VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

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S.C. SUPREME COURT

SYLVESTER KEEJUAN KING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002278

APPENDIX

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1 house; right?
2 A That's -- yeah. That's the same thing.
3 Q It's the same thing?
4 A That's -- that's the same -- same fight.
5 Q So -- but her testimony was that you sustained the
6 injuries from some type of store where you got jumped, or
7 something like that; right?
8 A Right. I don't -- I said I got robbed at my friend
9 girl's house. I don't know anything about a store. I
10 never got robbed at a store. I got robbed at Janice's
11 house.
12 Q So you're saying that these two stories are,
13 essentially, the same. Is that your testimony?
14 A Right. What I'm saying is that I got robbed at her
15 house, not -- not at no liquor house. That's the -- I
16 guess the statement she gave -- and she gave about two --
17 two different statements, I believe. I believe she said
18 she was there, then she said she -- she recanted her
19 statement and said she wasn't there. So I -- I don't know
20 which ones she gave.
21 Q Okay. So about this DNA evidence. Did Mr. Kornfeld
22 hire a private investigator?
23 A He -- he said he did, but he didn't go with no DNA.
24 The only thing that the investigator said that -- You know
25 you done it. You -- things -- he said, You know -- he

1 said, You know you done it. That he talked to some people
2 that said you done it.
3 I said, Well, if I talked to them people -- I said,
4 Well, who was the people that you talked to?
5 And he -- he would say, Oh, you -- you got a -- I
6 think he said you've got a -- a drug charge -- not a drug
7 charge, but a breach of peace charge and a gun charge.
8 That's what he said.
9 Q Okay. So Mr. Kornfeld didn't investigate your case.
10 He didn't call the witnesses that you wanted him to call.
11 Are those witnesses going to be here today to testify for
12 you?
13 A No. I -- I haven't talked to none of them.
14 MR. MITCHELL: Okay. Thank you, Judge.
15 That's all the questions I have.
16 THE COURT: All right. Anything else, Ms. Ross?
17 REDIRECT EXAMINATION
18 BY MS. ROSS:
19 Q When we discussed finding witnesses, did you have any
20 idea where they were now five or six years later?
21 A The main one that I know of --
22 Q Well, listen to my question. When we -- when I went
23 down to Perry and we talked about how I find these
24 witnesses, could you tell me this -- this much later where
25 they were?

1 A Yeah. I -- one of them is -- I know -- the names of
2 them I know them like that. And one of them is Raquan.
3 And the other one is Steve. I really don't -- I don't
4 know his first name, but.
5 Q Okay. And Raquan testified at your trial; correct?
6 A Right.
7 Q And you allege that if the trial had happened faster,
8 if it was a speedy trial --
9 A Right.
10 Q -- you would know where these witnesses were?
11 A Right. He -- he -- yeah.
12 Q But, now, you don't know where they are, do you?
13 A Right. They -- they -- they probably could -- they
14 probably could -- the one guy that I know, they
15 probably -- all they had to do was pull -- pull his
16 record. Because he was across -- he was across the hall
17 from me. And that -- that's the one that I was trying to
18 get Alex Kornfeld, you know, to go and investigate him.
19 MS. ROSS: All right. I've got no further questions.
20 MR. MITCHELL: I do have one additional question.
21 THE COURT: Go ahead, Mr. Mitchell.
22 RECROSS-EXAMINATION
23 BY MR. MITCHELL:
24 Q Mr. King, in terms of you testifying, did you have a
25 conversation with Mr. Kornfeld about testifying at your

1 trial?

2 A It was maybe two minutes before I was going on the

3 stand and he didn't -- he didn't prepare me to go -- to

4 get on the stand and testify.

5 Q But you knew you had a right to testify, if you chose

6 to?

7 A I -- I didn't even know that either. That -- I

8 didn't know -- I didn't know none of my rights.

9 Q So the Judge didn't go over that with you during your

10 trial?

11 A Right. But I'm -- I'm -- you know, I'm not the

12 brightest person, you know --

13 Q That's a "yes" or "no" question. Did the Judge go

14 over it with you or not?

15 A Right.

16 Q "Yes"?

17 A Yes.

18 MR. MITCHELL: Thank you.

19 THE COURT: All right. Anything else, Ms. Ross?

20 MS. ROSS: No, Your Honor.

21 THE COURT: All right. I have no questions.

22 You can step down.

23 Does the Applicant have any other witnesses,

24 Ms. Ross?

25 MS. ROSS: No, Your Honor.

1 THE COURT: All right. Is the State ready to
2 proceed?
3 MR. MITCHELL: We are, Your Honor.
4 The State would call Mr. Alex Kornfeld to the stand.
5 THE COURT: Mr. Kornfeld, come around, please, sir.
6 THE CLERK: Mr. Kornfeld, hi. Please place your left
7 hand on the Bible and raise your right hand.
8 WHEREUPON,
9 ALEX KORNFELD,
10 after first having been duly sworn, testified as follows:
11 THE CLERK: Thank you.
12 You may be seated.
13 And, please, state your full name for the record.
14 THE WITNESS: My name is Alex Kornfeld.
15 DIRECT EXAMINATION
16 BY MR. MITCHELL:
17 Q Good morning, sir.
18 How are you?
19 A Good.
20 How are you?
21 Q I'm doing well.
22 How long have you practiced law here in South
23 Carolina?
24 A It'll be nine years in November.
25 Q Okay. And how much of that time has been devoted to

1 criminal law?
2 A I've practiced criminal law since early 2010 after I
3 got my 403s. Since that time, I've continued to practice
4 criminal defense.
5 Q And since that time, how many cases do you think that
6 you've tried?
7 A Probably -- criminal cases?
8 Q Yes, sir.
9 A Probably 20 to 25.
10 Q Okay. And let me ask you. In this particular case,
11 were you retained or appointed to represent Mr. King?
12 A Appointed.
13 Q Okay. And if you could, to the best of your
14 ability -- I know it's been some time -- if you could just
15 give me a brief -- facts about how the charges arose in
16 this case?
17 A I believe he was charged in late March of that year.
18 I was appointed in late June of that year. His charges
19 arose -- he was charged with the murder of Janice
20 Hackett-Lewers.
21 The allegations were that he came over to
22 Ms. Hackett-Lewers' home in a brief time frame with
23 Mr. Raquan Lewers, Ms. Janice Hackett-Lewers' son, left
24 with, I think, two friends for a short period of time.
25 And then the allegation was that he went in the home

1 and -- and stabbed Ms. Janice Hackett-Lewers.
2 Then he left is the allegation and then went to
3 Anderson and, eventually, went to the Anderson AnMed
4 Hospital somewhere in Anderson and had a stab wound
5 that -- he had a pretty pronounced stab wound that he had
6 to have taken care of over there.
7 Q Okay. Thank you.
8 Now, during the course of your representation, can
9 you recall about how many times you met with Mr. King?
10 A I met with him at least -- at least, 10 times. But
11 there was other times that I met with him and I -- I just
12 met with him. I didn't meet with anybody else when I
13 went.
14 Also, I was able to petition the Court to get an
15 investigator in this case. We were able to get Lewis
16 Mahaffey, who, I guess, was a -- he's a retired police
17 officer. And he went with me. I let Mr. King know, hey,
18 we were able to get an investigator in this case. He's
19 going to come with me to meet with you. Let me know
20 certain things that you would like to be investigated.
21 And I, also, know that Mr. Mahaffey, at least, on one
22 occasion went to see him without me as well.
23 Q Okay. And so during these -- these first meetings,
24 did you go over the charges that he was facing with --
25 with him, and then the possible punishments that he was

1 facing as well?

2 A Yeah, I did.

3 Q Okay. And his Constitutional rights, and the State's

4 burden of proof?

5 A That's correct. Yes.

6 Q Okay. And so at some point -- well, I guess I should

7 ask you, did you file a Rule 5 to get discovery in the

8 case?

9 A I did, yeah.

10 Q And then once you got the discovery, did you share

11 that with the Applicant?

12 A I did. I -- I brought here -- he signed -- it looks

13 like I gave him discovery on July 28th, 2015, what I had

14 at that time. And I just want to say, you know, I gave

15 him the paper copy. I didn't give him CDs, or anything

16 like that. It just says I gave him discovery. But he

17 couldn't have the CDs, or things like that. But any paper

18 discovery I gave him.

19 Q Okay. And once he got the discovery, did you go down

20 and talk to him about the discovery that you had?

21 A Yes.

22 Q Did you guys discuss it?

23 A Yes.

24 Q Okay. And during those conversations, did he ever

25 seem to indicate to you that he didn't understand anything

1 that you guys were talking about?
2 A No. He didn't indicate that he didn't understand
3 anything. He did -- he did talk about the DNA a decent
4 amount. And that's why we asked, also, Mr. Mahaffey to
5 discuss that, you know. He sent me a letter concerning,
6 you know, the DNA issues, and the pro's and con's of going
7 down that road.
8 Q Okay. And what was your, I guess, conclusion, if
9 that's a good word? What was your thoughts on -- on --
10 A Well, and I -- I did talk to Mr. King about this.
11 But the DNA records in the house, one, they do show --
12 they did show Mr. King's blood was inside the house, as
13 well as in his vehicle. When I say "inside the house," I
14 mean Janice Hackett-Lewers' home.
15 And they did show that in some instances -- it
16 wasn't, you know, just clear like this is
17 definitely Janice. Some say a -- you know, a minor
18 contributor of a female. Others said that it was Janice
19 Hackett-Lewers. Some said it was Mr. King's. And some
20 said it was a mixture. And they weren't able to tell
21 whose blood that it may have been.
22 After speaking with Mr. Mahaffey and talking to
23 Mr. King, we thought that making -- making those arguments
24 as to there being a question about what the blood was was
25 a better approach than -- than investigating that

1 particular issue further.

2 Q Okay. And so in terms of this case, what type of

3 investigation did you do? Did you -- did he offer any

4 witnesses for you to contact? What'd you do to get

5 started?

6 A Well, I asked him to -- let him know that we were

7 coming with Mr. Mahaffey. Mr. King told us that he was

8 picked up from -- close by from the scene of Mr. -- Ms.

9 Janice Hackett-Lewers by I believe a white Ford Ranger by

10 an unknown Mexican man that he could not give us any

11 information about who it was, where he was, any other

12 things about how to investigate, which made it difficult

13 for us to try and, you know, seek who this man was. And

14 he wasn't able to give us anything else.

15 I do remember Mr. King telling me about a Crack. But

16 he couldn't tell me any other names. I definitely don't

17 have any records that say that he was in GCDC at that

18 time.

19 Q And so in terms of approaching -- well, I guess I

20 should back up. Were there ever any plea officers -- plea

21 offers offered to him by the State?

22 A No. Ms. -- the assistant solicitor, Ms. Munson, did

23 say, you know, If y'all want to plead straight up, you

24 can. Mr. King was not interested in doing that, you know,

25 to a straight up murder charge. But there were never any

1 written offers, or anything like that.
2 Q Okay. And then let me ask you about the witnesses
3 who testified at trial. I think the transcript reflects
4 that one of Mr. King's girlfriends, or a friend who
5 happens to be a female, testified at trial?
6 A Ms. Martin?
7 Q Yes.
8 Could you tell me a little bit about her, and how she
9 played a part in the trial?
10 A Ms. Martin was one of Mr. King's girlfriends -- or,
11 as he says, friend girl's that he went to her house, you
12 know, after this incident occurred. And she testified
13 concerning, you know, that, and I guess trying to bridge
14 the gap between when he went to the Anderson -- Anderson
15 hospital for the stab wound.
16 Q And I -- correct me if I'm wrong. The theory of the
17 case was that he was at the house and an intruder broke in
18 and he got away, and both -- and him and the victim got
19 stabbed; correct?
20 A That's right. That's correct.
21 Q Okay. Now, was Ms. Martin's testimony the same as
22 the theory of the case?
23 A No.
24 Q Okay. What was Ms. Martin's testimony?
25 A Ms. Martin's testimony was that he was -- he was

1 stabbed at a liquor store in Anderson County. And that he
2 left the liquor store to go get her to go to the Anderson
3 hospital, I believe.
4 Q And her testimony was based on a conversation she had
5 with the Defendant; right?
6 A That's correct.
7 Q Okay. Now, let me ask -- let me ask you a little bit
8 about the trial itself, and then some of the specific
9 allegations that are alleged in the Applicant's complaint.
10 One of the allegations is failure to object to hearsay by
11 the investigator. And I don't know if you have a copy of
12 the transcript with you.
13 A I don't.
14 Q Are you familiar with the allegations?
15 A I am, yes.
16 Q Okay. And so one of the investigators made a
17 statement about Mr. -- hearing a statement from the
18 Applicant that he called into work and that he was the
19 victim of a home invasion. And I think the allegation is
20 that you did not object to hearsay, but you made an
21 objection; correct?
22 A I did.
23 Q Okay. And what was your rationale or thinking behind
24 that objection?
25 A I -- I mean, I believe that it -- it would -- if he

1 stated it -- that's why I wanted them to lay a foundation.
2 There could be, you know, exceptions at that time. Judge
3 Pyle just, I believe, overruled the objection.
4 Q Okay. And then the next allegation is failure to
5 request a -- a voir dire of the jury about whether any
6 jury member had been a victim of a violent crime. You
7 didn't make any additional -- or ask the Judge to ask any
8 additional questions, did you?
9 A I didn't, no.
10 Q Okay. Did you have any rationale to that at all
11 or...
12 A Judge Pyle had been on the bench for a fairly long
13 time. I believed that he was going to make the charges
14 that -- that he would -- thought would suffice there. He
15 asked if there were any issues concerning anything else
16 that would make them, you know, prejudiced, or anything
17 like that.
18 But in hindsight, you know, yeah, I guess I should
19 have asked, you know, about the victims -- asked that to
20 be charged, regardless of what Judge Pyle may or may not
21 have done.
22 Q Okay. And then the next -- the next allegation is
23 failure to object to Raquan Lewers, who is the son of the
24 victim; right? Is that correct?
25 A That's correct, yeah.

