Oct. 5, 2007), *citing Patterson*. Considerable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence. Johnson v. Life Ins. Co. of Ga., 227 S.C. 351, 88 S.E.2d 260 (1955). A lapse of good taste will rarely constitute prejudicial error nor will robust language introduce an arbitrary factor. State v. Chaffee, 285 S.C. 21, 328 S.E.2d 464 (1984). Arguments must be confined to the evidence in the record and reasonable inferences therefrom, although failure to do so will not automatically result in reversal. State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997). A new trial will not be granted unless the comments so infected the trial with unfairness so as to make the resulting conviction a denial of due process. Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868 (1974); State v. Bennett, 369 S.C. 219, 632 S.E.2d 281(2006); Patterson. "[W]hether or not the particular arguments are so prejudicial as to constitute reversible error depends upon the nature of the

utterances and the circumstances under which they were made." Bennett, quoting South Carolina State Highway Dep't. v. Nasim, 255 S.C. 406, 179 S.E.2d 211 (1971).

The Solicitor may argue the evidence in the record and the reasonable inferences from that evidence, especially in a circumstantial evidence case. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999); State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). The Solicitor may argue his version of the testimony and comment on the weight to be given to the testimony of the witnesses. State v. Raffaldt, 318 S.C. 110, 456 S.E.2d 390 (1995); State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976); State v. Pitts, 256 S.C. 420, 182 S.E.2d 738 (1971). The Solicitor may argue that the evidence shows beyond a reasonable doubt that the defendant is guilty of the crimes charged. State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976)(a prosecutor may argue to a jury to return a verdict that she conceives it is their duty to return based upon the evidence presented in the trial); State v. Caldwell, 330 S.C.494, 388 S.E.2d 816 (1990)(a prosecutor may argue her case vigorously and give her version of the testimony, and what weight or credibility should be given to the evidence); State v Cannon, 220 S.C. 614, 93 S.E.2d 880 (1956). It is also proper for the Solicitor in closing arguments to hold up an exhibit to the jury or play tapes or recordings admitted into evidence. State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979); State v. Mishoe, 198 S.C. 215, 17 S.E.2d 142 (1941). In closing argument, the prosecutor may take an alleged murder weapon and demonstrate the use of such weapon and how it might have been used in the murder. State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996); State v. McIver, 238 S.C. 401, 120 S.E.2d 393 (1961). See also State v. Ash, 526 N.W.2d 473 (ND 1995)(having sheriff lie on floor while counsel held rifle to ear, consistent with pathologist testimony, not improper demonstration of how death occurred); People v. Bush, 430 N.E.2d 514 (Ill. App. 1981)(closing argument

demonstration using live model held proper); State v. Kroll, 558 P.2d 173 (Wash. 1976)(demonstration by prosecutor using one other than accused not improper where prosecutor was showing jury manner in which the crime might have been committed, prosecutor was demonstrating a reasonable inference from the evidence, the trial court placed restrictions on the demonstration, and the jury was instructed the demonstration was not evidence); People v. Caldaralla, 329 P.2d 137 (Cal. 1958)(closing argument demonstration using live model held proper); Herron v. Commonwealth, 64 SW 432 (Ky. 1901)(closing argument demonstration using live model held proper); Jacob Stein, Closing Arguments 2d, Section 1:64, © 2008 Thompson Reuters/West.

In the present case, in her closing argument, the Solicitor was not referencing or arguing the testimony of a specific witness that saw Applicant kill the victim, but arguing based on all of the evidence in the case, including the circumstantial evidence, Applicant was the person who committed these crimes. This was proper argument based on all of the evidence in this case. Further, the Solicitor's demonstration with the winch bar how Applicant killed the victim was entirely proper based on all of the evidence in the case. Brisbon; McIver. The argument was not objectionable and any objection would have been overruled. As a result, counsel was not deficient in failing to object to this portion of the Solicitor's closing argument, nor was Applicant prejudiced by any failure to object. Strickland v. Washington.

Alleged Ineffective Assistance of Appellate Counsel

Applicant specifically alleges his appellate counsel, Katherine Hudgins, was ineffective in failing to raise the issue of the admissibility of Tamika Ashford's testimony on direct appeal. This Court had the opportunity to observe the testimony of Ms. Hudgins and Applicant on this issue. This Court also had the opportunity to review Ms. Ashford's testimony before Judge

Newman and before the jury. This Court finds that Ms. Hudgins testimony on this issue was credible and Applicant's testimony on this issue was not credible. This Court also finds Ms. Hudgins testimony is corroborated by the record and her appellate brief.

