VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2017-CP-15-00383

Andre T. Richardson, #336692,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2019-000212

APPENDIX

ASHLEY A. MCMAHAN
McMahan & Taylor Attorneys, LLC
PO Box 5501
West Columbia, SC 29171
(803) 219-1110

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SARA ELYSSA GUNTON
Assistant Attorney General

PO Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

Steward and saw a car similar to his in the vicinity. ROA 370, l. 22 - p. 371, l. 1.

Solicitor Thornton also, in noting it was a circumstantial evidence case, noted "the outrageous statement that he makes about other people involved." ROA 371, ll. 2-6. See R. 307-315. He argued that the only thing Richardson did not admit to is pulling the trigger. He notes the belated story told to law enforcement [on February 27, 2009] months after lying to law enforcement and puts himself at the scene with the circumstantial evidence was sufficient even though there was no eyewitness testimony. ROA. 371.

Judge Buckner denied the motion for a directed verdict. ROA 371, l. 22- p. 372, l. 14; p. 379, ll. 18-19.[4]

ANALYSIS

In his argument before this Court, the Appellant essentially argues that the State's Case was solely based upon the fact that Appellant was not forthcoming about the mysteriously alleged violent kidnapping[5] contrasted against his four months of an exculpatory claim that he was home in bed at the time of the crime. Brief of Appellant, p. 14-15. He further speculates that people are fearful of giving police "a statement that places them in an area where a crime was committed for fear of being implicated in the crime, not believed." Is, p. 15. Richardson asserts

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[4] The defense renewed the directed verdict motions after the guilty verdict. ROA 449, ll. 4-22.

[5] See, e.g., State v. Cook, 204 S.C. 295, 300, 28 S.E.2d 842, 844 (1944) ("'Uncontradicted evidence is not, however, necessarily binding on the court or a jury, but may be disbelieved where it is contrary to natural or physical laws, opposed to common knowledge, inherently improbable, inconsistent with circumstances in evidence, or somewhat contradictory in itself, especially where the witness is a party or interested, or where, in the very nature of things, it is impossible to secure opposing testimony.'" (citations omitted)).

this evidence only raises a suspicion that he killed his grandfather. Respondent submits that Appellant's spider web of lies was pierced by the combination of fact witnesses and the evident inconsistencies in his statements and placed him as the true perpetrator of his grandfather's brutal death.

The Appellant extensively summarizes a series of opinions from the South Carolina appellate court's concerning the "substantial circumstantial evidence." What is evident from those cases is the stark difference with the full record in Richardson's case which is beyond proof of a mere suspicion.

The Cases Concerning Circumstantial Evidence.

The courts have previously assessed its earlier opinions in addressing the substantial circumstantial evidence issue. These assessments are persuasive in revealing the difference between those cases are Richardson's guilt.[6]

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the State accused Bostick of killing his neighbor, Polite, and burning down her home. The State presented the following evidence against Bostick: (1) investigators found personal items belonging to Polite, including a

[6] See State v. Bostick, 392 S.C. 134, 136-137, 708 S.E.2d 774, 775 (2011) (identifying no facts suggesting Bostick attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Arnold, 361 S.C. 386, 388-389, 605 S.E.2d 529, 530-531 (2004) (identifying no facts suggesting Arnold attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Lollis, 343 S.C. 580, 581-583, 541 S.E.2d 254, 255 (2001) (identifying no facts suggesting Lollis attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Mitchell, 341 S.C. 406, 408, 535 S.E.2d 126, 126-127 (2000) (identifying no facts suggesting Mitchell attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Schrock , 283 S.C. 129, 130-132, 322 S.E.2d 450, 451 (1984) (identifying no facts suggesting Schrock attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime). Thus, these cases are wholly distinguishable from the situation presented in Richardson's case.

watch and two sets of car keys, in a burn pile located on the Bostick family property; (2) Bostick's shoes contained a pattern that matched gasoline, and gasoline was the accelerant used to start the house fire; (3) and investigators found blood on the clothes Bostick was wearing the day of the murder, but that evidence could not be matched to Polite's DNA. Id. at 141–42, 708 S.E.2d at 778. However, the State never introduced a motive or a murder weapon into evidence. Id. Thus, "the evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime." Id. at 142, 708 S.E.2d at 778. See State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011).

In State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984), the sheriff's department responded to the report of a fire at the home of Mr. and Mrs. Strickland. Schrock, 283 S.C. at 130, 322 S.E.2d at 451. Mr. Strickland's body was found amid the remains of the burned home, and Mrs. Strickland's body was floating in a small pond 200 feet from the residence. Id. at 131, 322 S.E.2d at 451. Cigarette butts, an empty oil can, and a rolled-up newspaper were found on the premises. Id. Between the house and the garage, a footprint was found and photographed, and a plaster cast was made. Id. Schrock was eventually indicted and tried for the murders. Id. at 130, 322 S.E.2d at 451. The evidence against Schrock produced at trial was exclusively circumstantial. **Nothing placed Schrock at the scene of the crime, and experts could not definitively testify that the footprint was made by shoes belonging to Schrock.** Id. at 132, 322 S.E.2d at 452. Additionally, while witnesses could testify that Schrock was wearing tennis shoes the afternoon before the fire and the next morning, they could not place him less than three or four miles away from the Strickland home, and the shoes presented as evidence were not identified by any witness who had seen Schrock wearing tennis shoes. Id.

Although Schrock admitted to smoking the same Marlboro brand cigarettes located at the scene, tests run by the FBI did not indicate that Schrock had smoked the butts found. Id. at 131–32, 322 S.E.2d at 451. This Court found that the State had not been able to muster substantial circumstantial evidence warranting submission of the case to the jury; therefore, a directed verdict in favor of Schrock should have been granted by the circuit court. Id. at 134, 322 S.E.2d at 453. See State v. Bostick, supra.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the victim, Jennings Cox, was shot, and his body was found off a dirt road in Colleton County. 361 S.C. at 388, 605 S.E.2d at 530. On the last day Cox was seen alive, he borrowed a friend's BMW Z3 to go to a dentist's appointment. Id. at 388, 605 S.E.2d at 530. Evidence showed he withdrew money from an ATM on that day, but he was not seen again until his body was discovered. Id. The car driven by Cox was found in a parking lot in Johnson City, Tennessee, and one of the State's witness testified that Arnold called him from his father's home phone ten miles from where the car was found. Id. at 389, 605 S.E.2d at 530. While no blood was found in the car, the car had some unspecified scratches on it, and a coffee cup lid containing Arnold's fingerprint was found in the center console. Id. The court of appeals found there was no substantial evidence to submit the case to the jury and held a directed verdict of acquittal should have been granted. Id. at 390, 605 S.E.2d at 531.

The Supreme Court concluded that Arnold's fingerprint on the lid established only that he was in the borrowed BMW on the same day Cox was last seen alive. Id. Additionally, **there was no evidence that Arnold was at the scene of the crime**, which presumably was in Colleton County. Id. Even though both Arnold and the BMW were found in Tennessee, we held the

evidence only raised a suspicion of guilt and was not sufficient to show that Arnold killed Cox. Id. See State v. Bostick, supra.

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), the victim's home was burglarized and two guns were stolen. Mitchell, 341 S.C. at 408, 535 S.E.2d at 127. Mitchell had been a guest at the home on several occasions. Id. The day after the burglary was reported, investigators found a fingerprint on a screen leaning up against the house which matched Mitchell. Id. The fingerprint was the only evidence linking Mitchell to the burglary. Id. at 409, 535 S.E.2d 126. After first commenting that the evidence presented was entirely circumstantial, the Court determined "the fact that [Mitchell's] fingerprint was on a screen that was propped up against the house does not prove entry where [Mitchell] had been in and around [Mathis's] house at least three times prior to the burglary." Id. The State did not produce any evidence concerning whether the screen was on the window when the window was broken or when the screen had been removed. Id. See State v. Bostick, supra.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), the Court reversed a murder conviction when the State's case was purely circumstantial and the evidence was insufficient to establish the defendant's presence at the scene of the crime at the time of the murder. In Martin, the supreme court found the trial court erred in failing to grant the defendant's motion for directed verdict because there was a total lack of evidence, either direct or circumstantial, linking the defendants to the murder. In that case, the State was unable to establish a time of death of the victim, lacked any witnesses identifying the defendants at the scene of the crime at the time of the murder, and had no evidence of the defendants being in the victim's apartment any time after the victim was last seen. Although the State presented evidence that a car resembling the one in

the possession of the defendant was at the victim's apartment complex the night of the murder, there was no evidence that this car was actually the car in the defendant's possession. In reversing the conviction, the Court concluded, "[l]ike the footprints in Schrock, the possibility that it was the same car, without any other evidence placing the defendants at the scene, is not enough evidence to place [the defendant] inside the Victim's apartment." Id. at 603, 533 S.E.2d at 575.

Except in cases where the crime is alleged to be procured or caused indirectly, the Court has stated that "[b]y bringing the case, the State assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act." Schrock, 283 S.C. at 133, 322 S.E.2d at 452.

More recently, in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Court again revisited the "substantial circumstantial evidence issue." In Odems, the Court concluded that a directed verdict should have been granted in a burglary case. A witness noticed a brown car she did not recognize turning into her cousin's driveway. She telephoned law enforcement while she continued to watch the car from her own vehicle parked across the street from the house. The witness observed two men knocking on the door of her cousin's house, and later observed one of the men place something in the car's trunk. She then unsuccessfully attempted to follow the car once it departed. Approximately ninety minutes after the witness notified police, a nearby sheriff's deputy spotted a brown Cadillac. The sheriff's deputy pulled the car over, and ordered the driver out of the car. The driver, Derrick Dawkins, exited the car, as he spoke to two men located inside the car, Odems and Frederick Bell. Dawkins testified at trial that he told Odems that his license had been suspended, and that shortly thereafter "everybody ran."

A short time later Odems knocked at the door of Donna Beane. Odems informed Beane that he

needed a ride. Beane did not know Odems, but allowed him to use her telephone to call for a ride. Odems did not call for a ride, but told Beane that if police arrived she should inform them that he was her boyfriend. Beane claimed that Odems told her "he was with somebody that didn't have a driver's license or that had a suspended driver's license and that the person had gotten pulled over and that he didn't want to get in any trouble." Beane refused Odems's request just as police officers arrived. Police took Odems into custody as well as Dawkins and Bell who were found hiding in Beane's backyard. A police search of the Cadillac recovered several items identified as stolen from the victim's home, including a camcorder, a money jar containing between $300 and $400, a camera, three watches, and a gun. The estimated total value of the stolen items was over $1,000.

In Odems, the State's case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Odems in the getaway car with the burglars and the stolen goods; (2) Odems fled from law enforcement; and (3) Odems asked an uninvolved person to lie for him. The Supreme Court concluded that even when viewed in the light most favorable to the State, the circumstantial evidence presented did not reasonably tend to prove Odems guilt. The Court noted that the sole eyewitness in Odems' case described only two men at the scene. A forensic investigator testified that she collected twelve sets of fingerprints in the car and from the stolen goods. These sets included prints from both Dawkins and Bell, but not Odems. Dawkins testified during the State's case-in-chief and explained how Petitioner ended up in the car with the stolen goods even though he did not participate in the burglary. The Court found that the State's key circumstantial evidence: (1) Petitioner's location in the getaway car a relatively short time after the robbery; (2)

Petitioner's flight from law enforcement; and (3) Petitioner's attempt to enlist the assistance of an uninvolved individual, do not point to his guilt for the crimes charged to the exclusion of every other reasonable hypothesis-namely, the notion that he did in fact join Dawkins at a gas station following the crime. In his brief before this Court, the Appellant emphasizes that in Odems, the a factor was that the co-defendants did not implicate Odems and that the Court relied upon abandoned instruction on circumstantial evidence ". . . all of the circumstances proven be consistent with each other and point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." Odems, 395 S.C. 582, 590-91, 720 S.E. 2d 48, 52-53 (2011). However, as noted in the Court's standard of review it still recognized that the Court must still view the evidence in the light most favorable to the State. Here, we submit that the evidence was sufficient.

The Evidence Against the Petitioner

The Appellant left his grandfather by the side of the road and left to get a haircut and feign ignorance about the circumstances of his grandfather's death. It has been said that every case is unique. The death of Freddie Steward reveals how each case can be unpredictable and unique. The case also reveals how in making assessments jurors and judges alike must consider the entirety of the evidence. On appeal, courts reasonably are constrained to view the evidence in determining sufficiency of the evidence and the inferences in the light most favorable to the state, rather than attempt to cherry-pick inconsistencies in the evidence. To do otherwise would force the reviewing court to make improvident assessments, favoring evidence which the jury necessarily rejected in its determination. The assessment by the Appellant in this case to attempt to gain credibility to a wholly rejected Ninja marauder theory shows the fallacy of this claim.

As reasonable reading of the record constrained by the appropriate standard of review leads to the conclusion that Appellant shot his grandfather 10 times on October 27, 2008 and left him on the side of the road in rural Colleton County, South Carolina. Although the reason why he killed his grandfather is not clear, this factor does not preclude acceptance of the jury's verdict since motive is not an element of murder, but admittedly a proof of motive enhances a conclusion of guilt.

The record reveals that *Jerrol Lingard* on October 27, 2008 was driving down Bethel Road and noticed a light colored car parked on the side of the road with the emergency flashers on. There was a man lying on the ground behind the car. Lingard stopped and called 911. Other individuals driving by the scene also stopped, including a postal worker. Lingard saw cartridges scattered on the ground. Mr. Lingard left then later returned and gave a statement. Lingard went to Bishop Howard's brother's house and told him what happened and asked him to go over to Emma Steward's house and let them know. He called "Jerome" and also Gerwon Lingard to tell them Mr. Steward was murdered and where it happened, learning who he was after the postal worker had stopped. Lingard confirmed that when he initially stopped he was the only person at the scene. ROA 157-162.