1 Q Okay. Failure to object to his testimony that he
2 believed his mom was trying to get away from the Applicant
3 in this particular case. Is there a reason why you didn't
4 make an objection to that comment?
5 A The -- if my recollection goes well enough, I -- I
6 believe I didn't want to bring attention to that. I was
7 thinking that I would be able to cross-examine him on his,
8 you know, flashy cars, things of that nature. I -- I
9 think I probably just wasn't quick enough to -- to get up
10 there to object quick enough.
11 Also, he -- I believe he just said that she was
12 trying to, you know, move away, things like that. To me,
13 the context was, you know, they were on-again off-again.
14 There was several text messages. I didn't want them to be
15 able to, you know, bolster that, or try and bring any more
16 evidence in to be able to prove that any more.
17 Q Okay. And part of your theory of the case was that
18 an intruder came in. Did you guys have an idea of who you
19 wanted that intruder to be, or did you -- did you not?
20 A We didn't know who it was or -- or where it was. And
21 I don't think that we were going to be able to -- we
22 weren't able to ascertain who it was. But the theory was
23 that Ms. Janice Hackett-Lewers was married to Mr. Lewers.
24 They were estranged. He lived in Spartanburg for a while.
25 And then he moved out to California.

1 There was a settlement that Mr. Raquan Lewers had
2 that we learned about in -- which he was going to get when
3 he turned around 18. Ms. Hackett-Lewers, I guess, was the
4 trustee, or she was -- she controlled that money until he
5 turned 18. And he was about to -- Mr. Lewers was about to
6 turn 18.
7 The theory was that either Mr. Lewers or Raquan --
8 Mr. Lewers, the husband, or Raquan had something to do
9 with this, or had someone else do it.
10 Q Okay. And then the next allegation is failure to
11 point out that at the time of the stabbing Mr. King, the
12 Applicant, and the victim had been separated for four
13 years and not the year to -- the witness, the son, had
14 stated at trial. Do --
15 A I mean, I think that was fuzzy. One, I think that he
16 could say that they were together. They -- they texted
17 regularly on and off.
18 Mr. Raquan Lewers saw Mr. King as a father figure, at
19 least, at some point, I think, you know, called him -- I'd
20 have to look at the transcript -- but called him daddy,
21 things like that. They still had a decent relationship.
22 But they were on and off again.
23 I think that'd be a question of fact whether or not
24 they were together for, you know, four years or two years,
25 things like that. But they were definitely texting a lot.

1 Mr. King, you know, I think probably proudly had several
2 friend girl's in his life.
3 Q Then the next allegation is failure to fully
4 investigate and clarify for the jury about phones that
5 were found at the scene, DNA evidence, and then shoe print
6 evidence.
7 A Okay.
8 Q And we can take them in -- in separate parts.
9 A Sure.
10 Q In terms of the phones that were found there, did you
11 feel like that had some type of evidentiary value in the
12 case, something that you needed to take a look at
13 strongly?
14 A Well, I mean, there were -- I guess I don't remember
15 exactly, you know, all the phones that -- that were there.
16 I -- I don't remember all the -- the phones that were
17 found and -- and why that was necessarily, you know --
18 what -- what do you want to know about the phones?
19 Q Well, I guess do you recall any damming evidence
20 coming in about -- anything about phones at all?
21 A No.
22 Q Okay. And in terms of the DNA evidence in this
23 particular case, I know you -- did you discuss the DNA
24 evidence with the Applicant?
25 A Yes.

1 Q Okay. And in your interpretation of it, was it --
2 did it help you? Did it hurt you?
3 A I think it -- I mean, it was positive that it wasn't
4 just his DNA or just -- well, let me say, it wasn't --
5 they couldn't conclusively state -- the State couldn't
6 conclusively state that it was just Mr. King and
7 Ms. Janice Hackett-Lewers' DNA. There was, you know, some
8 third unknown alleles there, or DNA there. And, yeah, I
9 mean, I thought that that was positive for us.
10 Q And the third DNA potentially -- since -- you said
11 that the theory of the case was an intruder being there
12 potentially would have been helpful for your case?
13 A That's correct. Yes.
14 Q And in terms of this shoe print evidence, did --
15 A He had a -- there was a -- a shoe print in the house,
16 I think, that had his DNA on it. It was like a green and
17 black shoe.
18 I guess they're talking about the shoe prints that
19 were in his vehicle; is that correct?
20 Q Ms. Robinson [sic] may have to expand a little bit
21 further. And I may ask you additional questions again.
22 Because that's all the allegation says, so.
23 A Okay.
24 Q But I may come back up and ask you again.
25 A Yeah. That's fine.

1 Q But I'll -- I'll move on. Failing to advise the
2 Applicant not to testify. What was your conversations
3 with him about him testifying at trial?
4 A I didn't think it was in his best interest to
5 testify. I, also, didn't think it was in his best
6 interest for his sister to testify. He stated that his
7 sister needed to testify because, I guess, he had -- was
8 cut as a child. I think you can see on his face, he does
9 have a scar.
10 And Mr. King states that he was terrified of knives
11 and the jury needed to know that he would never, you know,
12 have been around a knife, or been able to -- to do any of
13 those things. So his sister needed to testify to that.
14 Ultimately, he -- he didn't take my advice concerning
15 his sister. And his sister did testify. He did take my
16 advice concerning himself, and he didn't testify.
17 Q Why did you advise him he shouldn't testify?
18 A That was more of a, you know, gut thing. And I've
19 got letters to him about different things. I did not --
20 as he sat up here, too -- and I had a picture -- I don't
21 know if you ever -- can see it now, but he had a huge
22 scar, the inconsistencies concerning his statement, the
23 evidence of the DNA there.
24 I -- I did not think that he being able to testify
25 was a good thing, you know, concerning, you know, who else

1 did this. He can't give me any information. I -- I did
2 not think that he would make a credible witness.
3 Q Okay. And then --
4 A And I -- I did tell him that, you know, before in
5 letters, you know, unfortunately, I don't believe that a
6 jury would believe you.
7 Q Okay. Another one of his allegations, failure to
8 secure -- advise him of a plea offer. And I think you
9 testified to the fact that there was never really one that
10 was -- besides pleading straight up?
11 A Yeah. I don't -- I don't remember anyone -- anything
12 like that. I -- I know that -- I think that Ms. Munson --
13 my recollection is Ms. Munson said that, you know, he
14 could plea straight up.
15 Q Okay. And then the last allegation is a supplemental
16 application, failure to object to the jury instructions
17 that Judge -- the Judge gave about charging them to return
18 a verdict that speaks the truth. Did you find any issue
19 with that and that you should object to at all?
20 A I -- I think that -- yeah. I probably should have
21 objected to that, you know. That's not really -- it's
22 beyond a reasonable doubt, not necessarily the truth on
23 that. But, yeah, sure.
24 Q Well, let me ask you this. Had the Judge articulated
25 the -- the burden to the jury, who had the burden?

1 A Yes. Yeah, he did. He did do that.
2 Q Okay. And then just a -- a few more questions about
3 some allegations that were brought up during Mr. King's
4 examination. In terms of a preliminary hearing, did you
5 see the need to have one at all or...
6 A Well, I do like to have them. I was appointed about
7 three months after. I think that's after the window that
8 I can request a preliminary hearing.
9 Q Very good. And he was directly indicted as well,
10 too?
11 A That's correct. Yes.
12 Q Okay. In terms of -- did you see any issues with --
13 or that you needed to file a motion to quash any type of
14 indictment?
15 A No. I -- if I remember correctly, I think he -- the
16 administrative rule is that they have to have -- they have
17 to try a case within a certain amount of time. It's --
18 it's an administrative rule. I've brought that several
19 times. There's case law on it. I'd like to think that --
20 you know, that that would cause a case to be dismissed,
21 but it's just not the case.
22 Q Okay. And in terms of filing a motion for a speedy
23 trial, did you guys ever have a conversation about that at
24 all?
25 A He wanted a -- no. But we did have conversations

1 about filing motions for bond.
2 Q Okay.
3 A He wanted a bond. I mean, he was in there for quite
4 some time, you know. I wanted him to have a bond, a
5 reasonable bond. By the time he asked -- at least, one of
6 the times, if I would have filed for the bond, I believe
7 since the trial was coming up, it was going to be denied.
8 And I told him that because -- I mean, right before a
9 murder trial is going to go, I -- I don't see a Judge
10 giving my guy a -- a bond a month ahead of time before
11 trial.
12 MR. MITCHELL: Thank you, Mr. Kornfeld.
13 Please answer any questions Ms. Ross may have for
14 you.
15 THE WITNESS: Yes, sir.
16 THE COURT: Cross-examination, Ms. Ross.
17 CROSS-EXAMINATION
18 BY MS. ROSS:
19 Q Hey there.
20 Okay. I'm going to try not to go over what you've
21 already answered. But --
22 A Yes, ma'am.
23 Q -- there are a couple of things. As far as a plea
24 offer -- and I don't think this really matters. But I'm
25 going to show you a letter that Ms. Munson wrote to the

1 Applicant.
2 A Okay.
3 Q Does that maybe refresh your memory as to maybe a
4 verbal plea offer, or do you have any recollection of
5 that?
6 A Yeah. I mean, this is -- this is what I remember.
7 Q Okay.
8 A I've never seen this letter before. But it just
9 says, I did not put a formal offer in writing to
10 Mr. Kornfeld. I offered to recommend a sentence of
11 40 years in exchange for --
12 Q Okay. And -- and then just -- the Applicant just
13 handed this to me during your testimony. But that does
14 show a recommendation -- potential -- a verbal offer of
15 40 years?
16 A Yeah. Mr. King -- I mean, he -- he always said he
17 didn't do it. And he said he wasn't going to plead to
18 murder, so.
19 Q Do you recall if you told him a verbal offer had been
20 made for 40 years?
21 A I -- I think so, yes. I definitely told him that the
22 offer was for murder, and that it was 40 years. He was
23 not interested in doing that.
24 Q Okay. And you testified before that straight up was
25 the offer?

1 A Yeah.
2 Q Okay. And as far as the -- the appellate opinion,
3 have you seen the appellate opinion in the discovery
4 package?
5 A I did see it. I -- I kind of looked over it a little
6 bit.
7 Q Did you -- do you recall one of the issues was --
8 that was brought up on appeal was the investigator,
9 Shaunee Peoples, brought in a hearsay -- an improper
10 statement in trial. And -- and you did make an objection.
11 But the Court of Appeals found that that objection was
12 improper because it was for no foundation laid verus,
13 specifically, hearsay.
14 A Hearsay.
15 Q So would you agree the record wasn't properly
16 preserved in that instance since the Court of Appeals did
17 not address the issue because you didn't object based on
18 hearsay?
19 A Yes.
20 Q Okay. Now, as far as -- and that's true as -- as
21 well with Raquan Lewers' testimony that he believed his
22 mom was trying to get away from Mr. King, that there was
23 no objection to that --
24 A That's correct.
25 Q -- as well?