As the record reflects, Tamika Ashford was an eyewitness [and ear-witness] to the facts surrounding the murder of Reverend Eichelberger, the victim in this case. See State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014). Ms. Ashford was present in Reverend Eichelberger's home when she and the victim heard a noise at the back of the victim's house. Ashford saw the victim go to the back of the house to investigate the noise and then heard the victim state out loud to someone in the back of the house: "how did you get in here." She then heard noises similar to a scuffle or struggle. Afraid, Ms. Ashford ran from the home and to her car and drove around the block and upon returning to the victim's residence saw an individual, standing on the victim's front porch or in the victim's front yard, who was holding a metal pipe in his hand and wearing what appeared to be white gloves. Ms. Ashford called the police and waited nearby until police arrived. While waiting nearby, Ms. Ashford saw the same individual walking down Farrow Road but without the metal pipe or the white gloves on. Ms. Ashford returned to the victim's home when police arrived and gave them a general description of the suspect. Ms. Ashford did not make an in-court identification of Applicant. It was brought out that she actually identified the wrong person in a show-up procedure shortly after the crime and then picked Applicant's picture out of a line-up at a later date as one (1) of two (2) persons in the line-up who looked most like the person she saw in the victim's yard the night of the murder. She stated Applicant's picture looked most like the perpetrator of the two (2) individuals she identified in the photo line-up; however, again she did not make a positive identification of

Applicant and did not make an in-court identification of Applicant. She testified Applicant met the general physical characteristics of the person she saw on the victim's front porch.

As Ms. Ashford's testimony surrounding the events the night of the victim's assault were relevant and admissible for several different reasons, appellate counsel was not ineffective for failing to raise the admissibility of her testimony on direct appeal. Jones v. Barnes; Strickland v. Washington. See also Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001)(ineffective assistance of counsel claims based on a failure to object to the admission of certain evidence are tied to the admissibility of the underlying evidence; if the evidence was admissible in any event, then the claims fails both prongs of Strickland as it was neither deficient nor prejudicial not to object).

Ms. Ashford was an eyewitness [and ear-witness] to the events surrounding the victim's murder and could describe for the jury exactly what she saw and heard and describe for the jury what the man she saw in the victim's front yard looked like, what he was wearing, and what he was holding. This testimony was highly relevant, probative, and admissible to the State's case on both murder and burglary in the 1st degree. Her testimony of how Reverend Eichelberger was murdered was corroborated by other evidence presented by the State in its case in chief, including the discovery of a metal pipe [a winch rod] in a neighbor's yard which contained the victim's blood and the discovery of two (2) white socks near a light pole in a nearby vacant lot that also contained both the victim's blood and also Applicant's DNA inside the white socks. And, Ms. Ashford established at what time Reverend Eichelberger was murdered and that the murder occurred in his home in Richland County. Simply because she could not positively identify Applicant as the perpetrator does not make her testimony inadmissible. Her testimony was relevant and admissible on several different issues in the case and any objection to the admissibility of her testimony at trial was properly overruled by the trial judge, Judge Newman.

Further, her testimony was so relevant and probative on these different issues that its probative value outweighed any prejudicial effect. Rule 403, SCRE. In fact, she was *the only eyewitness* to the crimes against Reverend Eichelberger.

On appeal, the South Carolina appellate courts would have reviewed Judge Newman's admission of Ms. Ashford's testimony under an abuse of discretion standard. See State v. McWee, 433 S.C. 307, 472 S.E.2d 235 (1996)(whether evidence is relevant and admissible is in the sound discretion of the trial judge); State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989)(a trial judge's determination of admissibility of evidence will not be disturbed on appeal absent a showing of abuse of discretion that has resulted in prejudice to the complaining party). And great deference is given to a trial judge's decision regarding the comparative probative value and prejudicial effect of evidence with the judgment of the trial judge only being reversed in exceptional circumstances. State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004), *affirmed in part, reversed in part* 369 S.C. 424, 632 S.E.2d 845 (2006); State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004); State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003).

As a result, appellate counsel was not ineffective in failing to raise the admissibility of Ms. Ashford's testimony on direct appeal. Having reviewed the appellate court records, including the direct appeal briefs, the issue Applicant alleges appellate counsel should have raised on appeal is not clearly stronger than the issues that were raised by appellate counsel for the reasons stated previously above. Smith v. Robbins, 528 U.S. 259, 285 (2000); Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000). Nor has Applicant established prejudice from appellate counsel's performance. Because Ms. Ashford's testimony was relevant and admissible, its probative value outweighed any prejudicial effect, and given the standard of review on appeal,

there is no reasonable probability Applicant would have prevailed on appeal had appellate counsel raised this issue. Id.

Applicant also alleges appellate counsel was ineffective in failing to raise on direct appeal the admissibility of the theft of the truck from Camden. As this issue was raised on direct appeal by appellate counsel and decided by the South Carolina Court of Appeals adverse to Applicant [*see State v. McGee*, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014)], there is absolutely no merit to this allegation and it must be denied and dismissed with prejudice. Smith v. Robbins; Bell v. Jarvis.

