

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Saluda County

Honorable Walton J. McLeod, IV, Circuit Court Judge

RONNIE MARTIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000604

APPENDIX

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II.

The trial judge properly admitted recordings of telephone calls between Appellant and Kimberly Gantt.

Relevant Facts

Janice Ergle, administrator of the Saluda County Detention Center, is the custodian of records for all phone conversations that are recorded for security purposes in the detention center. ROA. pp. 152-153. Ergle testified the records of the phone conversations are kept in the ordinary course of business and are reviewed as a security measure to monitor what conversations are going forth. ROA. p. 153. Ergle explained inmates who make phone calls from the jail phone system are apprised of the fact that their phone calls are being recorded by a recording that plays at the beginning of the call that alerts inmates the conversation could possibly be monitored. ROA. p. 153. The solicitor brought Ergle's attention to five recorded phone calls that were made in between December 13, 2013, and December 18, 2013. ROA. p. 154. Ergle testified the recordings fairly and accurately represented the phone conversations attributed to Appellant and had not been changed or altered in any way. ROA. pp. 154-155. The recordings of the phone calls were then admitted into evidence. ROA. p. 155.

Discussion

Appellant contends the trial court erred in admitting the recordings of the phone calls Appellant made to Gantt while he was incarcerated. Specifically, Appellant asserts the admission of the jail calls violated 18 U.S.C. §§2511 and 2516 because the federal statute prohibits the interception of telephone conversations in the absence of a court order. Appellant also argues the admission of jail calls at a criminal trial violated

constitutional protections against unreasonable searches and seizures and invasions of privacy because Appellant reasonably expected the contents of his calls would not be used against him in a criminal proceeding. Both of these arguments lack merit. Firstly, the law enforcement and consent exceptions to the wiretapping statutes render the use of jailhouse phone recordings permissible. Secondly, the admission of the phone calls did not violate Fourth Amendment protections against unreasonable search and seizure because Appellant was incarcerated at the time and thus had no expectation of privacy. Also, Appellant lacked an expectation of privacy in the phone calls because he was advised at the beginning of the call that the communication was subject to monitoring.

In United States v. Hammond, 286 F.3d 189 (4th Cir. 2002), the Fourth Circuit dealt with a challenge to the admission of recorded jail phone calls. In Hammond, the defendant sought suppression of the recorded telephone conversations, arguing that the recordings should be excluded from evidence because the government did not comply with the requirements of Title III. Id. at 191. Specifically, Hammond argued the FBI was required to obtain a judicial interception order to listen to the tapes. Id. The court first found that the recordings were admissible under the “law enforcement exception.” Id. at 192. The “law enforcement exception” excludes from the definition of “interception” recordings made by “any telephone or telegraph instrument, equipment or facility, or any component thereof . . . being used by . . . an investigative or law enforcement officer in the ordinary course of his duties.” 18 U.S.C. §2510(a)(ii). Id. The court found that since the Bureau of Prisons was acting pursuant to its well-known policies in the ordinary course of its duties in taping calls, the law enforcement exception applied. Id. The court also found the “consent” exception to the wiretapping statute applied. Id. 18 U.S.C.

§2011(2)(c) provides: “It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.” Id. The court concluded the “consent” exception applies to prison inmates required to permit monitoring as a condition of using prison telephones. Id.

As in Hammond, the admission of the recorded phone calls are admissible under the “law enforcement” and “consent” exceptions. The Saluda County Detention Center was acting pursuant to taping phone calls in the regular course of its business, and the policy is well-known since all parties have notice their phone calls are being taped. As Ergle testified, a recording plays at the beginning of the call to inform the caller their communications are subject to monitoring. Appellant thus consented to the recording by continuing to use the prison’s phone system after receiving notice the call was being recorded.

Appellant’s argument that the admission of the recorded phone calls violates constitutional protections against unreasonable search and seizure and invasions of privacy similarly lacks merit. The United States Supreme Court has repeatedly found prisoners have no reasonable expectation of privacy while incarcerated. See Bell v. Wolfish, 441 U.S. 520 (1979) (holding a requirement that pretrial detainees remain outside their rooms during “shakedowns by prison officials and practice of conducting body-cavity searches following contact visits did not violate Fourth Amendment); Hudson v. Palmer, 468 U.S. 517 (1984) (holding “society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison

cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions"). If security concerns can justify cell searches and body-cavity searches, then it is reasonable to monitor prisoner's phone conversations, especially where they are told the calls are being monitored. The fact that prisoners are given express notice that their calls may be monitored clearly informs them they have no expectation of privacy in their phone calls.

As discussed in Respondent's Issue I, the State submits that any alleged error with respect to the admission of the recorded phone calls is harmless due to overwhelming evidence of Appellant's guilt. Appellant's conviction and sentence should be affirmed.

III.

The trial judge properly denied Appellant's request to charge the jury on burglary in the second degree where there was no evidence from which it could be inferred that Appellant committed burglary in the second degree rather than burglary in the first degree.

Relevant Facts

At trial, Dianne Williams testified the burglary occurred around 8:00 P.M. ROA. p. 44. Williams stated, "it wasn't quite dark." ROA. p. 45. Williams elaborated. "But it wasn't quite – it wasn't – it wasn't dark. It was like middle daylight look a little bit. You know how the evening go down?" Williams then clarified she knew it was around 8:00 P.M. when Appellant entered her residence. Williams also testified she immediately called 911 when Appellant ran out of the home and that the 911 call was at around 8:00 P.M. ROA. p. 50.

At trial, the solicitor requested the Court take judicial notice of the time of sunset for December 13, 2013. ROA. p. 67. State's Exhibit #18, a report from the U.S. Naval Observatory Astronomical Application Department, was subsequently admitted into evidence without objection. ROA. p. 67. The Court took judicial notice of the times for sunrise, twilight and sunset for December 13, 2013. ROA. pp.67-68.

Chief Goldman testified that the robbery occurred moments before he arrived at the crime scene. ROA. pp. 72-73. Goldman stated it was dark at the time of his arrival. ROA. p. 73. Goldman elaborated the information he collected was that the burglary had just occurred and it was dark at that time. ROA. p. 73. On December 13, 2013, sunset was at 5:19 P.M. ROA. p. 75; R. p. * (U.S. Naval Observatory Astronomical Applications Department Report). Goldman also testified the last possible time there could be a determination it was daylight on December 13, 2013 was at 5:46 P.M. ROA. p. 73; R. p. * (U.S. Naval Observatory Astronomical Applications Department Report). The fact that it was dark outside at the time of the burglary was later corroborated by James Williams. ROA. p. 106.

Defense Counsel later requested a charge of burglary in the second degree, asserting there was testimony by Dianne Williams that it was light outside at the time of the burglary. ROA. p. 259. The solicitor responded:

Well, Your Honor, the Court has taken judicial notice of the fact that it was by every stretch, all of the testimony tracked that it was, in fact, nighttime. She makes some description of it that it was just turning light and I just don't think that there is any substantive evidence in the record at all that it was anything other than nighttime in this case. And, of course, in this case there is no defense in this case that it wasn't nighttime in this case. And it strictly was wasn't present. Wasn't me. Did not do it was the only thing that was proffered. There was nothing in there about it not being nighttime, Your Honor. I just don't think there is any substantive

evidence in the record that would permit a jury to find that it was anything other than a nighttime burglary in this case, your Honor.

ROA. p. 260.

The trial judge ruled:

While I'm charged with informing the jury of the law that they should apply, I don't think the evidence supports a request of a lesser included offense of burglary in the second degree. The State must prove beyond a reasonable doubt that the Defendant entered or remained in the dwelling in the nighttime. Nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face except by artificial light or moonlight. The uncontroverted testimony as far as the time is concerned is a quarter till eight, 8:00. The response time is within a minute, 8:03 P.M., 8:04 P.M. It just occurred. There is the U.S. Naval Observatory Astronomical Survey that shows when civil twilight was, when sunset was on the 13th. I don't think the comment not quite dark would exclude that period of time between sunset and sunrise. It's a quarter to eight. It clearly had been several hours where there had been sunset. Clearly it's not even getting a whiff of sunrise so to speak so I would respectfully deny that motion as well.

ROA. p. 261.

Discussion

Appellant contends the trial court erred in denying an instruction on the lesser-included offense of burglary in the second degree. Specifically, Appellant asserts, "Given Williams' purported knew the perpetrator, was guessing as to the time of the day, and the non-emergency nature of the call, it is reasonable to infer that the actual incident occurred well before 8:00 P.M." Br. of Appellant p. 15. This argument lacks merit, as the evidence at trial conclusively established the robbery occurred around 8:00 P.M. and that sunset was at 5:19 P.M. on the day of the burglary. The trial judge, thus, properly declined to charge the jury on burglary in the second degree because there was no evidence from which it could be inferred that Appellant committed burglary in the second degree rather than burglary in the first degree.

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). “No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence.” State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). “Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence.” State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993). In instructing the jury on the law, “[a] trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012).

Critically, the trial judge is only required to instruct the jury on the lesser-included offense when the evidence could support an inference the defendant is guilty of **only** the lesser-included offense and not the greater offense. State v. Lambright, 279 S.C. 535, 537, 309 S.E.2d 7, 8 (1983). “It is well settled that a jury instruction on a lesser included offense is required only when the evidence warrants such an instruction.” State v. Coleman, 342 S.C. 172, 175, 536 S.E.2d 387, 389 (Ct. App. 2000). “The mere contention that the jury might accept the State’s evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense.” State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006).

In Appellant's case, the fact that the robbery occurred around 8:00 P.M. was uncontroverted throughout trial. Appellant's contention that, "Williams purported knew the perpetrator, was guessing as to the time of the day, and the non-emergency nature of the call, it is reasonable to infer that the actual incident occurred well before 8:00 P.M." is directly contrary to the facts presented at trial. Williams testified the robbery occurred around 8:00 P.M. and she immediately called 911 once Appellant ran out of her home. Chief Goldman arrived at the home within a matter of minutes and testified, based on his conversations with James and Dianne Williams, that the robbery had just occurred. The Court took judicial notice of the Naval Observatory Astronomical Applications Department Report showing sunset on December 13, 2013 was at 5:19 P.M and civil twilight was at 5:46 P.M. Sunset and twilight were several hours before the time of the robbery. Williams's ambiguous statements that it was "not quite dark" and "it was like middle daylight look a little bit. You know how the evening go down" did not support an inference Appellant is guilty of only the lesser-included offense and not the greater offense. The facts that the robbery occurred around 8:00 P.M. and that sunset was several hours earlier were conclusively proved at trial. The trial judge, thus, did not err in denying Appellant's request for an instruction on the lesser-included offense of burglary in the second degree.

As discussed in Respondent's Issues I and II, the State submits that any alleged error with respect to the jury charge is harmless due to overwhelming evidence of Appellant's guilt. Appellant's conviction and sentence should be affirmed.

IV.

Appellant's argument that the solicitor's statements infected the trial with unfairness and denied Appellant his due process rights is not preserved for appellate review. Even if Appellant's argument was preserved, the solicitor properly predicated his opening and closing arguments on evidence presented and the reasonable inferences to be drawn from that evidence.

Appellant asserts the alleged errors discussed in issues I, II, and III were compounded by statements made by the Solicitor that were unsupported by the evidence presented at trial. Appellant takes issue with two comments made by the solicitor in his opening argument and one comment made during the solicitor's closing argument. In his opening statement, the solicitor stated:

You're going to hear that once he [Ronnie Martin] gets into custody in this case the scheming and conniving starts. He gets a hold of Kimberly Gantt and starts talking to her and basically decides he's gonna get in front of this thing and he's gonna frame somebody else for doing this. You're going to hear the name of a young man named Quinton Samuels. You will hear that Mr. Samuels is a little bit slow and has some disability.

ROA. p. 29. Later in his opening argument, the solicitor stated, "And because he [Ronnie Martin] knows her [Dianne Williams], that he can get her to recant her statement and say it wasn't me, it was Quinton Samuels, the slow person therein Ridge Spring." ROA. p. 30. During his closing argument, the solicitor stated:

You can hear him [Ronnie Martin] scheming. Get her pocketbook back. Get these charges dropped and let's frame a mentally challenged person in the town of Ridge Spring, with all deference to Mr. Samuels who is sitting here, he was practically talking to himself when he got up here on the stand, wanted to pick someone that was defenseless that couldn't defend themselves, that's the Ronnie Martin that's up here.

ROA. p. 303. Appellant contends, "the State's argument was focused not on the validity of the victim identification, the only evidence against Ronnie Martin, but rather on

portraying him as a conspirator preying on a mentally challenged person.” Br. of Appellant p. 17. Appellant further contends, “the references to Quinton Samuels as ‘mentally challenged’ and ‘disabled’ denote a medically established diagnosis, a fact not in evidence.” Br. of Appellant p. 17. Appellant’s argument lacks merit, as the solicitor’s argument was confined to matter presented during trial and the reasonable inferences to be drawn from the State’s evidence.

Initially, the State notes Appellant’s argument is not preserved for appellate review, as Defense Counsel did not object to the solicitor’s opening or closing statements at any time. If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). State v. Varvil, 338 S.C. 335, 339, 526 S.E.2d 248, 251 (Ct. App. 2000) (finding the failure to object to comments made during argument precludes appellate review of the issue; solicitor’s interjection of personal beliefs). State v. Wilkins, 310 S.C. 81, 89-90, 425 S.E.2d 68, 73 (Ct. App. 1992) (holding defendant lost right to challenge propriety of prosecutor’s opening argument by failing to contemporaneously object). Defense Counsel did not object to the solicitor’s statements during opening and closing argument. This error is thus not preserved for Appellate review.

Even if Appellant’s argument was preserved for Appellate review, Appellant’s argument lacks merit, as the solicitor’s comments during opening and closing were permissible where the solicitor’s argument was confined to matter presented during trial and the reasonable inferences to be drawn from the State’s evidence. The prosecution “may argue the State’s version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.” State v. New, 338 S.C. 313, 526

S.E.2d 237 (Ct. App. 1999). The solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002).

At trial, Kimberly Gantt testified regarding her conspiracy with Appellant to frame Quinton Samuels for the burglary. Kimberly Gantt testified Samuels was "not bright." ROA. p. 124. Chief Jared Goldman testified he knew Quentin Samuels and that, "I have had some dealings with Quinton and actually know him well. Quinton is a very handicapped or slow individual." ROA. p. 92. Goldman continued, "Quinton Samuels is very child-like. He's very impressionable. He can be talked into doing things, I guess, but really he's just very child-like. I would say he was around eight or ten years old mentally in his mind." ROA. p. 93.

As to Appellant's argument that, "the State's argument was focused not on the validity of the victim identification, the only evidence against Ronnie Martin, but rather on portraying him as a conspirator preying on a mentally challenged person," Kimberly Gantt's testified at trial regarding her conspiracy with Appellant to frame Samuels. Gantt and Goldman both testified concerning Samuels's intellectual disabilities. The solicitor's comments were based on evidence previously presented at trial and the inferences to be drawn from it and were wholly permissible.

As to Appellant's argument that, "the references to Quinton Samuels as 'mentally challenged' and 'disabled' denote a medically established diagnosis, a fact not in evidence," Chief Goldman testified based on his personal knowledge that Samuels was "a very handicapped or slow individual" and "child-like" and very impressionable. Gantt also noted Samuels was "not bright." The solicitor's arguments were based on Goldman

and Gantt's trial testimony and thus were based on evidence presented at trial and the reasonable inferences to be drawn from it.

As discussed in Respondent's Issues I, II, and III, the State submits that any alleged error is harmless due to overwhelming evidence of Appellant's guilt. Appellant's conviction and sentence should be affirmed.

CONCLUSION

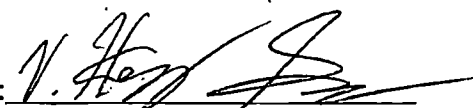
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 3, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From Saluda County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

RONNIE MARTIN,

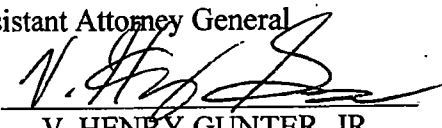
Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with
Rule 211(b), SCACR:

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May 3, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

Appeal From Saluda County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent

vs.

RONNIE MARTIN,

Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Molly R. Hamilton Cawley, Esquire, 1156 Bowman Road, Suite 201, Mt. Pleasant, SC 29464 and Robert M. Dudek, Esquire, Chief Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of May, 2016.


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

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

The State, Respondent,

v.

Ronnie Martin, Appellant.

Appellate Case No. 2015-001065

Appeal From Saluda County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2017-UP-246
Heard June 1, 2017 – Filed June 21, 2017

AFFIRMED

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Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Vann Henry Gunter, Jr., both of
Columbia; and Solicitor Samuel R. Hubbard, III, of
Lexington, for Respondent.

PER CURIAM: Ronnie Martin appeals his conviction for first-degree burglary,
arguing the trial court erred in (1) excluding evidence of third-party guilt, (2)

admitting recorded jail calls, and (3) refusing to instruct the jury on the lesser-included offense of second-degree burglary. Martin also argues the solicitor's opening and closing statements so infected the trial with unfairness that it deprived him of due process, and he contends his conviction should be reversed because of the cumulative errors of the trial court. We affirm.

1. We find the trial court correctly determined that Martin's testimony regarding his conversations with Quinton Samuels fails to meet the standard for third-party guilt evidence. The admissibility of a witness's prior inconsistent statement under Rule 801(d)(1)(A), SCRE, requires further scrutiny when those statements concern evidence of third-party guilt. *State v. Rice*, 375 S.C. 302, 317, 652 S.E.2d 409, 416 (Ct. App. 2007), *overruled on other grounds by State v. Byers*, 392 S.C. 438, 710 S.E.2d 55 (2011).

[T]he evidence offered by [the] accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence [that] can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. . . . [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.

State v. Gregory, 198 S.C. 98, 104–05, 16 S.E.2d 532, 534–35 (1941) (citations and internal quotation marks omitted); *see, e.g., State v. Cooper*, 334 S.C. 540, 547–50, 514 S.E.2d 584, 588–89 (1999) (finding a witness's testimony that the witness overheard a third party admitting to the crime with which the defendant was charged was inadmissible under *Gregory* because, aside from the witness's assertions, there was no credible evidence linking the third party to the crime).

During the proffer, Martin was asked whether he knew who committed the burglary and, in response, stated, "Well, [Samuels] . . . came by earlier that day and asked me to go with him to make a lick." "Lick" is slang for a break-in or robbery. He testified that, after he was imprisoned, he speculated that Samuels committed

the robbery because he saw Samuels shortly after the robbery had occurred and Samuels admitted to committing a robbery. Martin further testified that Samuels told him he stole a purse but threw the purse behind a house because he was being chased by the police. When Samuels testified, he could not recall the night of the burglary. Aside from Martin's assertions, there is no credible evidence linking Samuels to the crime.

Additionally, we find Martin's argument that Samuel's second statement was admissible as an excited utterance or present sense impression is not preserved because Martin did not raise the argument to the trial court. *See State v. Garner*, 389 S.C. 61, 66, 697 S.E.2d 615, 617 (Ct. App. 2010) ("[I]n order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court.]"); *id.* ("[A]rguments raised for the first time on appeal are not preserved for [appellate] review[.]").