1 Now, I just want to talk a little bit about the shoe
2 print and DNA evidence. Okay. This is some of the
3 forensic evidence from the case. And in -- the first
4 sheet, it's just what was processed. And as to the shoe
5 print, do you recall that a -- a white gel print was
6 lifted from an impression of a shoe print at the scene.
7 A Yeah. I remember there being shoe prints at the
8 scene. I -- I don't remember exactly that there was a
9 white gel lift, but, yes, I --
10 Q Okay. But you remember that from the discovery?
11 A Yes, yes.
12 Q And then part of this as well is the DNA report. Do
13 you remember the DNA report?
14 A Yes.
15 MS. ROSS: Okay. I'd ask that this be marked as an
16 Applicant's Exhibit.
17 THE COURT: All right. Any objection?
18 MR. MITCHELL: No objection, Your Honor.
19 THE COURT: Okay. It will be Applicant's Exhibit No.
20 1 without objection.
21 MS. ROSS: Okay. And I'd offer it at this time as
22 well.
23 THE COURT: All right.
24 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
25 identification and admitted into evidence.)

1 BY MS. ROSS:

2 Q Okay. I'm going to refer you to -- I made a little

3 star on it. And this goes to this DNA, Item 47-2.

4 A Right.

5 Q What does that say about the -- the shoe print DNA

6 evidence?

7 A It says, Item 47-2, swab from inside right of the

8 green and black shoe. DNA results obtained from this swab

9 are consistent with a mixture of, at least, three

10 individuals alleles and each -- indicating a mixture of

11 DNA from Janice Hackett-Lewers, Sylvester Keejuan King,

12 and a third unknown person.

13 Q And then what does it say further about those?

14 A No conclusion can be drawn from this mixture.

15 Do you want me to keep reading?

16 The DNA profile from Item 18-1 swab of the suspected

17 blood from rear passenger seat door handle --

18 Q Okay. That's -- okay. But it says, No conclusion

19 can be made from this mixture; correct?

20 A Correct.

21 Q And this mixture was found -- I just want to clarify.

22 This was found in the green and white shoe that was the

23 Applicant's shoe that was found in his car later?

24 A Okay. I thought it was found in the house is what I

25 remember. But it was in the -- in his vehicle?

1 Q Yes. The green and --
2 A Okay.
3 Q And then the print -- they couldn't tell from the
4 print the color of the shoe in the house. Does that make
5 sense?
6 A Right. Yes.
7 Q Okay. Now, when you cross-examined the -- and that
8 evidence didn't come in through the State, the evidence of
9 the shoe, the DNA on the shoe both being there.
10 A Okay.
11 Q And would you agree it couldn't come in because there
12 was no -- it wasn't conclusive enough for comparisons to
13 be conclusive?
14 A I don't know if I would -- I don't know. I don't
15 know if I could agree or disagree with that. I'll try and
16 answer --
17 Q Okay.
18 A I'm not trying to be difficult. It's --
19 Q No. That's fine. But that -- but that evidence was
20 brought in front of the jury through your questioning of
21 the DNA expert during the trial?
22 A It sounds like -- it sounds like from the transcript,
23 yes.
24 Q And that's on Page 235, Line 13, I believe. And the
25 Applicant mentioned that --

1 A Yeah. I believe you. I don't have any reason to
2 think otherwise.
3 Q Okay. Now, isn't it true that at the end of the
4 trial, the jury had a question? They -- they came out
5 with a question about DNA evidence, and what it was,
6 and -- and phone evidence as well?
7 A I do not remember those questions. But, yes.
8 Q Okay. And I would refer you to Page 415 of the
9 transcript -- and that is wrong. I can give you that page
10 yesterday, but you -- I mean in a minute.
11 A Yeah.
12 Q But you would agree that is possibly a question the
13 jury had for the Court?
14 A Yes. If it's in the transcript, absolutely.
15 Q And I'll get back to that. Now, as far as the -- as
16 far as the Judge's jury instruction, he, on Page 412, did
17 ask for the jury to find a verdict that speaks the truth;
18 correct?
19 A Yes.
20 Q And were you familiar with the background of that,
21 that that instruction has been disfavored since -- for
22 sometime?
23 A Ms. Ross, I don't believe so at the time. I am
24 familiar with it now. But I don't know if, at that time,
25 I knew about the -- you know, the speak the truth issues.

1 Q All right. And one more question. And this is -- it
2 goes to the phone cords. Do you recall pictures from
3 the -- the scene where a phone was plugged in on a table
4 in -- in the bedroom where Ms. Lewers was killed, and --
5 and of phones being around?
6 A I -- I don't. I have the pictures in here --
7 Q Okay.
8 A -- that I can review. But I --
9 Q That's okay. Just going back. Do you recall
10 Mr. Lewers' testimony about why he'd run back into the
11 apartment prior to -- to running out with his friends, and
12 then driving around, and doing a marijuana sale, and then
13 he ran back into the apartment? Do you recall what he was
14 doing?
15 A Yeah. It was a house on, I think, Ridgeview. They
16 left. He was going to go buy some weed, marijuana. And
17 then he came back. Is that what you're asking?
18 Q Yeah. And then was there anything about a phone?
19 Did he -- do you recall that he was going to plug in his
20 phone? And he ran inside to plug in his phone and then
21 ran back out?
22 A I think so, yes.
23 Q All right.
24 A And he -- the other thing is he was -- when he called
25 the -- the police, you know, he was real calm.

1 Q Okay. And he was, initially, a suspect in the case?
2 A He was, yes.
3 Q And -- and you brought that out at the trial?
4 A Yes.
5 MS. ROSS: Okay. I've got nothing further.
6 THE COURT: All right. Anything on redirect?
7 MR. MITCHELL: Just -- just briefly, Your Honor.
8 REDIRECT EXAMINATION
9 BY MR. MITCHELL:
10 Q Just in terms of that -- that argument about the
11 Judge's instruction to the jury. The -- the Judge's
12 charge, he was instructing them in the context of their
13 role as the jury; right?
14 A That's correct. Yes, he was.
15 Q And -- and it's the juries role to examine the
16 evidence in a particular case; right?
17 A That's correct.
18 Q Okay. And as far as you remembering -- you may have
19 answered this question already for me. The Judge,
20 clearly, stated the burden of proof that the State has;
21 right?
22 A That's correct. He did. He definitely gave, you
23 know, all the -- I guess what I would call standard
24 charges, beyond a reasonable doubt, burden of proof, all
25 those charges.

1 Q And did you think that the jury instruction as a
2 whole was correct?
3 A Yes, I did.
4 MR. MITCHELL: Thank you.
5 That's all the questions I have, Judge.
6 THE COURT: All right. Anything else, Ms. Ross?
7 MS. ROSS: No, Your Honor.
8 THE COURT: All right. I have no questions.
9 You can step down.
10 THE WITNESS: Thank you, Your Honor.
11 THE COURT: All right. Any other witnesses from the
12 State, Mr. Mitchell?
13 MR. MITCHELL: No additional witnesses, Judge.
14 THE COURT: All right. Anything in reply, Ms. Ross?
15 MS. ROSS: No, Your Honor -- well, I would state that
16 it was on Page 415 of the transcript where the Judge --
17 the jury had that question.
18 THE COURT: Yeah. I did -- I did find that.
19 MS. ROSS: Okay.
20 THE COURT: You don't have any additional questions
21 for him --
22 MS. ROSS: No, Your Honor.
23 THE COURT: All right. You can step down.
24 All right. Can I get a brief argument from both
25 sides?

1 MS. ROSS: Well, Your Honor, I -- I would start at
2 the end with that jury instruction. I've got State v.
3 Aleksey. It came out in 2000. Since then, a number of
4 cases that the disfavor of a jury instruction that -- that
5 asks the jury to -- to seek anything -- I mean, that's
6 been from '98. The jury should not seek anything, but,
7 certainly, not seek the truth. It's burden shifting. The
8 State has the burden of proof beyond a reasonable doubt.
9 An instruction to seek the truth changes that burden,
10 lessens that burden for the State, and was especially
11 harmful for Mr. King's case.
12 The only evidence -- Mr. King gave a statement that
13 came in and that was, essentially, his testimony. It was
14 a statement that he gave to police that came in during the
15 trial saying he was there, but once the stabbing started
16 happening, he ran out. There was DNA evidence consistent
17 of that on the door, exiting DNA evidence, and then out in
18 the carport. And this was just Sylvester's DNA found
19 there on the door, and then blood drops in the carport
20 leaving the scene.
21 The only DNA evidence putting him near the blood of
22 the victim, Ms. Lewers, was that shoe print. And that
23 came in through the Defense attorney. And that was
24 improper. The shoe print was not the -- the green shoe
25 found. The shoe print was never linked to the shoes that

1 were found in Mr. King's car.

2 And the DNA taken from the shoe that was found in

3 Mr. Lewers' [sic] car was inconclusive and couldn't have

4 come in except for the fact that the Defense attorney

5 brought that in. And that was, certainly, harmful because

6 it was the only thing that showed him -- his blood around

7 Ms. Lewers' blood, the only thing that was inconsistent

8 with his story that he left the scene.

9 As far as my other allegations, they are -- mostly

10 came out during testimony and are in my amended

11 application. And I don't have any further argument

12 regarding those. I think the record speaks for itself.

13 THE COURT: Thank you, ma'am.

14 Mr. Mitchell.

15 MR. MITCHELL: Judge, if I could hand up Aleksey. I

16 think it's the case that's instructive on jury -- if I

17 could approach.

18 I think Ms. Ross started off with that argument about

19 the Judge's jury instructions. The standard, obviously,

20 in South Carolina is that you take the jury instructions

21 as a whole. It'd be the State's position that that case

22 is instructive in terms of what should be looked at.

23 There's no question that in terms of the verdict speaking

24 the truth is disfavored by the Court. But in that

25 particular case, the Court found that the instructions

1 were -- were harmless.

2 And so it would be the State's position that there is

3 not sufficient prejudice that can be established for the

4 Judge issuing those instructions in large part because it

5 was not closely connected to the -- the language about the

6 burden of proof on the State. And the Judge, clearly,

7 stated that the burden, obviously, was on the State to

8 make their case.

9 In terms of the rest of the allegations in the

10 Applicant's application. I think Mr. Kornfeld articulated

11 very strongly the trial strategy, the trial theory for

12 making certain decisions regarding how he proceeded with

13 Mr. King's case.

14 His theory of the case was that there was a third

15 individual who was going to be there. The DNA evidence,

16 based on the information that was presented, showed that

17 there was a -- a third -- a potential third party that was

18 there. So it would be the State's position that that fell

19 right along in with his strategy and theory of the case.

20 I think the record is -- based on the testimony from

21 Mr. Kornfeld, all of the rest of the allegations failed on

22 the particular merit as he has offered -- offered

23 testimony that his strategy was to do certain things.

24 And in terms of the failing to object to the

25 investigator, Ms. Peoples' statement. When the Court of

1 Appeals did not reach a decision because the issue was not
2 preserved, it would be the State's argument that the
3 testimony by Ms. Peoples was not hearsay in itself because
4 it was not offered for the truth of the matter asserted.
5 And, again, the State's brief on that particular
6 issue is included in the packet that we provided for Your
7 Honor as well.
8 So for those reasons, the State does not believe that
9 Mr. King has met his burden of proof pursuant to
10 Strickland v. Washington.
11 THE COURT: All right. Thank you, Counsel.
12 Certainly, the -- going forward, the judges have
13 modified the instruction to the jury as it relates to
14 seeking the truth. And I -- certainly, I think that is
15 something that was looked very closely at prior
16 instructions. And I think the instructions at the time
17 that Judge Pyle presided over this -- over this case --
18 certainly, that was back in -- whenever it was -- 2014,
19 '15, whenever it was, that was the case.
20 But if you look at the case that Counsel submitted,
21 the Aleksey case, certainly, in that case, there was some
22 language that the instruction -- that single instruction
23 that the -- the Judge told the jury was not -- did not
24 violate the Defendant's due process rights, and that it
25 overruled the prior case that talked about that, which was

1 the Clute case. That's spelled C-L-U-T-E.
2 The Applicant alleges ineffective assistance of
3 counsel. And, of course, the standard case for the Court
4 to make that determination is the Strickland case,
5 Strickland v. Washington. And in that case -- the
6 Strickland case, there's two things that the Court looks
7 at. First of all, the Applicant must prove that Counsel's
8 performance was deficient. That's the first prong. I've
9 examined the testimony of the Applicant, as well as looked
10 at the record in the case. And I find that the Applicant
11 has not met that burden.
12 The second measure is whether the performance of the
13 attorney provided representation within the reasonable
14 competence required in criminal cases. Certainly, there
15 was some question about the trial strategy that Counsel
16 was utilizing. And, certainly, there was some -- some
17 questions about whether he objected to certain -- a couple
18 of things.
19 But I'm satisfied that the second prong of the
20 Strickland case was satisfied, based on the testimony I
21 heard from Defense Counsel, as well as what I heard from
22 the Applicant, and in reviewing the record.
23 So based upon that, I'm going to deny the Applicant's
24 application for post-conviction relief.
25 All right. Will you prepare the appropriate order?