Alleged Failure of DNA Lab to Follow Scientific Protocol

Finally, at the PCR hearing Applicant alleged the DNA Lab did not follow proper scientific protocol when it extracted his DNA from the inside of the white socks found near the crime scene. This claim is not cognizable on post-conviction relief. This is a claim of trial court error in the admission of evidence and as a result may not be raised in PCR and must be dismissed with prejudice. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)(citations omitted)("Allegations of trial court error are not cognizable on PCR. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993)(issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel), *citing* S.C. Code Ann. Section 17-27-20(b) (1985); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975), *also referencing* Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973);

Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973). As a result, Applicant's complaints against the trial judge, Judge Newman, are denied and dismissed with prejudice.

Furthermore, even if this claim was cognizable, or Applicant is raising a claim of ineffective assistance of counsel for failing to object to the admission of the DNA evidence for this reason, there is no merit to this argument. This Court finds based on its hearing Applicant's testimony and reviewing the entire record, that Applicant's testimony in this regard is not credible. Further, the record of the trial proceeding shows the DNA laboratory followed its protocol's in extracting and developing the DNA samples and DNA profiles in this case including those of the victim, the Applicant, and from the evidence recovered in the case. (ROA pp. 542-59, 561-629, 629-40). This was confirmed by two (2) different witnesses at trial, John Barron and Gray Amick, the DNA experts. (ROA, pp. 542-640). And, counsel extensively cross-examined the DNA experts about whether or not they followed the laboratory's protocol's in extracting and developing the DNA samples and DNA profiles and determining who they matched and who they did not match. (ROA, pp. 542-59, 561-629, 629-40). This Court finds based on the trial record, the State laid a proper foundation for the admission of the DNA evidence, and any objection by trial counsel in this regard would have been overruled. Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001)(ineffective assistance claims based on failure to object are tied to the admissibility of the underlying evidence; if the evidence admitted without objection was admissible in any event, then the complaint fails both prongs of the Strickland test, as it was neither deficient nor prejudicial not to object). As a result, Applicant has failed to show deficient performance or resulting prejudice on any ineffective assistance of counsel claim. Strickland.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this manner and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has waived and abandoned any such allegations, and Applicant failed to meet his burden of proof regarding them. Rule 71.1, SCRPC; Strickland; Butler v. State.

CONCLUSION

For the above stated reasons, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. 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 intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g) SCRPC; Bray v. State, 446 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

IT IS SO ORDERED.



The Honorable Paul M. Burch
Presiding Judge
Richland County

November 9, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 14, 2010, the Jurors of
Richland County present upon their oath:

MURDER

That Frankie Lee McGee did in Richland County, on or about May 3, 2009, willfully, feloniously, and intentionally kill the victim, Tryon Eichelberger, with malice aforethought, either express or implied, by means of blunt force trauma to the head, and the victim did die as a proximate result thereof, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


WARREN B. GIESE, SOLICITOR

WITNESSES

(s) Kevin E Reese - CPD

ARREST WARRANT NUMBER

K642495

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 16 2010

VERDICT

Guilty

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-0121

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

42

**THE STATE
vs.**

FRANKIE LEE MCGEE

**Indictment for
MURDER**

16-03-0010

0116

Class FEL/EXM(V)

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

Defendant

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

Defendant

Witness:

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

1698
ORIGINAL FILED
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

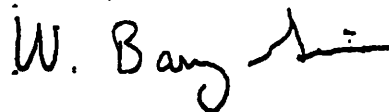
INDICTMENT

At a Court of General Sessions, convened on APRIL 14 2010, the Jurors
of Richland County present upon their oath:

BURGLARY- 1ST DEGREE

That Frankie Lee McGee in Richland County on or about May 3, 2009,
willfully and unlawfully enter the dwelling of Tryon Eichelberger without consent
and with the intent to commit a crime therein and when, effecting entry or while in
the dwelling or in immediate flight, the defendant was armed with a deadly
weapon and/or caused injuries to a non-participant of the crime and/or
threatened the use of a deadly instrument and/or entered or remained during the
hours of darkness and/or the defendant has two or more prior convictions for
burglary all in violation of Code Section §16-11-311, Code of Laws of South
Carolina (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

WITNESSES

(S) Kevin E Reese - CPD

ARREST WARRANT NUMBER

K642496

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 16 2010

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-40-0124

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

42

THE STATE

vs.

FRANKIE LEE MCGEE

**BURGLARY
1ST DEGREE**

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

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

Defendant

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

Defendant

Witness:

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

1610
SOUTH CAROLINA
RICHLAND COUNTY
CLERK OF COURT
OFFICE OF ORIGINAL FILING
CERTIFIED TRUE COPY
APR 16 2010