2. We find the trial court properly admitted the recorded jail telephone calls between Martin and his girlfriend, Kimberly Gantt. Title III of the Omnibus Crime Control and Safe Streets Act prohibits, with certain exceptions, the interception of "any wire, oral or electronic communication" in the absence of a court order. *See* 18 U.S.C. §§ 2511(1), 2516 (2015). However, the prohibitions of the statute do not apply to the recording of prisoners' conversations on institutional telephones if the recordings are made pursuant to the "law enforcement" exception or if a party consents to the interception. *United States v. Hammond*, 286 F.3d 189, 192 (4th Cir. 2002). The law enforcement exception "excludes from the definition of 'interception' recordings made by 'any telephone or telegraph instrument, equipment or facility, or any component thereof . . . being used by . . . an investigative or law enforcement officer in the ordinary course of his duties.'" *Id.* (quoting 18 U.S.C. § 2510(5)(a)(ii)); *see id.* at 191–92 (finding a prisoner's calls were not "intercepted" and, therefore, not prohibited by the statute because "the recordings were made as part of [the prison's] routine monitoring"). Pursuant to the consent exception, "[i]t shall not be unlawful . . . to intercept a wire, oral, or electronic communication" when "one of the parties to the communication has given prior consent." 18 U.S.C. § 2511(2)(c) (2015); *see Hammond*, 286 F.3d at 192 (joining the First, Second, Eighth, and Ninth Circuits in concluding the consent exception applies to prisoners who are "required to permit monitoring as a condition of using prison telephones"); *see also United States v. Frink*, 328 F. App'x 183, 189–90 (4th Cir. 2009) (finding the consent exception to the prohibition of recording calls applied when the message that the call was "subject to monitoring and recording" played at the beginning of each telephone call).

The law enforcement and consent exceptions to Title III render Saluda County Detention Center's (SCDC's) recording of Martin's conversations permissible. The law enforcement exception applies because the recordings of Martin's conversations with Gantt were made as part of SCDC's routine monitoring. Janice Ergle, the custodian of records for all phone conversations at SCDC, testified that records of the phone conversations were kept in the ordinary course of business and were monitored as a security measure. Additionally, Martin consented to having his conversations intercepted. Prior to an inmate using the phone at SCDC, a recording plays and alerts the inmate that the conversation could be monitored. Martin consented to having his calls recorded by continuing to use SCDC's phone after the warning message played.

Additionally, we find the recording of Martin's jail calls did not violate the Fourth Amendment's protections against unreasonable searches and seizures. "A government agent's search is unreasonable when it infringes on 'an expectation of privacy that society is prepared to consider reasonable.'" *United States v. Castellanos*, 716 F.3d 828, 832 (4th Cir. 2013) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). In order to have a legitimate expectation of privacy, one must have (1) a subjective expectation of privacy that (2) is objectively reasonable, i.e., one that society is willing to recognize as reasonable. *Id.* Prisoners have neither a subjective nor an objective expectation of privacy in phone calls made on prison telephones. *United States v. Van Poyck*, 77 F.3d 285, 290–91 (9th Cir. 1996). A prisoner does not have a subjective expectation of privacy when the prisoner is notified that his calls are being monitored. *Id.* at 290. Further, no prisoner should reasonably expect privacy in outbound telephone calls due to the severe curtailing of other privacy rights by virtue of being imprisoned. *See id.* at 290–91; *see also United States v. Clark*, 651 F. Supp. 76, 81 (M.D. Pa. 1986) (finding prisoners do not have a legitimate expectation of privacy in prison telephone conversations because prisons routinely monitor and record phone conversations to enhance security).

Martin had neither a subjective nor objective expectation of privacy in his prison telephone calls with Gantt. Martin did not have a subjective expectation of privacy because, as discussed above, he was notified that his calls were being monitored. Additionally, even if Martin had a subjective expectation of privacy, any such expectation was not objectively reasonable. To hold otherwise would be inconsistent with the recognition that prisoners have severely curtailed privacy rights and would frustrate SCDC's ability to preserve security in its facility.

3. We find the trial court properly refused to charge the jury on the lesser-included offense of second-degree burglary. A trial court's decision not to charge the jury on a lesser-included offense is reviewed for an abuse of discretion. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* at 570, 647 S.E.2d at 166–67. "A trial [court] must charge a lesser[-]included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004). The "presence of evidence to sustain [a] crime of a lesser degree determines whether it should be submitted to the jury and [the] mere contention that [the] jury might accept [the] State's evidence in part and might reject it in part will not suffice." *State v. Tyndall*, 336 S.C. 8, 22, 518 S.E.2d 278, 285 (Ct. App. 1999). Second-degree burglary is a lesser-included offense of first-degree burglary. *State v. Goldenbaum*, 294 S.C. 455, 457, 365 S.E.2d 731, 732 (1988) (finding the trial court properly refused to charge the lesser-included offenses of second- and third-degree burglary because "[t]here was no evidence . . . from which the jury could infer that [the] appellant committed second or third rather than first[-]degree burglary").

The trial court properly refused to charge second-degree burglary because there is no evidence from which the jury could infer it was daytime when the burglary occurred. In addition to the testimony from the victim, Dianne Williams that "[i]t wasn't quite dark," the victim further testified that it was around 8:00 p.m. when the burglary occurred and she called 911 immediately afterward. When Martin testified to establish his defense of alibi, he stated that it was "good and dark" around 8:00 p.m. Chief Jared Goldman, of the Saluda County Sheriff's Office, testified he arrived on the scene at 8:05 p.m., shortly after the burglary occurred, and that "[i]t was dark at that time." The trial court took judicial notice of the times for sunset and twilight on December 13, 2013, which, according to the U.S. Naval Observatory Astronomical Application Department, were 5:19 p.m. and 5:49 p.m., respectively. Furthermore, Williams' husband corroborated that it was dark when the burglary occurred.

4. We find Martin's argument that the solicitor's opening and closing statements so infected the trial with unfairness that they made his resulting conviction a denial of due process is not preserved because Martin did not object to the solicitor's statements. *See State v. Webb*, 389 S.C. 174, 183–84, 697 S.E.2d 662, 667 (Ct. App. 2010) ("In order to preserve an error for appellate review, a defendant must make a contemporaneous objection on a specific ground." (quoting

State v. Blalock, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003)); *see also State v. Franklin*, 318 S.C. 47, 58, 456 S.E.2d 357, 363 (1995) (finding the appellant's argument regarding the solicitor's closing argument was not preserved because the appellant did not object to the closing argument at trial).

5. We find Martin's argument that the trial court's cumulative errors require reversal of his conviction is not preserved because he did not raise the argument to the trial court. *See Garner*, 389 S.C. at 66, 697 S.E.2d at 617 ("[I]n order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court.]"); *id.* ("[A]rguments raised for the first time on appeal are not preserved for [appellate] review[.]"); *see also State v. Beekman*, 405 S.C. 225, 236–37, 746 S.E.2d 483, 489 (Ct. App. 2013) (finding the cumulative error doctrine must be raised to and ruled upon by the trial court for it to be preserved for appellate review).

AFFIRMED.¹

GEATHERS, MCDONALD, and HILL, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 07, 2017

The Honorable Sheri Coleman
100 Church Street, Suite 6
Saluda Courthouse
Saluda SC 29138

REMITTITUR

Re: The State v. Ronnie Martin
Lower Court Case No. 2014GS4100035
Appellate Case No. 2015-001065

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Molly Renee Hamilton Cawley, Esquire
Vann Henry Gunter, Jr., Esquire
Samuel R. Hubbard, III, Esquire

FORM 5
FILED

STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

Ronnie Martin

SCID 200596

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

v.)

State of South Carolina)

2017 OCT -4) AM 10: 28 THE COURT OF COMMON PLEAS

CLERK OF COURT
SALUDA CO. S.C.

2017-CP-41-254

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Saluda County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-41-035, Burglary 1st Degree
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 7, 2015, Life Sentence w/o Parole

Revised 3/2003

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appellate case remitted to lower court
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 7, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Counsel failed to adequately meet with the Defendant and/or advise him sufficiently prior to trial, where the Defendant was handed off between multiple attorneys at the public defender's office.

(b) Counsel did fail to adequately conduct a sufficient independent investigation and fully prepare for trial in this matter.

(c) Counsel inadequately communicated with the Defendant both before and during the trial.

(d) Counsel was inadequate when he failed to object to improper statements which caused a finding of guilt, and further failed to preserve the Defendant's rights upon appeal.

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

(a) Trial counsel failed to adequately meet with the Defendant as often or as long as necessary prior to trial. This failure was further caused by the transfer of the case between multiple public defenders.

(b) Counsel did not conduct a sufficient independent investigation into the evidence, witnesses, and facts and circumstances relevant at trial.

(c) Counsel inadequately communicated crucial elements regarding his representation with the Defendant, both prior to and during trial. To include but not limited to plea negotiations, trial preparation, witness statements, etc.

(d) Counsel failed to object to numerous improper and prejudicial statements offered by the State at relevant points during opening statements, the trial, and closing arguments, said failure to object was further found to be improperly preserved by the Court of Appeals.

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) _____
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
- 18. If you answered "yes" to one or more parts of (17), list:
 - (a) the name and address of each attorney who represented you:
 - i. Greg Seigler, Public Defender 11th Judicial Circuit
 - ii. Bennett Casto, Public Defender 11th Judicial Circuit
 - iii. Molly Renee Hamilton Cawley, 1250 Folly Rd., Charleston, SC 29412
 - iii. Robert T. Williams, Sr., 200 East Main Street, Lexington, SC 29072
 - (b) the proceedings at which each such attorney represented you:
 - i. Initial Appearance
 - ii. Trial
 - iii. Appeal
 - iiii. PCR

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

Reopen conviction and grant new trial

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

No

STATE OF SOUTH CAROLINA

)

VERIFICATION

)

County of Richland

)

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

Ronnie Martin

SWORN to and subscribed before me this 20
day of September, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires: April 27, 2027

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

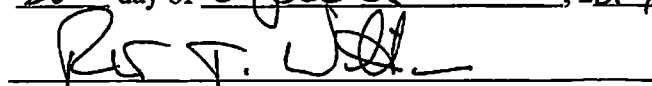
I, Ronnie Martin, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

20 day of September, 2017.


Notary Public

My Commission Expires: April 27, 2027

STATE OF SOUTH CAROLINA

COUNTY OF SALUDARONNIE MARTIN, SCDC# 200596

IN THE COURT OF COMMON PLEAS

FILED

CIVIL ACTION COVERSHEET

Pl 2017-CP-41-254 AM 10:23

vs.

CLERK OF COURT
SALUDA CO. S.C.

2017-CP - 41-254

RECEIVED

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: BENJAMIN A. STITELYAddress: PO Box 2390Lexington, SC 29071SC Bar #: 75339Telephone #: 803-359-9000Fax #: 803-359-9945Other: AnsweredE-mail: bstitely@wsblegal.com

OCT 06 2017

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: September 29, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Ronnie Martin, #200596,	)	Case No. 2017-CP-41-254
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, in making its return to the application for post-conviction relief (PCR) filed October 4, 2017, would respectfully show the Court:

Procedural History

Applicant is presently confined at Broad River Correctional Institution pursuant to orders of commitment of the Saluda County Clerk of Court. In February 2014, a grand jury in Saluda County indicted applicant for first-degree burglary. (Attachment 2; 2009-GS-41-035). Bennett Casto represented applicant at trial. (Attachment 1, p.1). Applicant was tried beginning May 5, 2015 before the Honorable R. Knox McMahon, and the jury convicted applicant as indicted. (Attachment 1, p.1; pp.441-42). Judge McMahon sentenced applicant to life without parole. (Attachment 1, p.459).

Petitioner's Trial

At trial, the State presented evidence that about 8:00 p.m. on December 13, 2013, Dianne Williams (Williams) walked to the front room of her house and heard a loud noise at the door. (Attachment 1, p.155; pp.157-58). Williams testified, "[T]here was a kick at the door and the next thing I know Ronnie Moe was coming through the door." (Attachment 1, p.158). Williams explained she knew applicant as "Ronnie Moe," clearly saw his face, and recognized him

immediately. (Attachment 1, p.158; p.160). After kicking in the door, applicant grabbed Williams's purse. (Attachment 1, p.159). When applicant grabbed the purse, Williams asked him, "Ronnie, what you doing with my pocketbook?" (Attachment 1, p.160).

Applicant had been at Williams's home earlier in the day when he helped her daughter. (Attachment 1, p.158). Williams testified applicant was wearing a blue hoodie and khaki pants earlier, and he was wearing the same clothes that night. (Attachment 1, pp.158-59). Williams stated the only difference was applicant had the hood up, but she was positive applicant was the intruder. (Attachment 1, pp.159-61). After applicant ran away with the purse, Williams called 911.¹ (Attachment 1, pp.161-62).

Investigators received a description of applicant from dispatch and he was spotted almost immediately. (Attachment 1, pp.186-87). Upon seeing an officer's patrol vehicle, applicant ran into the woods, but he was eventually arrested. (Attachment 1, pp.224-26).

Kimberly Gantt (Gantt) testified at trial. Gantt was in a relationship with applicant and lived with him at the time of the burglary. (Attachment 1, p.232). Following applicant's arrest, Gantt visited him in jail and he asked her to get the purse and return it to Williams, telling Gantt she could find it near a wedding venue in Ridge Spring. (Attachment 1, pp.235-36). Gantt subsequently located the purse and returned it. (Attachment 1, p.242).

Gantt communicated with applicant while he was in jail. (Attachment 1, p.237). During one meeting, applicant asked Gantt to tell police a man named Quinton Samuels (Samuels) showed her where the purse was hidden, and to convince Williams to tell police Samuels

¹ James Williams, Williams's husband, testified he was in another room and heard the door slam, and heard his wife say, "Ronnie Moe, put my pocketbook down. What are you doing with my pocketbook?" (Attachment 1, p.218). Williams's husband testified it was dark at the time of the burglary which prevented him from seeing anything once applicant left the home. (Attachment 1, p.218).

committed the crime, not applicant.² (Attachment 1, p.236; p.238). At applicant's instruction, Gantt provided investigators with a false statement in which she stated Samuels was the burglar. (Attachment 1, p.239). When asked about Samuels's, Gantt replied, "He's not – well, he's not bright." (Attachment 1, p.236).

The jury ultimately convicted applicant of first-degree burglary. (Attachment 1, pp.441-42).

Direct Appeal

Applicant timely filed a notice of appeal. (Attachment 4). Molly R. Hamilton Cawley represented applicant, and argued: (1) the trial court erred in excluding evidence of third-party guilt; (2) the trial court erred in admitting recorded jail calls between applicant and Gantt; (3) trial court error in failing to charge the jury on second-degree burglary; (4) whether the solicitor's statements in opening and closing so infected the trial with unfairness as to make the resulting conviction a denial of due process; and, (5) cumulative error. (Attachment 5).

The Court of Appeals affirmed applicant's conviction in an unpublished opinion filed June 21, 2017. (Attachment 6); *see also State v. Martin*, Op. No. 2017-UP-246 (S.C. Ct. App. filed June 21, 2017). Applicant did not seek further review. The Court of Appeals issued its remittitur on July 7, 2017. (Attachment 7).

Attachments

Attached and incorporated by reference are the following documents:

² Applicant attempted to introduce testimony that Samuels asked him to go with him to commit a break-in, but the trial court ruled it did not meet the standard for third-party guilt. (Attachment 1, p.271-98). There was no credible evidence presented that tended to clearly point to Samuels as the suspect, other than applicant's proffered testimony. Specifically, Samuels testified he did not speak to applicant on the night of the burglary and did not have any personal knowledge of the crime, and the only time he had ever seen applicant. (Attachment 1, pp.309-10).

1. May 5-7, 2015, Trial Transcripts (three volumes)
2. Saluda County Clerk of Court Records (including: indictments, sentencing sheet)
3. SCDC Records (including: Classification Summary Report, Probation Revocation Order, sentencing sheet)
4. Notice of Appeal in direct appeal
5. Final Brief of Appellant
6. Court of Appeals opinion (*State v. Martin*, Op. No. 2017-UP-246 (S.C. Ct. App. filed June 21, 2017))
7. Remittitur in direct appeal
8. PCR Application

PCR Action

On October 4, 2017, applicant through counsel filed an application for PCR. He alleges the following claims of error:

Ineffective assistance of trial counsel:

- a) Counsel failed to adequately meet with applicant and advise him sufficiently prior to trial, where applicant was handed off between multiple attorneys at the public defender's office
- b) Counsel failed to conduct a sufficient independent investigation and fully prepare for trial
- c) Counsel inadequately communicated with applicant both before and during trial
- d) Counsel failed to object to improper statements which cause a finding of guilt, and further failed to preserve applicant's rights on appeal

(Attachment 8). For the reasons set forth below, respondent denies applicant is entitled to relief on these claims.

Standard for Relief

"In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case." *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). At all times during the proceeding, the applicant maintains the burden of establishing he is entitled to relief. Rule 71.1(e), SCRCPP; *Suber v. State*, 371 S.C. 554, 558, 640

S.E.2d 884, 886 (2007). Moreover, there is "a strong presumption" counsel rendered adequate assistance and "exercised reasonable professional judgment in making all significant decisions in the case." *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006); *see also Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.").

Claims of Ineffective Assistance of Counsel are Without Merit

Claim (a): Failure to adequately meet with applicant

Applicant's facts in support of his first claim are limited to those set out above and the allegation that the time spent with trial counsel was insufficient to fully prepare for trial. It is unclear from the record what counsel could have presented at trial had he spent more time with applicant as counsel thoroughly cross-examined all witnesses, presented a defense, and applicant testified in his own defense at trial. Without more, respondent submits applicant cannot show any deficiency on counsel's actions. *See Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (holding brevity of time spent in consultation with defendant, without more, does not establish that trial counsel is ineffective); *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (holding PCR court erred in finding counsel failed to adequately and sufficiently meet with petitioner because petitioner failed to present evidence of what counsel could have discovered with additional meetings or preparation). Accordingly, applicant is not entitled to relief on this claim.

Claim (b): Failure to conduct adequate investigation

Applicant next alleges trial counsel failed to adequately investigate the case prior to trial, including the evidence, witnesses, and facts. Again, it is unclear what additional evidence or

witnesses applicant wanted counsel to investigate. Applicant and counsel developed a strategy to present third-party guilt at trial which the court rejected as failing to meet the proper standard, and the Court of Appeals upheld that ruling on direct review. (Attachment 1, p.271-98; Attachment 6). It is unclear from the record and from the application what additional evidence applicant wished counsel to investigate. *See Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (holding applicant not entitled to relief where no evidence presented to show how additional preparation would have had any possible effect on the result at trial). Further, there can be no prejudice by counsel's actions where the State presented overwhelming evidence of applicant's guilt, including the victim's identification of him, his girlfriend's testimony that he told her where to find the purse, and recorded phone calls from the jail. *See Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (holding prejudice is unlikely to result from deficient performance where there is overwhelming evidence of guilt). Accordingly, applicant is not entitled to relief on this claim.

Claim (c): Inadequate communication before and during trial

In support of his third allegation, application claims trial counsel failed to communicate crucial elements regarding his representation with applicant, including plea negotiations and trial preparation. Prior to selecting a jury, the solicitor informed the trial court applicant had rejected multiple previous plea offers, but the State was agreeing to allow him to plead guilty, and withdrawing its previously issued notice of intent to seek a life without parole sentence, with the understanding the court could sentence applicant to a term of between fifteen years and life. (Attachment 1, pp.8-9). However, following further discussion with counsel, applicant decided

to proceed with trial. (Attachment 1, p.40).