1 MR. MITCHELL: I will, Judge.

2 THE COURT: All right.

3 MS. ROSS: Thank you, Your Honor.

4 THE COURT: Okay.

5 ***************END OF TRANSCRIPT OF RECORD***************

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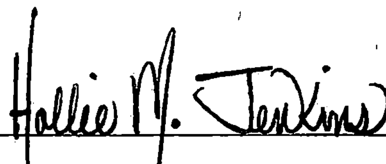
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 24th day of October, 2018.

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

March 5, 2019



Hollie M. Jenkins, Court Reporter
My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Sylvester Keejaun King, #366399 Applicant,	)	2018-CP-23-3013
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

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PAUL B. WICKENSIMER CLK OF COURT GVL SC

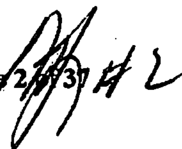
This matter comes before the Court by way of an application for post-conviction relief filed on May 24, 2018, by Sylvester Keejaun King, (Applicant). Respondent made its Return on September 4, 2018. An evidentiary hearing into the matter was convened on October 24, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Susannah C Ross, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Alex Kornfeld, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the Greenville County Grand Jury during the August 2014 Term for one count of Murder and one count of Possession of a Weapon during the Commission of a Violent Crime (2014-GS-23-7457). Applicant was represented by Alex Kornfeld, Esquire. The State was represented by Assistant Solicitors Judith M. Munson, Esquire and Brittany Scott, Esquire, both of the Thirteenth Judicial Circuit Solicitor's Office. On November 30 – December 2, 2015, Applicant proceeded to a trial by a jury before the Honorable Victor C. Pyle, Jr., Circuit Court Judge. Applicant was found guilty of both charges on December 2, 2015. (Tr. 417). Judge Pyle sentenced Applicant to life confinement for the murder conviction and five years confinement for the possession of a weapon during the commission of a violent crime conviction. (Tr. 422).

Applicant timely served and filed a Notice of Appeal. On appeal, Applicant was represented by Robert M. Dudek, Esquire, Chief Appellate Defender with the South Carolina Commission on Indigent Defense, Division of Appellate Defense. Applicant's appeal was perfected with the filing of a Final Brief of Appellant. In his Brief, Applicant asserted two arguments. First, he contended the court erred by allowing Sheriff's Deputy Suber to testify the decedent's son, who was a prime suspect in the murder, told him that he believed his mother's boyfriend [Applicant] was the murderer because he kept saying they were "hiding from him," since this testimony was not admissible as an excited utterance, and it was inadmissible prejudicial hearsay. Second, he argued the court erred by allowing Greenville Sheriff's Investigator Peeples to testify that she heard someone at Applicant's place of business allegedly told someone else that Applicant had had "called into work," and told someone at work that "he



was a victim of a home invasion where he was injured," since this testimony was inadmissible prejudicial hearsay. The State, through Assistant Attorney General Alphonso Simon Jr. filed its Final Brief of Respondent. The South Carolina Court of Appeals issued an opinion affirming the convictions on May 9, 2018. (Attachment No. 6). The Remittitur was issued on May 25, 2018.

FACTUAL HISTORY

On March 16, 2014, Appellant Sylvester Keejuan King ("King") stabbed his ex-girlfriend, Janice Hackett, to death in her home in Greenville. The victim suffered three separate incised wounds; one to the front portion of her right wrist, one to the front portion of her right shoulder, and one to the left upper shoulder in the back. (Tr. 322). She also had eight separate stab wounds. One was a superficial stab wound that went through the skin of her upper neck and stopped before it hit the bone of the skull. (Tr. 322). Another wound was to the midline of her upper back. This wound hit her seventh cervical vertebrae in the back. (Tr. 322-23). The victim suffered two separate stab wounds right above the clavicle. (Tr. 323). She was also stabbed once on the left shoulder. (Tr. 323). On the right side of her head, she suffered another superficial stab wound that did not penetrate the skull. (Tr. 324). There were also two stab wounds to the right side of her neck. (Tr. 324). The pathologist testified that the two neck wounds were the two most potentially fatal wounds. (Tr. 325). The victim died as a result of multiple stab wounds of the head and neck. (Tr. 330).

A. King and the victim had previously dated.

King and the victim were, at one time, in a relationship. (Tr. 93). According to Raquan Lewers, the victim's son, King and the victim lived together for a year or two. (Tr. 96). At one point, the two broke up. (Tr. 96). They got back together, and moved in together again. (Tr. 97). While Lewers was held in a juvenile detention facility, King and the victim broke up again. (Tr. 99). The victim moved away, and according to Lewers, she did not want King to know

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where she lived. (See Tr. 100). She did allow King's son, who would live with the couple along with Lewers when they were living together, to visit after the two ended their relationship. (Tr. 100).

During the defense case, King's sister, Sentoria Wilson, testified that she was aware that King and the victim were in a relationship at some point in time. (Tr. 340). She recalled seeing Hackett at family functions and events. (Tr. 340-41). Wilson never saw King be violent towards the victim or any other woman, but she also recalled that sometimes her nephew, King's son, would say that King and the victim would "be into it" sometimes.[1] (Tr. 341).

B. On March 16, 2014, the victim returned home from a weekend trip with a new boyfriend.

Lewers recalled that his mother had been out of town that weekend, but she just returned to her Greenville home from vacation on the day she was killed.[2] (Tr. 102). She had just started dating someone new. (Tr. 102). Lewers testified that she arrived home around the time the sun started to go down. (Tr. 102-03). He went with her to a Redbox, and to pick up some food from a seafood restaurant. When they returned home, the victim went to bed. (Tr. 103).

C. Lewers spends time with his girlfriend and her friend outside of the victim's home.

Lewers called his girlfriend, Quinna Fernandez, and told her to come over after his mother went to bed. (Tr. 103). Fernandez got a ride from her friend, Shakia Prease. (Tr. 62, 80). Fernandez indicated that Prease picked her up around 10:20 pm. (Tr. 63). The two drove over to the victim's and Lewers' house. (Tr. 62, 80).

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[1] Wilson stated that her nephew did explain what he meant when he was saying "into it," but she assumed he was talking about arguing. (Tr. 341-42).

[2] Lewers also testified that his father, Keith Lewers, had stopped by the house earlier in the day because Lewers was sick. (Tr. 103). Lewers' father got Lewers some soup and other supplies. (Tr. 103).

When the two arrived, Lewers walked out of the house and got into Prease's car. (Tr. 63, 80-1, 104). Prease was in the driver's seat, Fernandez sat in the front passenger seat, and Lewers got into the back seat. (Tr. 81). The three talked and played on their phones. (See Tr. 64-5, 104). After about fifteen to twenty minutes, Lewers went back inside the house to connect Fernandez's phone to a charger. (Tr. 64, 82, 104). Lewers informed his mother that he was about to have company, and he shut her bedroom door. (Tr. 104). He noted that she was asleep at that time. (Tr. 104-05). Lewers went back outside. (Tr. 105). Lewers did not lock the carport door when he left because he knew they would be right back. (Tr. 110, 114).

When he returned to the car less than two minutes later, the three continued hanging out in the car for another fifteen to twenty minutes. (Tr. 64, 74). During that time, both Lewers and Fernandez saw a car drive by slowly. (Tr. 65, 107). Lewers saw the car as creeping along, and then it pulled off real fast. (Tr. 107). Both described the vehicle as being a black car that looked like a Crown Victoria. (Tr. 65-66, 107, 114). Prease did not see the car, but she did recall Lewers and Fernandez talking about the car. (Tr. 82).

After hanging out in the car for a while, the three went to a nearby Citgo gas station to purchase some cigars.[3] (Tr. 66, 73, 82, 105). Fernandez went inside, purchased some cigars and obtained an employment application, and returned to the car. (Tr. 66). Lewers then asked Fernandez and Prease to take him to the Greenville Arms, a nearby apartment complex, to make a marijuana sale. (Tr. 67, 74, 82, 105). They drove to the complex. Id. While parked in the parking lot, Lewers got outside and sold marijuana to someone he knew. (Tr. 67, 75, 83). Lewers got out and walked behind the car. (Tr. 83, 88). Lewers took two to three minutes to make the sale. (Tr. 83-4, 88, 105). After the sale was completed, the three drove back to Lewers' home, the victim's residence. (Tr. 67, 84, 106).

[3] They planned to use the cigars to smoke marijuana. (Tr. 67, 74, 84, 106).

Prease, Fernandez and Lewers sat in the car in the driveway and talked for a while. (Tr. 67). Prease thought they were back for about five minutes before Lewers went inside to retrieve Fernandez's phone. (Tr. 84). Lewers recalled going into the house to get Fernandez's phone. (Tr. 106). Fernandez recalled Lewers stated he was going to go inside to check on his mother, the victim. (Tr. 67). He was also going to let her know that the three would be coming inside of the house. (Tr. 67). Prease noted that Lewers went through the garage/carport door to enter the house, and he came out the same door. (Tr. 85).

D. Lewers finds his mother's body in her bed.

When he went, he saw blood all over the door. (Tr. 106). As he walked in, he started calling his mother's name, and he got scared. (Tr. 106). He followed the blood, which he was hoping was juice, to her room. (Tr. 106; see Tr. 112). Lewers went into the victim's room, and he tried to wake her up. (Tr. 106). He noted that he touched her, and that he shook her, but she did not physically move her position in the bed. (Tr. 106-07).

Lewers ran back outside and pulled on the door of the car, trying to get Prease and Fernandez out of the car. (Tr. 67-8, 84, 85, 107). Prease and Fernandez both indicated this was within a minute of Lewers going inside the house. When he returned to the car, he pulled at the passenger side door. (Tr. 67-8, 84, 85). Fernandez recalled Lewers "was like my mama gone, she dead." (Tr. 68, ll 3-4). Prease testified that "[h]e was saying my mom is dead. My mom is dead." (Tr. 85, ll 15-6). Prease and Fernandez initially thought he was joking, but Lewers indicated he was not kidding. (Tr. 85). Fernandez then stated she wanted to go see Lewers' mother. (Tr. 69).

Prease and Fernandez then got out of the car, and the three then went inside the house. (Tr. 85). Lewers, Prease and Fernandez entered the house through the carport door. (Tr. 69). Lewers went in first, and Prease and Fernandez followed. (Tr. 69, 85). Fernandez noted the

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door was wide open. They walked through the kitchen, and they went straight to the victim's bedroom. (Tr. 69). Prease recalled there was blood immediately when they walked in the carport door. (Tr. 85). She observed a trail of blood; there was blood all on the wall, and there was a bloody hand print on Lewers' bedroom door. (Tr. 86). The three walked into the victim's bedroom and saw her. (Tr. 86).

Fernandez testified that one of the victim's knees was up, and the other was down. (Tr. 69). They were in the room for two minutes. Fernandez recalled she kept saying call 911. (Tr. 70). Both Fernandez and Prease confirmed they did not touch the victim or take anything from the house. (Tr. 70, 86).

Fernandez and Lewers both went to Lewers' bedroom. (Tr. 71). Lewers called the police first. (Tr. 72, 76). After speaking with them, he called his grandmother. (Tr. 72, 76). While Lewers was speaking with his grandmother, Fernandez called the police from her phone. (Tr. 72, 76).

Initially, three Greenville County Sheriffs' Deputies arrived on the scene in response to the 911 call. (Tr. 45-6; see Tr. 300-01). The deputies knocked on the front door and announced they were with the sheriff's department. (Tr. 47, 301-02). In response, Lewers, Fernandez, and Prease came out of the front door of the house. (Tr. 47, 302). Deputy Suber testified that Lewers indicated to him his mother was inside. (Tr. 302). The three teenagers were checked for weapons and were secured by the deputies. (Tr. 47, 302). Suber testified that while Lewers was being secured, Lewers expressed that he believed King was the one who killed his mother, and he did not know how King knew where they lived. (Tr. 303-04; Defense Exhibit 3).

#7

After the teenagers were secured, the deputies went into the house and cleared the residence. (Tr. 48-9, 304). Both Deputy Horne and Deputy Suber saw the victim lying in her bed, deceased, and covered in blood. (Tr. 49, 304-05).

Investigator Michael Fortner with the Greenville County Sheriff's Office arrived at the crime scene just a little after midnight on March 17. (Tr. 237-39). When he arrived, Lewers, Fernandez and Prease had already been transported to the Law Enforcement Center to be interviewed. (Tr. 240). The victim's body was still at the scene. (Tr. 240). Fortner, the forensics team, and Deputy Coroner Dill entered the house and did a walkthrough to identify potential evidence that needed to be collected. (Tr. 241-42). He noted there were large amounts of blood on the floor and the walls, on the floor of the kitchen, on the door, on several appliances in the kitchen, and in the hallway leading to the victim's bedroom. (Tr. 242). Fortner also noted the victim's bed was saturated in blood. (Tr. 243).