Postal Worker Aaron Virden testified that he stopped by Lingard's truck and inquired what was wrong. ROA 164-166. He noticed that a silver car parked by the side of the road with a man lying on the road. He recognized Mr. Lingard's truck on the right side and Mr. Steward's car on the left side. ROA 164, ll. 10-24. Another woman pulled up behind them. Virden walked over to the victim, saw the blood on the body and at least 3 shells over on the ground behind his body. He recognized Steward's body. Virden encouraged the Lingard who had stopped to leave because

he had children with him. ROA 165. Virden stayed after the deputy sheriff arrived, was searched and gave a statement. ROA 165-166. He recalled that he phoned his supervisor around 12:30 that he could not continue his route. ROA 167. He stated that the victim's car was pointed toward the Low Country Highway and the driver's side door was open and the trunk was open. ROA 167-168.

Sergeant Craig Stivender of the Colleton County Sheriff Department responded and stated he found the victim on the ground beside the vehicle. He stated that emergency flashers were on the victim's vehicle which was on the right side of the road with the trunk open. ROA 170, 172. He spoke with Virden at the scene who advised him about Lingard who had left the scene. He saw no sign of life with the victim. He saw three shell casings . He stated that he had received the call around 12:30 and it took him 20 minutes to arrive. ROA 172. He stated that he did not find any gun at the scene. ROA 172.[7]

EMT Brian Eadon testified he was called to the scene at approximately 5 minutes to 1 p.m. ROA. 179. When he arrived there were no signs of life. ROA. 180. He observed shell casings around the victim. He later returned to spray the blood off the roadway. ROA. 179-182. Similarly, *Colleton County Rescue worker David Drawdy* arrived and found the victim not breathing and having no pulse. ROA. 182-84. He also saw casings and the trunk open. ROA. 185. His partner, *Joseph Holmes*, who arrived with him testified similarly. ROA. 188-190. He did not see a gun and the only other person there was the mail carrier. ROA. 190.

The coroner, *Richard Harvey*, certified the victim was dead at 1:40 p.m. He had the body

[7]Former Colleton County Deputy Sheriff Theron Grant testified that he also arrived at the scene. He stated he arrived at 1:09 PM and helped secure the crime scene. ROA 178. ROA 175-178.

transferred to MUSC for a forensic autopsy. He did not see a gun. ROA. 192-94.

Angela Stallings, formerly of the Sheriff's Office testified that she processed scene and collected evidence with Investigator Carter. She stated she did not find gun, but found shell casings which were collected by Allen Inabinett. She stated that she spoke to nearby residents that did not recall anything unusual. ROA 197-200.

Stallings stated that the car would have been facing towards Lowcountry Highway away from Walterboro. She stated that if you were supposedly going to a bank in Walterboro, you would not be headed in that direction and would be driving away from Walterboro. ROA 200. She stated that Low Country Highway, also known as Highway 21 could still get to Walterboro if you would go toward Highway 63 -64. ROA 200.

Detective Jodi Taylor of the Sheriff's Office testified that he responded to incident on Bethel Rd. Detective Took statement from defendant at the scene which was State Exhibit 2. ROA 204-205. Richardson was He was not a suspect at the time and he voluntarily agreed to talk. He reviewed it and signed it.

In this initial statement, Richardson stated that he woke up at 10 am and that his grandfather was not home at that time. ROA 207-208. He stated that he came home around 11:30 am with some plastic bags. He stated that he left the house at 11:45 to go see his cousin, but ended up not meeting him and he went to get a haircut in Hodges instead. He was there for 30 to 40 minutes and then he received a call from his cousin Myeshia who told him what had happened to his grandfather. ROA 207, l. 12-20. He stated that he then tried to call his mother, but could not and that he picked her up. He stated that his sister called and told him where his grandfather was and they went to the scene. ROA 207-208.

Detective Taylor stated that he asked the Appellant for a statement for purpose of establishing timeline of victim's whereabouts. ROA 209. The defendant filled out top portion of form and asked Ms. Taylor to write it. He did not at any time admit to harming his grandfather. ROA 209-210.

Detective Jeff Scott testified that he processed the victim's Ford Focus vehicle and described the bullet that came from the rear passenger seat. ROA 213-214.

Det. Scott also described his discussion with the Appellant. On October 29, 2008. ROA 216-217. In this second statement, he gave a similar version. ROA 217-218. He stated that when he turned around after his cousin could not meet him, that he did not pas any vehicles. ROA 218. He stated that he stopped and got gas , then went to the One Stop, a job service, and then went to the barber shop where he was at until Myeshia called 40 minutes later. ROA 218. He described his conversation with her as being asked as to why would someone wasn't to kill your Uncle Freddie and she corrected him that it was his grandfather. ROA 218, l. 1-11. He stated that he had to call Myeshia back to get directions to the location. ROA 218, l. 8-15. State Exhibit 6.

Det. Scott stated that he received another statement from the Appellant on February 20, 2009, some 4 months later. ROA 221. State Exhibit 7. He stated that this statement was basically the same thing relayed on October 29. ROA 222, l. 20-21.

Det. Scott stated that the Appellant made a third statement to him four days later on February 24, 2009. State Exhibit 8. Scott stated that he advised the Appellant that he thought his earlier versions were false. ROA 225. He stated that he discussed cell phone call made the morning his grandfather was killed. ROA 224-226. Richardson stated in his first statement that he was at his residence at which time he called his residence from his cell phone. ROA 225, l.

19-24. He was confronted with the fact that he was claiming that he was calling his house with his cell phone while he was at the house. ROA 226. He provided an explanation but did not change his story substantially. ROA 226-227.

Det. Scott stated that as a result of the Appellant's statements that he was supposed to meet up with his cousin that day he went to speak with his cousin. And obtained a statement from him. ROA 227-228. He also stated that there was a search for the murder weapon, including the use of a Department of Natural Resources dive team, but they were unable to locate a weapon. ROA 228. Scott testified that he found a bullet in the back of the seat of the rear passenger seat that did not come from inside the vehicle. ROA 230-231.

The Appellant's cousin, *Roger Akeem Shider* testified that he gave a statement to Det. Scott on October 29 wholly conflicting with the Appellant's earlier versions. He stated that he told Det. Scott he woke up at 7, cranked up his grandmother's car, went back to sleep and woke up again at 12 or 1, went to PeeDee's to get part for his car and went to New York Wire to see if he could get his job back. ROA 239. He further stated he later got a phone call from Andre ("Dre") telling him that his grandfather was killed and Andre told him he got a call from Myeshia Yates that somebody shot his grandfather. ROA 239, l. 13-23. Shider testified that Richardson never came to his house. Shider clarified that Richardson called after 1:00. Shider denied that Richardson had called him before that telling him that he was going to pick him up. ROA 240, l. 9-21. On cross-examination, Shider denied that he spoke with Richardson that morning. ROA 241, l. 5-12. He admitted that he talks to Richardson a lot, they were close. He stated that he had probably talked to Richardson the day before. He stated that he was supposed to go to PeeDee's to get a part for the car and they were going to go to Beaufort that day but they did not go. He

stated that they had been talking about that for several days. ROA 242-43.

Kevin Nettles, who lives on the corner of Bethel and Red Root Road, gave a statement on Oct. 27th, 2008. ROA 245. He testified that he was waiting on ride for the logger woods, but the logging truck didn't come because it was rainy that day. Id. He stated that about 10:30 or 11, he went to cut grass. At that time he declared that he kept hearing a loud car race up and down the road, a Mustang, white or cream-colored looking.[A car similar to the Appellant's]. Nettles stated that he saw it approximately four or five times. Id. He stated that car had loud pipes and dark windows. ROA 246. He stated it went up and down Red Root and a short distance on Bethel.

He stated that he was in the yard while his son was on the lawnmower. ROA 247. He saw the car go up and down the road four or five times. Nettles stated that he could not see the driver, because the car had tinted windows. ROA 247.

Similarly, Ricky Breland, who lives on Bethel Rd, also gave statement on October 27th, 2008. He testified that he saw a Mustang on the road five or six times that morning, driving "real slow" and "where it went it wasn't gone very long, it was right back." ROA 249. He remembered car as white with stripes down it and blacked out rims, a Ford Mustang. ROA 249-250. He stated that his attention was drawn to it because as he was getting ready to cut the grass shortly after 9:00, and it came back by several times, driving really slowly, looked like it was "looking for something" and he thought it might want to stop and talk to him. ROA 250 . He confirmed that he could not see the driver. He stated that this was in the morning around 9 am. [Appellant's statements had stated he was in bed until 10 and did not leave until around noon]. Id

Breland stated it occurred shortly after 9:00 in the morning. Usually cuts the grass

between 9:30 - 11:00 and believes the car was going back and forth the entire time, about 20 to 30 minutes apart. ROA 251-252. He stated he saw it four or five times in hour and a half it takes to cut the grass. ROA 251-252.

Tyrone Kinard testified that he gave statement on Oct. 31, 2008. ROA 253. He stated that he was driving a trunk and logging on Red Root Rd. less than half a mile from Bethel Rd. ROA 253-254. At about 11:30, he was standing outside the highway and a white mustang with black stripes went down and came back several times, maybe 15 to 20 minutes between the times. ROA 254-255. Kinard stated that shortly after that, maybe on its last trip down, Mr. Steward, the victim, came by shortly after, maybe around quarter to twelve. ROA 254. Kinard stated that Steward was in a silver Ford. ROA 255. Kinard testified that he could see inside the car, saw it was Mr. Freddie, and he was by himself. He stated that he was close enough to see that there were not a bunch of people in the car. ROA 255-256. He stated that he was standing there right by the white line in the roadway. ROA 256. He stated that this was maybe 10 minutes after the white car went down the last time. He stated that Steward only went by the one time. ROA 256. He did not recall whether he saw the white car come back. However, he was firm that he saw Steward at about a quarter til 12. ROA 257.

On cross-examination, Kinard stated that he was standing there while the truck was getting loaded. ROA 257-58. He testified that he did not speak to Mr. Steward that day but he does know him. He stated he noticed the car because he was watching the road. He said Steward was heading way from his house and he was driving slow. ROA 258. He said it could have been a little earlier than 11:45, maybe 11:30. Kinard said he left the area shortly after the car came through. He stated he did not hear any gun shots because they were on a logging job and would

not have heard anything anyway. ROA 258-259.

The barber, John Yates testified that he works at Hodges' Barber and Beauty. He stated that he gave a statement on October 27th, 2008. He testified that he received a call from Richardson about 12:43 saying he was coming to get a haircut. ROA 261-262. [Note witnesses had indicated the crime had occurred before 12:30]. Yates testified that Richardson got there about 1:00 and left about 1:40. ROA 261-62. Yates states Richardson always calls to make an appointment for a haircut. Id. He stated while he was there he got a phone call and he said he had to leave, that his cousin Myeshia called him and told him someone killed his grandfather. ROA 262. Yates stated that Richardson came back a little later that day and told him what happened, and described that he was "real upset." ROA 262-263. Yates stated that he didn't say he knew anything about it, just that his grandfather was shot. Yates stated that when he called at 12:40 and made the appointment, everything sounded normal when he told him that he was coming to get his hair cut. ROA 263.

On cross-examination, Yates stated that the Appellant seemed visibly upset after he got the call from his cousin. ROA 264-65. After the call, Yates stated that he was finishing him up and Appellant then left. Id. He stated that Appellant came back maybe two or three hours later with family and was still upset. ROA 265. Yates stated that he asked him if he had something to do with it and Richardson said he had no part in it. ROA 265. On re-direct he confirmed that he was not upset when he called him at 11:40. ROA 265. The defense questioned Yates on whether the call could have been earlier, but Yates stated it could not have been much earlier and not 11 or 10 o'clock. ROA 266.

The Appellant's cousin Myeshia Yeats testified next. ROA 268-269. She stated that she

received phone call on October 27th from Mr. Lingard informing her that Mr. Steward had been killed. ROA 286. She stated that she called Richardson and informed him. ROA 268. On cross-examination, she stated that she doesn't remember the exact time she called Mr. Richardson, but that she knows it was after 12. ROA 269. She stated that she did not have his mom's number in her phone but did have Richardson's, so she called him because he was his grandfather. ROA 269. She stated that she is not close to Andre and denied seeing him with money. She said that Mr. Steward was a great uncle to her and that they lived in the same neighborhood. She stated that she was at work when the incident happened. ROA 270. Her boyfriend's name is Kenneth Manigo. ROA 270-271.

The issue concerning the murder weapon evolved from the testimony of another cousin, Bobby Varn. ROA 273-281. Varn testified that he owned a 9 mm. pistol that was stolen. ROA 272-273. He reported it stolen more than a year ago, on or about December of 2007. ROA 273, l. 1-14. he stated he made a report with Officer Walker the day of the theft. Id. He stated that gun was stolen at New York Wire, his workplace. ROA 274. He state that he worked first shift there and Richardson worked third shift at the time. ROA 274. He stated that a window was broken on his vehicle, it would only go up a certain way and that made it easier to get into his car. ROA 274. He testified that the gun was stolen from the car inside the middle glove box. ROA 275. The gun came with shell casings to show that it works. Varn stated that he still had the test fire casing and turned it over to Det. Inabinett. ROA 275. Varn confirmed that his own work records showed that on the date of Oct 27th, 2008, he was working from 8 until 4. ROA 276, l. 1-23.

On cross-examination, Varn stated that he has been a good friend with Richardson for a long time. ROA 279. He stated that he had checked for his gun before he went to work . He said

that morning, it was there, but when he got off work, it wasn't there, so he called the police. ROA 278-79. He stated that when he found the gun was missing, the window was down a "little crack" ROA 279. He stated that the window was off track and can be pushed down. ROA 279. He denied ever seeing the Appellant with his gun and never asked him if he stole it from him. ROA 280-81. He noted that the security cameras did not point to the area that he was parked. ROA 281. He testified that he worked from 8 - 4 and Andre's shift was from 12 - 8. Varn stated that a couple months prior to the incident, he remembers Richardson sitting on the bed counting money, between ten and thirteen thousand dollars. ROA 281-82. He stated that it was Richardson's money, not his. ROA 282-83. Varn stated that his brother, Andre Varn, was also in the room with them. ROA 283.