The record is clear applicant was fully informed throughout counsel's representation of the multiple plea offers and chose to voluntarily reject them, and opted to proceed with trial. *See Missouri v. Frye*, 566 U.S. 134, 145 (2011) (citing *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009)) (holding as a general rule, trial counsel has the duty to communicate favorable plea offers from the state). Further, as argued above in the discussions for claims (a) and (b), it is not clear from the application what information counsel did not communicate to applicant, what discovery was not reviewed with him, or how additional time with counsel could have changed the outcome. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (holding brevity of time spent in consultation with defendant, without more, does not establish that trial counsel is ineffective). The record indicates counsel was fully prepared to proceed with trial, had witnesses available to testify on applicant's behalf, and understood the trial strategy developed. It was applicant's choice to reject the plea offers, proceed to trial, and risk a life without parole sentence. Counsel cannot be held accountable for applicant's unrealistic expectations. Accordingly, respondent submits applicant is not entitled to relief on this claim.

Claim (d): Failure to object to solicitor's improper and prejudicial statements, leaving issue unpreserved

It appears applicant's final allegation relates to comments made by the solicitor during opening statement and closing argument. The solicitor's comments were regarding applicant's plan to frame Quinton Samuels for the burglary and his girlfriend's testimony about it. (Attachment 1, pp.133-34; p.414). The issue was raised on direct appeal and found unpreserved by the Court of Appeals because trial counsel did not object to the comments. (Attachments 5 and 6).

Respondent submits counsel could not be deficient for failing to object to the comments as they were not objectionable. The solicitor's comments were permissible inferences drawn from the evidence presented. *See State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) (finding the prosecution "may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony"). Accordingly, even if counsel had objected, applicant cannot demonstrate the outcome would have been different because the trial court would have overruled any objection, and the Court of Appeals would have affirmed the ruling as the issue lacked merit. There is also no evidence the solicitor's comments unfairly prejudiced applicant given the overwhelming evidence of his guilt. *See Johnson v. State*, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997) (holding contention that counsel should have objected to solicitor's closing argument on the ground that it was an improper comment on applicant's failure to testify was rejected because there was no evidence the jury could have drawn an adverse inference from the comment). Therefore, applicant is not entitled to relief on this claim.

Standard for Evidentiary Hearing

Respondent submits applicant cannot satisfy either prong of *Strickland*. However, the claims of ineffective assistance of trial counsel likely raise questions of fact the record cannot conclusively refute. *Sharper v. State*, 279 S.C. 264, 266, 305 S.E.2d 247, 249 (1983); *see also* S.C. Code Ann. § 17-27-80 (providing for an evidentiary hearing and the procedure that shall be followed to develop the record). Therefore, respondent requests an evidentiary hearing to fully resolve the issues.

Conclusion

Each and every allegation contained within the application not previously expressly

admitted, qualified, or explained is hereby denied.

WHEREFORE, having made its return, respondent requests the Court hold an evidentiary hearing on the two claims of ineffective assistance of counsel.

Respectfully submitted,

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Attorney General

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BY: 

SHERRIE BUTTERBAUGH

ATTORNEYS FOR RESPONDENT

January 8, 2018.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	
	)	2013-CP-41-0254
	)	
Ronnie Martin,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

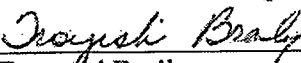
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1. I am an employee of the Respondent in the above-captioned action.
 2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
 3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Benjamin A. Stitely, Esquire
 Williams, Stitely & Brink, PC
 Post Office Box 2390
 Lexington, SC 29071

RETURN ATTACHMENTS LIST:

- (1) May 5-7 Trial Transcript (three volumes)
- (2) Saluda County Clerk records
- (3) SCDC records
- (4) Notice of Appeal in direct appeal
- (5) Final Brief of Appellant
- (6) Court of Appeals Op. No. 2017-UP-246
- (7) Remittitur in direct appeal
- (8) PCR Application 2017-CP-41-254

DATED this 30th day of November, 2017.



 Troyeshi Brailey
 Paralegal to Sherrie Butterbaugh
 Assistant Attorney General

State of South Carolina
County of Saluda

Court of Common Pleas

Ronnie Martin	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2017-CP-41-00254
	)	
State of South Carolina	)	
	)	
<u>Respondent.</u>	)	

January 25, 2019
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Benjamin Stitely, Esquire
Attorney for the Applicant

Kelly Oppenheimer, Assist. Attorney General
Attorney for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

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1 P R O C E E D I N G S

2 * * *

3 MS. OPPENHEIMER: May it please the Court, Your
4 Honor?

5 THE COURT: Yes, ma'am.

6 MS. OPPENHEIMER: This is Ronnie Martin vs. The
7 State of South Carolina, Docket No. 2017-CP-41-254.
8 During its February 2014 term, the Saluda County
9 Grand Jury indicted Applicant for first degree
10 burglary. Assistant Public Defender Bennett
11 E. Casto of the Eleventh Circuit Public Defender's
12 Office represented Applicant on this charge.

13 On May 5th through 7th, 2015, Applicant
14 proceeded to a jury trial before the Honorable
15 R. Knox McMahon. Following the deliberations, the
16 jury convicted Applicant as indicted and Judge
17 McMahon sentenced Applicant to a term of
18 imprisonment of life without the possibility of
19 parole. Applicant filed a notice of appeal and
20 Molly R. Hamilton Cawley perfected an appeal on
21 Applicant's behalf.

22 On appeal, he raised following issues: Whether
23 the trial court erred in excluding third-party guilt
24 evidence; whether the trial court erred in admitting
25 recorded jail calls between Applicant and his

1 girlfriend; whether the trial court erred in denying
2 a jury instruction on the lesser included offense of
3 second degree burglary; whether the solicitor's
4 statements so infected the trial with unfairness as
5 to make Applicant's result in conviction a denial of
6 due process; and whether these errors and statements
7 individually or in the aggregate required reversal
8 of Applicant's conviction.

9 Following briefing, the South Carolina Court of
10 Appeals affirmed Applicant's conviction and sentence
11 by unpublished opinion on June 21st, 2017, and the
12 remittitur was issued on July 7th, 2017.

13 On October 4th, 2017, Applicant filed an
14 application for postconviction relief alleging
15 ineffective assistance of counsel for failing to
16 meet with Applicant and advise him sufficiently
17 prior to trial, failing to investigate, failing to
18 prepare, failing to communicate with Applicant, and
19 failing to object to the solicitor's alleged
20 improper comments during opening and closing
21 arguments.

22 The State made its return on January 8th, 2018,
23 requesting an evidentiary hearing be held.
24 Applicant is present today and he's represented by
25 Ben Stitely.

1 MR. STITELY: Good morning, Judge. Are you
2 ready for testimony?

3 THE COURT: Yes, sir.

4 MR. STITELY: All right. We'd call around
5 Mr. Martin.

6 THE COURT: The sentence in this case was life
7 without parole?

8 MR. STITELY: Right.

9 THE COURT: I know y'all have talked. But does
10 he understand the risks of --

11 MR. STITELY: Judge, he was served with an LWOP
12 notice, so I think once it went to trial, I think
13 that was the only option. So an overturn would
14 potentially take that off the table. So there's no
15 risk. He can't get a worse sentence.

16 THE COURT: Right. Okay.

17 RONNIE MARTIN

18 being first duly sworn, testified as follows:

19 THE APPLICANT: Yes, ma'am, I do.

20 THE CLERK: Have a seat and state your full
21 name, please.

22 THE APPLICANT: Ronnie Martin.

23 DIRECT EXAMINATION

24 BY MR. STITELY:

25 Q. Hey, Ronnie. How old are you?

1 A. 51.

2 Q. Where are you currently located?

3 A. In prison or --

4 Q. Yeah.

5 A. Broad River Correction.

6 Q. Okay. At SCDC?

7 A. Yes, sir.

8 Q. How long have you been there?

9 A. I've been at Broad River going on two years.

10 Q. How long in the department?

11 A. Five, six.

12 Q. Okay. Since your date of conviction?

13 A. Yes, sir.

14 Q. Okay. Where were you prior to your conviction?

15 A. Saluda County.

16 Q. Okay. You were in the detention center?

17 A. Yes, sir.

18 Q. At any point were you on the street, or were

19 you maintained in custody from your arrest until

20 your trial and, ultimately, your sentencing?

21 A. In custody.

22 Q. Okay. Were you able to conduct any kind of

23 investigation on your own while you were in custody

24 or were you just locked in the jail?

25 A. Just locked in jail, basically.

1 Q. Okay. So what did you get convicted of?

2 A. First degree burglary.

3 Q. Okay. And what was your sentence?

4 A. Life without parole.

5 Q. And, to your understanding, why was it life
6 without parole?

7 A. That's what the sentence carried -- or the
8 crime carried, I think.

9 Q. At some point, were you given or told about a
10 document that said the State was seeking a
11 life-without-parole sentence?

12 A. Yes, sir. Mr. Seigler brought me down for a
13 bond hearing and they had a negotiable plea of 15
14 years or that if I didn't accept the plea or
15 something, it would be life or something. That's
16 what Mr. Seigler --

17 Q. Okay. Do you ever remember getting a piece of
18 paper that said the State was seeking your sentence
19 be enhanced to -- where the Judge only had the
20 option of giving you life without parole if you got
21 convicted?

22 A. I don't remember that. No, sir.

23 Q. Okay. So let me actually kind of -- you
24 started there. Who represented you first?

25 A. Mr. Greg Seigler.

1 Q. Okay. And what was Greg's position at the
2 time?
3 A. Public defender.
4 Q. Okay. And he was the State-appointed public
5 defender for the tri-counties?
6 A. Yes, sir.
7 Q. And you actually knew Mr. Seigler from --
8 A. Yes. Yes, sir.
9 Q. Okay. You had him on a previous occasion?
10 A. Yes, sir.
11 Q. How would you describe your relationship with
12 Mr. Seigler?
13 A. I would say fair.
14 Q. Okay. You got along with him?
15 A. Yes, sir. He actually listened to me.
16 Q. All right. At some point in your case,
17 Mr. Seigler left; is that correct?
18 A. Yes, sir.
19 Q. Do you know why?
20 A. I think he got a higher position or a family
21 court judge or something.
22 Q. So when he became the family court judge, he
23 was no longer your public defender?
24 A. Yes, sir. Right.
25 Q. Do you have any idea as to -- when were you

1 first arrested?

2 A. December 13th, 2013.

3 Q. Okay. And when did Mr. Seigler stop being your
4 attorney, to your knowledge?

5 A. Sometime April or March or somewhere in there,
6 I think.

7 Q. And what happened after Mr. Seigler stopped
8 being your lawyer?

9 A. I was appointed another attorney.

10 Q. Okay. And who was that?

11 A. Mr. Bennett Casto.

12 Q. Okay. And he was the new public defender for
13 the tri-counties?

14 A. Yes, sir.

15 Q. Okay. When did you first meet with Mr. Casto,
16 to your knowledge?

17 A. It was some -- it was -- actually, it was about
18 maybe five, six months after Greg stopped being my
19 lawyer. I'm not sure.

20 Q. Okay. When did you go to trial on this case?
21 Do you remember?

22 A. May the 5th, 2015.

23 Q. 2015?

24 A. Yes, sir.

25 Q. So how long were you in the county jail

1 waiting?

2 A. Right at two years, I think.

3 Q. All right. How many times do you think you met
4 with Mr. Casto while you were at the jail?

5 A. Maybe twice there and once when I was in
6 Laurens, I believe, or twice. It wasn't many.

7 Q. Okay. Let me go ahead and back up to your time
8 when you were represented by Mr. Seigler. The early
9 stages of this case, would you say you were in plea
10 negotiations with the State?

11 A. Yeah. He had talked to me and had told me the
12 seriousness of what was going on. And when they
13 made that offer, he said that -- he had asked that
14 that remain on the table. But we were just for a
15 bond hearing at that time. But he was letting me
16 know what was going on.

17 Q. And it was your understanding he was to bring
18 you back the final offer, correct?

19 A. Right.

20 Q. Did you ever get that from him?

21 A. It was the 15 last time.

22 Q. But did you ever get to talk to him again
23 before you left?

24 A. Mr. Seigler? No, sir.

25 Q. Okay. And then nine months -- he leaves and

1 then six -- you said probably six months later, you
2 hear from Mr. Casto?

3 A. Right.

4 Q. Okay. Did you ever have any meaningful plea
5 negotiations while Mr. Casto was your lawyer?

6 A. No. He said that they really didn't want to
7 give me no good plea offer because of a prior thing
8 with a gun or something. And it never got to it.
9 The only thing I ended up with was we may take life
10 off the table.

11 Q. Okay. So you never got -- to your belief, you
12 never got an actual offer that you were able to say
13 yes or no to while your lawyers were being switched?

14 A. No, sir.

15 Q. Had there been an opportunity to take something
16 that wouldn't have been an LWOP, would that have
17 been something you would have been interested in?

18 A. Yes, sir.

19 Q. Okay. And you were just waiting because the
20 only time you met with Mr. Seigler was when you had
21 a bond hearing?

22 A. Right.

23 Q. Never went back to court with him after that?

24 A. No, sir.

25 Q. Never a chance to do your plea?

1 A. No, sir.

2 Q. Never an actual plea offer given to you?

3 A. No, sir.

4 Q. Okay. And then Mr. Casto got it --

5 A. Right.

6 Q. -- and you had already got that

7 life-without-parole paper?

8 A. The paper, yes, sir.

9 Q. All right. I'm going to kind of shift you

10 forward a little bit. You said you met with him a

11 couple times.

12 A. Yes, sir.

13 Q. Okay. Did you talk to him about the discovery

14 in your case?

15 A. I talked to him about the stuff that I knew

16 about my case and what was going on. But, you know,

17 he never would give me an answer. He would just

18 shake it off --

19 Q. Okay.

20 A. -- and tell me no or whatever.

21 Q. Did you give him a list of potential witnesses

22 that you wanted?

23 A. Yes, sir.

24 Q. And who were some of the witnesses you had in

25 mind?

1 A. One of them was my brother Thaddeus Martin, and
2 the other one was the victim's daughter Kyrisha
3 Gambler [phonetic].

4 Q. And a Mr. Samuels too, correct?

5 A. And Mr. Samuels.

6 Q. Okay. Do you know if he ever went and
7 interviewed Mr. Samuels before he put him on the
8 stand?

9 A. No, sir.

10 Q. He did put him on the stand though, correct?

11 A. Yes, sir.

12 Q. Okay. And there were a lot of things that came
13 up in the appeal dealing with Mr. Samuels'
14 testimony, correct?

15 A. Yes, sir.

16 Q. And I know you're not a lawyer, but do you feel
17 that Mr. Samuels was handled appropriately on the
18 stand?

19 A. No, sir.

20 Q. Do you feel that Mr. Casto had properly
21 vetted that witness before putting him on the stand?
22 Vetting means made sure he knew what he was going to
23 say and he was ready for his testimony.

24 A. I don't even think he ever even talked to him.

25 Q. Okay. Do you know if he ever interviewed

1 Thaddeus?

2 A. No, sir, he didn't.

3 Q. And if he ever interviewed the daughter of the
4 victim?

5 A. I think he sent an investigator to talk to her.
6 And her -- and, actually, he told me that everything
7 that I had told him that she said, but she wasn't
8 sure when I left out the house. So...

9 Q. Okay. Did you ever get a copy of any
10 investigator's report?

11 A. No, sir.

12 Q. Was it ever provided to you?

13 A. No, sir.

14 Q. Did you ever receive a copy of your discovery
15 in this case?

16 A. The --

17 Q. The information from the State.

18 A. From the County, yes, sir.

19 Q. Okay. Did you ever have a chance to fully go
20 through each and all of it before going to a trial
21 where your life was on the line?

22 A. Not with my lawyer.

23 Q. Okay. Do you think it would have helped you in
24 preparation for your case, had you had that
25 opportunity?

1 A. Sure, it would have.

2 Q. Do you think it would have changed the outcome
3 where you wouldn't have received life without
4 parole?

5 A. Yes, sir.

6 Q. Okay. As far as pretrial preparation, do you
7 feel you had an adequate opportunity to sit with
8 your lawyer prior to trial?

9 A. No, sir.

10 Q. How did that go, by the way? When did you
11 learn you were going to trial?

12 A. Well, he had told me the day before that we was
13 going to trial. I asked him about my witnesses. He
14 said he wasn't going to call them up -- he wasn't
15 going to call my witnesses. I asked him about
16 certain other stuff, like my inventory, stuff that
17 never made it into evidence, about -- then we had to
18 talk about the -- some of the other evidence that he
19 had, like the 911 call, stuff like that. But,
20 first, just going over a strategy of what we were
21 going to do, no.

22 Q. Okay.

23 A. And everything I asked him about or asked that
24 I wanted in, he'd tell me no.

25 Q. And how many minutes do you think would be your

1 normal visit with him on those two times?

2 A. Maybe 30, 45 minutes, maybe.

3 Q. So, in all, how much time do you think you
4 spent with Mr. Casto before facing life without
5 parole?

6 A. We didn't spend -- we didn't spend -- over that
7 two years I was in the county, it wasn't ten hours
8 all together.

9 Q. Okay. Would you say you had a bad relationship
10 or just didn't have much of one at all?

11 A. Me and Mr. Casto didn't get along at all.

12 Q. Okay. You ultimately did go to trial, correct?

13 A. Yes.

14 Q. During your trial -- and I know you have a
15 bunch of things you'd like to discuss. And we'll
16 get to those, so don't let me forget.

17 A. Yes, sir.

18 Q. Okay. There were a couple of issues that were
19 raised on the appellate level that the Court said
20 Mr. Casto didn't preserve; is that correct?

21 A. Yes, sir.

22 Q. One of the key elements in being convicted of
23 burglary first is the requirement that the event
24 took place at nighttime, correct?

25 A. Yes, sir.

1 Q. What is a burglary first? Do you even know?

2 A. Burglary first is going into a dwelling armed
3 or after dark, intending on taking something or
4 taking something.

5 Q. Committing a crime inside?

6 A. Yes, sir.

7 Q. And, in this case, one of the questions that
8 was argued was what happened in general, correct?

9 A. Yes, sir.

10 Q. And there was a debate about whether or not
11 there was ever any crime, let alone what time it
12 was, correct?

13 A. Yes, sir.

14 Q. Okay. And there was a Mr. Samuels who,
15 potentially, was going to be a witness, that maybe
16 he knew what was really going on?

17 A. Right.

18 Q. Did that come out in trial?

19 A. He got up there and acted like he didn't know
20 me, stuff like that; said that we never talked that
21 day and stuff like that; tried to play the crazy
22 role, I guess.

23 Q. There were some statements that weren't allowed
24 in. And the Court of Appeals said because they
25 weren't properly preserved, they couldn't address

1 that. Do you recall that, his second set of
2 statements?

3 A. It was -- with Quentin?

4 Q. Yes, sir.

5 A. What he said?

6 Q. Yes, sir.

7 A. I can't remember all of that. No.

8 Q. But there was a part of your appeal which the
9 Court of Appeals wouldn't let you argue because they
10 said it wasn't properly preserved, correct?

11 A. Wasn't properly preserved. The --

12 Q. The third-party guilt stuff.

13 A. The third-party guilt. The -- then they was
14 talking about he wasn't -- that he was mentally ill,
15 he couldn't have possibly committed the -- all kinds
16 of stuff that denied me due process. He was telling
17 them that he couldn't have possibly done that or
18 whatever.

19 Q. And when the statements that would contradict
20 that weren't allowed in, there was no objection
21 made; is that correct?