After the walkthrough, the forensics team processed the house. (Tr. 243). Fortner contacted other investigators to check on the progress with the interviews with Lewers, Fernandez, and Prease. (Tr. 243). Fortner also walked around the house looking for a possible weapon. (Tr. 243). No weapon was found.

Law enforcement did canvas the neighborhood to see if anyone heard or saw anything that night. (Tr. 50, 245). No witness came forward. (Tr. 50, 245). Fortner testified that he received information regarding Lewers' statements to law enforcement, and they initially thought he may be a suspect. (Tr. 245). Law enforcement was later able to rule him out as a suspect. (Tr. 246).

E. King tells one of his girlfriends that he was injured in a fight outside of a liquor house in Greenville.

Sheila Martin, one of King's girlfriends at the time of the stabbing, lived in Anderson at the time. (Tr. 132-33). She owned a Mazda 626, and she allowed King to borrow her car while his car was in the shop.[4] (Tr. 133-35). King and Martin spoke earlier in the day on March 16, 2014. King had indicated he was hanging out with his cousins, but he also advised Martin that he would come over to her residence later in the day. (Tr. 138).

King did not arrive at Martin's residence until almost 2 a.m. (Tr. 138). At that point, Martin was not expecting him, and King had not called to say he was still coming. (Tr. 138-39). When she opened the door, King came and walked to Martin's bedroom. (Tr. 139). When Martin went into the bedroom, King was laying on the floor, face down. (Tr. 139). When she turned him over, he told her he had been in a fight. (Tr. 140). His hand was bandaged up in a shirt. Martin took the shirt off of the hand, and saw a really deep cut on King's wrist. (Tr. 140). The cut was still bleeding, and there was a lot of blood. (Tr. 140). King's explanation was that he and his cousin got into a fight with four guys at a liquor house. (Tr. 141). King also told her that he messed up her car, and there was blood all in the front seat.[5] (Tr. 143). Martin tried to get King to call the police, and she attempted to re-bandage the wound and apply pressure to stop the bleeding. (Tr. 141-42).

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[4] King had told Martin that he was trying to prevent his baby mama from knowing where he lived, so he asked if he could borrow her car while his was in the shop. (Tr. 134). Martin drove King's rental car during that period. (Tr. 133-35).

[5] Martin confirmed her Mazda was bloody. There was blood on the seat, the steering wheel, and base floorboard. (Tr. 151). Martin attempted to clean it, but she could not get the blood out. (Tr. 151). Martin also indicated King had left a pair of tennis shoes in the rental car. (Tr. 153, 154).

F. King tells an Anderson City Police officer that he was injured during a robbery outside of a liquor house in Anderson.

Martin then took King to the emergency room at the Anderson County hospital. (Tr. 142-43). At the hospital, King was re-bandaged twice. (Tr. 145). King also spoke with law enforcement about his injuries. Officer Daniel Stipe of the Anderson City Police Department was the officer who responded to the Anderson County Hospital. (Tr. 188-89). Stipe testified that King indicated he was at a liquor house in Anderson. (Tr. 190). While there, he encountered some guys that were disrespectful to him and to his girlfriend, Ms. Martin. (Tr. 190-91). They left, and while they were walking back to his car, four guys approached and told him that he needed to give up his jewelry. (Tr. 191). King claimed that a gold necklace and two gold rings valued at $1080 were taken from him. (Tr. 191). King could not give a written statement because of his injury. (Tr. 191).

According to Martin, King told the officer at the hospital that he claimed he was robbed, and he stated Martin was present when the robbery occurred. (Tr. 146-47). Martin did note that when she asked King about the incident later, King maintained he and his cousin were jumped by four people because his cousin allegedly stepped on one of the guy's shoes. (Tr. 147-48). Martin did not recall King telling her anything about a robbery. (Tr. 148).

G. King runs away from a potential encounter with law enforcement.

After Martin and King left the hospital, they went back to Martin's home. (Tr. 147). She left King at her home, and she to get King a cell phone from a Family Dollar. (Tr. 148). While there, Martin received a call from law enforcement. (Tr. 149). When she returned home, Martin told King about the phone call she received. (Tr. 149). In response, King said he had to go. (Tr. 149). The two then drove around to different places. (Tr. 149-50). When they were heading back to Martin's residence later that day, officers were on Martin's street. (Tr. 151). King asked

Martin to go around and to not return to her residence, but Martin refused because her daughter was home. (Tr. 151). In response, King jumped out of the moving car. (Tr. 152). Martin did not know what he did after he jumped out of the car. (Tr. 152).

Craig Hawkins, who was with the Greenville County Sheriff's Office Warrants Division, found King at a residence in Spartanburg on March 26, 2014. (Tr. 200-01). The apartment belonged to Kumiko Mitchell, another of King's girlfriends. (Tr. 201). King was arrested that morning and transported to the Greenville County Law Enforcement Center. (Tr. 203-05).

H. Law enforcement investigation continues.

Investigators sought to speak to several other potential suspects, including Lewers' father, the victim's current boyfriend, and King. (Tr. 246-47). Fortner eventually spoke with King by phone, and the two made arrangements for King to speak with investigators. (Tr. 247-48, 249). King did not show up at the arranged time. (<u>See</u> Tr. 248). Fortner testified that law enforcement searched King's house in Greenville, and they found keys to the Mazda he borrowed from Sheila Martin. (Tr. 261). Nothing else of evidentiary value was found at the house. (Tr. 262-67).

The victim's DNA was found in a swab from the kitchen closet doorknob, swab from son's bedroom doorknob, a swab from victim's bedroom doorknob, swab of suspected blood from top steps to rear kitchen door, suspected swabs from Samsung cell phone on the stool in the victim's bedroom, swabs from buttons of Samsung cell phone on the stool in victim's bedroom, suspected blood swabs from Samsung Verizon phone, swab from touchscreen of Samsung Verizon phone, suspected blood swabs from the charger of Samsung Verizon phone, and fingernail clippings from the victim's hands. (Tr. 225-26). King's DNA was found on the exterior side knob of the rear kitchen door; on the rear passenger door handle of the vehicle that was located in the carport; on the ground near the rear passenger door by the car under the car

port; on a swab on the exterior carport window; from the interior of the rear door on the driver's side of a car; on the rear door frame on the driver's side of the car; on the floor mat from the front passenger side of the car; from the interior of the front windshield of the car; from the top of the steering column, from the front of the steering wheel; on the turn signal shifter; on the vehicle's carpet. (Tr. 226-27). King's DNA, the victim's DNA, and a third individual's DNA was found on the sole of King's tennis shoes that were recovered from the vehicle at Martin's residence. (Tr. 235).

I. King claims he is also a victim in his statement to law enforcement.

King gave a statement to law enforcement. In his statement, he admitted he knew the victim and that they had broken up. (Tr. 259). He claimed that on the night of the stabbing, she had picked him up at his house in Greenville and took him to her house. (Tr. 259). The two laid down to go to bed. According to King, he noticed the bedroom door come open, and an individual was standing there. (Tr. 259). That individual said something to the effect of "oh, hell no;" and at that time, the individual produced a knife and started attacking King and the victim with the knife. (Tr. 259). That was how King explained his hand was cut. (Tr. 259). King described the assailant as a black male who was kind of muscular. (Tr. 259). King asserted the assailant was larger than King. (Tr. 260).

King further told law enforcement that he tried to defend himself and the victim. (Tr. 260). He jumped up and ran out of the house thinking the victim was following him. (Tr. 260). King then ran down the street, where he claimed to flag down a man in a white pickup truck. (Tr. 260). King claimed he paid the man $20 for a ride to his house in Greenville. (Tr. 260).

ALLEGATIONS

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

10(a) Ineffective assistance of counsel for failure to discharge his duty of due diligence to investigate the evidence, facts, and witness(es) in the case

10(b) Ineffective assistance of counsel for failure to provide a proper defense for pysical[sic] evidence in the case.

10(c) Ineffective assistance of counsel for his abandoment[sic] of his client during trial.

11(a)(1) Counsel failed to properly and fully investigate the case

11(a)(2) Counsel failed to properly and fully prepair[sic] Petitioner for testimony in the case.

11(a)(3) Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepaired[sic] to present testimony through direct and cross-examination of relevant evidence to the matter.

11(a)(4) Counsel failed to interview or call as a witness a number of people who would have relevant information in this matter.

11(a)(5) Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about case.

11(a)(6) Counsel failed to spend adequate time with Petitioner reviewing discovery with him.

11(a)(7) Counsel failed to challenge the testimony of the State's witness(es) and failed to adequately object and preserve objections to portions of the witness(es) testimony, and failed to cross-examine the witness(es) on their testimony

11(a)(8) Counsel failed to move for a pretrial motion for a Directed verdict.

11(a)(9) Counsel failed to move for a Directed Verdict at the end of the State's case, or at the end of the entire case.

11(a)(10) Counsel failed to move for a pretrial motion to suppress the evidence from the case.

11(a)(11) Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient.

11(a)(12) Counsel failed to provide a valid defense for trial.

11(a)(13) Counsel failed to request a competency hearing, to evaluate the Petitioner, and see if he was incompetent at the time of his trial.

11(a)(14) Counsel failed to move for a fast and speedy trial. Petitioner, lost certain witness(es) that could of testified on his behalf, pursuant to the 21 month delay for trial.

11(a)(15) Counsel failed to object to the State's hearsay, and circumstantial evidence being admitted at trial.

11(a)(16)(A)(B)(C) Ineffective Assistance of Counsel: This is the only venue I am aware of for these type of claims.

In an amended application dated October 4, 2018, Applicant further alleged he is being held in custody unlawfully for the following reasons:

(1) failing to make a hearsay objection to Investigator Shawnee Peoples statement, "I was advised that that day he called into work and he told his job that he was the victim of a home invasion where he was injured"; (R. p. 159, l. 2)

(2) failing to request jury voir dire as to whether any of the jurors had been victims of a violent attack; (p. 14)

(3) failing to object to witness Raquan Lewers testimony that he believed his mom was trying to get away from Mr. King; (R. p. 96, l. 22)

(4) failing to point out that at the time of the stabbing Mr. King and the victim had been separated for four years, not the year or two witness Raquan Lewers said; (R. p. 96)

(5) failing to fully investigate and clarify for the jury whose phones were found at the scene and used to call 911, DNA evidence, and shoe print evidence; (R. 415)

(6) advising Mr. King not to testify;

(7) failing to secure or advise Mr. King of a plea offer; and

(8) failure to object to the jury instruction, "I charge you to abide by your oath and return a verdict that speaks the truth." (R. p 412, l. 18)

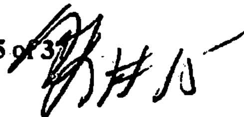
SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he was represented by Trial Counsel on his charges. He testified

during the course of Trial Counsel's representation he met with him five times for a total of five minutes each time. Applicant testified Trial Counsel failed to investigate his case or call witnesses. He testified he reviewed his discovery himself but that Trial Counsel did not review it with him. Applicant testified Trial Counsel did not discuss the DNA evidence in his case with him and Trial Counsel told him the DNA evidence was not that important in the case. He testified the victim's son testified that he saw Applicant's car that night but the car that was described was not his car, and Applicant testified Trial Counsel should have shown the jury what his car looked like. Applicant testified he did not testify at his trial because Trial Counsel told him not to and any of his prior record could be used if he did. He testified he remembered telling the trial judge he did not want to testify in his defense but that he was not prepared for the colloquy. He testified he wanted to go to trial. Applicant testified he did not get a preliminary hearing in his case. He testified there was a shoe print found but that the State did not bring out evidence of whose print it was at trial and that the print did not match his shoes. Applicant testified the issue of his shoes was only brought up one time at trial. He testified he did not have a handle on the evidence in the case because Trial Counsel did not properly investigate and wanted more time with Trial Counsel. Applicant testified Trial Counsel should have had a suppression hearing to keep out the DNA evidence and his clothes. He testified Trial Counsel did not move to quash his indictment or make a motion for a speedy trial. Applicant testified Trial Counsel failed to move for a directed verdict and did not come up with a valid defense.

On cross-examination, Applicant testified he met with Trial Counsel five times during the course of his representation and each meeting only lasted five minutes. He testified Trial Counsel sent him his discovery right before trial and that he did not talk about any defenses to his case with him. Applicant testified he did not know his rights. He testified he gave Trial Counsel the



names of people to call to interview about the incident. Applicant testified he was at the victim's house that night in which there was involved in altercation where a man stabbed him and the victim. He testified Trial Counsel had an investigator on his case but that the investigator did not go over anything in his case.