Deputy Thomas Walker of Colleton County Sheriff's Department testified that he went to New York Wire in reference to Bobby Varn's stolen handgun. In December 2007. ROA 284-285. He stated that he did not check for fingerprints on the vehicle because Varn told him that he went inside his vehicle and checked for his gun already in the spots He stated that Varn told him that he thought someone had a broken window that came down easily on the drivers side. ROA 288-289.

Detective Allen Inabinett of the Colleton County Sheriff's Office testified about a series of matters surrounding the case. He stated that he took over most of the crime scene processing when he arrived. ROA 287-88. He identifies shell casings from scene, logged them into evidence locker and they were later submitted to SLED by Det. Carter. ROA 290-91. He also received casing from Bobby Varn, logged it, and submitted it to SLED for comparison. Id. He also identifies personal effects from autopsy of victim. He stated he attended autopsy. The majority of

affects are clothing with also a wristwatch and some paper currency, approximately $139 in cash as well as a wallet.[8] ROA 293-95.

Lt. Inabinett stated that he spoke to Richardson on two different occasions. Initially, he spoke with him on Oct. 28th. ROA 302-305. Appellant was not in custody at the time. He stated the interview began on the night of the 27th around 11:45 and it progressed until after midnight, into the 28th. He stated that Richardson gave statement with similar comments mentioned by other detectives. ROA 305. He stated to Inabinett about waking up, trying to make contact with his cousin, going to Walterboro to have his hair cut. He testified that during a later part of interview, was asked if he would consent to GSR [gun shot residue test] test and he refused. ROA 305-06. He stated that Richardson was asked about a consent search of his vehicle, and he also refused that. ROA 306.

The Abduction Version

Lt. Inabinett then described the second statement he was involved in February. He identified an inmate request form from Richardson after the date of his arrest, on February 27th, 2009. ROA 307. He testified that the request stated, " I need to talk to Jeff Scott, ASAP." Inabinett stated that Jeff Scott was out of town so Det. Inabinett brought him over to Colleton County Sheriff's Dept. Annex and conducted an interview. ROA 307-308. After the Miranda Rights Form was signed by Richardson, the interview was recorded and lasted approximately three hours and forty-five minutes. ROA 307-10.

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[8]Lt. Inabinett identified a white, short sleeved T-Shirt belonging to Mr. Steward, as well as a blue and red, white-striped long-sleeved, button down shirt. Has a gunshot hole. Also a sweater cap and pair of boots. He stated that the wallet was in the center console of the vehicle. The wristwatch and cash were removed by pathologist from Mr. Steward at autopsy. ROA 296-297.

During this interview, Appellant asserted a completely new version of the events that lead to his grandfather's death. Richardson stated during the interview he was awakened in his bedroom by an individual dressed in all black: black gloves, black mask tucked inside of his shirt. The individual placed his hand over his mouth and he had a revolver-type weapon pointed at his head. Appellant stated he was then directed to get out of his bed and move into the living room where he saw his grandfather. There were two other gentlemen dressed identically in all black with an overall jumpsuit, black gloves, black mask. He could not tell their race, but Richardson stated "they sounded like they were white guys trying to act black" ROA 311, l. 19-312, l. 14.

Richardson stated the individuals asked Steward for money or where the money was at. Steward declined to give them money. The individuals had the gun pointed at Richardson demanded keys. Richardson stated he gave the keys to the individual and he left in Richardson's Mustang, which is white with a black racing stripe, loud pipes, and a spoiler. ROA 312, l. 19-25. The defendant stated for approximately 20 minutes, the individual was gone in the Mustang. When he returned, he told them they were going to take a ride, and they left for the BB&T Bank in Walterboro, and the defendant and his grandfather were escorted to the victim's silver Ford Focus. ROA 312, l. 15- p. 313, l. 5.

Richardson further asserted that Mr. Steward was the driver, the subject in black was a passenger, the Appellant was a back seat passenger, and a second subject in black was also a backseat passenger. Richardson stated they left the third subject in black at the victim's house. They then traveled to Red Root Rd, made a right and turned onto Bethel Rd. Appellant stated that they were supposed to go to BB&T in Walterboro to withdraw money from Richardson's

personal account. Appellant stated that while traveling, the subject kept demanding the victim relinquish his money, which he said "I'm not" and quoted scripture from the Bible about their conduct. ROA 313, l. 8- 313, l. 25.

Richardson stated after they turned onto Bethel Rd, they pulled over and the individual in the front seat made the victim exit the vehicle and the second individual also exited the vehicle, leaving the defendant in the back seat. ROA 314, l. 1–6. Both individuals in black escorted the victim to the trunk of his vehicle. Richardson, still in the car, overheard an altercation. He later stated he heard several gun shots, but never left the car. ROA 314, l. 1-13.

Appellant stated that he then heard a car pull up. Appellant's white Mustang, being driven by the third subject left at the residence. He overheard the subject mention what happened or what went wrong. A fourth car pulled up, a dark vehicle driven by a fourth subject that never exited but stayed inside the car. The other three replied to the driver who asked the same question, "What happened? What went wrong" and said "The old man didn't want to cooperate." They then got into the dark colored car and one individual told Richardson that this is what happens when you don't cooperate and if you tell anyone what happened I'll harm you, your sister, and your mom. They then fled in the dark vehicle towards Lowcountry Highway. ROA 314, l. 14 - p. 315, l. 8. After they left, Richardson exited, got in his vehicle, and left and went to Walterboro to get a haircut. ROA 315, l. 8-11.

Inabinett stated that this was the first time he had given this story. ROA 315, l. 21-25. The vehicle was not headed in the direction of Walterboro, they would have been taking them further out into the country, more towards the Ruffin area. ROA 316-17.

Inabinett emphasized that according to his statement, Richardson's vehicle was brought to

the scene after the gunshots went off and left for him to drive away in. ROA 317. He confirmed that according to Appellant , after they left, Richardson got into his vehicle and went to Walterboro to get a haircut. ROA 317 - 318.

Inabinett also confirmed that according to any of the other witnesses, Richardson had never mentioned this story to anyone else prior to Feb. 27th. When asked why he had not mentioned this before in the four months, he stated he was scared and shaken up and he worried about the safety of his mother. ROA 318, l. 17-23. He confirmed that Appellant stated they were going to rob his grandfather, but $139 in cash was found on his grandfather at the autopsy. ROA 319.

He also declared that after the incident, the Appellant admitted that he paid his car insurance and car note with his grandfather's personal bank account. ROA 319, l. 10- 320, l. 21.

On cross-examination, concerning the GSR test refusal, Inabinett stated that the GSR test was refused at about 11:45 the night of Oct. 27th 2008, and shooting occurred between 12:30 and 12:50 pm that afternoon. GSR dissipates after about six hours, which Det. Inabinett told the defendant, but Det. Inabinett stated that he was still willing to try and take the GSR kit from the Appellant. ROA 328-329.

He opined that Appellant was coherent at time of interview. He was calm and normal at the beginning and eventually began to shed some tears and get emotional during the latter part of the interview. ROA 330-331. Inabinett stated that Richardson never admitted to shooting or harming his grandfather. ROA 331. It took some time for him to give his statement. It started out as "normal, bland conversation" then eventually he disclosed his version of events.

At the time of the incident, the victim, the defendant, and Mr. Steward's daughter and her

two youngest sons lived in the house. Appellant stated to Richardson that they were the only ones besides the three intruders that were home at the time. ROA 331. According to Richardson's statement, the individual who woke him up demanded his keys and then left for approximately 20 minutes or so. ROA 333. The other two gunmen stayed in the home and occasionally demanded money from the victim, but Mr. Steward refused. Id.

Det. Inabinett spoke during the conversation of the $13,000 Richardson had, but it was a separate discussion apart from the robbery. ROA 333. Asked if they searched the house or if there was an incident with a safe, but Det. Inabinett does not recall. It would be on the recorded tape if it happened during the interview. Id.

According to Richardson, once the individual in the Appellant's Mustang returned, the two subjects inside the home said "Let's take a ride. We're going to the bank" which was the BB&T in Walterboro. ROA 334. Inabinett stated that Appellant did not specify what made them pull over, but that Mr. Steward repeatedly refused to give them money before they pulled over on the side of the road. ROA 336-337. According to Appellant, after stopping, the subject that was in the front exited and made Mr. Steward exit. He stated that the masked man in the back also exited and took Mr. Steward to the rear of the vehicle and the trunk was up. The appellant was not clear of how the trunk got up. ROA 336-337. The appellant was the only one in the vehicle and Mr. Inabinett believes he had his cell phone with him. ROA 338.

On cross-examination, Inabinett reiterated that after the shots, Richardson claimed to hear his Mustang pull up and the third gunman ask "what happened" or "What went wrong?" Then, a fourth gunman pulled up in a dark colored vehicle and asked a very similar statement. ROA 339-339. The subjects then entered the dark vehicle and told the defendant "This is what happens

when you don't cooperate." From Richardson's statement, he never exited the grey Ford until all four left. Then, he exited, got into his Mustang, and went to get a haircut. ROA 338-339.

Inabinett confirmed that payment was made out of Mr. Steward's account after his death was a telephone transaction where he had to give the account routing number. ROA 340. The defendant was in possession of the routing number of the victim after his death. Safe Auto and Ford Motor Credit Company had a voice recording of the Appellant giving the routing number and approving the authorization of payment. ROA 340.

On re-direct examination, Inabinett presented the following points:

- Richardson may have mentioned the gunmen were wearing football eye makeup around their eyes to conceal their race during the interview. ROA 344-345.
- The car was facing the direction of Lowcountry Highway, going towards the country toward Ruffin area. ROA 345, l. 10-16.
- He didn't explain why he called his home phone from his cell phone if he was at the house, just that it was one of the normal things he would do. ROA 345, l. 17-21.
- Richardson claimed once the individuals left, he got in his car and went to the barbershop, and did not mention stopping to check on his grandfather. ROA 346, l. 11-16.

On re-cross, Inabinett confirmed that you can get to Walterboro going the direction the car was going but it is not the most direct route. He opined that it would put you about 25 miles out of the way. ROA 346, l. 11-16.

Defense also stipulated as to the chain of custody being complete on State's Exhibits Ten

and Eleven as well as that both casings, State's Ten and Eleven, were fired by the same weapon, one being from the incident and the other being from the pistol of Bobby Varn that had been stolen the prior year at the joint workplace of Appellant and Varn. ROA 350, l. 1-24, p. 353, l. 5-19.

The forensic pathologist, Dr. Susan Presnell performed autopsy on October 28th, 2008 of Freddie Steward. She opined that victim had ten gunshot wounds to his body. ROA 355-356. Two of them were on his left arm and the left hand, both were superficial. These did not go through much but top tissue of skin. She determine that eight (8) gunshot wounds were to the torso. Of the eight, there is one above the collar bone, one in the middle of the right chest. ROA 356-357. The remaining six of the eight wounds are across the back, from the right shoulder down to the left backside. Id.

She opined that the eight bullets did a lot of criss-crossing. ROA 357 The bullets managed to go through both right and left lungs and heart multiple times as well as the aorta multiple times. She opined they went through liver, spleen, pancreas, intestines, multiple ribs, backbone, and collarbone, as well as the scapula. The victim suffered a lot of internal bleeding. ROA 357. She tracked individual paths as much as she could. Dr. Presnell opined that the official cause of death is multiple gunshot wounds to his torso. ROA 357-358. She opined that death deemed a homicide. ROA 358.

Renee Stanley, an employee at B.B. and T Bank testified that she knows Freddie Steward and saw him on the morning of Oct 27th when he came to the bank to make a transaction. ROA 360-61. She stated that there was another transaction that occurred by telephonic draft taken from the account of Mr. Steward after the 27th. ROA 361-362. She stated that a person would need to

provide the routing number and account number to take the money out of the account. ROA 361-62. She said that the account was a joint account between Mr. Freddie Steward and Mr. Michael Steward. She stated that Andre Richardson was not on the account and was not a signatory on the account. There was nothing in the records to indicate he had permission to use the account. ROA 362.

On cross-examination, she stated that payment was made to Ford Motor Credit. She does not know who owns the vehicle for which the payment was made or if it was made in the past. ROA 363. Mr. Steward did not make a complaint that anyone was taking money out of his account. ROA 363-364. Request was submitted by Ford Motor Credit Company. They gave the routing number and gave the account number for the account of Mr. Freddie Steward. Doesn't know who the owner of the automobile is. ROA 366-367.

There is substantial circumstantial evidence to support a Murder Conviction.

In the Appellant's video statement concerning the masked Ninja abduction of himself and his grandfather certain salient facts are presented:

- The Appellant puts himself at the crime scene during the abduction.
- The Appellant places himself in the victim's vehicle at the location of the killing.
- The Appellant places his own vehicle at the crime scene.
- The Appellant places himself at the place and time of his grandfather's killing.
- The Appellant drives his car away from the death scene to his barber where he calmly gets his haircut with full knowledge that his grandfather is laying by the road shot numerous times.

The only question raised by the fantastical version is whether the Appellant killed his grandfather

or did the 4 masked men not revealed by him to anyone for four months do it.

What is intriguing is the reasonable inference that Freddie Steward drove himself to his death scene on Bethel Road. The evidence is that Steward was seen by Tyrone Kinard driving toward that location around 11:30 less than ½ mile from Bethel Road. No one was seen in the vehicle by Kinard who had a clear view of the victim's car as he was standing on the roadway. More particularly, a car full of masked Ninja men was not seen within the vehicle along with Appellant as Appellant's version would necessarily suggest. A clear view destroying the Appellant's attempt to avoid responsibility.