22 A. No objection.

23 Q. Okay. So that wasn't preserved, so it couldn't
24 have been reviewed on appeal?

25 A. Right.

1 Q. Do you think that could have altered the
2 outcome of your case, potentially?

3 A. Yes, sir.

4 Q. And had that been done properly, you would have
5 been in a different position than you are today?

6 A. Yes, sir.

7 Q. Okay. One thing that also happened in your
8 case is the -- at some point, the judge -- do you
9 remember who your judge was?

10 A. Mr. Mahone or --

11 Q. McMahan?

12 A. McMahan. Yeah.

13 Q. He took judicial notice and called it
14 nighttime. Do you remember that?

15 A. Yes. The aviation or nav- -- something,
16 whatever it was.

17 Q. And that was not objected to by your lawyer?

18 A. No, sir.

19 Q. And the Court of Appeals said they couldn't
20 review that because it wasn't protected, correct?

21 A. Right. It wasn't protected.

22 Q. Why is it important that the Judge took
23 judicial notice in a burglary case? Do you know
24 why?

25 A. To let the -- I guess, to let -- I'm not for

1 sure.

2 Q. We talked about it earlier. One of the
3 elements to be a burglary first rather than a
4 burglary second is what?

5 A. It's between night and day.

6 Q. And if it's just the judge sua sponte saying
7 it's night, he was proving one of the elements,
8 correct?

9 A. Right.

10 Q. And your attorney didn't object to that?

11 A. No, sir.

12 Q. Didn't protect you on the record?

13 A. No, sir.

14 Q. So the Court actually made one of the elements
15 of the State's case --

16 A. Yes, sir.

17 Q. -- on his own volition without an objection
18 from your attorney?

19 A. Without objection, yes, sir.

20 Q. And the Court of Appeals said that was non --
21 they couldn't review it because it wasn't objected
22 to?

23 A. Wasn't properly preserved. Yes, sir.

24 MS. OPPENHEIMER: Your Honor, I'm going to
25 object. This wasn't one of the issues raised to the

1 Court of Appeals. So I think that there's a little
2 bit of mischaracterization of the record going on.
3 This was not one of the issues raised or briefed at
4 the Court of Appeals' level in terms of if it was
5 night.

6 MR. STITELY: The Court of Appeals does
7 address -- and, Judge, you have a copy of it.
8 Either way, they talk about how they were able to
9 not charge burglary second. They said: Because the
10 Court took notice of it being nighttime.

11 Pretty much, the Court takes judicial notice --
12 you can see it in the record -- that it was
13 nighttime. And they said that it was proper to not
14 charge burglary second. Although Mr. Casto didn't
15 request a burglary second charge, the Court of
16 Appeals said it was proper that the Judge didn't
17 give it because he had already taken notice that it
18 was nighttime.

19 It would be our position that a court just
20 deciding it's nighttime is making one of the
21 elements. It's not the position of the trial court
22 to ever make a statement of the facts. And if they
23 did, it would have been the attorney's job to object
24 to it, and that was not done in this case.

25 THE COURT: Just a second.

1 Is the issue with the Court allegedly taking
2 judicial notice in the application for PCR?

3 MR. STITELY: No, Judge. My issue with this,
4 in a very limited scheme, is, in the trial, there's
5 a couple conflicting witnesses. One -- and correct
6 me, please, if you disagree with any of this: One
7 says it happened before it gets dark; one says it
8 was probably after dark. And then, at some point,
9 the Judge says, well, according to the National
10 Weather Center, it got dark at this time, so we're
11 going forward like that. The Court just says, we're
12 deciding it was dark.

13 THE COURT: Okay.

14 MS. OPPENHEIMER: Your Honor, there was some
15 testimony from an officer at which time was sunset.
16 But we'll get into that on cross-examination and
17 with Mr. Casto. We don't need to argue that right
18 not.

19 MR. STITELY: No problem. But that's just --
20 I'm just laying -- that's how my situation is
21 that --

22 THE COURT: I see the point you're laying.
23 Just move on.

24 MR. STITELY: Okay. We're good. Okay. Sorry.
25 BY MR. STITELY:

1 Q. So besides --

2 MR. STITELY: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. STITELY:

5 Q. Now, you have a couple of other things that you
6 wanted me to address very specifically. And if
7 we're going to go through them, let's look at the
8 transcript page where you want to talk about it and
9 what the exact problems were. And give everyone a
10 second to go to that page so we're ready.

11 A. All right.

12 Q. One second. Let's make sure everyone has a
13 copy of their transcripts.

14 A. All right.

15 Q. All right. What was the first element during
16 your trial that -- where an objection was missed or
17 a point of clarity that you think should have been
18 argued properly that wasn't for your behalf?

19 A. Well, the first one I got, it was -- it was
20 just a statement that the victim made.

21 Q. What page in the transcript?

22 A. 170.

23 Q. Okay. And I like to do it this way to make
24 sure everybody knows exactly what we're talking
25 about.

1 A. Yes, sir.

2 Q. And that is Ms. Williams?

3 A. Ms. Williams, yes, sir.

4 Q. Okay. What was the statement that wasn't
5 objected to?

6 A. Well, the burglary happened on a Friday, which
7 was the 13th. Ms. Dianne's statement was about her
8 purse, as I was telling him, that Kimberley was
9 lying about. Her testimony was that -- she stated
10 she was not sure about the date, but she knew it was
11 that Saturday when her purse was returned.

12 So the Saturday was the next day. So all the
13 other stuff that the officer and everybody brought
14 together didn't make no sense because she done had
15 her purse since that following day.

16 Q. Okay. And this is an element that was not
17 properly reviewed before trial?

18 A. Yes, sir.

19 Q. The time line wasn't mapped out by your
20 attorney in preparation for your case?

21 A. Yes, sir.

22 Q. And her statements weren't crossed against what
23 the law enforcement said the proper time line as far
24 as they were concerned was?

25 A. Right. Right.

1 Q. Okay. What is the next issue?

2 A. The next one is on page 164.

3 Q. Okay. Give everyone a second. Okay.

4 A. This is the victim again. The solicitor did
5 not object to the solicitor leading the witness.

6 Q. Okay.

7 A. He was asking about who returned the purse, I
8 think it was, and she said Kimberley. She said
9 the -- not Kimberley. She said Kyrisha, her
10 daughter, and then she said the police. Then she
11 said -- he got her to say, no, let's not talk about
12 Kyrisha and the police; let's talk about Kimberley
13 bringing the purse.

14 Q. Okay.

15 A. I think he was kind of leading her into saying
16 what he wanted her to --

17 MS. OPPENHEIMER: Your Honor, I'm going to
18 object. That's a mischaracterization of the record.
19 I don't see anywhere in this testimony where she
20 mentions Kyrisha or anyone brought the purse back.

21 BY MR. STITELY:

22 Q. So, Mr. Martin, your position is that --

23 THE COURT: I'll sustain the objection.

24 BY MR. STITELY:

25 Q. Mr. Martin, your position is that your attorney

1 failed to object when the State was putting, in
2 theory, what you would say, words into the witness'
3 mouth?

4 A. Yes, sir.

5 Q. Okay. What is the next page you had an
6 objection?

7 A. 239, 240.

8 Q. Okay. Give us one second. Okay.

9 A. This is Kimberley again, a witness for the
10 State. He did not object when the solicitor was
11 saying that I had sent Kimberley threatening
12 letters. There was not any evidence. There was no
13 evidence showing that I wrote any type of letters
14 threatening her whatsoever.

15 And she tried to stay away from saying it, but
16 he kept leading, well, how was it -- y'all
17 relationship, how was it; the talk was when he was
18 writing you and then kept on until he got her to say
19 it was threatening. But none of this was in no
20 evidence whatsoever.

21 Q. So your attorney did not object to the
22 solicitor calling into question items outside of
23 evidence?

24 A. Right.

25 Q. Referencing letters that were not admitted into

1 evidence?

2 A. No evidence whatsoever. Yes, sir.

3 Q. Okay. And he should have objected to her
4 making hearsay comments about letters that were not
5 presented to the jury?

6 A. Right. Yes, sir.

7 Q. All right. What's the next issue?

8 A. 205.

9 Q. All right. Okay.

10 A. This is dealing with Chief Goldman. Mr. Casto
11 did not object to testimony by Quentin Samuels'
12 mental condition. The officer is not a doctor to
13 diagnose a -- I think I was denied due process
14 because he was telling the jury and everybody that
15 this man was mentally ill, he could not do this and
16 that. And Mr. Casto did not object.

17 Q. So there was a failure for counsel to object to
18 some form of quasi-expert testimony regarding this
19 mental status of a witness by a lay witness?

20 A. Right. Yes.

21 Q. And we talked about that previously. With
22 Mr. Samuels testifying, you feel that Mr. Casto
23 didn't properly prep that witness before trial?

24 A. Right.

25 Q. Okay. What is your next issue?

1 A. The next one is 218, 219.

2 Q. Okay. Give us one second. This is the direct
3 examination of Mr. Williams?

4 A. Yes, sir.

5 Q. Okay.

6 A. Mr. Williams' testimony was all hearsay.

7 Q. Okay. And so pretty much at any point in these
8 next two pages that your attorney failed to object
9 to any number of hearsay --

10 A. He did not object to it.

11 Q. And that impacted your trial?

12 A. Yes, sir.

13 Q. Okay. What's your next area of issue?

14 A. This is not in the transcript: The 911 call.

15 Q. Okay. So if it's not in the transcript, go
16 ahead and tell me, what's the issue?

17 A. The 911 call, I asked Mr. Casto --

18 THE COURT: I'm sorry. What page did you go
19 to?

20 MR. STITELY: No transcript. He's just talking
21 about how he wasn't provided the 911 call.

22 THE APPLICANT: The 911 -- this has got to with
23 evidence. The 911 call, Mr. Casto asked the Judge
24 not to put that in. And I questioned why. He never
25 would answer me and he would just look at me and

1 walk off. I said, well, the 911 call -- the officer
2 and everybody telling the people that she was
3 jumping up and down calling my name.

4 I said, the 911 call clearly states that she
5 said someone just broke into my house. She said, I
6 think I know who it was. My name was never called,
7 but the jury and the Judge were led to believe that
8 my name was called from the beginning.

9 BY MR. STITELY:

10 Q. Okay. So the problem is there was a 911 call,
11 apparently, that existed that you weren't provided
12 as an item of evidence to be offered to the jury.

13 A. Right.

14 Q. And had it been, it would have demonstrated
15 that you were not necessarily the person in
16 question?

17 A. Right.

18 Q. And there was no objection to the solicitor
19 inferring you were mentioned on the 911 tape when
20 the 911 tape did not corroborate that?

21 A. Right.

22 Q. Okay. What's your next issue?

23 A. My next one is -- it's on 435. But this is
24 some of the stuff dealing with the jury, I believe.

25 Q. Okay. Give us one second. And these were jury

1 questions that were asked?

2 A. Yes, sir.

3 Q. Okay. Hang on. Okay.

4 A. This was also a question that I asked him.
5 Inventory -- inventory sheet of what I was wearing
6 that night was never in evidence. It was never
7 brought to trial to prove that it was a blue hoodie
8 in question. Testimony were all about a blue
9 hoodie, the perpetrator having on a blue hoodie.
10 And the only thing they said, it was not in
11 evidence. And the other thing, they tried to say my
12 girlfriend had got it. So the jury had asked for a
13 copy of the sheet where she signed it out. They
14 said it's not in evidence.

15 None of the stuff actually -- instead of them
16 letting the jury and the Judge know that none of
17 this stuff exists, they made it seem like they just
18 didn't bring it. So I think if they would have
19 spoke more about that during the trial...

20 Q. Okay. So let me clarify what the actual
21 situation is. You feel that your attorney failed to
22 bring to the jury's attention that this inventory
23 sheet --

24 A. Did not match what they said the perpetrator
25 was wearing. Yes.

1 Q. Okay. So there was -- and if you read through
2 the whole trial transcript, there were some
3 questions of identification. And one of the items
4 that was utilized was a blue hoodie?

5 A. Yes.

6 Q. And someone came and picked items up from the
7 jail in an inventory.

8 A. So --

9 Q. And you feel it would have been appropriate for
10 your attorney to get a copy of that inventory placed
11 into evidence to demonstrate that there was, in
12 fact, no blue hoodie --

13 A. No blue hoodie, no sign-out sheet, none of
14 that.

15 Q. Okay. So no blue hoodie existed on this sheet
16 of evidence that she picked up?

17 A. Right.

18 Q. And it's clear that the jury was concerned
19 about that because they even asked for it in a jury
20 question.

21 A. Right.

22 Q. And during your trial prep, your attorney
23 didn't properly locate all relevant items of
24 evidence, to include the inventory sheet from the
25 jail?

1 A. Right.

2 Q. Had he done that and presented it into
3 evidence, it would have debunked, I guess, the
4 State's position that you had some kind of blue
5 hoodie on?

6 A. Right.

7 Q. And that would have satisfied the jury's
8 question and would have ultimately changed their
9 position on guilt?

10 A. Right, because they're the ones who asked for
11 it. Yes, sir.

12 Q. All right. What is your next area?

13 A. Another one is dealing with Mr. Samuels. It's
14 not in the transcript --

15 Q. We flushed out the questions about Mr. Samuels.

16 A. Okay. I was just talking about the criminal
17 record part.

18 Q. And I'll go into that when I make the argument
19 with Mr. Casto.

20 A. All right. Okay. I already talked about not
21 calling my witnesses.

22 Q. Correct. We did discuss that.

23 A. Okay. I would go to transcript page 167.

24 Q. Okay. Hang on. Let us get there. 167?

25 A. 157.

1 Q. 157. Okay. These are the items dealing with
2 the darkness or whatever and the times?

3 A. Yes, sir. The time of day and everything.

4 Q. We've addressed that one.

5 A. Okay. So we can skip that?

6 Q. We can go past that for now.

7 A. Okay. All right. Let's go to page 17.

8 Q. 17?

9 A. Yes, sir.

10 Q. Okay.

11 A. This is dealing with the evidence. The
12 purse --

13 Q. Hang on. Hang on. My page 17 deals with jury
14 selection.

15 A. Well, 201 then.

16 Q. Okay. Hang on. Sorry. 201. Okay. 201 is
17 the police chief as we're talking --

18 A. Yes, sir; about the purse being admitted into
19 evidence. I think Mr. Casto should have objected to
20 the fact the purse being put in evidence, because
21 even back to the police record, we had no
22 description, what color, the size, the make, or
23 nothing of the purse. So anything could have been
24 brought. And then the officer admitted himself that
25 the purse had changed hands three or four different

1 times.

2 Q. So, more specifically, the attorney didn't
3 object to the chain of custody of the item that was
4 identified as a purse in this case, correct?

5 A. Right.

6 Q. And that's further corroborated by multiple
7 other examples in the transcript where the days got
8 changed, the person who collected the purse altered,
9 and the police did not properly preserve the chain
10 of custody. And no objection was made by trial
11 counsel, correct?

12 A. Right.

13 Q. And no proper identification was laid or a
14 foundation for that particular item?

15 A. Right.

16 Q. Okay. What's your next area?

17 A. The next one is on -- it's on a bunch of pages:
18 104, 105, 106, and 107.

19 Q. Okay. Let us get there.

20 Okay. This was a matter during the trial where
21 you were having a problem with Mr. Casto?

22 A. Yes.

23 Q. Why don't you just go ahead and tell us what
24 the situation was?

25 THE COURT: What page?

1 MR. STITELY: 104, at the very beginning,
2 Judge. It runs for a couple pages. It's like a
3 mid-trial hearing done outside the presence of the
4 jury. It looks like a quasi-motion to relieve
5 mid-trial.

6 THE COURT: Okay.

7 BY MR. STITELY:

8 Q. Go ahead, Ronnie. What was the situation?

9 A. This right here is a situation where Mr. Casto
10 refused to do anything I asked him. Everything I
11 asked him, calling my witness, inventory sheet,
12 whatever I asked him to do, he said no; straight
13 out, no, I'm going to do that.

14 I said, well, this is my life on the line. I
15 said, you're supposed to be representing me, so
16 whatever I ask you to do, you should do it, if I
17 think it would benefit me. He just refused. And I
18 was telling him these are the things that I want.
19 He told me no.

20 So when we got back out there -- I didn't even
21 see this coming -- he went to the Judge and said
22 that Mr. Martin has a problem with me and he wants
23 me to be removed from his case.

24 I remind you, at the time, I just had lost my
25 father and I was in a wheelchair. I couldn't walk,

1 I was in pain, and it was just getting on my nerves.
2 And I told the Judge -- I said, I'm just tired of
3 going through this. I said, I just want it to be
4 over. I want Mr. Casto to be made to do his job. I
5 want him to represent me like it was his life on the
6 line. And -- because I was just tired of it. But,
7 as you can see, he wanted to be removed. Anything I
8 asked him to do, he just said no, refused to.

9 Q. And this was kind of a culmination of what we
10 talked about earlier with the lack of communication?

11 A. Yes.

12 Q. Lack of trial preparation?

13 A. Right.

14 Q. Independent investigation?

15 A. Right.

16 Q. Time spent with you, generally?

17 A. Right.

18 Q. And creating a usable trial strategy with the
19 evidence that existed?

20 A. Right.

21 Q. The evidence that did not exist?

22 A. Right.

23 Q. Things like the 911 call, the jail inventory?

24 A. And there was some missing calls as well from
25 that.

1 Q. Had you ever had an opportunity to address this
2 on the record prior to this day?

3 A. No, sir.

4 Q. You didn't get to go in front of a judge and
5 talk about it?

6 A. No, sir.

7 Q. How many times did you actually go to court
8 with Mr. Casto?

9 A. That was it.

10 Q. The trial?

11 A. The trial.

12 Q. And you learned about it the day before?

13 A. The day before.

14 Q. All right. What's your next area?

15 A. Well, this right here -- that's pretty much it.
16 But I'm going to tell you the worst thing that
17 Mr. Casto did to me during my trial.

18 Q. Okay.

19 A. I'm sitting there in the wheelchair, the
20 solicitor is questioning witnesses and stuff.
21 Mr. Casto is sitting there texting back and forth
22 with one of his colleagues that was sitting in the
23 back of the courtroom. They were looking back. He
24 had his phone, texting. So he wasn't paying any
25 attention to what was going on whatsoever. And

1 that's what let me knew that I didn't have a chance
2 whatsoever.

3 Q. And so, just as far as legal grounds, you just
4 feel that he wasn't adequately giving your trial the
5 attention it required?

6 A. He wasn't professional at all.

7 Q. Fell short of the standard of reasonableness
8 that would have ensured a different outcome in your
9 case?

10 A. Yes, sir.

11 Q. And a cumulative act, along with the other
12 things, which impacted your freedom?

13 A. Yes, sir.

14 Q. Okay. And that's what you have on your list,
15 correct?

16 A. Yes, sir.

17 Q. I didn't miss anything that we've gone over so
18 far?

19 A. That's pretty much it. Yes, sir.

20 Q. And just as a quick overview -- and we've heard
21 the specifics and the Judge took notes. I just want
22 to go back just -- in your case, your representation
23 was bifurcated between two lawyers, correct?