Trial Counsel's Testimony

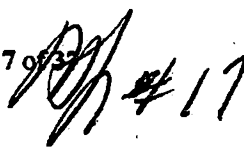
Trial Counsel testified he had practiced law in South Carolina since 2010 and all of that time had been devoted to criminal law. He testified he was appointed to represent Applicant and that Applicant was charged with stabbing the victim who was his former lady friend to death. Trial Counsel testified he met with Applicant at least ten times during the course of his representation. He testified during those meetings he discussed the indictments and the possible punishments Applicant was facing, Applicant's constitutional rights and the State's burden of proof. Trial Counsel testified the court signed an order for funds so he could hire an investigator for Applicant's case. He testified he gave Applicant a paper copy of his discovery and also reviewed it with him. Trial Counsel testified he discussed the DNA evidence with Applicant and that the victim and Applicant's blood were found in the home. He testified in terms of investigation, Applicant did not offer him much information about the case. Trial Counsel testified Applicant told him some man attacked the victim and him while they were at the victim's house and he was able to get away. He testified Applicant told him he got a ride from some unknown Mexican man driving a white Ford ranger after the attack. Trial Counsel testified Applicant could not give him a name of the man or other vital information for his case.

Trial Counsel testified there was never any true plea offers from the State other than Applicant pleading "straight" up to the charge. He testified Applicant was not interested in that offer. Trial Counsel testified one of Applicant's other lady friends, Ms. Martin testified at trial.

He testified she stated to the jury that Applicant showed up at her house after the incident and they went to the hospital. Trial Counsel testified Ms. Martin told the jury that Applicant told her he was stabbed at liquor store after being robbed.

Trial Counsel testified he objected to the comment by Investigator Shawn Peoples during trial about a statement Applicant made. He testified he objected on the ground of lack of foundation but that he was overruled by the trial judge who he knew had a propensity to overrule objections quickly and try to move a trial along. Trial Counsel testified during voir dire he did not ask if any member of the jury panel had been a victim of a violent crime and maybe should have asked. He testified he did not object to the victim's son's testimony concerning his mom and Applicant as he did not feel it was that prejudicial and that sometimes objecting to things highlights them more for a jury to consider. Trial Counsel testified he tried to show the jury that maybe the victim's son or his dad had something to do with the murder of the victim as the son had money from a civil suit when he was younger whom the victim was the conservator over. He testified he did not think the information about phones being found at the scene was prejudicial to Applicant's case. Trial Counsel testified the DNA evidence showed the victim's and Applicant's DNA were found at the house that night. He testified an unknown third person's DNA was also found. Trial Counsel testified this third unknown person's DNA was potentially helpful in the case to the trial theory that someone had attacked the victim and Applicant. He testified he advised Applicant not to testify as there were too many inconsistencies in his story and his story would not be credible to the jury. Trial Counsel testified he should have objected to the trial judge's jury instruction about returning a verdict that speaks the truth but that he believed the trial judge ultimately articulated the burden of proof properly to the jury.

On cross-examination, Trial Counsel testified there was a letter from the State about a



plea offer for murder for a sentence of forty years. He testified he had the discovery that contained information about the shoe print that was found but no conclusion could be drawn from it. Trial Counsel testified the jury had a questions about the DNA evidence and a cell phone.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Strategy

The reviewing court applies a two-pronged test in evaluating allegations of ineffective

assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing.

Ineffective Assistance of Counsel

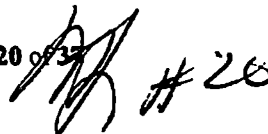
Failure to Make a Hearsay Objection

Applicant alleges Trial Counsel was ineffective for failing to make a hearsay objection to Investigator Shawnee Peoples statement concerning Applicant in which she said: "I was advised that that day he called into work and he told his job that he was the victim of a home invasion where he was injured" (Tr.p.207). This court finds that Trial Counsel was not ineffective regarding this allegation. Trial Counsel testified he objected on the ground of lack of foundation but that he was overruled by the trial judge who he knew had a propensity to overrule objections quickly and try to move a trial along. This court finds Applicant cannot demonstrate deficiency or sufficient prejudice regarding this allegation because the statement was admissible because it was not hearsay. The statement was not offered from the truth of the matter asserted. Instead, it

was merely offered to show why Peeples proceeded to call local hospitals to see if King was treated for any alleged injuries. As such, the statement was properly admitted by the trial court.

Evidence is not hearsay unless it is an out of court statement offered to prove the truth of the matter asserted. State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (internal citations omitted). "Additionally, an out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." Brown, 317 S.C. at 63, 451 S.E.2d at 894 (citing United States v. Love, 767 F.2d 1052 (1985), cert. denied, 474 U.S. 1081, 106 S.Ct. 848, 849, 88 L.Ed.2d 890 (1986). Evidence explaining why law enforcement is in a particular area has been held to be relevant information for the jury to consider. State v. Johnson, 318 S.C. 194, 197, 456 S.E.2d 442, 444 (Ct. App. 1995) (citing State v. Davis, 309 S.C. 56, 419 S.E.2d 820 (Ct.App.1992)).

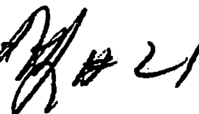
Here, the Applicant's statement to his employer that he was injured in a home invasion was not entered for the truth of the matter asserted. The testimony presented by Peeples after the reference to the statement shows the intent of introducing the statement was to explain why Peeples took certain actions in the investigation. Peeples testified that after hearing the statement, she called local hospitals to see if King sought treatment for the injuries he would have suffered in the home invasion. (Tr.p.207). After learning that King also had an address in Anderson County, Peeples contacted the hospital in Anderson County to see if he was treated for injuries. (Tr.p.207). After confirming he was treated, Peeples obtained an order for production of records for the medical records for the treatment and contacted the Anderson City Police Department to obtain a copy of the police report that was generated from King's hospital visit. (Tr.p.208). She also contacted the hospital's security department to obtain video footage of King's visit at the hospital. (Tr.p.208).



The State did not use the statement in any other manner during the trial. It was not utilized in closing argument, and no other witness referred to the statement. In light of the limited use of the statement only to explain why Peeples contacted local hospitals regarding King, the record supports a finding the statement was not hearsay and was properly admitted at trial. See Caprood v. State, 338 S.C. 103, 111, 525 S.E.2d 514, 518 (2000) (finding statements made regarding unrelated crimes did not constitute hearsay when "officers were explaining their actions in pursuing the defendants and the statements were not offered for their truth."); see also State v. Thompson, 352 S.C. 552, 559, 575 S.E.2d 77, 81 (Ct. App. 2003) (finding officer's testimony regarding statement by bystander was not hearsay because it was not entered for the truth of the matter asserted, but "rather to explain and outline the officers' investigation and their reasons for going to the Thompsons' home."). Because of this, this court finds Applicant has failed to meet his burden to show Trial Counsel was ineffective. Therefore, this court finds this allegation must be denied and dismissed with prejudice.

Failure to Request Jury Voir Dire

Applicant alleges Trial Counsel was ineffective for failing to request jury voir dire as to whether any of the jurors had been victims of a violent attack. Trial Counsel testified during voir dire he did not ask if any member had been a victim of a violent crime and maybe should have asked. This court finds Trial Counsel was not ineffective in this regard as Applicant has failed to demonstrate sufficient prejudice from Trial Counsel not asking this question. This Court further finds Applicant has failed to show that Trial Counsel's failure to ask this question 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. This court would also note that during jury voir dire, the trial judge informed the jury of the charges Applicant was facing and that he



was being tried for stabbing the victim. (Tr.p.12). The trial judge went on to inquire of the jury if they were aware of any bias or prejudice with respect to Applicant, to the State or to the subject matter of the case why they could not give Applicant and the State a fair and impartial trial based on the law and evidence to be presented. (Tr.p.13-14). One juror stood and the judge questioned her and she indicated she could be fair juror. (Tr.14). Because of this, this court finds Applicant has failed to meet his burden to show Trial Counsel was ineffective. Therefore, this allegation is denied and dismissed with prejudice.

Failure to Object to Witness' Testimony

Applicant alleges Trial Counsel was ineffective for failing to object to witness Raquan Lewers' testimony that he believed his mom was trying to get away from Applicant. (Tr.p. 96). Trial Counsel testified he did not object to the victim's son's testimony concerning his mom and Applicant as he did not feel it was that prejudicial and that sometimes objecting to things highlights them more for a jury to consider. This Court finds Applicant has failed to prove Trial Counsel was ineffective. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

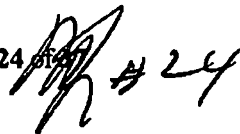
Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Here, this Court finds Trial Counsel offered a valid strategy for not objecting to the comment made by the witness. Because of this, this court finds Applicant has failed to meet his burden to show Trial Counsel was ineffective. Therefore, this allegation is denied and dismissed with prejudice.

Failure to Point out Information to the Jury

Applicant alleges Trial Counsel was ineffective for failing to point out that at the time of the stabbing, Applicant and the victim had been separated for four years, not the year or two witness Raquan Lewers said (Tr.p.96). This Court finds Applicant has failed to prove Trial Counsel was ineffective. Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Here, this Court finds Applicant has failed to demonstrate sufficient prejudice. This Court further finds Applicant has failed to demonstrate that had Trial Counsel pointed out an alleged discrepancy in time, there is a reasonable probability that, but for this, the result of the proceeding would have been different. Therefore, this Court finds this allegation is denied and dismissed with prejudice.

Failure to Investigate/ Interview or Call Witnesses

Applicant alleges Trial Counsel was ineffective in failing to investigate his case and for not interviewing or call witnesses at his trial. First, to show ineffective assistance for failure to investigate, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Trial Counsel done more investigation. Even so, Trial Counsel testified credibly that he reviewed all of the discovery and met with Applicant on numerous occasions. Moreover, Trial Counsel testified he hired a private investigator through funds approved by court order to investigate Applicant's case. Notwithstanding, this court finds Applicant has failed to produce any information that Trial Counsel would have found had he done more investigation. This Court finds Trial Counsel's investigation was reasonable. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Trial Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. This Court concludes Applicant has not met his burden of proving Trial Counsel



failed to render reasonably effective assistance. The allegation is denied and dismissed with prejudice.

Next, Applicant alleges Trial Counsel was ineffective in failing to interview and call certain witnesses during his trial. Applicant testified he gave Trial Counsel the names of people to call to interview about the incident. Trial Counsel testified Applicant told him some man attacked the victim and himself while they were at the victim's house and he was able to get away. Trial Counsel testified Applicant told him he got a ride from some unknown Mexican man driving a white Ford ranger. Trial Counsel testified Applicant could not give him a name of the man or other vital information for his case. This Court finds Applicant has failed to show that Trial Counsel was ineffective for either not interviewing or calling witnesses for his trial. First, this Court notes any claims surrounding the failure to present testimony from a witness assumes the testimony from the witness would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to

produce the testimony of any witnesses, sufficient prejudice cannot be demonstrated by Applicant.

Secondly, this Court finds Trial Counsel's testimony on the issue more credible than that of Applicant. Trial Counsel testified Applicant did not provide him with the names of any potential witnesses and therefore he did not know about them. Trial Counsel cannot be expected to interview a witness he does not know exists. Therefore, Applicant has failed to prove Trial Counsel was deficient or that he was prejudiced by any alleged deficiency. The allegation is denied and dismissed with prejudice.

Failure to Advise not to Testify

Applicant alleges Trial Counsel was ineffective for failing to advise Applicant not to testify a trial. Applicant testified he did not testify at his trial because Trial Counsel told him not to and that his prior record could be used if he did. Applicant testified he remembered telling the trial judge he did not want to testify at in his defense but that he was not prepared for the colloquy. Trial Counsel testified he advised Applicant not to testify as there were too many inconsistencies in his story and his story would not be credible to the jury.