Independent witnesses also undermined both false theories of innocence by Appellant. Contrary to the Appellant's versions that he had not left the home until 11:45, a vehicle strikingly similar to his - white Mustang, black racing strip with spoilers and tinted windows, was viewed running back and forth multiple times on Bethel Road early that morning. The Appellant's protestations that he was not in that area with that vehicle were defeated by the testimony of Kevin Nettles and Ricky Breland. ROA 243 - 251. There failure to specifically identify Appellant as the driver was reasonably reflected because of the tinted windows they could not identify anyone. Tyrone Kinard saw the Mustang drive back and forth around 11:30 and shortly after the Mustang's last trip saw the grandfather by himself drive by between 11:30 and 11:45 by himself driving away from his house slowly. ROA 257-258. His web of lies again pierced by the circumstantial evidence. Contrary to his assertions, he was not "home in bed."

Further evidence is the cell phone call. There was evidence and an admission by the Appellant that he made a call to house - where his grandfather lived - from his cell phone. Yet it was his claim that he was at home in bed - the same place he made the call to. Was this evidence

that he was calling his grandfather to lead to his traveling to his death scene on Bethel Road? Not conclusively. However, it is another odd fact to the Appellant's version where again the facts catch up to the lies by his unreasonable behavior.

He had an ongoing false claim throughout his earlier versions that he was headed to meet his cousin Roger Akeem Shider. However, contrary to the claim, Shider conclusively testified that the Appellant never called him that morning to meet as he suggested prior to the February statement. ROA 242. He stated that he had discussed doing it. Further, the Appellant's apparent expectation as to what Shider would be doing that date were undermined because Shider, in fact, did not go to PeeDee's that date as they had discussed he would do and was not on the road there rather than being able to meet with Appellant. It was not until after the death had been discovered that Shider talked with Appellant. Again, his web of lies failing by the facts leading to an inference of a cover-up and guilt.

What is more probative of his guilt is that in the numerous statements he gave police is plain evidence that he was a prevaricator. He claimed until February that he did not know anything about his grandfather's death until he received the call from his cousin, Myeshia Yates at 1:40 while he was at the barber shop. He claimed in his versions that he was home asleep until 10 and then watched TV for 1 ½ hours until his grandfather came home at 11:30 and that he let around 11:45 to meet his cousin. However, there is no mention of Ninja abductors in any of these initial statements. However, not only is it false because his grandfather was seen on the road headed toward Bethel Road at that time, his claim that he left his grandfather at home to meet with Shider is also false since Shider was not there to be met because they had no communication to do so. Other than getting a haircut and receipt of the telephone call, the

Appellant points to nothing in the pre-Ninja statements that was true or corroborated.

The bizarre Ninja story is unbelievable based upon the salient evidence which undermines it from witnesses seeing the Mustang and the victim's alone in his vehicle. At the outset is the far-fetched theory that the masked men would kidnap both of them, leaving Appellant in the vehicle while they shot grandfather ten times out side the vehicle, then have the Appellant's own vehicle brought and left there with keys for the Appellant to drive it away. It is further fanciful that there was some threat about telling that would put a cone of silence on the Appellant until February. What would cause him to be silent from these factors - he could not identify the perpetrators because they were wearing all black and masked. [9] The fact that his grandfather had been brutally murdered with 10 shots fired into his body was already known by that time.

Another problem with the Ninja theory is that the vehicle was headed away from the bank in Walterboro not towards it. ROA 200-201, 345-46. It is fanciful that they would drive 25 miles out the way to get to a bank to get grandfather's money. ROA 346, l. 11-16. The car was headed in the wrong direction. Evidence was presented by Renee Stanley of BB and T Bank that the grandfather had been in the bank that date. As the State argued, the victim - who Appellant claimed was driving - knew the way to the bank. ROA 360. Again, the witness who saw the victim around 11:30 saw him alone and headed away from Walterboro and he was visible through clear glass windows after he had previously seen the Mustang drive by and not come

[9]The Appellant's counsel in his appeal asserts that the delay in the version was his fear as a minority that he would be implicated in the crime. Brief of Appellant, p. 15. However, the Appellant gave as his reason for non-disclosure of the masked marauders that he was scared and shaken up because he had never been kidnapped before and feared for his mother. ROA 317, l. 21-24.

back. ROA 256.

Concerning the claim of the marauders intent to rob them, the victim was found with $139 dollars on his person at the autopsy. It defeats the assertion of the abduction for money when money is left on the supposed victim and a car is brought up to the scene after the shooting to allow the survivor-eyewitness to drive away. Appellant stated that they brought his car. Yet in his February statement, he stated that the grandfather was driving his car with two of the marauders in the vehicle with him and that they were being trailed by the robbers vehicle. He then states that another of the marauders drives the Appellant's vehicle to the scene after that shooting and then leaves it for Appellant to drive off. This is simply implausible.

The missing murder weapon does not undermine substantial circumstantial evidence. His co-worker and cousin Bobby Varn had the murder weapon stolen from his car at their worksite in December 2007. Although the owner never saw Appellant with his gun after it was stolen, [ROA 280-81], Varn acknowledged that they worked different shifts and that they were real close friends. ROA 281. In particular, their friendship was close enough that a couple months prior to the murder, he was counting between $10,000 and $13,000 that Appellant had at his house. ROA 282. It is not disputed that Varn's gun was the gun used to killed the victim based upon the stipulation at trial. ROA 353.

Here, the circumstantial evidence reasonably lines up to guilt. These factors are:

- white Mustang
- blacked out rims
- tinted windows.
- statement puts himself at crime scene.

- statement puts himself driving away from crime scene in his Mustang.
- statement admits knowledge of his grandfather's death before it is reported.
- implausible and delayed claim that he was also abducted by 4 masked marauders.
- implausible that he would be left in the victim's car as eyewitness after they shot victim 10 times.
- unbelievable that he would drive from the death scene and calmly get a haircut and create an attempt at a fictional alibi, knowing his grandfather was lying alongside the road, not calling 911, or going to the police or even to a relative concerning the abduction.
- bizarre that he would have the particular conversation he had with Meyshia Yates concerning his grandfather's death and then finish his haircut and maintain his silence about the abductors.
- the gun used had been stolen from a close-friend and cousin at their joint workplace during Varn's shift which began after Appellant completed his shift.
- the appellant refused to be tested for gunshot residue on his hands on the night of the incident.[10]

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[10]In the Brief of Appellant, p. 10, he claims that the GSR test that was offered was a sham because it was more than 6 hours since the murder. However, this was not a "sham." Detective Inabinett stated that he still would have tried to make an effort to try the GSR kit. ROA 305-306, 328-329. However, there are cases where GSR residue have been determined not to stay on hands after 6 to 8 hours because it dissipates, but some protocols have allowed up to 12 hours. See State v. Page, 28 So.3d 442, 448 (La.App. 5 Cir.,2009). Nevertheless, it does not preclude the possibility that GSR may be found in a greater time frame - even more that the request that was made of the Appellant. See State v. Delk, 2008 WL 5333757, 1 (Minn.App.) (Minn.App.,2008) (evidence of gunshot residue found and admitted where approximately 29 hours after the shooting, the police swabbed Delk's hands to test for gunshot residue).

- Appellant acted normal when he was getting his haircut, yet acted upset after Myeshia called about his grandfather's death.[11]
- Oddly when the barber asked at that time if he had any part in the death, Appellant stated he had no part in it rather than revealing his abduction claim. ROA 264.

The Appellant ignores that his attempts in creating lies are themselves further circumstantial evidence indicating guilt. Burgos, supra. It was convincingly presented at trial that none of his versions spoke the truth. The fact of his falsehoods can be used as substantive evidence of guilt. Contrary to the claim of Appellant in his brief, it is not merely that the Appellant's statements were inconsistent theories, it is the fact that the inconsistencies addressed the knowledge of the crime and his whereabouts. This dichotomy in his falsehoods contrasted with his actions after the crime - the feigned normalcy then surprise at the revelation of depth at the barbershop. Here, unlike Schrock , the Appellant tied himself to the crime scene. Similarly, unlike Martin, the Appellant admitted that his white Mustang was at the crime scene. Here, unlike Bostick, while no murder weapon or motive was placed into evidence, there was evidence of a murder weapon that was connected to a close friend of the Appellant who had he had worked with at the place when the gun was stolen. While this weapon evidence not conclusive of guilt, it was not excluding him either, yet the state's case did not rest on this factor. Unlike

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[11]In his Brief of Appellant, he claims that this is supportive of innocence. Brief of Appellant, p. 8. Yet, he ignores the fact that under his marauder theory, he was already ware of his grandfather's death and these acts were all part of an act to cover-up his knowledge of his grandfather's death. Similarly, his reliance that Appellant's crying four months later as he relayed facts about the abduction (ROA 309-310) is wholly inconsistent with his normal calm demeanor within an hour after the claimed abduction while at the barbershop. ROA 261-264.

Arnold where there was no evidence that he was at the scene of the crime, Appellant's own statement placed him at the crime scene at the time of death. The evidence was more than the mere shoeprint, fingerprint which was in Schrock, Arnold and Mitchell concerning being at the crime scene. It was the actual placement there by the Appellant's own words.

This is more than the mere suspicion concerns of Odems. The state's case against Appellant disputed his fanciful Ninja version, unmasking it as a feeble lie against the weight of the State's contrary evidence about the factual underpinning of his version by neutral witnesses. In addition, the evidence of false versions given before the development of the state's case cast his attempted cover-up of his role as additional substantive evidence of guilt. Although the Court minimize the attempt by Odems to persuade a person to lie on his behalf as substantial evidence, the Appellant's web of lies through the implausible and contradicted versions are more powerful that Odems brief encounter. Appellant's actions were miscalculated to draw attention away from him, but by their implicit falsehoods by lack of corroboration, they must be viewed as additional evidence of guilt. Unlike Odems, no witness corroborated his version or testified that they saw the marauders or other with the victim. To the contrary, the Mustang and silver Ford Focus with the victim were the limits of the witnesses attention. It was not the mere inconsistency in the statements that amounted to guilt, but their implausibility in light of the other evidence. The evidence taken together points exclusively to Appellant to the exclusion of every other **reasonable** hypothesis. The trial court properly denied the motion for a directed verdict.

CONCLUSION

For the aforementioned reasons, the State respectfully asks this court to affirm the ruling of the trial court as well as Appellant's underlying convictions.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

By: 
Donald J. Zelenka

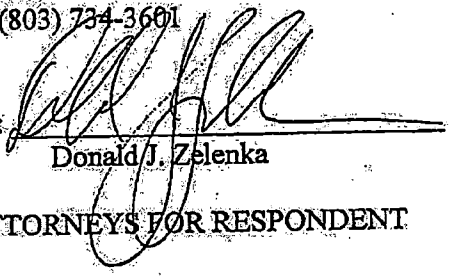
November 30, 2012

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the ***Brief of Respondent*** in the foregoing action by depositing copies in the InterAgency Mail to Robert M. Dudek, Chief Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 30th day of November, 2012.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

By: 
Donald J. Zelenka

November 30, 2012

ATTORNEYS FOR RESPONDENT

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.

Andre Taft Richardson, Appellant.

Appellate Case No. 2009-139266

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2013-UP-223
Heard May 14, 2013 – Filed May 22, 2013

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, and Senior Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Issac McDuffie Stone, III, of Beaufort, for Respondent.

PER CURIAM: This appeal arises from Appellant Andre Richardson's conviction for murder and financial identity fraud. On appeal, Richardson argues the trial court erred by denying his motion for a directed verdict on the murder charge because the State failed to present sufficient circumstantial evidence Richardson murdered his grandfather. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001) ("On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State."); *State v. Garvin*, 341 S.C. 122, 125, 533 S.E.2d 591, 592 (Ct. App. 2000) (providing that although the trial court should grant a motion for a directed verdict when the evidence merely raises a suspicion of the accused's guilt, the trial court must submit the case to the jury if any direct or substantial circumstantial evidence exists that reasonably tends to prove the accused's guilt); *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (noting when the State relies exclusively on circumstantial evidence, the trial court "is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced"); *State v. Pace*, 337 S.C. 407, 415, 523 S.E.2d 466, 470 (Ct. App. 1999) ("As a general rule, any act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt."); *United States v. Burgos*, 94 F.3d 849, 867 (4th Cir. 1996) ("Relating implausible, conflicting tales to the jury can be rationally viewed as further circumstantial evidence indicating guilt."); *State v. Trull*, 571 S.E.2d 592, 599 (N.C. Ct. App. 2002) (noting "evidence of a defendant's refusal to submit to a lawful testing or identification procedure has been held admissible when offered as circumstantial evidence of guilt"); *id.* (holding the trial court did not err in admitting evidence that the defendant refused to submit to a gunshot residue test).

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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June 14, 2013

The Honorable Patricia C. Grant
PO Box 620
Walterboro SC 29488-0028

REMITTITUR

Re: The State v. Richardson, Andre T.
Lower Court Case No. 2009GS1500116, 2009GS1500129
Appellate Case No. 2009-139266

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,

CLERK

cc: Donald J. Zelenka
Robert Michael Dudek

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of COLLETON)

2013-CP-15-442

Andre Richardson #336692)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina) **APPLICATION FOR**

) **POST-CONVICTION RELIEF**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 JUN -6 PM 12:16

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 Lieber Corectional Institution
P.O. Box 205, Ridgeville, SC, 29472

2. Name and location of Court which imposed sentence
Colleton 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) 2009-GS-15-0116 (financial indentity fraud

(b) 2009-GS01500129 (murder)

(c)

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

(a) September 2, 2009 (5 years) concurrent

(b) same as above (35 years) concurrent

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty trial by jury

(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. affirmed convictions and sentences

ii.

iii.

(c) the date of each such result:

i. May 22, 2013

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) n/a

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel:

(b) Denial of Sixth Amendment;

(c) Denial of Fourth and Fourteenth Amendments

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

(a) see attached issues and memorandum in support

(b) same as above

(c) same as above

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

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

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

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

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

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

(a) the specific nature thereof:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) first filing of post conviction relief

(b)

(c)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea?