24 A. Yes, sir.

25 Q. And there was a six-month gap where you just

1 sat in jail --

2 A. Right.

3 Q. -- kind of waiting to hear about a plea that
4 never came to you?

5 A. Right.

6 Q. And you were given an LWOP notice at some
7 point?

8 A. Right.

9 Q. What is your prior record? Go ahead and tell
10 us.

11 A. I had a prior burglary and CSC --

12 Q. Okay.

13 A. -- first degree.

14 Q. When was that?

15 A. That was about 20 years before this.

16 Q. Okay. And that's how they made it eligible,
17 you had previous strikes?

18 A. Yes, sir.

19 Q. Okay. When was the last time you had been in
20 trouble before this?

21 A. It was 2007 or -8 or something. Some guy
22 jumped on my son and I took up for my son.

23 Q. Okay. You eventually get Mr. Casto. You feel
24 you did not adequately have the preparation you
25 needed facing an LWOP trial, correct?

1 A. Yes, sir.

2 Q. Your witnesses were not interviewed as you
3 would have thought would have been necessary for
4 this kind of situation?

5 A. Yes, sir. I knew if Kyrisha had been there,
6 she was willing and -- she was ready to come and
7 testify. But they wouldn't allow her.

8 Q. Okay. Kyrisha is the daughter?

9 A. The daughter of the victim.

10 Q. You don't feel like Mr. Casto adequately spoke
11 to your family and talked to Thaddeus or any of the
12 other individuals?

13 A. No. They never interviewed Thaddeus
14 whatsoever.

15 Q. In this case, the allegations stem from, pretty
16 much, a purse snatching of an ex-girlfriend. Is
17 that -- what was your relationship with the victim,
18 allegedly?

19 A. Kyrisha was my brother Thaddeus' girlfriend.

20 Q. So a friend?

21 A. Yeah. That was the victim's daughter.

22 Q. Okay. And it was, pretty much, what amounted
23 to be a purse snatching. They just said it happened
24 in the nighttime hours, so you got charged with
25 burglary?

1 A. Yes, sir.

2 Q. There were no weapons involved?

3 A. No, sir.

4 Q. The only element of aggravation to bring it to
5 a burg first was the question about what time it
6 happened?

7 A. Yes, sir.

8 Q. Okay. And you don't feel that was properly
9 preserved where the Court could have charged
10 burglary second?

11 A.. Right.

12 Q. Okay. When you got to the trial stage, you
13 feel that there was an inadequate conversation with
14 your attorney?

15 A. Yes.

16 Q. You feel like he didn't prep properly with the
17 witness he did call?

18 A. No, sir. That was -- no way.

19 Q. Generally speaking, do you feel that the
20 representation you received ultimately impacted you
21 so negatively that you're here today?

22 A. Yes, sir.

23 Q. Had you been able to take an opportunity -- I
24 mean, you've been in jail now for how many years?

25 A. Five and some change.

1 Q. -- to take some kind of plea where you would
2 not have be facing life without parole, you would
3 have been on board with that?

4 A. Yes, sir. If he would have been -- refused to
5 call my witness or testimony -- I had talked to my
6 mother and my daughter and my brother. They said,
7 well, you know how the system is, it don't always
8 work in your favor. And my daughter, she broke down
9 and said, well, Daddy take the 15 because at least
10 you'll come back home. I don't want to be without
11 you for the rest of my life.

12 Q. And you never got that opportunity?

13 A. No, sir.

14 Q. They just drug you in on a trial?

15 A. Yes.

16 Q. Is there anything else that I have not gone
17 over at this point with you that you would like
18 to -- this is your chance to make sure that the
19 Judge knows anything else, specifically. And I'll
20 get to argue again. But I just want to make sure
21 there's nothing I've missed when going over it with
22 you.

23 A. I just feel like if Mr. Casto would have
24 actually listened to what I was saying and
25 investigated on what I was telling, that the trial

1 would have been a whole lot different, such as blue
2 hoodie and all this other stuff.

3 If he would have called my witnesses, you know,
4 called my inventory and stuff like that, I know it
5 would have came out different because it would have
6 showed that this was all circumstantial stuff that
7 they was trying to put together.

8 Q. And some of those objections weren't made. And
9 other ones just was evidence that he never sought to
10 go find?

11 A. Right.

12 Q. Okay. Please pay attention to any questions
13 she has. Answer any of the attorney general's
14 questions, please.

15 A. Yes, sir.

16 THE COURT: Cross-examination.

17 MS. OPPENHEIMER: One moment, Your Honor.

18 Your Honor, I'd just initially ask that you
19 kind of bear with me. There was a lot of transcript
20 references, so it might take me a moment or two.

21 THE COURT: You want to take five minutes?

22 MS. OPPENHEIMER: No. Just in between
23 questions, it might take a moment.

24 THE COURT: Very well.

25

1 CROSS-EXAMINATION

2 BY MR. OPPENHEIMER:

3 Q. Now, Mr. Martin, you talked about a lot. And I
4 want to get to everything that you talked about.

5 But, first of all, what is your nickname?

6 A. My nickname?

7 Q. Yes. What do people call you?

8 A. They call me Moe.

9 Q. Moe? Do they call you Ronnie Moe?

10 A. Moe, Ronnie.

11 Q. Okay. And do you recall the victim's testimony
12 at trial, when she said the moment that you busted
13 through that door, she said, Ronnie Moe, what are
14 you doing? Do you remember that testimony?

15 A. Yes. I remember it being led to that. The 911
16 call speaks different though.

17 Q. Do you have that 911 call?

18 A. I have it in my Rule 5. It's -- it says that
19 someone just broke into my house, I think I know who
20 it is. My name was never called.

21 Q. But you don't have that with you today, do you?

22 A. No, ma'am.

23 Q. And do you remember the testimony at trial?

24 Ms. Williams specifically said, Ronnie Moe did this,
25 Ronnie Moe, why you taking my purse? Do you

1 remember that testimony?

2 A. I remember that coming out in court.

3 Q. And Mr. Williams also testified that he heard
4 his wife say, Ronnie Moe, what you doing? Ronnie
5 Moe, why you taking my purse? Right?

6 A. I think that was part of the testimony.

7 Q. And you say that you had no opportunity to come
8 into court and plead guilty. But when you were
9 first brought into court on May 5th, 2015, you were
10 actually there for a plea, correct?

11 A. I was fixing to sign a plea. But it wasn't a
12 negotiable plea of 15. I found out it was an open
13 plea of first degree burglary, and I told them
14 that's not what I was promised.

15 Q. Well, now you recall the solicitor saying that
16 you had previously rejected a 15-year and 20-year
17 offer --

18 A. Not true.

19 MS. OPPENHEIMER: Your Honor, may I approach
20 the witness?

21 THE COURT: Certainly.

22 BY MS. OPPENHEIMER:

23 Q. If you'll look at page 9, lines 2 through 5.
24 If you'll read that to yourself.

25 A. No, ma'am. That's what the solicitor said.

1 And why Mr. Casto didn't object to that, I don't
2 know. But I was never made any other offers like
3 that. The only offer they brought to me was an open
4 plea, first degree burglary. And that was the day
5 of my trial.

6 Q. And Mr. Maye said that if you took that plea,
7 he would remove LWOP notice, correct?

8 A. He would remove the life.

9 Q. So you still could have gotten 15 years if you
10 had decided to take that plea, correct?

11 A. Well, open plea, we all know that you don't
12 always get that. He could have gave me anywhere
13 from 15 to 50.

14 Q. But you could have gotten 15, right?

15 A. But I could have gotten 50.

16 Q. And do you recall taking a recess so that
17 Mr. Casto could discuss with you the plea?

18 A. Yes. That's when he brought me that plea.
19 That's when me and him actually really fell out the
20 most. Like I said, the only thing that they were
21 willing to do that he could do, so he say, was
22 remove life. So that would have been an open plea
23 and not knowing what was going to happen. But with
24 Mr. Seigler, I had a negotiable plea of 15 years,
25 and he asked that that remain on the table.

1 Q. You decided to not to take it?

2 A. No. I wanted to take it. But he told me --

3 Q. Why didn't you say anything at that time?

4 A. I told Mr. Casto. He said it wasn't on the
5 table any longer.

6 Q. But the assistant solicitor did say that you
7 did, in fact, reject 15 and 20 years.

8 A. I never talked to anybody about another plea.

9 Q. But that's what the solicitor said.

10 A. That's not true.

11 MS. OPPENHEIMER: Your Honor, may I approach
12 again?

13 THE COURT: Yes, ma'am.

14 MS. OPPENHEIMER: Do I need to keep asking
15 or --

16 THE COURT: No, ma'am.

17 MS. OPPENHEIMER: Thank you.

18 BY MS. OPPENHEIMER:

19 Q. And you talked about your motion to relieve,
20 kind of. If you'll look on pages 106, lines 11
21 through 13, and page 107, lines 13 through 15. If
22 you'll just review that to yourself.

23 A. What was the other?

24 Q. 107, I believe, 13 through 15. Whatever that
25 next page is.

1 A. Okay.

2 Q. Do you recall Judge McMahon asking you if you
3 wanted him to do anything?

4 A. Well, if you remember my testimony just a while
5 ago, I told you about losing my father and that I
6 was in a wheelchair. I was sick. And I asked the
7 Judge, just make him do what he's supposed to do
8 because I'm tired of sitting in the county jail
9 almost two years and going back and forth. I asked
10 him to make him just do what he's supposed to do.

11 Q. So you didn't want him to be relieved, correct?

12 A. Well, actually, I tried to get him relieved off
13 my case before I went to trial, twice.

14 Q. When Judge McMahon asked you, are you asking me
15 to remove him, you said no, correct?

16 A. I said no at the time. I said I just want him
17 to be made to do what he's supposed to do.

18 Q. Turning to the time that this crime happened,
19 this was in December, correct?

20 A. Yes, ma'am.

21 Q. And do you recall the victim testifying that it
22 was around 8:00 or quarter till?

23 A. I remember her saying three times it was in the
24 middle of the day.

25 MS. OPPENHEIMER: Your Honor, may I -- sorry.

1 May I approach? I know I don't need to keep asking.

2 THE COURT: Yes, ma'am.

3 THE WITNESS: That's another issue I had
4 with --

5 BY MS. OPPENHEIMER:

6 Q. If you'll just look at page 156, lines 17 down
7 to the end of the page, her testimony was that this
8 occurred around 8:00 at night, correct?

9 A. Okay. But you go a little further, it says she
10 said it was not daylight -- I mean, it was dark at
11 that point in time. And she --

12 Q. Was her testimony --

13 A. She said --

14 Q. Was her testimony that this occurred about 8:00
15 at night?

16 A. Okay. But she said it wasn't dark. So
17 somewhere she got in there twisted. She said it was
18 8:00 and then she said it wasn't dark three times.

19 THE COURT: I hate to interrupt you, Madam
20 Attorney General. What page are you on?

21 THE APPLICANT: 156 and 157.

22 THE COURT: Thank you.

23 BY MS. OPPENHEIMER:

24 Q. Now, we all know how time works. But in
25 December, the sun goes down earlier than it does in

1 the summer, right?

2 MR. STITELY: Judge, I'm going to object, at
3 least at this point, if we can wait one second.
4 Literally the answer that she gives is: Yeah, but
5 it wasn't quite -- it wasn't dark.

6 THE COURT: Just a moment.

7 MR. STITELY: That's on 157, line 8. Just
8 to -- it's a mischaracterization of what the
9 testimony is. Literally the witness' answer is:
10 Yeah, but it wasn't quite -- it wasn't dark.

11 THE APPLICANT: It was more like middle of
12 daylight, look a little bit like --

13 MR. STITELY: It was, like, middle daylight.

14 THE COURT: Mr. Martin, let the lawyers talk
15 and --

16 THE APPLICANT: I apologize.

17 THE COURT: Ms. Oppenheimer, I think, is taking
18 notice of your objection, and you may rephrase the
19 question.

20 MS. OPPENHEIMER: I do have a follow-up, Your
21 Honor. I apologize.

22 BY MS. OPPENHEIMER:

23 Q. If you'll look page 185, this is Chief
24 Goldman's testimony.

25 A. 185.

1 Q. About the middle of the page. Do you recall --
2 what time does Chief Goldman say that the sun set
3 that night?

4 A. 5:19 PM.

5 Q. 5:19 PM, correct?

6 A. Yes, ma'am. 5:46 at the latest.

7 Q. And your whole defense was that Quentin Samuels
8 actually did this, correct?

9 A. Yes, ma'am.

10 Q. And you wanted Mr. Casto to call him as a
11 witness, correct?

12 A. Yes.

13 Q. And he did that, correct?

14 A. He refused to ask the question that should have
15 been asked.

16 Q. But he did call him as a witness, correct?

17 A. He didn't do what I asked him to do. He called
18 him as one --

19 MS. OPPENHEIMER: Your Honor, will you instruct
20 him to answer the question? And then he can explain
21 his answer.

22 THE COURT: Your attorney will have the
23 opportunity to talk with you again during your
24 examination. So please answer the attorney
25 general's question.

1 THE APPLICANT: I'm being as straightforward as
2 possible. He called him on the stand. Yes, sir.

3 BY MS. OPPENHEIMER:

4 Q. And there were some phone calls between you and
5 your girlfriend that were introduced at trial,
6 correct?

7 A. Yes, ma'am.

8 Q. And in those phone calls, you were telling your
9 girlfriend where to find this purse, correct? And
10 you tried to say, go ask Quentin, go ask Quentin.

11 A. Well, the whole phone call was I was telling
12 her to ask Quentin. He know what he did and he
13 going to pay for what he did. Tell him I ain't
14 falling for him.

15 Q. And when Quentin got on the stand, he denied
16 having any involvement in this, correct?

17 A. Yeah.

18 Q. So his testimony didn't support your theory,
19 correct?

20 A. His testimony was that he didn't know me.

21 Q. And let's talk a little about Quentin Samuels.
22 He's kind of the town idiot, right?

23 A. No. I mean, I ain't going to say that about
24 nobody. We got a bunch of them.

25 Q. Do you recall Chief Goldman testifying that he

1 had prior dealings with Mr. Samuels?

2 A. Yes, ma'am.

3 Q. And that he knew Mr. Samuels, right?

4 A. Yes, ma'am.

5 Q. And based on his experience with Mr. Samuels,
6 he testified that Mr. Samuels was childlike; that he
7 was about eight or ten mentally; that he had some
8 learning disabilities, right, in his opinion?

9 A. In his opinion, yes, ma'am.

10 Q. Based on his experience with him, correct?

11 A. His opinion, yes, ma'am.

12 Q. And your girlfriend also testified that she
13 knew Quentin Samuels from around town, correct?

14 A. Yes, ma'am.

15 Q. And she testified that Quentin Samuels isn't
16 too bright, correct?

17 A. Well, yeah. That's why half the time --

18 Q. And you recall Mr. Casto trying to get into the
19 statements that Quentin had allegedly made to you
20 earlier that day, right?

21 A. I remember him trying. It was something that
22 he didn't do where they said that he could have did
23 because Quentin was on the -- it wouldn't be hearsay
24 because Quentin was on the stand.

25 Q. Well, now, Judge McMahon said that that

1 testimony would not be allowed, correct?

2 A. No. The appeal courts ruled that it wouldn't
3 have been hearsay; it would have been admissible
4 because Quentin Samuels was there and he was sworn
5 in as a witness, if I remember right.

6 MS. OPPENHEIMER: And Your Honor has the
7 opinion. You can review it.

8 I beg the Court's indulgence.

9 BY MS. OPPENHEIMER:

10 Q. If you'll turn to page 170 of transcript, you
11 testified on direct that the purse was returned to
12 the victim that Saturday. But what was the question
13 right before your answer earlier?

14 A. According to this?

15 Q. Well, it is a transcript of what happened.

16 A. This was Mr. Casto saying her purse was
17 returned, actually, some days later.

18 Q. Right. So the question is: Your purse was
19 returned to you some days later, about 12:16.

20 Correct?

21 A. That's what he was leading her to say. But
22 going on, it says -- she says: I'm not sure of the
23 date, but I know it was returned back to me that
24 Saturday. Saturday being the next day.

25 Q. Well, it was returned to her at some later

1 date, whether or not it was the next day or if there
2 was testimony that it was days later. Correct?

3 A. Yeah. But they kept on trying to get her to
4 say other dates. But she kept saying she wasn't for
5 sure, she knew it was that Saturday. That was some
6 of the questions that I didn't agree with that
7 should have been objected to.

8 Q. And when the purse was returned to her, it had
9 been left outside for some days and it was actually
10 kind of wet from the rain, right?

11 A. I have no idea. By testimony, I think maybe
12 that's what it was. I don't --

13 Q. So there was nothing of evidentiary value that
14 could have been taken from that purse, right?

15 A. I have no idea.

16 Q. Well, the officers testified --

17 A. They said they couldn't get fingerprints or DNA
18 or -- but then we don't know if that was the purse.

19 I mean, no color, no make, no size, no nothing.

20 Q. Well, the victim identified it as her purse,
21 correct?

22 A. That's at trial. They could have got a
23 purse from anywhere and she say it's hers.

24 Q. The victim knows what her purse looks like,
25 correct?

1 A. Yes, ma'am. But in the evidence, it don't give
2 no name, no color, no nothing of the purse. So, I
3 mean, that was another thing that should have been
4 objected to, I think. I'm not a lawyer. I don't
5 know.

6 MS. OPPENHEIMER: I beg the Court's indulgence,
7 Your Honor. I apologize.

8 BY MS. OPPENHEIMER:

9 Q. And do you recall your girlfriend testifying at
10 trial that you left the house wearing a blue hoodie?

11 A. I remember her saying -- I think I do remember
12 that.

13 Q. And she said that it was her blue hoodie,
14 right?

15 A. Okay. Yeah.

16 Q. You left that house that night wearing a blue
17 hoodie. That's what she testified to, correct?

18 A. That's what she said.

19 MS. OPPENHEIMER: Your Honor, I don't think I
20 have any further questions.

21 THE COURT: All right. Redirect?

22 MR. STITELY: Little bit of followup, Judge.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. STITELY:

1 Q. Ronnie, I want to go back over a few things
2 that she addressed with you.

3 A. Yes, sir.

4 Q. The 911 call --

5 A. Yes, sir.

6 Q. -- can you have things like tapes and CDs back
7 in the jail?

8 A. No, sir.

9 Q. Is there any way you'd have it at SCDC?

10 A. No, sir.

11 Q. What do you think, if I tried to hand you a CD,
12 they would do?

13 A. They'd probably lock you and me both down.

14 Q. Okay. Are you aware that 911 calls are deleted
15 after 90 days and purged from the system?

16 A. No, sir.

17 Q. Are you an attorney?

18 A. No, sir.

19 Q. Are you an evidence custodian for the sheriff's
20 department?

21 A. No, sir.

22 Q. Is there any way in the world you physically
23 could have a 911 tape?

24 A. No, sir.

25 Q. Okay. I don't know if you know much about

1 PCRs --

2 A. No, sir.

3 Q. -- but when I get your file and get a copy of
4 the transcript, I don't have your original evidence
5 either, do I?

6 A. Not that I know of. No, sir.

7 Q. Okay. The conversation about the potential for
8 a plea, the attorney general went over with you.

9 A. Okay.

10 Q. Mr. Maye said that you turned down some offers.
11 But the judge never asked you that question, did he?

12 A. No, sir.

13 Q. You never told the judge you turned down an
14 offer?

15 A. No.

16 Q. That's not, in fact, true; that's just what
17 Mr. Maye had to say?

18 A. That's what the solicitor had to say. Yes,
19 sir.

20 Q. And that's literally when your trial was
21 starting, correct?

22 A. My trial had started, yes, sir.

23 Q. They had already started calling jurors into
24 the room when they wanted you to make that decision?

25 A. Yes, sir. They had already started picking the

1 jurors.