This Court finds Trial Counsel's performance was not deficient and Applicant has failed to demonstrate sufficient prejudice by the alleged deficiency. This Court finds Trial Counsel's testimony on this point credible and finds he provided advice well within professional norms on the decision to not testify. Further, this Court finds Applicant was advised he could take the stand to testify on his behalf and be potentially impeached with any prior record. (Tr.p.332-334). Further, when Applicant was asked by the trial judge if any one used any force or made any threats including his attorney in making a decision to not testify, Applicant answered no. (Tr.p.334). Finally, when asked by the trial judge if the decision to not testify was made freely

and voluntarily, Applicant answered in the affirmative. (Tr.p.334). Because of this, Applicant has failed to prove Trial Counsel was deficient or that he was prejudiced by any alleged deficiency. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Failure to Secure or Advise of a Plea Offer

Applicant alleges Trial Counsel was ineffective for failing to secure or advise Applicant of a plea offer. Trial Counsel testified there was never any true plea offers from the State other than Applicant pleading "straight" up to the charge and that Applicant was not interested in that offer. Trial Counsel testified there was a letter from the State about a plea offer for murder for a sentence of forty years. This court finds Trial Counsel's testimony credible regarding this allegation. Furthermore, this court finds credible Applicant's testimony that he wanted to go to trial. Because of this, this court finds Applicant has failed to prove that Trial Counsel was deficient regarding this allegation and also failed to demonstrate sufficient prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Failure to Object to Jury Instruction

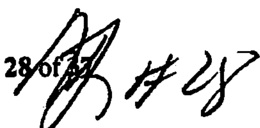
Applicant alleges Trial Counsel was ineffective for failing to object to the jury instruction, "I charge you to abide by your oath and return a verdict that speaks the truth". (Tr.p.412). This Court finds Applicant has failed to meet his burden as to this allegation. Trial Counsel testified he should have objected to the trial judge's jury instruction about returning a verdict that speaks the truth but that he believed the trial judge ultimately articulated the burden of proof properly to the jury.

On this issue, our State Supreme Court has cautioned "[j]ury instructions **on reasonable doubt** which charge the jury to 'seek the truth' are disfavored because they '[run] the risk of unconstitutionally shifting the burden of proof to the defendant.'" State v. Aleksey, 343 S.C. 20,

26-27, 538 S.E.2d 248, 251 (2000) (emphasis added). However, the Aleksey court went on to hold because the "truth-seeking" instruction in that case was "given in the context of the jury's role in determining the credibility of witnesses" there was "not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt." Id. at 28-29, 538 S.E.2d at 252. The court cautioned the circuit courts to abandon the truth-seeking language in future charges, but held that the instruction as a whole in that case was a correct statement of law and found no basis for reversal on that ground. Id.

The recent opinion in State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018), revisited the Aleksey decision and held a preliminary instruction using the phrases "search for the truth," "true facts," and "just verdict" were delivered in error but caused no prejudice warranting reversal where the instruction appeared in the preliminary remarks to the jury and, again, did not speak to the State's burden of proof. Beaty, 423 S.C. at 33, 813 S.E.2d at 506. The Beaty court held "the disputed comments can be distinguished from Aleksey because they were a mere statement to the jury and not a charge on the law." Id. at 34, 813 S.E.2d at 506. Further, the remarks were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in Aleksey. Id.

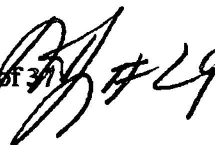
This Court finds that the jury instruction Applicant alleged do not form the basis for a grant of post-conviction relief. The limited nature of this phrase imparted no duty upon counsel to object in light of the Aleksey decision, which existed at the time of trial, and the failure to object to this limited phrase did not rendered Trial Counsel's performance deficient. Further, the lack of objection to the charges excerpted above did not prejudice applicant because the trial court's issuance of any language pertaining to the jury's role at trial did not address the burden of proof the jury was to apply to its deliberations. The relevant case law makes it clear the



instruction did not prejudice applicant because it spoke only generally to the jury's role as the factfinder. The instruction was not anywhere near the burden of proof instruction and did nothing to shift the burden from the State. There is no reasonable possibility of a different outcome had counsel made an objection to the instruction. Accordingly, pursuant to Aleksey and Beaty, this Court finds applicant has failed to demonstrate ineffective assistance of counsel. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Failure to Request a Preliminary Hearing

Applicant testified in a cursory fashion regarding Trial Counsel's failure to request a preliminary hearing. This court finds Applicant has failed to prove ineffective assistance of counsel regarding this allegation. Every criminal defendant is entitled to notice of his right to a preliminary hearing "to determine whether sufficient evidence exists to warrant [his] detention and trial." Rule 2(a), SCRCrimP. If a defendant makes a timely request for a hearing, one should be held within ten days. Rule 2(a)-(b), SCRCrimP. However, the hearing "shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held." Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Furthermore, a defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). This Court finds that Trial Counsel's performance was reasonable according to professional standards. It is clear there was probable cause to support the charges. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as a preliminary hearing would not have resulted in dismissal of the charges, and therefore, there is no likelihood that the result of the



proceeding would have been different. Furthermore, this Court finds Applicant also cannot demonstrate sufficient prejudice as he was directly indicted for the charges. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Failure to Quash Indictment

Applicant testified in a cursory fashion regarding Trial Counsel's failure to quash his indictment. Applicant is not entitled to relief upon this claim of ineffective assistance of trial counsel. Applicant has failed to show Trial Counsel was deficient in not moving to quash the indictment and he also cannot show he was prejudiced.

> In determining whether an indictment meets the sufficiency standard, the trial court must look at the indictment with a practical eye in view of all the surrounding circumstances. See State v. Means, 367 S.C. 374, 383, 626 S.E.2d 348, 353-54 (2006); Gentry, 363 S.C. at 103, 610 S.E.2d at 500; State v. Gunn, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993); State v. Wade, 306 S.C. 79, 83, 409 S.E.2d 780, 782 (1991); State v. Guthrie, 352 S.C. 103, 108, 572 S.E.2d 309, 312 (Ct.App.2002) (citing State v. Adams, 277 S.C. 115, 126, 283 S.E.2d 582, 588 (1981); State v. Reddick, 348 S.C. 631, 637, 560 S.E.2d 441, 444 (Ct.App.2002)); see also Evans, 363 S.C. at 507-09, 611 S.E.2d at 516-17 (noting all the surrounding circumstances must be weighed to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment). Accordingly, the sufficiency of an indictment is examined objectively, from the viewpoint of a reasonable person, and not from the subjective viewpoint of a particular defendant. Means, 367 S.C. at 383, 626 S.E.2d at 353-54. Further, whether the indictment could be more definite or certain is irrelevant. Gentry, 363 S.C. at 102-03, 610 S.E.2d at 500. As repeatedly noted by our appellate courts:
>
> > An indictment is sufficient if the offense is stated with [enough] certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet.
>
> See Means, 367 S.C. at 383, 626 S.E.2d at 353-54; Gentry, 363 S.C. at 102-03, 610 S.E.2d at 500; State v. Ham, 259 S.C. 118, 191 S.E.2d 13 (1972); State v.

> Walker, 366 S.C. 643, 661, 623 S.E.2d 122, 131 (Ct.App.2005); State v. Adams, 354 S.C. 361, 374, 580 S.E.2d 785, 792 (Ct.App.2003); Guthrie, 352 S.C. at 108, 572 S.E.2d at 312.

State v. Tumbleston, 376 S.C. 90, 97–98, 654 S.E.2d 849, 853 (Ct. App. 2007).

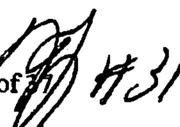
Here, Applicant's indictments were sufficient to apprise him of the charges he faced. The murder indictment stated,

> That SYLVESTER KEEJAUN KING did in Greenville County, on or about the 16th day of March, 2014, unlawfully and with malice aforethought kill JANICE HACKETT by means of by means of stabbing her, and that JANICE HACKETT died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

It outlined the elements of murder, provided the time and place Applicant was alleged to have committed the murder, and identified the means by which Applicant killed the victim. Similarly, the possession of a weapon during the commission of a violent crime indictment was sufficient. It stated,

> That SYLVESTER KEEJAUN KING did in Greenville County, on or about the 16th day of March, 2014, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

It outlined the elements of unlawful possession of a weapon during the commission of a violent crime, provided the time and place Applicant was alleged to have committed the crime and identified the violent crime committed, and referenced the statute at issue. Applicant has not identified any insufficiency of either portion of the indictment. Thus, he cannot show that Trial Counsel was deficient. Further, Applicant has not identified how he was prejudiced. Altogether, he is not entitled to relief upon this claim. Therefore, this claim for relief is denied and dismissed with prejudice.



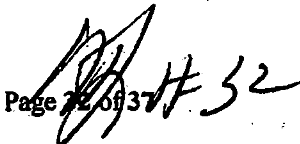
Failure to Move for a Speedy Trial

Applicant testified in a cursory fashion regarding Trial Counsel's failure to move for a speedy trial. This Court finds this allegation to be without merit and finds Applicant has failed to show Trial Counsel was deficient, and that he was prejudiced by this alleged deficiency. In this claim, Applicant asserts Trial Counsel should have moved for a speedy trial. He asserts there was a twenty-one month delay, and he lost witnesses as a result of the delay. This Court finds Applicant cannot show Trial Counsel was deficient, or that he was prejudiced by Trial Counsel's decision not to file a motion for a speedy trial.

First, Applicant fails to show that Trial Counsel was deficient in not filing a motion for a speedy trial. "A criminal defendant is guaranteed the right to a speedy trial." State v. Cooper, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct.App.2009), citing U.S. Const. amend. VI; S.C. Const. art. I,§ 14; State v. Pittman, 373 S.C. 527, 548, 647 S.E.2d 144, 155 (2007). However, "[t]here is no universal test to determine whether a defendant's right to a speedy trial has been violated." Cooper, 386 S.C. at 216, 687 S.E.2d at 66 (citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). "[T]he determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." Pittman, 373 S.C. at 549, 647 S.E.2d at 155; see Cooper, 386 S.C. at 217, 687 S.E.2d at 66.

> A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: 1) length of the delay; 2) reason for the delay; 3) defendant's assertion of the right; and 4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997). These four factors are related and must be considered together with any other relevant circumstances. Barker, 407 U.S. at 533, 92 S.Ct. 2182.

Cooper, 386 S.C. at 216-17, 687 S.E.2d at 66.



In reviewing a speedy trial claim, analysis begins "with the 'triggering mechanism' of a speedy trial claim, which is the length of the delay." State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012).[6]

> The clock starts running on a defendant's speedy trial right when he is "indicted, arrested, or otherwise officially accused," and therefore we are to include the time between arrest and indictment. United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982). The Supreme Court was quick to remind in Barker, however, that even the length of time necessary to trigger the full inquiry "is necessarily dependent upon the peculiar circumstances of the case." 407 U.S. at 530–31, 92 S.Ct. 2182. Thus, a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case. Id. at 531, 92 S.Ct. 2182; see also id. at 531 n. 31, 92 S.Ct. 2182 (suggesting that a delay of nine months could have been presumptively prejudicial in a case that depended on eyewitness testimony (citing United States v. Butler, 426 F.2d 1275, 1277 (1st Cir.1970))).

Langford, 400 S.C. 421 at 442, 735 S.E.2d 471 at 482.

In Applicant's case, twenty months elapsed between the date of Applicant's arrest and his trial. While this time was lengthy, it was not outside the parameters of cases in which a lengthy delay was not considered to constitute a violation of the right to a speedy trial.[7]

Barker provides not only should the reason for the delay be considered, but also that those reasons should be examined as to relative justification:

> Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense

[6] In Langford, this Court noted the other factors should not be examined until there was some delay that was presumptively prejudicial. Id. at 442, 735 S.E.2d at 482 (quoting Barker).

[7] See Langford, supra (twenty-three month delay reviewed in armed robbery, first degree burglary and kidnapping case); Pittman, supra (reviewing three year delay between arrest and trial in murder case); Waites, supra (reviewing two year four month delay in assault and battery of a high and aggravated nature and pointing and presenting a firearm); Cooper, supra (reviewing forty-four month delay on murder re-trial). See also State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997) (reviewing three years and five months delay in aimed robbery and murder case); State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct.App. 2000), affirmed by State v. Kennedy, 348 S.C. 32, 558 S.E.2d 527 (2002) (reviewing two year and two month delay in grand larceny, first degree burglary and financial transaction card fraud case); State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct.App. 1992) (reviewing three year delay in murder case).

> should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Barker v. Wingo, 407 U.S. at 531. Here, there was no discussion regarding the delay in Applicant's trial on the record. This Court would note the Clerk of Court records reflect Trial Counsel was still likely conducting his investigation through August 2015, which was when he obtained funding for an investigator. This may have caused some of the delay in the case being called to trial.

"[T]he defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right." Barker, 407 U.S. at 528. Multiple assertions of the right will weigh heavily in a defendant's favor. See, for example, United States v. Bass, 460 F.3d 830, 837 (6th Cir. 2006)("Between his arraignment and trial, Bass filed three motions to dismiss based upon speedy trial grounds: (1) in January 1999, two months after the arraignment; (2) in March 2000; and (3) in March 2002. Accordingly, Bass asserted his right to a speedy trial, and this factor weighs in his favor.").