(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? no

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. Mr. Harris Beach, Esq.
Colleton County Public Defender

ii. same as above

iii. Mr. Robert M. Dudek, Esq.
South Carolina Office of Appellate Defense

(b) the proceedings at which each such attorney represented you:

i. trial and sentencing

ii. same as above

iii. Direct appeal

STATE OF SOUTH CAROLINA

COUNTY OF COLLENTON

IN THE COURT OF COMMON PLEAS

Indict.No.2009-GS-15-0116; 0129

Andre T. Richardson, II -- Petitioner,

-Vs-

State of South Carolina -- Respondent,

MEMORANDUM OF LAW IN SUPPORT OF

APPLICATION FOR POST CONVICTION RELIEF

PURSUANT TO S.C.CODE ANN. §§17-27-20 THROUGH 160

Andre T. Richardson, II
SCDC# 336692
Lieber Corr. Inst.
P.O. Box 205
136 Wilborn Ave.
Ridgeville, SC. 29472

TABLE OF CONTENTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLENTON	)	

Andre T. Richardson, II	)	Indict.No. 2009-Gs-15-0116; 0129
Petitioner,	)	
-V-	)	**MEMORANDUM OF LAW IN SUPPORT OF**
State of South Carolina	)	**APPLICATION FOR POST CONVICTION**
Respondent,	)	**RELIEF PURSUANT TO S.C.CODE ANN.**
	)	**§§17-27-20 THROUGH §160**

COMES NOW, Andre T. Richardson, pro-se, seeking relief in this Honorable Court pursuant to S.C. Code Ann. §17-27-20 through §17-27-160, claiming that his rights were violated in a number of ways including but not limited to his Sixth Amendment right to the effective Assistance of Counsel and his Fourteenth Amendment right to a fair trial that is protected under the Federal Constitution.

Respectfully Submitted,

/s/ Andre T. Richardson, II

Andre T. Richardson, II

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTIONS'S HIGHLY PREJUDICIAL IMPROPER CLOSING ARGUMENT WHEN THE PROSECUTION ARGUED PETITIONER WAS GUILTY OF AN **UNINDICTED** OFFENSE AND THEREFORE WAS ALSO GUILTY OF THE OFFENSE PETITIONER WAS ON TRIAL FOR?

FACTS

Petitioner was indicted for murder (2009-GS-15-0129) and financial identity fraud (2009-GS-15-0116). At the onset of the trial the Court told the jury that Petitioner has pled not guilty to the offenses he was indicted for and therefore the burden of proving Petitioner's guilt beyond a reasonable rested upon the State. [Tr.p.138, L.14-22].

During closing summation to the jury the following was argued by the Prosecution, as was recorded:

> What about Bobby Varn, friend of Andre Richardson. They work at the same place. His testimony was when Mr. Beach asked him, Andre worked third shift, he worked first shift. Remember that? Third shift gets off right as first shift goes in. He notices his gun missing, and we've stipulated and they're in evidence, there is no question that the gun Bobby Varn had stolen from him in December 2007 is this casing and there's no question that that casing matches the casings pulled from the ground Mr. Freddie's body. so Bobby Varn's gun is the one that did it. [Tr.p.398, L.21-25, p.399, L.1-6].

Coming directly after Petitioner's counsel argued the following to the jury, as was recorded:

> And I submit to you Ladies and Gentlemen that there is no connection in any of this between this man, the defendant, and that act. There just isn't any. There's no gun. He may have access to a gun. [Tr.p.404, L.10-13].
>
> The stealing of the gun out of Mr. Yates' car, they didn't take finger prints. They didn't investigate. They did not come to Mr. Richardson and question him about the gun. They didn't do anything about that gun except write it down and write is off and it disappeared. [Tr.p.404, L.20-25].
>
> The State says well that proves that Andre Richardson stole this man's gun because he was working third shift, or first shift, whichever it was, at New York Wire. [Tr.p. 405, L.1-3].

Petitioner asserts he was denied the effective assistance of counsel when counsel not only failed to object to the State's highly prejudicial improper closing argument that allowed the State to argue an [unindicted] offense to the jury while Petitioner was being tried for an unrelated offense, but yet counsel entertained the Prosecution's assertion by telling the jury "petitioner had access to a gun."

This was extremely prejudicial while Petitioner is on trial for murder counsel allowed the Prosecution to argue that Petitioner is also guilty of an unindicted weapons offense.

DISCUSSION

A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the passions or prejudices of the jurors. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160, 166 (2002); accord Simmons v. State,

331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

In the instant case the unproved assertion that Petitioner allegedly stole Bobby Varn's gun almost "two years" prior to the incident Petitioner was on trial for is problematic for several reasons. First, the argument was not based on record evidence or any reasonable inference that could be drawn from it. Bobby Varn testified his gun was stolen out of his car from his place of employment in December 2007 almost two years before Petitioner was indicted for the offense his was being tried for. The evidence was that the deceased was murdered beside the road with the gun that belonged to Bobby Varn that had been stolen out of Varn's car at New York Wire. Secondly, Petitioner was never questioned, arrested or indicted for Varn's gun and therefore the incident surrounding Varn's gun was no more than an unproved assertion that allowed the jury to believe Petitioner stole Varn's gun and later used the gun to shoot and kill his grandfather.

This complete lack of evidence about what happened to Varn's gun did not prove Petitioner stole Varn's gun and later killed his grandfather with it. By saying Petitioner had stole Varn's gun, the Prosecution asserted something as fact that had not been proved, and that was clearly improper. By going outside the evidence, the Prosecutor "violated a fundamental rule, known to every lawyer, that arguments are limited to the facts in evidence." United States ex rel Shawn v. De Roberts, 755 F.2d 1279, 1281 (7th Cir.1985).

It was extremely misleading for the Prosecution to tell the jury that Petitioner [stole] Varn's gun out of his car and later used Varn's gun to shoot and kill his grandfather, when there was [NO] evidence [Petitioner] stole Varn's gun or even had possession of Varn's gun or that Petitioner even had knowledge of Varn's gun being stolen almost two years earlier. By forcefully stating an unreasonable inference, the Prosecution was making the misleading suggestion to the jury that it could draw the inference that Petitioner was the perpetrator who stole Varn's gun out of his vehicle months prior to the shooting. See 1 ABA Standards for Criminal Justice 3-5.8(a)(3d ed.1993)("The prosecution should not intentionally... ...mislead the jury as to the inferences it may draw).

Further the Prosecutions assertion that Petitioner was responsible for the disappearance of Varn's gun was extremely prejudicial to Petitioner. It is hard to fanthom anything more prejudicial than an unproved assertion that the accused is also guilty of the uncharged pistol offense while he is on trial for another offense (murder). See U.S. Bradley, 5 F.3d 1317, 1321 (9th Cir.1993)(evidence of an uncharged homicide was "highly and unfairly prejudicial") also compare to U.S. v. Pirovolos, 844 F.2d 415, 426 (7th Cir.1988)(any implication that a criminal defendant is guilty of an uncharged offense unfairly encourages the jury to find the defendant guilty because of his bad character, rather than because the evidence warrants a guilty verdict).

In the instant case it was stipulated that Varn's gun killed the victim, but there was no evidence to prove Petitioner was the perpetrator who stole Varn's gun. The import of the Prosecution's argument was highly damaging since Petitioner was never questioned, arrested or indicted for the theft of Varn's gun and there can be nothing more prejudicial than to argue to the jury Petitioner stole Varn's gun and later used the gun to shoot and kill his grandfather. The prejudicial impact was exploited to the maximum during Varn's testimony when Petitioner's counsel asked Varn whether or not he (Varn) had questioned Petitioner concerning the gun being stolen out of his car and Varn responded: "ask him if he -- ask him if he stole it from me", especially since Petitioner did [not] testify during trial.

Surely Counsel should have lodged an objection to the Prosecution's improper argument, as a result Petitioner was prejudiced and was denied his right to a fair trial. For the aforemtnioned reasons, Petitioner respectfully prays this Honorable Court will grant the requested relief of a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S MALICE INSTRUCTIONS THAT SHIFTED THE BURDEN OF PROOF WHEN THE TRIAL COURT FAILED TO CHARGE THE JURY THEY COULD ACCEPT OR REJECT THE INFERENCE OF MALICE FROM THE USE OF A DEADLY WEAPON?

FACTS

During Petitioner's trial the Trial Court instructed the jury on murder, the following instruction was recorded:

> Malice is hatred, ill-will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with intent to inflict an injury or under circumstances the infers an evil intent.
>
> Malice aforethought does not require that malice exist for an particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time of the act being committed. There must therefore be a combination of the previous evil intent and the act.
>
> Malice aforehtought may be expressed of inferred. Those terms expressed and inferred do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference, from the facts and circumstances, which are proved based on evidence introduced during the trial of the case.
>
> Express malice is when a person speaks words which express hatred or ill-will for another, or when the person before hand, prepared to do the act, which was later accomplished. For example, lying in wait for a person, or any other act or preparation going to show that the deed was in the defendant's mind, would be express malice. Malice may be inferred from conduct showing total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.
>
> A deadly weapon is any article, instrument, or

> substance, which is likely to cause death, or great bodily harm; whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case, based on evidence introduced during the trial of case. [Tr.p.423, L.8-25. p.426, L.1-14].

As is seen from the underlined portions of the trial court's malice instructions the trial court told the jury malice "is the intentional doing of a **wrongful act.** Here the jury could have interpreted this as directing a verdict for the State for (2) two reasons. (1) if the jury believed the prosecution's theory that Petitioner stole Varn's gun from his vehicle almost two years prior to the alleged incident, then breaking into a motor vehicle and the stealing Varn's gun is clearly an **wrongful act,** and (2) Petitioner admitted to using his grandfathers account to pay his car payment, thus a **wrongful act.**

Coupled with these erroneous instructions is the fact the jury was told they could infer malice from "the use of a deadly weapon", thus creating a mandatory presumption since the trial court failed to instruct the jury they could "accept or reject" the inference based on their consideration of the evidence presented and the jury could give it such weight as they (the jury) deemed appropriate. Regardless of the nomenclature used, the trial court's malice instructions only served the purpose of directing a verdict for the State, mainly because counsel failed to object to the burden-shifting instructions as the jury could have reasonably interpreted this instruction as placing the

burden on Petitioner to prove he didn't break into Varn's vehicle and steal his gun.

DISCUSSION

This Court has long held that burden-shifting presumptions are unconstitutional. See State v. Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985). Specifically, a charge that a prima facie case may be rebutted by other evidence is impermissible. State v. Key, 282 S.C. 413, 319 S.E.2d 338 (1984).

Evidentiary presumptions [must] be charged as permissive inferences with [specific] instructions that the jury may "accept or reject" them based on their consideration of the evidence and given such weight as the jury deems appropriate. State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987); State v. Peterson, supra.

In determining whether evidentiary presumptions in a jury charge had the effect of relieving the State of it's burden of persuasion beyond a reasonable doubt of every element of the crime, the court must determine whether, based on the specific language of the challenged instruction, created a constitutional objectionable "mandatory presumption" or merely a "permissive presumption" on an essential element of the crime: if a specific portion of the jury charge, considered in isolation, could reasonably have been understood as creating a presumption.

"Permissive inferences" violate the due process clause only if the suggested conclusion is not one that reason and common

sense justify in light of proven facts before the jury; "mandatory presumptions" violate the due process clause if they relieve the State of the burden of persuasion.

In a long line of cases, culminating in Yates v. Evatt, 111 S.Ct. 1884 (1991), the United States Supreme Court has recognized that the prosecution must prove each and every element of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 158 (1970). The burden of proof on any element cannot be shifted to the defense, because in doing so decreases the State's burden of proving beyond a reasonable doubt.

Such shifting of the burden of persuasion with respect to a fact the State deems so important that it must either be proved or presumed, is impermissible under the Due Process Clause. See Patterson v. New York, 432 U.S. 197, 215 (1977).

In Sandstrom v. Montana, 442 U.S. 510 (1979), the United States Supreme Court held that a jury instruction creating a mandatory presumption regarding malice was violative of the defendant's due process rights as it impermissibly shifted the burden of proof from the state to the accused. Further in adopting Sandstrom, the South Carolina Supreme Court determined that a "mandatory presumption of malice charge, rather than one creating a permissive inference constitutes reversible error." Carter v. State, 301 S.C. 396, 392 S.E.2d 184 (1990), citing State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). The Court in Carter further found trial counsel to be ineffective in

failing to object to such a charge. Carter v. State, 392 S.E.2d at 185.

For the aforementioned reasons, Petitioner respectfully prays this Honorable Court will grant the requested relief of a new trial.

ISSUE (C) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO WHEN THE TRIAL COURT IMPERMISSIBLY COMMENTED ON THE FACTS OF THE CASE BY CHARGING EXAMPLES DIRECTLY RELATING TO PETITIONER'S CASE THAT WAS TO BE DETERMINED BY THE JURY?

FACTS

During Petitioner's trial is was critical for the State to prove malice. The State could not show any ill-will between the decendent and Petitioner. During closing summation the Prosecution argued the following:

> What about the gun. Bobby Varn, friend of Andre Richardson. They work at the same place. His testimony was when Mr. asked him, Andre worked third shift, he worked first shift. Remember that? Third shift gets off right as first shift goes in. He notices his gun missing and we've stipulated and they're in evidence, there is no question that the gun Bobby Varn had stolen from him in December 2007 is this casing and there's no question that that casing matches the casings pulled from the ground Mr. Freddie's body. Okay? So Bobby Varn's gun is the gun that did it. [Tr.p.398, L.21-25, p.399, L.1-6].

As is seen above the State was allowed to successively argue that Petitioner had allegedly stolen Bobby Varn's gun in December 2007, thus "creating" an inference that Petitioner stole Varn's gun and "later" shot and killed his grandfather.

Coming directly after the trial Court gave the following instructions without objection from Counsel, as was recorded:

> Malice aforethought may be expressed or inferred. Those terms expressed and inferred do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference, from the facts and circumstances, which are proved based on evidence introduced during the trial of the case. [Tr.p.425, L.19-25].
>
> Express malice is shown when a person speaks words of express hatred or ill-will for another, or when the person, **beforehand prepared** to do the act which was **later accomplished**. For **example**, lying in wait, or preparation going to show that the deed was in the defendant's mind, would be expressed malice. [Tr.p.426, L.1-8].
>
> Inferred malice may also arise when the deed is done with a deadly weapon. [Tr.p.426, L.8-9].