2 Q. This wasn't a week before, a month before, or a
3 year before?

4 A. It was that day.

5 Q. Okay. And at that hearing that we addressed
6 earlier where you were talking to Judge McMahon,
7 your jury was already sworn, right?

8 A. Yes.

9 Q. Are you a lawyer?

10 A. No, sir.

11 Q. They had already started testimony or whatever
12 in your case, correct?

13 A. Yes, sir.

14 Q. Were you ready to represent yourself after your
15 trial had already started?

16 A. Yes, sir, pretty much.

17 Q. I mean -- but at that point, you had a lawyer
18 and your trial was going?

19 A. And my trial was going.

20 Q. This wasn't a month before, a year before?

21 A. Right then.

22 Q. You wouldn't have had an opportunity to get
23 somebody else?

24 A. No, sir. They had already started.

25 Q. And you just asked him to make sure your

1 attorney did the best he could at that point going
2 forward?

3 A. Do what he could. Because, like I said, I was
4 in pain, in a wheelchair, and my father just had
5 passed, and I had all kinds of stuff going on with
6 me.

7 Q. All right. A couple other things she hit on:
8 One of them is that the conversation -- and I
9 brought it up earlier when we were talking -- about
10 the nighttime versus daytime, correct?

11 A. Yes, sir.

12 Q. And out of the alleged victim's own mouth, she
13 said it wasn't dark, it was, like, midday time?

14 A. Yes, sir.

15 Q. That's on page --

16 A. 167, I think.

17 Q. -- 157. The solicitor is telling her it's at
18 8:00. And then at 185 -- do you have your
19 transcript in front of you?

20 A. No, sir.

21 Q. 185 is where they were having the cop say what
22 time he thought it was dark, correct?

23 A. Right.

24 Q. Any objection from your attorney about that?

25 A. No, sir.

1 Q. But the victim herself, out of her mouth, back
2 on -- we're back on that 157 page, said: It was,
3 like, middle daylight, look a little bit?

4 A. Right.

5 Q. 157, line 8 and 9. And the solicitor kept
6 saying it was 8:00, correct?

7 A. Yes, sir.

8 Q. But out of the victim's own mouth, it was
9 daylight?

10 A. Right.

11 Q. Daylight, look a little bit? Whatever that
12 means.

13 A. And she went on, I think, to say: Like, when
14 the sun go down. It was three times she said it was
15 day.

16 Q. And, once again, the only reason this case was
17 a burglary first was because it had to have happened
18 at nighttime, correct?

19 A. Yes, sir.

20 Q. And the victim's own statement on page 157 is
21 that it was daytime?

22 A. Yes, sir.

23 Q. Yet, at some point, the Court took notice and
24 said it was nighttime, and there was no objection
25 made?

1 A. No objection, yes, sir.

2 Q. Was there any objection made to the police
3 officer spouting off like he was the weather service
4 talking about the times of day?

5 A. No objection. No, sir.

6 Q. And the solicitor characterized Mr. Samuels as
7 being the village idiot?

8 A. Yes, something like that.

9 Q. And the police officer said that. Was there
10 any objection saying that he's not some kind of
11 mental health expert who can make some kind of
12 determination?

13 A. No, sir.

14 Q. Okay. And then the last thing that y'all
15 addressed was that purse question. And we addressed
16 it when we were on direct, how she said it was a few
17 days later but, she, at least, had it on Saturday?

18 A. Right.

19 Q. And it was the police's position that the
20 reason they didn't do any evidentiary testing is it
21 had been outside in the weather for several days?

22 A. Several days. And he actually stated that it
23 had changed hands several times.

24 Q. But there was no objection made to the custody
25 or the foundation?

1 A. No, sir.

2 Q. And in her direct testimony, she thinks she had
3 it back that very next day?

4 A. That Saturday. Yes, sir.

5 Q. Which would have made their theory of it being
6 outside in the rain and untestable a direct
7 contradiction with what the victim said?

8 A. Right.

9 Q. So, in this case, the victim says it's daytime
10 and the purse is recovered the very next day?

11 A. Yes, sir.

12 Q. And only law enforcement says that it must have
13 been nighttime and it really happened several days
14 later?

15 A. Right.

16 Q. Did your attorney ever bring that out?

17 A. No, sir.

18 Q. Do you think if the attorney would have
19 objected and gotten that burglary second charge,
20 that could have changed things?

21 A. I'm sure it would have.

22 Q. Do you think if he had put your 911 tape in
23 that did not state your name, even though the victim
24 says she would have known who you were, would it
25 have changed things?

1 A. Yes, sir. The jury would had a chance to --

2 Q. If he'd gotten that jail sheet that showed the
3 inventory of what you really had on you when they
4 arrested you have changed things?

5 A. Yes. The jury's the one that asked for that.
6 He never brought it up during my testimony
7 whatsoever. And the jury actually wanted to see the
8 inventory. The jury wanted to see it.

9 Q. And I'm not being a smarty butt, but you've
10 been to jail before?

11 A. Yes, sir.

12 Q. And when they release you, they give you an
13 inventory sheet, correct?

14 A. Yes, sir.

15 Q. Or when your family comes and picks your stuff
16 up?

17 A. Right.

18 Q. So they have a copy of that?

19 A. Right.

20 Q. And your attorney could have got that?

21 A. Yes, sir.

22 Q. And it would have been relevant to show exactly
23 what the jury wanted to know?

24 A. Right.

25 MR. STITELY: That's all the questions I have,

1 Judge.

2 THE COURT: Anything else from the State?

3 MS. OPPENHEIMER: Just very briefly, Your
4 Honor.

5 RECROSS-EXAMINATION

6 BY MS. OPPENHEIMER:

7 Q. Regardless of whether or not it was dark or
8 night, the victim was always steadfast that this
9 occurred around 8:00 at night, correct?

10 A. Well, that's basically what the police kept
11 saying. But...

12 Q. She was steadfast in her testimony that it was
13 about 8:00, right?

14 A. Yes, ma'am. I think so. I seen that in there.

15 Q. Do you have this inventory sheet with you?

16 A. My lawyer never would get one.

17 Q. And, to be clear, you weren't the one picking
18 up the stuff from the jail and neither was your
19 family; it was actually your girlfriend, correct?

20 A. Either way it go, someone had to sign for it,
21 if that's what they say. You had to have records.

22 Q. You don't have that with you today?

23 A. No, ma'am. My public defender didn't get any
24 of that stuff for me.

25 MS. OPPENHEIMER: Your Honor, I have no further

1 questions.

2 THE COURT: You may step down, sir.

3 MR. STITELY: I call Mr. Casto.

4 THE COURT: Let's take about five minutes.

5 (Brief recess.)

6 BENNETT CASTO

7 being first duly sworn, testified as follows:

8 THE WITNESS: I do.

9 THE CLERK: Have a seat and state your name,
10 please.

11 THE WITNESS: My name is Bennett Casto.

12 DIRECT EXAMINATION

13 BY MR. STITELY:

14 Q. Mr. Casto, what is your job title, I guess?

15 A. I am Tri-County Public Defender in the 11th
16 Circuit. So I work out in Saluda, Edgefield, and
17 McCormick Counties.

18 Q. How long have you been working out there?

19 A. Going on five years.

20 Q. When did you take the title over from
21 Mr. Seigler?

22 A. As soon as he became a family court judge.

23 Q. When you got Mr. Seigler's caseload, how many
24 cases do you think you got?

25 A. Probably about 200.

1 Q. How many cases did you have of your own at that
2 point?

3 A. Well, probably a fraction of that. I think
4 that, you know, before -- you know, I was here in
5 Lexington, so I was kind of in between. So I think
6 that I was trying to finish out what I had here so I
7 wouldn't have to, you know, come to Lexington and
8 then also be responsible for those cases out there
9 too.

10 Q. At its finest, there were a lot fewer public
11 defenders than there are right now, correct?

12 A. That's right.

13 Q. Back then, there was probably almost half of
14 what the public defenders are today, correct?

15 A. That's right.

16 Q. Caseload hasn't gone down, though, has it, or
17 up?

18 A. Not to my knowledge.

19 Q. At its worst, how many clients would you have
20 back five or six years ago in jail at one time?

21 A. Probably 40 or 50.

22 Q. Okay. So assuming you tried just to meet with
23 your jail clients, it would take you two months just
24 to give each of them a little bit of your time, if
25 you did nothing else, correct?

1 A. It would take a good amount of time, correct.

2 Q. And that was across multiple counties?

3 A. That's right.

4 Q. And I'm not trying to take away from what you
5 do. But it would almost be physically impossible
6 for you to spend eight hours a day with each client
7 once a week to get ready for their case, correct?

8 A. That's right.

9 Q. Because it's not that you didn't also have
10 court, correct?

11 A. That's right.

12 Q. And so how often did you have court?

13 A. So I was kind of in the winding-up phase in
14 Lexington. But -- so the tri-counties looks like
15 this: For each county, they each have -- well, four
16 two-week terms a year.

17 Now let me back up. McCormick, which is our
18 smallest county, has four one-week terms a year. So
19 all combined, that's 20 weeks of court a year.

20 Q. And I would assume, during those two weeks, as
21 the public defender, there's a fair chance that you
22 had at least one of the trials in the county,
23 correct?

24 A. I was -- in those days, I was at least on the
25 trial list multiple times.

1 Q. And the way the solicitor handled it back then,
2 you didn't know what was going on until you showed
3 up on Monday sometimes, correct?

4 A. That's true. That was kind of a different
5 administration then. But now, the current
6 administration, you know, saw that for what it was,
7 hated everything about that, and has sought to kind
8 of clean that up.

9 Q. And I'm not trying to talk about it, but this
10 goes a long way into what ability you had to
11 actually fully represent clients back five, six
12 years ago. But -- no knock on you. But you do you
13 feel that you had the adequate resources to give
14 every single client the amount of time and attention
15 you would have liked to?

16 A. No, but I feel -- it's probably something that
17 is a commonly held belief amongst public defenders,
18 you know, in our office, statewide and nationally.

19 Q. Mr. Martin's case was gifted to you by
20 Mr. Seigler, correct?

21 A. That's right.

22 Q. Do you know when your first meeting with him
23 was?

24 A. I do not. I do remember -- so for whatever
25 reason, Mr. Martin was not held in Saluda County.

1 He was actually held in Laurens. So I would drive
2 up there and meet with him and review his case. And
3 I remember doing that on multiple occasions.

4 Q. So that even made it more complicated to meet
5 with him: He wasn't even located within your
6 district, or whatever we call it, judicial district?

7 A. Circuit. That's right.

8 Q. And Laurens is an additional, even from your
9 closest county, another hour plus out of the way,
10 correct?

11 A. It was a good, I would say, hour and a half
12 from Lexington.

13 Q. Did you have a meaningful conversation with
14 Mr. Seigler about Mr. Martin in your interim or just
15 kind of you end up with this file? Do you recall?

16 A. I think it is the latter. I think I kind of
17 ended up with the file.

18 Q. So you can't speak to any negotiations
19 Mr. Seigler would have had with Mr. Maye or
20 Mr. Martin ahead of time?

21 A. I cannot.

22 Q. And there was probably 200 files that were kind
23 of handed over?

24 A. That's right.

25 Q. And it happened relatively suddenly, correct?

1 A. Well, you know, we knew that he had been
2 elected. But then, you know, there's that window of
3 time when, you know, he's not officially serving as
4 a family court judge. So we were -- and that was a
5 decent amount of time to kind of get some things in
6 order on that. It wasn't overnight.

7 Q. But it wasn't a situation where you were able
8 to fully go through each file, sit down with him, go
9 over everything that you specifically recall doing
10 that with this case?

11 A. Right.

12 Q. Okay. In Mr. Martin's case, do you recall any
13 written plea offers provided by the Solicitor's
14 Office?

15 A. No.

16 Q. Do you recall this negotiated 15 guarantee that
17 Mr. Maye was speaking about in the trial?

18 A. I recall bringing Mr. Martin an offer of 15.
19 We discussed it while he was in Laurens. But it
20 was -- I recall it being well before trial or
21 anything like that. And, you know, I told him, hey,
22 you know, here are our choices. I'm not exactly
23 thrilled about your plea offer, but it is what it
24 is. It's 15 or, you know, it's my understanding
25 they will LWOP you.

1 Q. Was it ever written from Mr. Maye, a negotiated
2 sentence?

3 A. No. He -- he never would -- that I recall,
4 ever made any written plea offers or anything.

5 Q. It was more like a, you think you would find
6 him here -- and I'm not, once again, speaking
7 about people who are no longer -- Mr. Maye was not
8 always the easiest to get a firm anything from. Is
9 that fair?

10 A. That is absolutely fair. I think that -- the
11 reason that I remember this plea offer was because
12 it was one I wasn't thrilled about. You know, it's
13 my understanding that Mr. Martin had an earlier case
14 that was up for trial, there were some witnesses
15 that backed out, and, ultimately, Ervin Maye had to
16 dismiss the case. So I think -- and that came
17 before me.

18 But -- so it's my understanding, from that
19 moment on, I think that it's fair to say he kind of
20 had a bulls eye on him and they wanted him.

21 Q. Okay. Even in the worst light, what would you
22 say this case was, as far as an evidentiary
23 standard, as far as egregious burglaries that
24 deserve LWOP go?

25 A. I think that, at least for me -- and I kind of

1 pride myself on not being much of a radical or what
2 have you. But I certainly don't think -- I mean,
3 life is, you know, one of the harsh penalties that
4 we have. So then when we look at the facts or the
5 ingredients that make that up, I just don't believe
6 that this is something that equals a life sentence
7 whatsoever.

8 Q. Even in the State's evidence, this amounts to,
9 pretty much, a purse-snatching case, correct?

10 A. I would agree with that, you know, in that
11 there wasn't any weapons used or anything like that
12 at all.

13 Q. Any violence?

14 A. No.

15 Q. Injuries?

16 A. No.

17 Q. An actual breaking? Was there a busted down
18 door?

19 A. You know, I don't recall how entry was made.
20 So I don't know if that -- if it was or it wasn't.

21 Q. But this wasn't a situation where someone
22 jimmied open a window, climbed in, busted, kicked
23 down a door, came in guns a-blazing, anything like
24 that?

25 A. There certainly was no weapons. But I don't

1 recall how entry was made.

2 Q. Did you ever get the 911 tape?

3 A. I want to say -- if memory serves, I want to
4 say that there was a 911 tape that we had gotten. I
5 believe that's correct.

6 Q. Had you gotten the case, say, nine months later
7 and went to request one from the sheriff's
8 department, would you have been able to obtain one?
9 In your history as a lawyer, are you able to get
10 them almost a year later?

11 A. It's very difficult, you know, to get that. I
12 think you talked about on direct that there's kind
13 of a window of opportunity there. But --

14 Q. Okay. One of the allegations in this case is
15 that you did not adequately pretrial prep this case.
16 To your recollection, what did your pretrial
17 preparations in Mr. Martin's case involve?

18 A. So what I would -- I'd go to Laurens. What
19 we'd do is just go through everything, you know. So
20 my standard practice is to just, hey, look, you
21 know, I'm going to tell you the truth, whether you
22 like it or not, and we're going to talk about some
23 good things in the case and then also some things
24 that are bad about it. And then whatever plea offer
25 there is, we'll also cruise through that too, in

1 addition to the rights. There's no wrong decision.
2 They can plead, they can go to trial.

3 So I remember, with him, going through and
4 speaking with him about the discovery. I want to
5 say that we had hired an investigator in this case.
6 We had spoken with some of the witnesses. I don't
7 have my file with me, but I know that we had done
8 that. And then we talked about what -- you know,
9 the plea offer that was -- you know, that was there.
10 And I remember specifically we talked about that
11 just based on what his answer was.

12 Q. Okay. Did you interview this Mr. Samuels who,
13 ultimately, became a witness in this trial?

14 A. No.

15 Q. So how did you come around calling Mr. Samuels
16 as a witness?

17 A. So I remember, you know, telling Mr. Martin,
18 hey, here's what we have in the case, you know; it's
19 alleged that these folks, they know you; it's
20 alleged that these folks, they saw you; this is
21 going to be very difficult to, you know, overcome,
22 you know. And we talked about that fact at length
23 well before the trial, in fairness.

24 And, ultimately, you know, I remember coming
25 into court that day and it was already mid-trial,

1 you know. Mr. Martin and I -- I remember
2 discussing -- you know, when he sat up here and
3 said, yes, you know, I definitely want you to call
4 Mr. Samuels, I thought long and hard about it
5 because, you know, I'm in this unenviable position.
6 And, lo and behold, he just showed up at court that
7 day. He wasn't on our list of witnesses to call. I
8 don't recall whether he was on the State's
9 witnesses. I think he might have been subpoenaed by
10 the State. I'm not sure. But, either way, he was
11 there. You know, I saw -- in my opinion, you know,
12 the way that I thought the trial was going, which
13 was not particularly well for Mr. Martin, and, you
14 know, I called him. I admit that.

15 Q. So you called a witness. You hadn't
16 interviewed him ahead of time, asked him --

17 A. That's exactly right.

18 Q. Taking cold questions like you are from me now?

19 A. Yes.

20 Q. In hindsight, would you have liked to have
21 interviewed him?

22 A. Yes.

23 Q. Vetted him?

24 A. Yes.

25 Q. And known exactly what he would have said

1 before you asked the questions?

2 A. Yes.

3 Q. Okay. Do you recall how long it was before
4 getting trial notice in Mr. Martin's case and
5 knowing it was really going to trial?

6 A. I -- I don't -- well, I remember -- you know, I
7 think that they had officially served -- if memory
8 serves -- and let me know if I'm speaking out of
9 turn. But that they had called him over and served
10 LWOP notice on him, you know, a date well before the
11 trial, I mean, maybe even a couple of months.

12 So at that time, hey, you know, this thing is
13 coming. This looks like it will realistically go to
14 trial in the next available opportunity.

15 Q. Do you know if you were told a Monday before
16 the Monday it started, the Friday before or that
17 Monday morning, that you're starting on Tuesday?

18 A. That part was always a little bit disorganized,
19 I think, from the State communicating -- in those
20 days, with the staff they had -- they don't have
21 them anymore, but -- probably for this reason. But
22 it was something that was maybe unclear. I will say
23 that, you know, I recall having an idea that it was
24 up.

25 So, you know, we had already hired an

1 investigator who checked with some folks months in
2 advance. You know, I think that I remember -- it
3 wasn't a situation where, hey, they told me a couple
4 days you're up for trial and then my preparation
5 started. That had already begun, in fairness.

6 Q. But it is possible that you might have been
7 told literally just before the trial it's really
8 happening and it happened?

9 A. I think that I had more -- I recall having more
10 notice than that. It wasn't a lot. But I don't --
11 as bad as that system was out there in those days, I
12 am almost positive that I would have known that, you
13 know, I am first up, at least a week, you know.

14 Q. Okay.

15 A. And should have been more notice for sure. But
16 I think that I kind of knew before then that I was
17 up. But, you know, I think it really looked like
18 all of that's true a week out.

19 Q. And I won't go through specific examples, but
20 you wouldn't disagree that the record is what it is,
21 if there was an objection not made or made, that's
22 what really happened?

23 A. Yes. I agree with that.

24 Q. And if the Court of Appeals says you didn't
25 make said objection, you probably didn't make it?

1 A. That's correct.

2 Q. The transcript is fair, as far as that goes?

3 A. It is what it is. And I -- you know, I don't
4 have any reason to disagree with anything that's
5 left out.

6 Q. The one thing still addressed, you asked for a
7 burg second charge, correct?

8 A. I did.

9 Q. And the judge wouldn't give it, correct?

10 A. That's correct.

11 Q. And the basis for that was some kind of -- he
12 decided it was nighttime, correct?

13 A. I believe that's right. Yes.

14 Q. And, without question, during the trial, the
15 witness being Ms. Diane Williams, says it was like
16 middle daylight?