As already noted, the delay itself is not dispositive of whether a violation has occurred. Neither is the time at issue dispositive of prejudice. Pittman, 373 S.C. at 551, 647 S.E.2d at 156) (rejecting Pittman's argument "that the delay of his trial was so lengthy that it not only meets the requisite finding of delay, but also that the delay is presumptively prejudicial"). Other courts have examined similar delays and declined to find presumptive prejudice.[8] The Supreme Court in Barker specifically noted the damage that may very well be done to the prosecution's case:

[8] See United States v. Blanco, 861 F.2d 773, 778 (2nd Cir. 1988) (rejecting general assertion of prejudice in ten year delay between indictment and trial where defendant at fault in delay and where "delay can just as easily hurt the government's case"); United States v. Tchibassa, 452 F.3d 918, 925-927 (D.C.Cir. 2006) (finding no presumptive

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> A second difference between the right to speedy trial and the accused's other constitutional rights is that deprivation of the right may work to the accused's advantage. Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof. Thus, unlike the right to counsel or the right to be free from compelled self-in-crimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself.

Barker, 407 U.S. at 521.

In reviewing all of the factors, Applicant cannot show he would have been entitled to relief based upon an assertion of his right to a speedy trial. There was no evidence the delay was the result of any attempt from the State to hinder Applicant's ability to present a defense. Applicant has presented no argument or evidence reflecting he suffered any prejudice as a result of the delay in his trial. He has not identified any witness that was unavailable because of the delay, nor has he indicated what information those witness(es) could provide. Since there is no merit to this claim, Applicant cannot show that trial counsel was deficient. Further, Applicant cannot show that he was prejudiced. See, e.g., Werts v. Vaughn, 228 F.3d 178, 203 (3rd Cir. 2000) ("counsel cannot be ineffective for failing to raise a meritless claim"); see also Almon v. U.S., 302 F.Supp.2d 575, 586 (D.S.C.2004) ("There can be no ineffective assistance of counsel for failing to raise a claim which is not legally viable."). Therefore, this claim is denied and dismissed with prejudice.

Failure to Suppress Evidence

Applicant testified in a cursory fashion regarding Trial Counsel's failure to suppress evidence. This court finds this allegation to be without merit and finds Applicant has failed to

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prejudice where defendant more at fault than government in eleven year delay). Accord United States v. Mendoza, 530 F.3d 758, 764-765 (9th Cir. 2008) (noting that if government had "exercised due diligence," for speedy trial claim on delay of eight years, defendant would have had to have shown "specific prejudice to his defense" rather than assessing presumptive prejudice).

show Trial Counsel was deficient, and that he was prejudiced by this alleged deficiency. This Court finds Applicant has failed to show upon what grounds Trial Counsel should have argued to suppress the evidence he claimed formed the basis for suppression. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. Here, this Court finds Applicant has failed to meet his burden. Therefore, this claim is denied and dismissed with prejudice.

Failure to Move for Directed Verdict

Applicant testified in a cursory fashion regarding Trial Counsel's failure to move for a directed verdict. This court finds Trial Counsel was not ineffective. Contrary to Applicant's assertions, Trial Counsel did move for a directed verdict at the end of the State's case. (Tr. 331-32). The motion was denied by the trial court. Id. Trial Counsel also renewed the motion at the close of the defense's case. (Tr. 354). Again, the trial court denied the motion. Id. Since Trial Counsel moved for a directed verdict at the end of the State's case and at the end of the entire case, Applicant's claim in this allegation is without factual support. Therefore, this claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of November, 2018.

ALEX KINLAW JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

Copy mailed to
Attorney Ross and A.G.
on 11 / 7 / 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

SYLVESTER KING,
APPLICANT.
v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

MOTION TO ALTER OR AMEND THE JUDGMENT

CASE # 2018-CP-23-3013

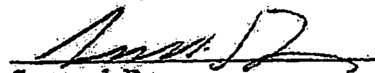
COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRCP, to alter or amend the judgment of this Court filed on November 7, 2018. The Applicant takes issue with the findings of fact and conclusions of law set fourth resulting in the denial of post-conviction relief in his case. Specifically, he argues that the Order of Dismissal in its argument regarding the issue that trial counsel failed to fully investigate and clarify for the jury whose phones were found at the scene, DNA evidence, and shoe print evidence, states no evidence was presented at the PCR hearing of what investigation would produce. (Order p. 24) Under cross examination, Mr. Kornfeld admitted that at trial he brought out evidence in cross examination that a shoe print had DNA from the Applicant, the victim, and an unknown third party contributor. (R. p. 235, l. 13) In fact, that sample was inconclusive. That is why the State did not use it. This was the only evidence the jury heard of shared DNA, and it was not supported by the actual DNA records. Thus the Applicant argues counsel's error in bringing forth damaging DNA evidence reflected a failure to investigate the issue.

The Applicant also wishes to clarify that his allegation was that counsel failed to advise the Applicant *to* testify. He argues that each allegation set fourth caused to undue prejudice. He further argues that if each allegation did not amount to ineffective assistance of counsel standing alone, the cumulative error prejudiced him to the degree that "there is a reasonable probability

that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

For the foregoing reasons, the Applicant requests this Court to alter its Order of Dismissal and grant Applicant relief.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 16 day of November, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
SYLVESTER KING,	)	ENTERED COMPUTER
Applicant,	)	CASE NO.: 2018-CP-23-3013
vs.	)	
THE STATE OF SOUTH CAROLINA,	)	**ORDER TO ALTER OR AMEND THE JUDGMENT**
Respondent.	)	

'18 DEC 14 AM10:35
Paul Wickensimer CDC GVL SC

This matter comes before the Court pursuant to Rule 59(e) motion, to alter or amend the judgment. The Applicant's Post-Conviction relief was denied on October 24, 2018 after this Court careful reviewed the entire record, including the testimony presented at the evidentiary hearings.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. This Court found that the Applicant failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel.

Finding no legal basis to support Applicant's motion, this Court hereby denies Applicant's Motion to Alter Judgment.

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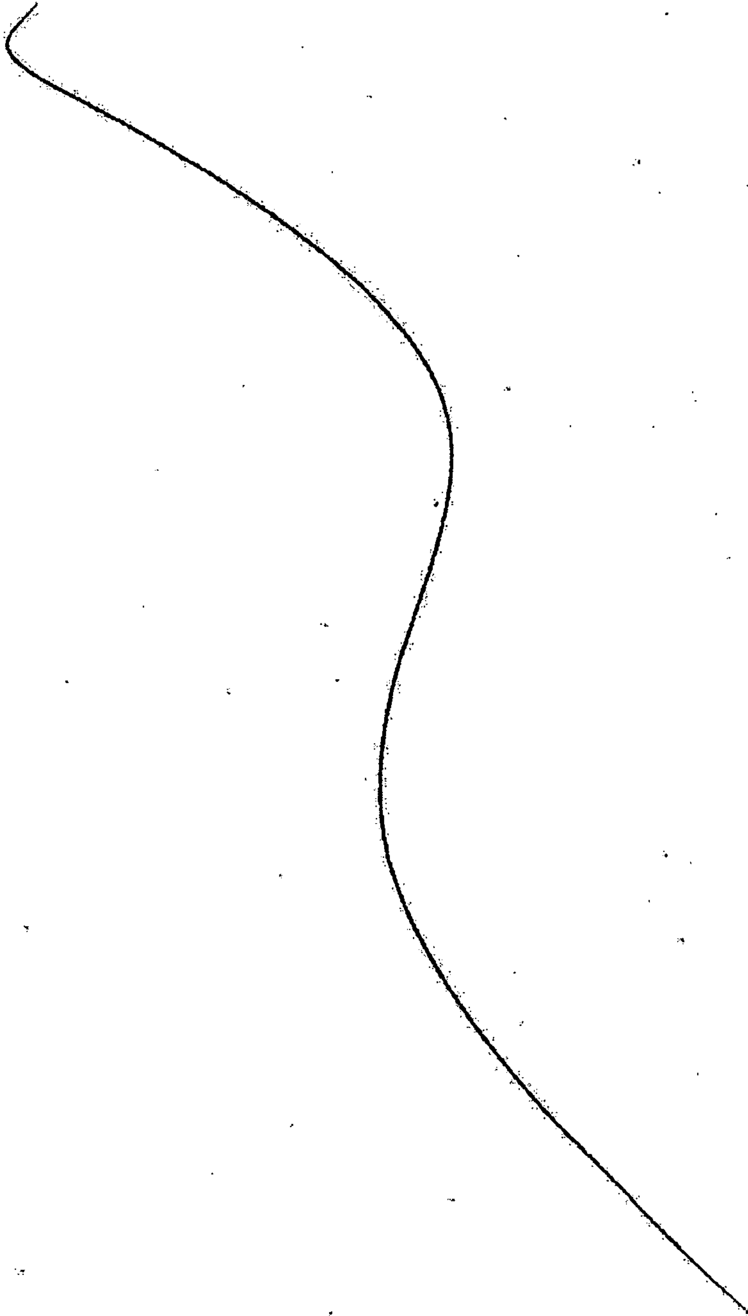
Copy mailed to
Attorney Ross / A.G
on 12 14 18

IT IS SO ORDERED.

Dated: 12/4/08
Greenville, SC

Hon. Alex Kinlaw, Jr.
Circuit Judge, Thirteenth Judicial Circuit



STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
COUNT ONE – MURDER
COUNT TWO – POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on AUG 19 2014 the Grand Jurors of Greenville County present upon their oath:

COUNT ONE-MURDER

That SYLVESTER KEEJAUN KING did in Greenville County, on or about the 16th day of March, 2014, unlawfully and with malice aforethought kill JANICE HACKETT by means of by means of stabbing her, and that JANICE HACKETT died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO-POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That SYLVESTER KEEJAUN KING did in Greenville County, on or about the 16th day of March, 2014, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina 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.

SOLICITOR

007457

DOCKET NO. 2014-GS-23-
CAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
August **TERM 2014**

THE STATE

vs.

SYLVESTER KEEJAUN KING

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/26/2014

ARREST WARRANT NUMBER
2014A2330202379

2014A2330202380

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT
Count 1: Guilty
Count 2: Guilty

Foreperson of Petit Jury
Date:

Indictment for

0116
0549

MURDER
VIOLATION § 16-03-0010
POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
VIOLATION § 16-23-0490

ENTERED
ACCT

580

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE VS. Sylvester Keejaun King

INDICTMENT/CASE#: 2014GS2307457

A/W#: 2014A2330202379

AKA:

Date of Offense: 3/16/2014

Race: BLACK Sex: M Age: 36

S.C. Code § : 16-03-0010, 0020

DOB: [redacted]-1978 SS#: [redacted]

CDR Code #: 0116

Address: [redacted] (Last Known)

City,State,Zip: Williamston, SC 29697-1522

DL#: [redacted] SID#:

SENTENCE SHEET 30 - life

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murder (gs)

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ______ (defendant's initials)

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

ATTEST: Munson, Judy — 64040 SC Bar# — Defendant — Attorney for Defendant: Alex Kornfeld — 79046 SC Bar#

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ______

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ ______ plus 20% fee: ______ $ ______

Payment Terms:

☐ Set by SCDPPPS

Recipient:

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ______

May serve W/E begining ______

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

$ ______ paid to Public Defender Fund

Other:

Item	Amount	$
*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Paul B Wickensimer

Court Reporter: T Johnson

Presiding Judge: C. Victor Pyle Jr.

Judge Code: 2070

Sentence Date: 12-2-2015

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS 10407

COUNTY OF Greenville

STATE VS. Sylvester Keejaun King

INDICTMENT/CASE#: 2014GS2307457

AKA:

A/W#: 2014A2330202380

Date of Offense: 3/16/2014

Race: BLACK Sex: M Age: 36

S.C. Code § : 16-23-0490

DOB: [redacted]-1978 SS# [redacted]

CDR Code #: 0549

Address: [redacted] (Last Known)

City,State,Zip: Williamston, SC 29697-1522

DL#: [redacted] SID#:

COUNT TWO

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Weapons / Poss. Weapon During Violent Cr

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ______ (defendant's initials)

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

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Munson Judy	64040 SC Bar#	Defendant	Attorney for Defendant Alex Kornfeld	79046 SC Bar#

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for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed ______ years

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

of $ ______; plus costs and assessments as applicable*; the balance is suspended with probation for ______

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SPECIAL CONDITIONS:

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PTUP

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E begining

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

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3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk [signature]

Court Reporter: T Johnson

Presiding Judge [signature]

Judge Code: 2010

Sentence Date: 12-2-2015

SCCA/217 (03/2011)