As is seen from the underlined portions of the trial court's malice instructions, the trial court told the jury they could infer malice from "facts and circumstances which are proved based on the evidence introduced during trial." Reiterating the State's just finished closing.

This resulted in an impermissible comment on the facts because Petitioner was never questioned, arrested or indicted for the alleged stealing of Varn's gun. Yet the trial court was allowed to charge the jury with examples directly relating the Prosecution's just finished closing summation.

Petitioner asserts the trial court's malice instructions and examples resulted in an impermissible comment on the facts that directed a verdict for the State based on the underlined portions of the trial court's instructions.

DISCUSSION

Judicial comments on the facts of a case is prohibited in South Carolina. See South Carolina Constitution Article 5, Section 17, "a trial judge may not instruct a jury regarding what weight should be given to certain evidence or even that certain evidence is or is not entitled to consideration from them. As the South Carolina Supreme Court said in State v. Hartley, 414 S.E.2d 182, at 183:

> Judges shall not charge in respect to matters of fact, but shall declare the law. State v. Bagwell, 23 S.E.2d 244 (1942)(a judge cannot express in his charge, or intimate any opinion as to the weight or sufficiency of the testimony without violating the prohibition of the Constitution as to charging upon the facts) See 75A Am.Jur.2d Trial §1203, at 693 (1991)(the trial court may not instruct the jury what weight should be given to the evidence, or even that any particular evidence is or is not entitled to receive weight from them. State v. Edwards, 120 S.E. 490 (1923)(wherein our Supreme Court held the absence of motive is a mere circumstance and rejected an instruction that the absence of motive may raise a reasonable doubt as to the defendant's guilt because it was a charge on the facts).

In the instant case it was critical for the State to prove malice, and the Prosecutor emphasized in his closing summation (as is seen in the closing, supra) that Petitioner had allegedly stolen Varn's gun in December of 2007 and had planned the killing of his grandfather some two years later.

Petitioner asserts counsel was ineffective for failing to object to the trial court's jury charge which used examples

applying specifically to Petitioner's case in it's definition of malice and unrelated alleged crime (stealing Varn's gun).

The judge in his charge cited several examples and then directed them as "express malice", that clearly directed a verdict for the State. The examples of malice concurred with the State's articulated theory of malice. The Court's examples all reflected the facts of the case and reiterated points stressed in the State's closing summation to the jury, which the jury reasonably could have interpreted as being applied to Petitioner. This combination of charges would lead a reasonable jurist to assume that malice corresponded precisely to the State's allegations against Petitioner.

This charge coming immediately after the State's closing argument only reiterated the facts as put forth by the Prosecution, to where the malice charge reasonably could be interpreted as a judicial endorsement of the Prosecution's argument.

The examples used would conversly lead a reasonable jurist to assume this was a broad, multi-faceted term with only a tangible application to Petitioner. These comments strongly implied that the facts of the case perfectly supported a finding of malice.

Since the judge's charge impermissibly skewed the jury's consideration of the facts regarding these issues, Petitioner was prejudiced by the error and counsel was ineffective for failing to object to the improper jury instructions given by the court.

Petitioner further asserts that his due process rights to a

fair trial were violated by the comments of the trial judge. For through the doctrine of substantive due process, all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States. Whitney v. California, 47 S.CT. 641 (1927).

The threshold inquiry is whether the comments by the trial judge were sufficiently conscience-shocking as to implicate substantive due process protections protections. Petitioner contends they were. Because the trial judge acted intentionally, for purposes that only served the Prosecution. Here the issue asserted is one protected by the due process clause, when it's violation by the Court served a compelling interest, which amounted to abuse of power sufficient to shock the judicial conscience. County of Sacramento v. Lewis, 118 S.Ct. 1708, 1717-18 (1998).

Petitioner asserts that the direct comments of the trial court were a direct violation of his rights to a fair trial, and that the only purpose served by this was to direct a verdict for the state.

Here counsel's failure to preserve meritorious issues for appeal fell below an objective standard of reasonableness that amounted to a deficient performance, as there is a reasonable probability that but for this deficiency the results of the trial would have been different.

Counsel's failure to object and preserve the issue for appeal, was deficient performance as there is a reasonable

probability that but for this deficiency the results of the trial and the appeal would have been different, that is a deficiency that undermines confidence in the outcome.

For aforementioned reasons, Petitioner respectfully prays this Court will grant a new trial.

CONCLUSION

WHEREFORE, Petitioner believes through the statement of facts, issues presented and citations of authorities relied on he has shown unto this Honorable Court his entitlement to the requested relief of a new trial.

THEREFORE, Petitioner respectfully prays this Honorable Court will grant the requested relief of a new trial.

Respectfully Submitted,

/s/ Andre T. Richardson II

Andre T. Richardson, II

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

vacate sentence and conviction and remand for new trial

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Dorchester)

I, Andre Richardson, 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.

Andre T. Richardson II

SWORN to and subscribed before me this 4th day of June, 2013.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2026

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

I, Andre Richardson, 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.

Andre T. Richardson II
Applicant

SWORN or affirmed to and subscribed before me this 4th day of June, 2013.

Lucian Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS 2013-CP-15-0442
Andre Richardson, #356692, Applicant, v. State of South Carolina, Respondent.	)	**RETURN**

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 6, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the June 2009 term of the Colleton County Grand Jury for financial identity fraud (2009-GS-15-0116) and murder (2009-GS-15-0129). The Applicant was represented by Harris Beach, Esquire.

The Applicant proceeded to trial and was convicted. On September 2, 2009, the Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of five (5) years for financial identity fraud and ~~life~~ 35 years for murder. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were affirmed by the Court of Appeals. State v. Richardson, No. 2013-UP-223 (S.C. Ct. App. May 22, 2013). The Remittitur was issued on June 14, 2013.

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
    a. Denial of his 4th, 6th, and 14th amendment rights.
    b. Failure to object to the prosecutor's highly prejudicial improper closing argument when the prosecution argued Petitioner was guilty of an unindicted offense and therefore also guilty of the offense Petitioner was on trial for.
    c. Failure to object to trial court's malice instruction that shifted the burden of proof.
    d. Failure to object to the trial court impermissibly commenting on the facts of the case by charging examples directly related to the Petitioner's case.

III.

The Applicant claims ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: A. R. W.
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 20, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2013-CP-15-0442
	)	
Andre Richardson, #356692	)	
	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the abovecaptioned 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:

Tristan M. Shaffer
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 21th day of August, 2014

Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON
COURT OF COMMON PLEAS
CASE NUMBER 2013-CP-15-00442

ANDRE T. RICHARDSON — PETITIONER

VERSUS

STATE OF SOUTH CAROLINA — RESPONDENT

OCTOBER 18, 2016 POST-CONVICTION RELIEF HEARING

BEAUFORT, BEAUFORT COUNTY, SOUTH CAROLINA

BEFORE HON. MICHAEL NETTLES, JUDGE

APPEARANCES

ON BEHALF OF PETITIONER:
ANDRE T. RICHARDSON:

HON. TRISTAN M. SHAFFER
225 COLUMBIA AVENUE
CHAPIN, SOUTH CAROLINA 29577
843-916-9300
tristanshaffer@gmail.com

ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

HON. RUSTON NEELY
ASSISTANT ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
803-734-3970
rneely@scag.gov

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ATTACHMENTS

EXHIBITS

No exhibits were admitted.

BEGINNING 11:40 A.M.

THE COURT: Mr. Neely, which case are we dealing with next?

MR. NEELY: I believe the next case, your Honor, is the case of Andre Taft Richardson versus State of South Carolina, and that's Case Number 2013-CP-10-4994 [sic].

THE COURT: Mr. Shaffer, I'm going to ask you, if you could, to enumerate which -- what -- enumerate with specificity the grounds for your application for post-conviction relief.

MR. SHAFFER: Thank you, your Honor. The motion that I just handed up was filed this morning. The State -- well, Mr. Neely's precedesor had -- had access to it about a year ago. And I sent it to Mr. Neely, I guess, Monday or Tuesday of last week. I don't think the State's necessarily opposing the motion to amend.

Your Honor, I made a decision. As his attorney, I think that we can sufficiently argue the case based solely on those two grounds that are in that app -- that amendment, your Honor.

THE COURT: I want you to enunciate those grounds on -- on the record for me.

MR. SHAFFER: Thank you, your Honor. They're -- they are that trial counsel was ineffective for failing to move to suppress the -- the evidence concerning my client's refusal to allow a search of his vehicle and his refusal to allow them to do a GSR testing.

THE COURT: All right. You may proceed with your application --

MR. SHAFFER: Thank you.

THE COURT: -- however you see fit. You can argue each one of these in depth or you can elicit testimony. However you wish to proceed.

MR. SHAFFER: Thank you, your Honor. I -- I will probably argue them, since my understanding, obviously, in a PCR, the record down below is part of the record here in appeal -- or in the PCR, the trial transcript is. Therefore, I think I can sufficiently make it out through that. I will ask my client in the end of it if he would to -- to take the stand after that, but I think I can sufficiently make out my allegations just solely off the trial transcript, your Honor.

THE COURT: Okay.

MR. SHAFFER: And --

THE COURT: Is that an appropriate question to put to an applicant on the stand, to ask him if does he have anything else he would like to say?

MR. SHAFFER: No, your Honor. That's -- that's not exactly what I would ask him. I would ask him if he would like to add to the two grounds I had -- I had said.

THE COURT: Oh, okay.

MR. SHAFFER: I'm not --

THE COURT: It's quite often done.

MR. SHAFFER: Yes, sir.

THE COURT: I was just wondering whether you thought it was appropriate (Inaudible).

MR. SHAFFER: I -- I think I would prefer not to answer that question.

THE COURT: That was rhetorical. That was a rhetorical question. You can go ahead.

MR. SHAFFER: Thank you, your Honor.

MR. SHAFFER: To give you a little bit of background, this is a murder case. My client's grandfather was actually the victim in the murder. The evidence in the case essentially boils down to this. The police responded to a body that was found on the side of the road. There was -- there was some evidence that my client's car might have been driving up and down the road nearby where this all happened. Okay?

After talking to -- or finding the body, talking to my client, the officers asked them [sic] if he would consent to a search of his vehicle. He invoked his *Fourth Amendment* right not to. They also asked him if they [sic] would consent to, essentially, a search of his hands. So he invoked his *Fourth Amendment* right not to consent to the GSR test as well.

There was money that ended up missing from his grandfather. Now, the money ended up being missing, and money ended up being spent from his account on various things that were related to my client. So, obviously, at that point, he

became a suspect. He was arrested, your Honor.

Initially, he denied knowing anything about the death. Later on, he ended up giving a statement that --

THE COURT: (Inaudible). Are you saying that he refused for him to search the car? That was shortly after the murder.

MR. SHAFFER: Yes, your Honor.

THE COURT: And that he refused the GSR; and it was at a subsequent time that there was discovery that there was money missing; then they initiated further investigation and, ultimately, an arrest?

MR. SHAFFER: Yes, your Honor. I -- I want to say --

OFF-THE-RECORD DISCUSSION BETWEEN

MR. SHAFFER AND DEFENDANT

MR. SHAFFER: It was six months later, your Honor, that they actually arrested him. So there was a long period of time here.

The gun that was used, they were -- they never found the -- the gun that was used. They were able to determine what gun was used, though. There was a gun that became missing from the parking lot -- several months before this, a gun went missing from the parking lot of my client's work place. It was in a car, a friend of my -- my client's, and they -- they ended up finding -- linking that gun to it based off of a shell casing that the manufacturer kept. So they -- they knew it was that gun that was stolen then, and they were able to pinpoint around

the time that it would have happened. And the State, of course, alleged that my client stole it because it was at his work and he had the opportunity to steal it. It was at a place called New York Wire.

THE COURT: Called what?

MR. SHAFFER: New York Wire.

THE COURT: Okay.

MR. SHAFFER: The -- and to fast forward to the point that he gets arrested, eventually, he gives a different statement. Okay? And his other statement, the State more or less says is -- I'm quoting directly from their brief:

In February 2009, Richardson sought out law enforcement for an interview of almost four hours, and proceeded -- proceeded to give a fantastical story about how he and his grandfather abducted -- he and his grandfather --

-- I guess were abducted is what they meant to say --

-- from their home by four masked, Ninja-like marauders and drove down -- drove them down the highway, pulled his grandfather out of appellant's vehicle and shot them ten times -- shot him ten times.

Okay? So, at trial, the -- the evidence that was presented essentially was that statement, his previous denials, the fact that his car was seen in the area, and the fact that he didn't consent to the GSR and he didn't consent to a search

of his vehicle.

Your Honor, I -- I've sent -- put -- passed up two cases. Simmons is the most on-point case. There's another case. Both of those are PCR cases. They ended up -- ended up saying essentially that you can't use the denial of -- or you can't use the client's exercise of a constitutional right as evidence of guilt. Okay? Those -- those are essentially what those two cases stand for.

In one of the cases I handed up -- Simmons is the first one. In Gant, the second one I handed up, the court ended up reversing the PCR court because it found no prejudice. And so, I think that -- I know it's our position that these are the two cases that the Court needs to concern itself with primarily. And I imagine the State's probably in the same position, because I think these are the only two cases that address this specific issue in the context of a PCR.

When he went to trial, at the *Jackson v. Denno* hearing, it came up that he denied -- he refused the GSR and refused the -- the search of his vehicle. It also came up -- and I will take you to 305, and I'm referring to the bigger numbers in the transcript, 305. And if you go from Line 18, I will be going from 18, all the way to 15 on the next page.

It says -- the question --

THE COURT: I'm on 305. Where does it start?

MR. SHAFFER: 18, your Honor.

THE COURT: Okay.