17 A. I believe that's -- if that's what's in there,
18 that's what she said.

19 Q. But you didn't object specifically to the judge
20 just making the decision it was nighttime?

21 A. I didn't object to him taking judicial notice
22 of that. That's exactly right.

23 Q. So when it went up on appeal, that issue could
24 not be argued?

25 A. That's correct.

1 Q. Thank you, Mr. Casto. I have no other
2 questions. Please answer any questions from the
3 attorney general.

4 MS. OPPENHEIMER: May it please the Court, Your
5 Honor?

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. OPPENHEIMER:

9 Q. So let's start from the beginning. Mr. Stitely
10 asked you a lot about your caseload as a public
11 defender. And, admittedly, not all of us are like
12 Mr. Stitely and in private practice, correct?

13 A. That's right.

14 Q. So you don't get to pick and choose your
15 clients, correct?

16 A. That's true.

17 Q. And it's not unusual for you to have several
18 hundred cases as one time, correct?

19 A. It's not.

20 Q. And you've been a PD for longer than five
21 years, correct; just in the tri-county area for five
22 years?

23 A. Just in the tri-county area for approaching
24 five years. All totaled up, it's, I think, close to
25 11 years just as a public defender.

1 Q. So you're familiar with how to handle this
2 caseload and what needs to be done when?

3 A. That's right.

4 Q. And about -- you said you met with Mr. Martin
5 several times. Can you ballpark a number?

6 A. I would say, you know, at least, in fairness,
7 two or three when he was in Laurens. And I
8 remember, you know, his case was one where there
9 were not a ton of moving parts. It was, you know,
10 an entry into a home. The person believed that that
11 was him.

12 You know, there was another person in the house
13 who heard that person say Ronnie Moe, I believe is
14 what was hollered out. And I think Mr. Martin was
15 arrested shortly after that it happened. So it was
16 one that -- it was a case that, we could go over it,
17 and each visit, we could go over it, you know, again
18 and again.

19 Q. Would you say you had lengthy meetings with
20 him?

21 A. I would say so. I mean -- you know, when I
22 would drive up to Laurens, it wasn't an issue where
23 I was really pressed for time because, you know, I
24 sort of knew -- driving up there, I knew what I was
25 getting into. So that would be a -- you know, I

1 don't know, a lengthy afternoon where it was blocked
2 off just for him. I think in those days, I don't
3 think that I had -- I don't think that I had any
4 other clients at that particular jail to visit. It
5 was just him, I believe.

6 Q. And you just testified the victim hollered out
7 Ronnie Moe. Was there ever a question of identity?

8 A. There was not.

9 Q. And can you explain that a little bit? Like,
10 what was the relationship between Mr. Martin and
11 these people?

12 A. So, as I understand it and if memory serves, it
13 was a situation where it was alleged Mr. Martin was
14 hanging out over there earlier in the day; that -- I
15 think Mr. Martin leaves and goes home, does some
16 other things, what have you, and then, you know,
17 ultimately goes in the house. It's alleged that he
18 went in the house and took this purse, just ran out.

19 And I think that the victim was always somebody
20 that said -- you know, used the term Ronnie Moe in a
21 way that, hey, what are you doing at my house,
22 Ronnie Moe, whatever. And there was another
23 individual in the home that didn't see it go on at
24 all, he just heard her call that out.

25 And I want to say that Mr. Martin was arrested

1 fairly soon after that. And I want to say that they
2 put him in the back of the police car and brought
3 him back to have the victim identify him. And I
4 believe that she did.

5 Q. So she never had any question in her mind it
6 was Mr. Martin who came into her house and stole her
7 purse?

8 A. That's what her testimony was. Yes.

9 Q. And there's been some confusion about whether
10 or not it was dark or what time this occurred. This
11 happened in December, correct?

12 A. That's right.

13 Q. And regardless of whether or not the victim
14 waffled about whether or not it was dark, do you
15 recall her being steadfast that it was 8:00 p.m.
16 when this happened?

17 A. I remember her at least saying that time.

18 Q. And do you recall Chief Goldman testifying as
19 to what time the sun went down that night?

20 A. I do.

21 Q. Did you have any reason to object to that?

22 A. At the time, I felt no. In hindsight, I'm not
23 sure whether I should have objected or not.

24 Q. Well, to be fair, PCR law requires us not to
25 look back in hindsight, right? So at the time, you

1 had no reason to object, correct?

2 A. I don't recall one, no, ma'am.

3 Q. Can a judge take judicial notice of what time
4 the sun goes down?

5 A. I believe so. Yes, ma'am.

6 Q. Is that something that would be kind of common,
7 like take notice of it was sunny that day, the sun
8 went down at this time or whatever?

9 A. Common? I don't know about common. I think
10 that it's certainly something that would fit that.
11 But I haven't -- in my experience, haven't had many
12 judges really take judicial notice, even though
13 that's certainly within their ability to do so, not
14 something that comes up an awful lot.

15 Q. All right. And you testified that you hired a
16 private investigator to go out and interview some of
17 these witnesses?

18 A. That's right.

19 Q. Do you recall who they interviewed?

20 A. Off the top of my head, I can't recall. But I
21 remember that -- and I'm sorry I don't have my file,
22 but I remember they made investigative notes and
23 things. And so with regard to actual fact witnesses
24 who might have witnessed, actually, something, not
25 character people or whatever, I remember that we had

1 touched based with those folks.

2 Q. And did Mr. Martin ever give you any witnesses
3 to investigate outside of those fact witnesses or
4 inside those fact witnesses?

5 A. I'm not sure if he did. He may have. I just
6 don't remember.

7 Q. If he gave you a list of witnesses to
8 interview, would you have sent your investigator to
9 go talk to them?

10 A. Depending on who they were. So this is kind of
11 a common occurrence in cases: Well, who's this
12 person? Well, that's my mother. Well, did your
13 mother see anything that day? No, my mom just knows
14 that I'm a good guy or whatever. I'm not saying he
15 did that. But I'm saying, you know, what I would do
16 is kind of vet who he gave me because, specifically,
17 you know, I wouldn't send my investigator to
18 interview a witness that couldn't further the case
19 factually at all; in other words, you know, that
20 would comply with what's allowed in court.

21 Q. Okay. So if Mr. Martin testified that he asked
22 you to go interview his brother -- his brother
23 wasn't there that night, correct?

24 A. I don't believe -- I don't believe so.

25 Q. What about the victim's daughter?

1 A. I'm not sure. If memory serves, I think that
2 we did interview her. I don't recall. You know,
3 again, I would have to look back at the
4 investigative report. But I don't specifically
5 recall what she had to say.

6 Q. If she had provided beneficial information for
7 Mr. Martin, would you have called her as a witness?

8 A. Yes.

9 Q. And you testified that you did not interview
10 Mr. Samuels beforehand. Was he difficult to track
11 down?

12 A. I can't recall whether or not he was. He was a
13 little bit of -- he's kind of a fixture out in those
14 parts, somebody that just sort of roams around. So
15 I think that he does have a place to stay. I'm not
16 sure. I assume it's with family somewhere. But,
17 you know, no, I don't think he has a permanent job
18 or anything like that.

19 Q. So it was surprising to you that he showed up
20 for trial towards the end of the trial, correct?

21 A. Yes.

22 Q. And Mr. Martin was steadfast that he really
23 wanted you to call him, correct?

24 A. That's true.

25 Q. And you testified that you thought long and

1 hard about that. As an attorney, do you weigh in
2 your mind the pros and cons of calling witnesses?

3 A. Yes.

4 Q. And you, ultimately, decided to call
5 Mr. Samuels as a witness on Mr. Martin's insistence,
6 correct?

7 A. That's right.

8 Q. Can you describe Mr. Samuels for us?

9 A. He is somebody that, you know, I think is, you
10 know, mentally challenged in some form or fashion.
11 I would agree with his assessment -- some of the
12 folks that testified, their assessment that he
13 probably presents much younger than he really is.

14 He is an adult. I would guess he would be in
15 his late 20s, maybe early 30s at the latest. Like I
16 say, he's kind of a fixture out there in those
17 parts. So you -- almost every -- or at least maybe
18 half the time I go to Saluda, I still see him,
19 because he's kind of a roamer.

20 And I don't know that he's -- you know, been
21 somebody that's been tangled up in any, like,
22 horrible offenses or anything like that. I think he
23 has been arrested some, but I think that's about the
24 extent of it. I just think that, you know, he
25 just -- I don't feel threatened by him or anything.

1 Q. And Chief Goldman testified similarly to what
2 you just said based on his experience with
3 Mr. Samuels, correct?

4 A. That's right.

5 Q. Okay. Did you have any reason to object to his
6 opinion of Mr. Samuels based on his experience?

7 A. I -- at the time, I didn't believe that I did.

8 Q. Do you necessarily need to be a mental health
9 expert to describe a person as young mentally or he
10 presents young, like he's eight to ten years old?

11 Do you have to have a mental health degree to
12 present that?

13 A. I don't think that you would, if you're talking
14 in generalities like you mentioned in your example.

15 Q. And that's what Chief Goldman testified to, in
16 generalities, correct?

17 A. That's right.

18 Q. And going back to the plea offers, you
19 testified that you did have a 15-year offer from the
20 assistant solicitor, right?

21 A. Yes.

22 Q. And you presented Mr. Martin with that offer?

23 A. I did.

24 Q. He didn't want to take it?

25 A. He did not. You know, it was an offer that,

1 you know, I hated because I thought it was unfair,
2 based on what happened. I remember -- you know, I
3 think we sometimes will do a little consumer math as
4 far as, you know, if you got 15 years on this, it's
5 an 85-percent offense, you've already done a couple
6 years in jail, okay, well, that means you'll be
7 such-and-such an age when you get out. I remember
8 he was kind of like, well, you know, where am I
9 going to go; I mean, I'm not going to have anything
10 once I get out. And, you know, I -- he did not
11 accept the plea offer.

12 Q. And you would have presented him with any
13 offers that you received from the assistant
14 solicitor, right?

15 A. Yes; whether I thought they were good or bad.

16 Q. And I believe there was some discussion on
17 direct about whether or not this was a written
18 offer. Is it unusual for assistant solicitors just
19 to give verbal offers and not written offers?

20 A. It is not unusual. In fact, with the
21 particular solicitor involved in this case, I don't
22 know of any -- even an e-mail even of any offers
23 ever in written form to any other lawyers, including
24 myself.

25 Q. All right.

1 MS. OPPENHEIMER: Beg the Court's indulgence.

2 BY MS. OPPENHEIMER:

3 Q. Do you recall testimony at trial from
4 Mr. Martin's girlfriend that he was, indeed, wearing
5 a blue hoodie that night?

6 A. I believe that's right.

7 Q. Was Mr. Martin picked up wearing a blue hoodie?

8 A. Yes. I believe that's correct.

9 Q. Would there have been any reason to introduce
10 this jail inventory sheet from the jail?

11 A. I don't think so. I can't remember if we had
12 it or not. I want to say that I thought I
13 remembered where they had logged, you know, what he
14 had on and I believe I had seen that. The thing
15 about the hoodie is that, ultimately, it was picked
16 up, it was returned.

17 Q. It was returned to his girlfriend?

18 A. I think that's right.

19 Q. Okay. And tell us a little bit about these
20 phone calls between Mr. Martin and his girlfriend
21 while he was in the jail.

22 A. So I think that these calls were, you know,
23 him -- you know, instructing his girlfriend to the
24 location where, you know, he thought this purse was.
25 You do hear some language in there saying, well,

1 that's where Quentin did that. And I want to say
2 that the purse was found. I can't remember how long
3 after the purse was found, but I think that, you
4 know, it was, ultimately, located and, I assume,
5 returned to the victim.

6 Q. And, do you recall, had it been sitting out in
7 the elements for several days when it was returned?

8 A. I want to say that -- I can't remember how
9 long. But, yes, I mean, it made it there the night
10 this happened, and it was ultimately found sometime
11 later.

12 Q. And there was nothing of evidentiary value
13 found in the purse, correct?

14 A. I believe that's right.

15 Q. And there was no question that that was,
16 indeed, the victim's purse, correct?

17 A. That's what she -- I believe she identified it.

18 Q. Mr. Martin alleged that you were texting one of
19 your colleagues back and forth during the trial. Is
20 that true?

21 A. No. That -- you know, there was somebody with
22 my office there, an attorney. And, you know, during
23 a break or something like that, I would say, hey,
24 maybe take a look at something like this and he
25 might shoot me a text. But, no, as far as in any

1 way, shape, or form looking at that during
2 testimony, just, you know, tuning everything out or
3 making plans or doing -- you know, it's my testimony
4 that, you know, hey, while we're in a trial, that
5 was the only thing going on in my life.

6 Q. All right. Mr. Martin takes issue with some of
7 his girlfriend's testimony at trial about these
8 letters. Did you have any reason to object to them
9 or to her saying that she was getting letters from
10 Mr. Martin?

11 A. I don't believe so.

12 Q. Kind of backtracking a little bit, you said you
13 might not have had clear notice of when this trial
14 was going to occur. But you knew that it was going
15 to happen, correct?

16 A. Yes.

17 Q. And you would have been preparing during those
18 months in between the rejection of the plea offer
19 and when the case was actually called, correct?

20 A. That's right.

21 Q. And this 911 call, you testified that you did
22 have it or --

23 A. I think that I did.

24 Q. Would it have been helpful to your defense at
25 all?

1 A. No, because in my mind, the answer would be no,
2 because I think it says on there I know who they
3 were on there. I don't remember whether or not
4 Ronnie Martin's name was used. But the problem you
5 run into is, okay, the 911 call is made right after
6 this incident happened. Well, you know, Mr. Martin
7 is arrested soon after this happens, so they bring
8 him back to the scene and he identifies her. And
9 all the State would have to do in that situation
10 was, well, we heard in your 911 call that you
11 thought you knew who it was; who did you think it
12 was? And the answer would have been Ronnie Martin.
13 Well, why do you think it was him? Well, you know,
14 I know him. I used his name and my husband heard me
15 say his name. So we didn't want to run into a
16 situation like that.

17 Q. Okay. And kind of going to Mr. Williams'
18 testimony, Mr. Martin has taken issue that he
19 testified that he heard the victim yelling Ronnie
20 Moe. Did you have any reason to object to that
21 testimony?

22 A. No.

23 MS. OPPENHEIMER: Your Honor, I have no further
24 questions at this time.

25 THE COURT: Redirect.

1 MR. STITELY: Briefly, please, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. STITELY:

4 Q. Mr. Casto, so he said around ten hours total.
5 You said a couple visits up in Laurens for the
6 afternoon. Reasonable number, probably?

7 A. I think so. That's right.

8 Q. Y'all are about in line with that?

9 A. I think so.

10 Q. Just a couple of other things. One of the
11 questions the attorney general asked you in cross
12 was you didn't object at the time. And you said,
13 well, in hindsight. She said we can't look at
14 hindsight. But at the same time, when you didn't
15 object, you didn't know the Court was going to go
16 ahead and take judicial notice and decide it was
17 nighttime when the witness was testifying two days
18 earlier?

19 A. I can't remember how that arose, whether the
20 State asked him to or what. I don't recall. But I
21 didn't know that was going to happen, obviously,
22 because it hadn't happened yet. Right? So I didn't
23 know.

24 Q. Right. You didn't know to object because you
25 didn't know the bench was going to make that

1 decision later on?

2 A. That's fair.

3 Q. Mr. Samuels, once again, you called him that
4 day. But you hadn't spoken to him before?

5 A. That's exactly.

6 Q. The blue hoodie, we've gone over a few times.
7 It could have potentially been relevant if his
8 inventory didn't have a blue hoodie, correct?

9 A. That's right. I can't remember whether we had
10 had an inventory sheet or not. Like I said, I don't
11 have my file with me. But if it did say that, we
12 would not have wanted it.

13 Q. One thing you talked about with her too, the
14 purse was returned to the victim. You didn't make
15 an evidentiary objection to a piece of evidence that
16 somehow left law enforcement, returns to the victim,
17 yet gets back to law enforcement for trial purposes,
18 correct?

19 A. That's right.

20 Q. But, somehow, even if you believe her that she
21 got it the next day or several days later, this
22 piece of evidence was floating around in the public
23 and back to the victim before it went back to law
24 enforcement?

25 A. That's right. I'm not sure when it was

1 returned in relation to when this happened.

2 Q. Okay. The last thing, in the 911, you said
3 they could have clarified by saying, well, I know
4 who it is; well, it was that guy. Isn't it also
5 true that if the 911 never said Ronnie Moe yet
6 Mr. Williams was saying I heard her yelling it's
7 Ronnie Moe while she's on the phone with the police,
8 could have been a point of direct opposition of
9 their testimonies, correct?

10 A. Could be.

11 Q. And that was not brought up at trial?

12 A. It was not.

13 Q. No other questions. Thank you, Mr. Casto.

14 THE COURT: Anything else from the State?

15 MS. OPPENHEIMER: Very briefly, Your Honor.

16 RECROSS-EXAMINATION

17 BY MS. OPPENHEIMER:

18 Q. Did you have any reason to object to the purse
19 coming into evidence?

20 A. I did not.

21 MS. OPPENHEIMER: No further questions, Your
22 Honor.

23 THE COURT: All right. Mr. Casto, you may step
24 down, sir.

25 MR. STITELY: Argument, Judge, but no further

1 witnesses.

2 MS. OPPENHEIMER: The State has no witnesses,
3 Your Honor.

4 THE COURT: All right. Anything in closing?

5 MR. STITELY: Your Honor, I won't go through
6 all the facts, specifically, in this case. I saw
7 you were taking notes and you can look at the record
8 over the time of the case.

9 Your Honor, I guess I'm going to go
10 quasi-soapboxing here as I get to my argument. Your
11 Honor knows I like to pontificate about what I
12 consider to be injustices in general. And I think
13 the biggest thing, when you look at PCRs, is you're
14 looking at a very difficult standard. You want to
15 say, was it ineffective assistance of counsel? I
16 think I can say, with all honesty, I've never tried
17 a case and sat down and said man, Ben, that was
18 spot-on perfect, you didn't miss a single objection,
19 you didn't do anything. We all make errors. I
20 tried a case for six weeks and it's been up on
21 appeal now for five years and it's still going. I'm
22 sure I messed things up during that trial.

23 That being said, what you have here is an
24 interesting situation with some very specific
25 allegations and a general problem I see with the

1 system, which, luckily, has been rectified. As the
2 attorney general brought up, you can't go back and
3 say, well, yeah, I might have -- should have
4 objected to that.

5 What you had in this case, you have a situation
6 where an individual was charged with a crime in
7 Saluda County and was given a public defender,
8 Mr. Seigler. Mr. Seigler had this case for a number
9 of months and it seems like they were in some kind
10 of plea negotiations.

11 Then the file is passed on along, with
12 200-some-odd files, to Mr. Casto. To no fault of
13 Mr. Casto, he told the Court he probably had 40ish
14 clients in jail. Further adding to the
15 complication, Mr. Martin was housed up in Laurens
16 County, which was an hour and a half further out of
17 his way.

18 I'm not saying it's Mr. Casto's fault, but I
19 would say the system, as it was working in a
20 combination the way the State was treating them and
21 with the public defender's office being as
22 understaffed as it was in Lexington, he had
23 ineffective assistance of counsel.