MR. SHAFFER: It's a question from Deputy Solicitor Thornton to the detective.

All right. What did Mr. Richardson tell you, if anything?

ANSWER:

He basically started out with a similar comment that were mentioned by Detective Taylor and Detective Scott about waking up that morning and trying to contact one of his cousins, then going to Walterboro to have his hair cut, and things of that nature.

At the later part of the interview, I asked him if he would consent to a gunshot residue test, which is commonly known as a GSR, and he refused. The --

-- comma; I actually think it meant to say then --

-- I asked him if he would consent to a search of his vehicle, which is a white Mustang, and he also refused.

QUESTION:

All right, sir. Do you feel you had enough evidence or any evidence at that point to make an arrest?

ANSWER:

Not at that time. Just basically an interview -- interview trying to establish the last time Mr. Stewart was seen alive.

QUESTION:

Okay. So, to recap, he basically said he got up and tried to get in contact with his cousin, ran a few errands, and then went to get his hair cut?

ANSWER:

Yes, sir, basically.

All right. But he refused to give a GSR kit and he also refused consent to search his vehicle. Is that right?

That is correct.

Now, your Honor, this also comes up during -- during the cross-examination as well. Okay? And I will take you to 329. Excuse me. I will take you to 340 right now, and I'll go to Line 10.

I apologize. It should be 342. I was looking at the small number, your Honor. The big number's 342. Okay. And I'm starting at Line 1. There was a question that was -- and this is Mr. Beech questioning the detective again on cross-examination. It said:

I know you all had talked with him -- with them a good bit, and there was attempts to

obtain fingerprints or anything like that from the house? Any forensic evidence from the house that would bear in his statement?

The answer was:

Initially, in October 27th of -- or the 27th of October 2008, law enforcement did go out to the house. I wasn't present at that. I was at the crime scene. But several attempts were made to process the crime scene at the residence, as well as defendant's vehicle, which that's one he actually refused to consent to search and that same day of.

So the -- the search was mentioned twice in here. The GSR was also mentioned twice as well. Mr. Beech brought it up on -- on Page 329 in what appears to be -- and I -- I'm reading -- or I'm looking at 329, Lines 2 through about 9. And it appears what Mr. Beech was doing is to try to lessen the effect of him refusing the GSR. So I think that that's indication that Mr. Beech knew that the GSR was harmful.

It says -- and I'm going at 329, Line 2:

Isn't it true that gunshot residue dissipates after six hours?

Answer:

That's approximately correct, yes, about six hours.

Question:

And didn't you tell that to the defendant?

Answer:

I did.

Question:

And he declined to take the test?

Answer:

Yes, he still refused, but I was willing to try to make an effort to try the GSR kit.

I think what Mr. Beech was doing there is he recognized the fact that that was bad evidence against his client, and wanted to at least try to mitigate that in some way by saying, well, is it true, Officer, you -- you told him that, you know, it's possible that the gunshot residue would have been dissipated anyway?

Now, your Honor, I think that the case law, if you look at Simmons, Simmons refers to questioning and argument. I think the questioning certainly is there. The -- the State decided to introduce this through their questioning, but they also decided to argue it, your Honor. And I will point the Court's attention to Page 401. And I'm going to start reading at Line 7, 401.

And your Honor, before I do, I will point out the fact that, obviously, as I mentioned New York Wire, and one of the reasons I wanted to bring that up earlier is that the gun being

his -- the gun was an essential key piece of evidence in this case, and his opportunity to steal it was a lot of what the State tried to prov, you know, and one big defense. Mr. Beech questioned several times -- or questioned people from New York Wire about how many people would have had the opportunity to steal the gun other than my client. And this is the response that the State made in their argument, starting at Line 7:

Now, Mr. Beech asked a question.

THE COURT: This is what page, Line 7?

MR. SHAFFER: Oh, I'm sorry, your Honor. It's 401, Line 7.

And he wrote -- this is the solicitor's closing argument.

Now, Mr. Beech asked a question that I thought was good. He asked a question: 'Well, how many people work at New York Wire.'

Well, it's probably a lot of them.

How many people work at New York Wire who drive a white Mustang with blacked out rims, tinted windows, who put themselves at the scene of the crime, who put themselves at the scene when Mr. Freddie was killed, who refused a gunshot residue test and refused consent to search their vehicle, who happened to be kidnaped by these four people? I submit to you that there is only one, and he's sitting right there, at the table right

there.

This isn't about how many people work at New York Wire. This is about Andre Richardson and whether or not he's the one that killed his grandfather, and the State submits to you that he is, ladies and gentlemen, because that's what makes sense.

Your Honor, clearly, the State is using his refusal to search the vehicle and his refusal to the GSR as evidence of his consciousness of guilt, of his -- of him being guilty of this crime. They're saying, you know, these are, you know, specifically laid out to why he's the suspect and identifying him.

Your Honor, I think that if you look at Simmons, which is the 1991 Supreme Court case, and I -- I highlighted a few sections on Page 3, and I think you have the highlighted as well. The State should as well.

One part says:

Next, the law is clearly established that the State cannot, through evidence or argument, comment upon accused exercise of a constitutional right.

And if you go forward, they find that it was a *Fourth Amendment* violation for them to constitute on his refusal for a warrantless search. And it also says:

We conclude that counsel's failure to fulfil such basic tenants of criminal defense brings his representation of the petitioner below the standard of reasonableness, under the prevailing standards of the profession.

In 1991, the prevailing standards of the profession were you can't -- you can't not object to this information. Okay? It was the same in 2003 when Gant came out. Because, once again, the PCR court, relying, obviously, on the -- on the Simmons case, the PCR court ended up ruling that it -- granting PCR on that. The Supreme Court reversed, but they reversed because of a prejudice finding. Okay? And in this case, this is a little bit different. Inside of Richland County. Gant -- there was a court order for -- for a defendant to do a DNA test, and the defendant wanted to fight the court order fight -- and get away from the DNA test, and didn't cooperate with him, and they basically had to force him to do the DNA test. They found there was no prejudice in that case. Obviously, they ended up -- it was his actions that caused that. It Is distinguishable in several ways. One, there was a court order for him to conduct the DNA test. You know, he -- he refused to comply with it, and his actions caused it. But yet, again, they still found that it -- you know, they affirmed that the -- the PCR court, in finding that counsel was deficient in not objecting to it. Or not properly preserving the issue for

appeal, because there's a procedural issue in this case. But essentially, counsel objected to it, but not sufficient enough to preserve it.

They did say, however, that they didn't think that it was -- it was a -- it was prejudicial to the client. And essentially, they found that -- in that case, the DNA would have gone to whether or not they had sex. They consented -- he was consensual that he actually did have -- have a sexual relationship, the defendant in this case did. He said it was a consensual sexual relationship. So it's not really going to whether or not he was the one who provided that. It's just showing that he (Inaudible).

But they said that it was -- it was not relevant in that -- or that it was not prejudicial in that case. And they used basically the same thing you would use for a Doyle rule in it. They used a four-factor test to -- that they also used for Doyle. And the first is whether the reference to the accused of his constitutional right was a single reference. Okay? Whether the State tied this to -- right directly to the accused exculpatory account; whether the accused exculpatory account was totally implausible; and whether the evidence of guilt was overwhelming.

What they did in this case -- and they found that, essentially, the only comments there was, they asked him whether or not they -- they fought it. And then they said

something in closing argument saying he knew his rights when he was arrested. Okay?

This is a very different case. In this case, the solicitor brought it up. It got brought up again during -- during cross-examination. And then he specifically tied it to his theory of the case and why it supports a finding of guilt.

Your Honor, there's also plenty of federal case law in this. Obviously, it's a federal issue. There's not a whole lot in the Fourth Circuit. Essentially, the Fourth Circuit says, if you -- that this is improper evidence; the only way the State can use it is if the defendant's using it as a sword, not a shield. Essentially, they're trying to attack the police by saying something they can -- they can actually use it at that point. This isn't the situation. Then they forgot to open the door. They can't use it until the -- the defendant opens the door. There's nothing wrong --

THE COURT: It says, you didn't find the gunshot residue on my hand. And you say, well, you refused to let me test you.

MR. SHAFFER: That's correct, your Honor. There's nothing like that in this case. And that's the reason I think that, essentially, if the Court's following --

THE COURT: Let's go through each one of the elements. It says whether the reference to the accused exercise of his constitutional rights was a single reference.

MR. SHAFFER: It was not, your Honor. It was -- it was

referenced twice. It was referenced once in the testimony, and then once again in the argument. But it was also referenced in cross-examination twice. I bring that up --

THE COURT: So that's three times in testimony, and once in the argument?

MR. SHAFFER: Yes, your Honor. And -- and your Honor, and I apologize. It's actually the GSR was brought up -- during direct, both the GSR and the search of the vehicle were brought up. During cross-examination, they only brought up the GSR separately than the search of the vehicle. So it only got brought up twice, I guess. Each one got brought up twice in testimony, your Honor, and once on -- during argument.

THE COURT: All right. Now, can you count it if the defendant brings it up in cross?

MR. SHAFFER: And your Honor, I -- I think that you can in this situation, because one of the time -- the only time the defendant brought it up in cross is that -- that section with the GSR, that was mentioning about the GSR. And essentially, what I think he was trying to do is mitigate it. Because once it's already in, you know, obviously, he can -- he can attempt to mitigate the evidence. And I think that's what he was doing. He was trying to minimize the effect of, well, he refused the GSR and give some reason for it.

THE COURT: All right. In both instances, the State brought it up at least once in their direct and once in

argument.

MR. SHAFFER: That's correct.

THE COURT: You think that's two or you think that's one?

MR. SHAFFER: I think that's two, your Honor, and I think that it's two different incidents, in part because, well, -- and on the search of the vehicle -- and your Honor, I apologize for not answering your question directly, but there's one other point I wanted to bring up about the search of the vehicle, if you'll allow me.

The search of the vehicle, when -- when they brought it up on cross-examination, that wasn't responsive to any question that was asked. The cop just slipped it in there. I mean, that's what happened. I mean, he's asking about searching the home and whether he found fingerprints in the home, the cop slip in, oh, well, I wasn't there for that, but I was there when your -- your client decided not to consent to a search of his vehicle.

THE COURT: Okay. I got you.

MR. SHAFFER: So I think it was brought up. At least -- at least the search was brought up twice by the State. I think that that -- that would count. Obviously, during the closing argument, I think that the -- the search was brought up during the closing argument. And the -- the way he used it in the closing argument is not just, hey, I'm going to mention it. He used it as substantive evidence of guilt. I mean, he's saying,

why does it not matter how many people lived there, because there's a bunch of signs that point to my client. And one of the client -- one of the signs was that he refused the GSR, and one that he refused the search of his vehicle. He's using that specifically to identify who he thinks is the prime suspect and -- and to support his case. It's not -- it's not some comment about, oh, well, you know, he refused a search of the vehicle.

There's actually -- you know, if you read it in context of all the other elements, he's specifically saying this is what -- you know, these are the reasons why you need to not worry about Mr. Beech's argument about a bunch of people being able to steal the gun.

So I think that it's a little more calculated. I do think that you could say the search was brought up three times, and I think that the -- the GSR was brought up twice, because it was certainly brought up in the closing argument, your Honor.

THE COURT: All right. How about the (Inaudible) whether the State tied the exercise of his right to records of accused exculpatory account?

MR. SHAFFER: And your Honor, I'm -- I don't think that that is necessarily -- he did not tie it to the account. Well, he -- he sort of did during the closing argument, I will say that. But honestly, I think that that test is more applicable to a Doyle with that specific -- specific finding whether or

not he tied it to the exculpatory account. I think that he's tying it to the defense theory of the case, certainly, because the exculpatory account or the argument by the defense is, plenty of people could have stolen that gun that was used to kill him; it doesn't have to just be my client. And he's tying it specifically to that, so I think that that would be improper.

THE COURT: How about whether the accused exculpatory account is totally implausible?

MR. SHAFFER: Your Honor, I'm not willing to -- I was -- I will say that the State certainly believes it totally implausible, obviously, because of the -- the level of seriousness that they put forward on the recanting -- I mean, describing his account in their brief, your Honor. Obviously, they don't think that it's very plausible. But then, again, I'm not sure how that necessarily ties back to my client's story. I think that if you look at it in -- if you use the word *exculpatory* -- I mean *exculpatory account* and -- I guess it depends on what the Court's interpretation of that term, *exculpatory account*. If you're saying defense theory to the case, then, certainly, they tied it back to that, and I think it is plausible. If they're saying what my client said happened, and the police afterwards, I think that the State could certainly put -- put forth the position that it was not plausible.

THE COURT: All right. How about whether the evidence of guilt was overwhelming?

MR. SHAFFER: Your Honor, that's certainly not the case in this situation. This is a case that but for my client's statement putting himself at the scene of this crime, I think this would have been a directed verdict case under -- if you look at the substantial circumstantial evidence cases. Some of those hinge on whether or not the client -- there's evidence that the client was actually at the scene of the crime. If you look at the case where the -- and the -- the case name escapes me at the moment, but basically, there was a murder -- kidnaping and murder that happened in Georgia, or possibly even in Beaufort County, and the body was found here. And then the vehicle was found with the suspect in Tennessee, or a block away from the suspect. They said that that's not substantial circumstantial evidence that he committed the murder. If you look at case like that, I think that you can see that this is -- this case right here is not a case where anyone said he did it. In fact, nobody -- nobody says he did it. It's just a circumstantial case of whether or not he did it. The issue on appeal, the -- the issue that was raised, was actually -- and it was raised not in a *Anders* brief; it was raised in a regular brief by Mr. Dudek. He raised that issue under the directed verdict issue. This is not a frivolous directed verdict claim whenever you -- for example, you could tie it back to some sort

of DNA evidence showing he did it or something like that. This would actually matter in the trial, your Honor. I think that -- and if you'll look -- I don't think that the State can even point to where this would be overwhelming evidence of guilt. I think that they would have a huge problem doing so. Because essentially, they're saying: client stole from grandfather; client was seen; client's first stories didn't add up; client's last story didn't add up; and client had opportunity to steal what we know was the murder weapon; and he lied before, so he must be lying whenever he did it. That's essentially their case. I don't think that they can point to where anything that's overwhelming evidence of guilt in this case. So I think we would certainly meet that factor, your Honor.