24 If we're going to agree to both of them saying
25 around ten hours, be it two visits, three visits,

1 whatever, Mr. Martin's facing life without
2 possibility of parole on what amounted to a
3 purse-snatching case with no injury, with what
4 really amounts to a nonsignificant -- I mean, he had
5 a prior record from 20 some odd years ago which gave
6 him strikes, and he got ten hours of time. It's
7 ineffective.

8 I'm not saying it's Mr. Casto's fault directly.
9 I'm saying it might be the system's fault. This man
10 is getting life without the possibility of parole
11 with ten hours of prep time. And that's wrong,
12 Judge. I don't care how simplistic we want to say a
13 case was, you cannot prepare for someone's rest of
14 their life on ten hours. If that's the standard of
15 effective counsel, I think it's wrong. It's
16 ineffective assistance of counsel.

17 There's no possible way you can flesh out every
18 single possible trial strategy, trial remedy,
19 witness statement, piece of evidence, any and
20 everything in ten hours. And that's ten hours over
21 two years split between two public defenders when he
22 gets the file cold.

23 Once again, I'm not saying Mr. Casto didn't
24 necessarily do his best on it, but he had 40 clients
25 in jail across the State of South Carolina, each

1 with their trial days mixed in with 20 weeks of
2 active court. Mr. Martin's case was lost in the
3 shuffle.

4 I think that's evident, particularly when you
5 look at the fact that Mr. Casto was forced to call a
6 witness cold. Number one rule of law school: Don't
7 ask a question you don't know the answer. He put a
8 witness up at trial having never spoken to him
9 before, having no idea what that witness was going
10 to say. I would say, by definition, I think that
11 falls to ineffective assistance of trial counsel.
12 He put a cold witness up on a stand when a man was
13 facing life without the possibility of parole not
14 knowing what the witness was going to answer the
15 questions.

16 THE COURT: What was the prejudicial effect to
17 your client as a result of the testimony?

18 MR. STITELY: Pretty much, it kind of beat back
19 their case. Their position the whole time was that
20 Mr. Samuels, through these jail phone calls and
21 through these letters, knew something about it. And
22 then when they attempted -- this is kind of -- it
23 goes into a double part of where the objections
24 weren't made. And the Court of Appeals talks about
25 it.

1 There was some kind of communication between
2 Mr. Samuels and Mr. Martin about him doing
3 something, some letter, some talks, and it was
4 objected to as being hearsay and it never all came
5 in, which would have been impeaching evidence to
6 show that he actually had some knowledge of this
7 purse snatching.

8 It kind of just all plays into the point that
9 when you look at it with the question of one witness
10 saying -- the witness, the only witness to the
11 actual snatching saying it happened in the daytime
12 and that he took X purse, which somehow miraculously
13 is back in her possession at some point later when
14 law enforcement goes to find it, there are a lot of
15 problems, Judge.

16 And some of them were objected to -- and you
17 have the transcript and you can read through it --
18 some of them weren't. You've got chain problems,
19 you've got hearsay problems, you've got, I would
20 call, identification problems. If we had had the
21 inventory -- Mr. Martin maintained the whole time
22 that when his girlfriend picked up the stuff, there
23 was no blue hoodie in inventory. And the police
24 said they arrested him with a blue hoodie. I mean,
25 there should have been a log presented at trial

1 because the law enforcement said he had a blue
2 hoodie. He never left their custody on the way to
3 the jail. So where did it go?

4 That's a very relevant piece of evidence when
5 you combine that with things like the 911 call where
6 they never reference him by name, yet the second
7 audible witness, I guess we're going to call him,
8 says, I heard her yelling his name while she's on
9 the phone with 911. He's saying she's yelling
10 Ronnie Moe. 911 tape never says the word Ronnie
11 Moe. Someone is lying. The witness must be lying,
12 because it's not on the 911 tape. Even if they
13 could have said, well, that's really him, I didn't
14 say it, it would have proved that Mr. Williams was,
15 in fact, being less than truthful trying to bolster
16 the case.

17 It's not the most complicated fact pattern,
18 I'll acknowledge that. But there was a lot here
19 that wasn't properly vetted to go to trial when you
20 have this much at stake. And Your Honor actually
21 said, well, you know, if it goes -- he ain't got
22 nothing else to lose. I mean, it's life. It should
23 have been more than ten hours, Judge.

24 I've known Mr. Casto a long time. There are
25 elements in trial that we obviously miss. There are

1 some objections that could have been made. The
2 burglary second to a burglary first, I think, is a
3 huge error in law. And you want to talk about
4 prejudice on that one? He should have objected and
5 made them put something up other than the Judge
6 saying it was dark when the star witness of the case
7 said it was light.

8 I'm sorry, Judge. Their eyewitness said --
9 light is burglary second, not burglary first. That
10 should have been flushed out harder. And had he got
11 convicted of burglary second, he'd have maxed out by
12 now. He would have been home. And the Judge has
13 the discretion to charge, but that argument should
14 have been preserved stronger.

15 THE COURT: I understand your point. And I'm
16 not trying to cut you off from your argument. This
17 is my one chance to talk with you as well. So
18 just -- we talked a lot about 156 and 157. And in
19 your opinion, based upon those pages, what time do
20 you think it was?

21 MR. STITELY: If she is saying that it's still
22 light out in December --

23 THE COURT: Well --

24 MR. STITELY: I don't know, Judge. I think
25 this all -- and I'm not cutting you off.

1 THE COURT: I'm looking at 156. And the
2 question was -- question: It's December. And what
3 time was it? Around 8:00; is that correct?

4 Answer: Yeah. It was about, like, I would
5 say, maybe quarter till.

6 About a quarter till 8:00?

7 Something like that. Yeah.

8 MR. STITELY: She never says 8:00. The
9 solicitor keeps saying 8:00. She says light time.

10 THE COURT: Well, about a quarter to 8:00?

11 Something like that. Yeah.

12 She didn't say the time. So it wasn't quite
13 dark. Middle daylight is certainly a term of art.

14 And I just remember in the transcript there was
15 testimony from somebody about how sunset that day
16 was at approximately 5:15. Obviously you've got
17 twilight for 30 minutes. So it's dark-dark at 5:46.
18 So, I mean, that's a two-hour delta we're talking
19 about.

20 And it may not be crystal clear from the
21 transcript, but, I mean, do you think it was -- do
22 you think the testimony of the transcript leads to a
23 reasonable interpretation that it was before 5:30?

24 MR. STITELY: The standard, when you're asking
25 for a jury charge, is if there is any -- not overly

1 so, but if there is any evidence that something
2 could have been what it is, you got to charge it.
3 And in this case, you have the eyewitness, the only
4 eyewitness in the entire case, saying light time.
5 Should have been charged. And the reason it wasn't
6 charged is the Court --

7 And this is a PCR problem, appeal problem,
8 except for the Court of Appeals says it wasn't
9 objected to. Attorney asks for the charge, Court
10 doesn't make it because the Court decided it was
11 nighttime. It's just a miscarriage of justice.
12 Maybe he should have been objecting the entire time
13 as it went down the ladder.

14 And I guess there's where ineffective
15 assistance came. The question was asked, well, why
16 didn't you object? They said because you don't know
17 at the end of the trial the bench is going to be
18 like, no, we're going with it was nighttime, I'm not
19 charging burg second when the eyewitness says it was
20 daytime.

21 I don't care if she changed her story 50 times.
22 There is evidence in the record from a witness on
23 the stand saying it was daytime. And that is not a
24 burg first. It should have been charged as burg
25 second. He could have charged burg first as well.

1 THE COURT: I understand your point.

2 MR. STITELY: And it's kind of like a cross.
3 But there's a number of things where it needed to be
4 preserved better so it could have been addressed,
5 and it wasn't.

6 And you've heard all the other arguments,
7 Judge. I'll leave it at that. I know you were
8 taking notes. If you have other questions, I'll be
9 happy to answer them.

10 But, in general, I don't think there was
11 anything deliberately done in this case. But there
12 was enough there that it rises to the level of
13 ineffective assistance. And, because of that, he
14 received a life-without-parole sentence. Had this
15 gone back, had it been charged properly, even if he
16 gets convicted of burg second or whatever, he would
17 have maxed out.

18 THE COURT: Thank you, sir.

19 MR. STITELY: Thank you.

20 MS. OPPENHEIMER: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 MS. OPPENHEIMER: Mr. Stitely has talked a lot
24 about Mr. Casto's caseload. And, quite frankly, I
25 wish I was in the position of Mr. Stitely where I

1 got to pick and choose my cases. The fact of the
2 matter is State employees don't get to pick and
3 choose their cases. I, myself, have over 300 cases.
4 Mr. Casto has hundreds of cases at one time. That's
5 not unusual. We learn how to prepare our cases with
6 the caseload that we are given and the caseload that
7 we have.

8 Mr. Casto testified that he went up to Laurens
9 County several times, about two or three times, to
10 meet with Mr. Martin, and he would block off the
11 afternoon to meet with him and he would review
12 everything.

13 Now, that was not the only time that Mr. Casto
14 was preparing this case. He was preparing this case
15 for months and months and months. And the State
16 would argue that a lot of preparation that goes into
17 a trial isn't necessarily hand-in-hand with your
18 client at all times. You review everything with
19 your client; you review all of the evidence with
20 them; you discuss strategy; you discuss defenses,
21 which they did, and then you go out and investigate.
22 The person in jail cannot do that, obviously. But
23 we would argue that Mr. Casto did spend ample time
24 preparing this case for trial.

25 I know there's been some discussion about this

1 was just a purse snatching. At the end of the day,
2 the solicitor and law enforcement decide what
3 charges to bring. That's not within Mr. Casto's
4 control, neither is serving notice for life without
5 the possibility of parole. That is within the
6 solicitor's control. And they did decide, based on
7 these facts, that they were going to seek a first
8 degree burglary charge.

9 The plea negotiations, you heard from
10 Mr. Casto. He said he had an offer of 15 years. He
11 brought that offer to Mr. Martin. Mr. Martin did
12 not want to take that. There was no hesitation
13 whatsoever. He wasn't going to take that. And
14 you'll see at the very beginning of the trial before
15 a jury is picked, he's brought in to plead guilty
16 straight up, but LWOP notice would have been taken
17 off the table at that time. Mr. Martin says, no, I
18 don't want that. He decides to go to trial.

19 Regarding Quentin Samuels, it sounds to me like
20 he's a little bit of a -- I don't think vagrant is
21 the proper word. But he roams around town. You
22 heard Mr. Casto say he roams around. He doesn't
23 have a permanent job. He might have a permanent
24 place to stay, not really sure. But the State would
25 argue this would be a person that would be difficult

1 to get in touch with. And he weighed the pros and
2 cons of calling Mr. Samuels as a witness back and
3 forth before trial.

4 And Mr. Martin was insistent, call him, call
5 him, he did it. You need to put him up on the
6 stand. So Mr. Casto, listening to his client,
7 decided to put Mr. Samuels on the stand. I
8 wholeheartedly believe that if he had not put
9 Mr. Samuels on the stand, we would be here today on
10 an allegation of ineffective assistance of counsel
11 for failing to call Mr. Samuels as a witness.

12 And I want to read briefly -- Your Honor has
13 the opinion from the Court of Appeals. But just
14 briefly, the Court of Appeals found that the trial
15 court correctly determined that Mr. Martin's
16 testimony regarding his conversations with Quentin
17 Samuels fails to meet the standard for third-party
18 guilt evidence. They said that that was not
19 admissible testimony at all.

20 Mr. Martin just wanted to get up there and say,
21 well, Quentin said he was going to do a lick that
22 day and asked me to do it with him. Court of
23 Appeals and the trial court properly determined that
24 that was not admissible evidence. So any of these
25 statements that Mr. Martin alleges Mr. Samuels said

1 to him would not have been admissible as impeaching
2 evidence or as hearsay evidence as per the Court of
3 Appeals.

4 Your Honor heard from Mr. Casto that there was
5 no reason to object to the chain. The purse was
6 found days later and had been subject to the
7 elements. There was no -- nothing of evidentiary
8 value; no fingerprints, no DNA found from that
9 purse. It was actually directly delivered to the
10 victim by Mr. Martin's girlfriend, and then it went
11 back into law enforcement custody. He said that
12 there was no reason to object to the chain. There's
13 really nothing there. Nothing was taken from it.
14 The victim testified that nothing was taken from it.

15 With regards to the hearsay information that
16 Mr. Martin alleges from Mr. Williams, he heard the
17 victim cry out Ronnie Moe. It was never a question
18 that Ronnie Moe, Mr. Martin, was the one who broke
19 into the house and took the purse. The victim was
20 always steadfast that it was Ronnie Moe. She yelled
21 and screamed that it was Ronnie Moe.

22 You heard from Mr. Casto that the call would
23 not have been helpful because even if she did not
24 specifically say Ronnie Moe, she said I know the
25 person who did this. And she would have gotten up

1 there and testified that Ronnie Moe did this, Ronnie
2 Moe broke into her house and stole her purse and ran
3 out.

4 There was also ample testimony that Mr. Martin
5 was, indeed, wearing a blue hoodie that night. The
6 blue hoodie was picked up from inventory by the
7 girlfriend. The girlfriend testified that he left
8 the house wearing a blue hoodie. Law enforcement
9 testified that he was wearing a blue hoodie when he
10 was arrested. I don't see any way, shape, or form
11 that the inventory sheet would have been helpful.
12 And you heard from Mr. Casto that if the inventory
13 sheet didn't say blue hoodie, he would not have
14 wanted to introduce that.

15 Going back to Mr. Williams very quickly, the
16 State would argue there would be no hearsay
17 objection. It's an excited utterance. It would
18 fall under a hearsay exception, under 803(2).

19 There's been a lot of discussion about whether
20 or not this was at night. I think Your Honor could
21 take judicial notice that in December, the sun sets
22 a lot earlier than 8:00 p.m. It sets around 5:30 or
23 so. And I don't always pay attention to when the
24 sun is setting when I am sitting in my home. And,
25 clearly, there was some confusion with this victim

1 about whether or not it was day or dark, but she
2 was -- it was 7:45, it was 8:00. The chief
3 testified that sunset was at about 5:19 that night.
4 I think that is something that a judge can take
5 judicial notice of. I don't think there's anything
6 objectionable in that testimony.

7 And if you look at Mr. Williams' testimony on
8 page 218, he testifies -- at the bottom of the page,
9 question: It was dark at the time that he came in
10 and out?

11 Answer: Yes, sir, it was.

12 Question: You're sure it was dark?

13 Answer: Yes, sir, it was dark.

14 Furthermore, Your Honor -- I know I'm jumping
15 around a little bit. Going back to Quentin Samuels,
16 any opinions about whether or not Mr. Samuels was
17 the town idiot, which I believe that there is
18 testimony in that -- throughout the transcript,
19 there's testimony that he was childlike, that he is
20 about the age of eight or ten, that he does have
21 some mental disabilities.

22 Mr. Goldman testified to that based on his
23 experience and knowledge of Mr. Samuels. And you
24 heard Mr. Casto use those exact same words to
25 describe Mr. Samuels. You don't need to be a mental

1 health expert in order to give that opinion. And
2 any mention during opening or closing about
3 Mr. Samuels would be a reasonable inference from the
4 testimony presented at trial.

5 So, Your Honor, we would argue that there is no
6 prejudice in this case as there is overwhelming
7 evidence of guilt. You have a victim who
8 immediately starts screaming, Ronnie Moe, Ronnie
9 Moe, what you doing? These people knew Mr. Martin.
10 They knew who he was. There was no question in
11 their minds that this was Mr. Martin who committed
12 these crimes.

13 So, Your Honor, we'd ask that you deny the
14 application for postconviction relief.

15 THE COURT: All right. Well, I've heard a lot.
16 I thank both lawyers for arguing their cases very
17 well. I'll have the matter under advisement.

18 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Saluda County, South Carolina, on the 25th of January, 2019.

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

June 18, 2019

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

Ronnie Martin, #200596,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-41-00254

ORDER OF DISMISSAL

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

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

PROCEDURAL HISTORY

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

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

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

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

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

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

CURRENT APPLICATION

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

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

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

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

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

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

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

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

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 444, 334 S.E.2d at 815.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Id.*, 300 S.C. at 117, 385 S.E.2d at 625 (internal citation omitted). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 300 S.C. at 117-18, 386 S.E.2d at 625 (internal citation omitted).

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

Counsel's alleged failure to convey a plea offer

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

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

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

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

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

Counsel's failure to enter plea negotiations

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

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

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

Counsel's alleged failure to investigate and call witnesses

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

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

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

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

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

Counsel's alleged failure to prepare for trial

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

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

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

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

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

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

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

Rule 701 provides:

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

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

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

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

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

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

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

Counsel's alleged failure to object to leading questions

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

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

A: Okay. Kimberly brought it back to me.

Q: Kimberly Gantt brought you that pocketbook back?

A: Yeah.

Tr. p. 164.

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

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

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

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

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

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

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

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

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

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

Counsel's alleged failure to object to hearsay

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

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

Counsel's alleged failure to introduce the 911 tape

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

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

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

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

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

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

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

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

CONCLUSION

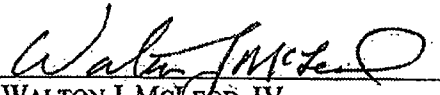
Based on all the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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


WALTON J. MCLEOD, IV
Presiding Judge

Lexington, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

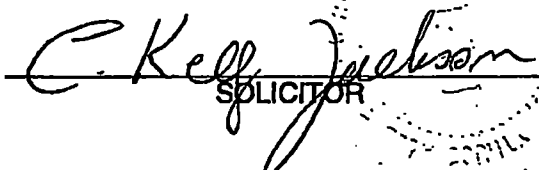
INDICTMENT FOR

BURGLARY
1ST DEGREE

At a Court of General Sessions, convened on February 3, 2014, the Grand Jurors of Saluda County present upon their oath:

That RONNIE MARTIN, did in Saluda County, South Carolina, on or about December 13, 2013, willfully and unlawfully enter, during the night time, without consent and with the intent to commit a crime therein, the dwelling of Dianne Williams, in violation of §16-11-311(A), South Carolina Code of Laws, 1976, as amended, with penalties provided for in §16-11-311(B), 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

WITNESSES

RSPD

GOLDMAN

ARREST WARRANT NUMBER

2013A4110200141

ACTION OF GRAND JURY

Deborah L. Howell

Foreperson of Grand Jury

Date: FEB 6 5 2014

VERDICT

TRUE BILL

Guilty

Beth Richardson

Foreperson of Petit Jury

Date: 5/7/15

DOCKET NO. 2014-GS-41- 035

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

THE STATE

vs.

RONNIE MARTIN

CDR#0079

Indictment for

**BURGLARY
1ST DEGREE**

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Don B. Baker
Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA

COUNTY OF Saluda
 STATE VS.
Ronnie Martin

AKA: _____
 Race: Black Sex: M Age: 47
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary 1st

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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: _____

Solicitor _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# 76708
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 1 WOP 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: _____

*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

Clerk of Court/Deputy Clerk _____
 Court Reporter: Steven De Blase
 SCCA217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014-641-035
 A/W#: 2013A4110200141
 Date of Offense: 12/13/2013
 S.C. Code § : 16-11-0311 MAY 18 2014
 CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

SC Court of Appeals

76708

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 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: _____

ATTEST: TRUE COPY
 Clerk of Court
 Saluda, S.C.

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

Presiding Judge _____
 Judge Code: 145
 Sentence Date: 7 MAY 15