THE COURT: All right. Anything else you want to say?

MR. SHAFFER: No, your Honor.

THE COURT: Let me hear what the State has to say. Mr. Neely.

MR. NEELY: Thank you, your Honor, I can from the start by pointing to cases that your Honor's looking at. Your Honor asked PCR counsel if the -- if the solicitor asked him one question in direct, and then mentioning it again in his argument was one instance or two. Well, in the Gant case itself, the solicitor asked one question of the officer:

What was respondent's response to you in request for these samples?

That he did not want to do it.

Did he refuse?

Yes, sir.

And then, in argument, the solicitor wants to respond to refusal, and go the context if he knew his rights. They count that as one instance in the Gant case. So mentioning it in direct, and then mentioning it in your closing argument, for Gant purposes, they count it as one.

And in this case, we only have one instance of -- one question asked by the solicitor about the GSR and vehicle refusal, and then one mention in closing argument.

THE COURT: How about the cross-examination where he volunteered?

MR. NEELY: The cross-examination --

THE COURT: The cross at search.

MR. NEELY: For -- there's a couple of arguments I have on that, and so, again, in a case where -- I'm arguing inferences you can make from the record. Throughout the entirety of the record, Mr. Beech is hammering focus was the circumstantial evidence of this case, as Mr. Shaffer argued -- alluded to. And he hammered on the lack of forensic data that law enforcement was able to gather on this case. No fingerprints, no DNA, no eyewitnesses of the murder itself, and he continued to hammer on the forensics of this case. And then, in cross-examination, the State would argue that he is

again hammering on the forensic of this case. What he brings up isn't -- what he hammers on isn't the fact that his client refused the GSR kit. He -- he brings up the fact that his client refused the GSR kit after it would have mattered. They didn't -- they didn't try to get a GSR kit within the six-hour window where the GSR kit would have been usable in trial or been usable by an expert. They -- they tried to get it after twelve hours. So he's hammering the officer on the fact that even if he had -- even if he had given a GSR kit, it wouldn't have mattered, because you failed to do your job again; you failed to get more -- you failed to get the one piece of forensic evidence you -- you could have gotten, because you told him that it was only applicable in a six-hour window, and you asked double the window.

So I think it's more of a trial strategy argument at this point where, again, without -- without Mr. Beech allowing that argument in, he's not able to -- to pound law enforcement on the fact that they failed to do it as it should have been done, which was his main argument throughout the trial.

And just to kind of clarify again, in *State v. Gant*, Gant is actually reversing a PCR judge, who granted PCR based on Simmons. So PCR -- PCR judge granted PCR based on the Simmons case, and they turned around and reversed that PCR judge because of lack of prejudice.

And then kind of going back to Simmons --

THE COURT: Well, what do you think about when you read the closing argument? Do you think that's prejudicial for him to say that this is the reason why we know he's guilty is because he refused the GSR and refused the search?

MR. NEELY: Well, I don't think that's what he's -- I don't think that's exactly what he's saying.

THE COURT: Well, that's what it means.

MR. NEELY: Well, I mean, as a part and parcel of a much larger argument. It was only mentioned once -- once in closing, and that's because it was only part and parcel of the entire picture. The -- the State's real case was the fact that the applicant gave five different statements, the first four of which were all fairly innocuous: I was at home when that -- I was home that day; I was home the entire day; I went to the barber that day; I did this that day. Just very, very innocuous statements; I don't know anything about it. And then the fifth statement that he gave was a four-hour long, audio/video interview. And in that four-hour long audio and video, the statement that he gave to law enforcement was that he was at home with his grandfather, four men in jump suits with masks on and black face on under the masks came in, and they were speaking in I believe he -- I can't remember the exact words he used, but they were -- they were trying to sound like -- I think the -- in the interview, the applicants describes them as white men trying to sound like black men.

And then these -- these masked men in jump suits get in the car with him and his grandfather, and take him to a remote location, try to get his grandfather to give him -- give these jump-suited men money; take him out; shoot them [sic]; tell him not to say anything to anybody; and walk off; and he drives his car home. And that -- that's the final statement that he gives to law enforcement. And that is -- he places himself at the scene of the murder, witnessing the murder, with this very incredibly ludicrous story. And that was -- that was the main thrust of the argument. And then he combined that with the fact that the gun that was used for the murder went missing from his co-worker. His co-worker had a shift in the morning, and then -- I'm sorry, I got that wrong. Yeah, co-worker had a shift in the morning, and the applicant had a shift, I believe, directly following, and that was the discrepancy when the gun went missing. So the shifts lined up, with the gun going missing and him put the co-worker leaving and the defendant coming in. The gun went missing from his work place, and that was the gun that was used to murder his grandfather.

And then, after the murder of the grandfather, the defendant used funds in the grandfather's bank account to pay for his bills. And so, the ludicrousness of the story is -- is definitely, like, the main thrust of the argument. He gave four innocuous statements that were all lies. And then all four of those statements, the State called in witnesses to

disprove them. And so, each one of the statements, they called in the barber; they called in these people; they called in people that saw him driving the vehicle. And in fact, the person who saw him driving the vehicle, and they were all able to testify the windows were not tinted; the only person we saw in that car was the defendant; there was no masked men; there was no people in jump suits. So all the statements that he gave were brought into the light and just shot down.

And then -- so, again, that is the thrust of the State's argument, not -- not the fact that this one mention of the GSR kit and the refusal to consent was done.

And going back to *State v. Simmons*, I just wanted to read into the record the strength of the questioning that the solicitor actually used in that case. And this is on Page 3 of 3 of *State v. Simmons*.

And the trooper wanted to search your car, and you wouldn't let him, would you?

That is right.

Because you had something to hide, didn't you?

No, I don't have nothing to hide.

The dope is right there, came out of the trunk of your car, and you wouldn't let the trooper search your car, because you didn't want him to find the dope, didn't you?

You are saying that.

I am asking you, isn't that right?

No, that is not right.

Would you tell us if it was right?

No, it is not right?

And then, in the closing argument, the solicitor argued:

We all have a right not to let someone search our car, but what reason would he have to not let him search the car, just a rental car. He said he had never went in the trunk. Why didn't he want him to search the car? Right here, folks, right here. They picked it up in Miami, and they were bringing it back home to Georgetown.

So it is hammered home that the reason that he didn't let them search that vehicle is because he knew there was -- they open that trunk. And there was no other reason that he would say no. So that was definitely brought down over and over and over again. Whereas, the State would argue that this case is much more analogous to Gant where -- it -- it might -- it was -- it was probably objectionable, and it could have been objected to, and I would also that it was objected to. And so, this would have been argued for direct appeal, because there was a *Jackson v. Denno* on Page 109 of the transcript. And in that *Jackson v. Denno*, Mr. Beech actually objects on the basis of prejudice to -- to the statement about bringing the GSR kit

and the vehicle, consent to search the vehicle, in. Go it was actually objected to on Page 109. And then it was preserved for appeal on Page 307, where -- where the judge says on -- sorry, Page 306. On Page 306, Lines 24: *Any objection? Other than subject to my prior ruling, anything additional?* And Mr. Beech says, *nothing additional, your Honor.*

So my understanding of that -- and this is -- this is whenever they're talking about the GSR, this is -- on the same page, the solicitor asked the question about the GSR kit and the voluntary search -- or the -- the search of the vehicle that was not -- the defendant did not allow. The objection is renewed on that same page. So my argument -- my first argument would be this is not preserved to PCR, because he did all he could. He was overruled. And if the Defense at to bring this up on direct appeal, they could have. They thought their best issue --

THE COURT: Was there a direct appeal filed in this case?

MR. NEELY: There was. And in the direct appeal, the defense decided to focus their -- the main gist argument on the fact that it should have been a directed verdict; there was not enough circumstantial evidence. And that is certainly their right. And there is case law that says it is common practice for a -- an appellate attorney to focus on the issues they think they have the best chance on, and then use that as their main argument. And there is nothing wrong with that, and

that's been found many times. You don't need to bring up every single possible argument you have on direct appeal; you bring your best argument. And that was the argument they made was that it was not enough circumstantial evidence, but it was preserved for appeal in this case.

And so, I think there's two ways you can look at Mr. Beech's cross-examination. And the first way, as -- as I've already mentioned, I believe prior, was that he was using it as a sword to hammer home, again, where the law enforcement failed to find forensic evidence against his client.

And then, secondly, he would be -- he could be doing as Mr. Shaffer said, where he had objected in the *Jackson v. Denno*, had it -- had it renewed, and thought I just need to mitigate this damage as best I can. So, I mean, it could have -- we don't know; he can't testify; but it could have been either or. And I think both are valid arguments to make in this case.

And then kind of going back to Gant, as your Honor did, and kind of walked down the elements, whether the reference the accused exercised his constitutional right was a single reference. One question from the solicitor, one mention in cross-exam -- in the closing argument, and that was -- that was found to be a single -- for Gant's purposes, that was one single reference. So we have one single reference where the State tied the exercise of this right directly to accused

exculpatory account. I don't think we have that. I don't think he's tying it exculpatory account.

The State hammers home a number of times on the exculpatory account, or lack thereof, that -- that the defendant gave, and it's all throughout that closing argument. However, in that paragraph that he mentions, you know, the GSR kit and the -- and the lack of consent for the vehicle search, it gets mentioned as one of many factors.

And then, third element, whether the accused exculpatory account was totally implausible, in this case, we have that in spades. We have five accounts, all of which were disproven by the State through various witnesses and through common sense. The fact that he gives -- I think the solicitor, in his closing argument, said that four Ninja warriors descended upon his house, took him and his grandfather captive, and then murdered him in the night, and then went -- and then disappeared into the forest. It is not -- it is not an account -- it's an account that stretched the bounds of good believability, and an account that was disproven by a witness that saw him driving to the location without any of these -- these jump-suited men in his vehicle.

And then whether the evidence of guilt was overwhelming. It -- I think I do -- and I do agree with Mr. Shaffer in this case that the -- there's not a overwhelming evidence of guilt in that we don't have DNA and we don't have -- again, referring

to the case on -- on Monday where we have fifteen baggies of DNA, crack cocaine in a bag, crack cocaine in a dresser, his I.D. lying with the crack cocaine. We don't have all this evidence that it makes you throw up your hands and say, why are we here, he's obviously guilty. What we do have is him placing himself on the scene with -- and then ridiculous stories trying to back out.

And something I don't think I've mentioned is that, that four-hour long interview with the ridiculous story, placing himself at the murder scene didn't happen until after he had received discovery and seen that the State had disproven all his other exculpatory accounts, had interviewed the barber, had interviewed the people he said he was with, interviewed all the alibis and determined them to be false. So then, he comes up with this -- this new story and tries to divulge to law enforcement and try to explain away what he had said earlier.

Something else that I -- one other thing I wanted to mention, and I'll be brief, is that in this kind of case, normally, the main issue is that the defendant's silence is not something you want to use against him. Silence is not a sword for the State. In this case, the defense -- the defense's main problem was that their client wouldn't shut up. He couldn't stop talking to law enforcement. He kept talking to law enforcement over and over and over and over and over again, giving vast statements about what he did and what he didn't do,

and they were all disproven. So, in this case, it was not somebody that was -- that was just clamming down and saying I'm not going to give you anything; you have to prove your case. He was giving them all the -- all this information and this all was disproven to be misinformation. So this is not a case where it's a silence of the defendant being used as a sword against him.

THE COURT: Anything further?

MR. SHAFFER: Yes, your Honor, I have a couple of things, but may I ask the Attorney General to point out what he's saying was preserved or where the objection was raised in the *Jackson v. Denno* hearing?

MR. NEELY: It's Page 113, Line 4, of the *Jackson v. Denno* hearing, where Mr. Beech says, after the *Jackson v. Denno* hearing is included in it, all the testimony has been taken, we would object to the introduction of this because it is exculpatory and because it's prejudicial. And the Court finds on Page 114, I see, well, that objection is respectfully overruled, Mr. Beech.

And then, on Page 307, Line 24, on the same page where the solicitor asks his one question about the GSR and the vehicle consent search, the Court says: *Any objection? Other than subject to my prior ruling, anything additional?* And Mr. Beech says, on Page 307, Line 1: *Nothing additional, your Honor.*

So, to me, that is an objection being raised on prejudice grounds in *Jackson v. Denno* hearing, and then that objection being overruled, and then it's preserved on -- in the record on -- during the trial.

THE COURT: You think that is the GSR and the search?

MR. NEELY: I mean, it was -- it was one question. And in the *Jackson v. Denno*, they both came up. So, to me -- to me -- to me, they're inextricably linked. They're always mentioned together. So, really, this is not really -- I realize that --

THE COURT: So, to answer that, I suppose you think it's both?

MR. NEELY: Yes, sir, your Honor, I think it's both.

THE COURT: All right.

MR. SHAFFER: Your Honor, going to this, right whenever they asked of there's any objection, other than subject to my prior ruling, they admit the -- the tape -- the statement from the *Jackson v. Denno*. Your Honor, the -- what he's referring to -- the trial judge if referring to -- and I -- I can say that this is -- with confidence, that what he's referring to is the *Jackson v. Denno*, the actual statement that was objected to prior to it. There is no way that that is properly preserved. The -- there is no way that his *Fourth Amendment* right was properly preserved by that statement, by those two statements. Nowhere does he ever say, I'm objecting to this on

constitutional grounds. Nowhere in this does he ever even say, I'm objecting specifically to the GSR separate than the *Jack* --

THE COURT: *Jackson v. Denno* is a constitutional grounds.

MR. SHAFFER: And your Honor, that's correct, but a *Jackson v. Denno* hearing is only dealing with voluntariness of his statement, not -- not --

THE COURT: What you said, he wasn't objecting on constitutional grounds.

MR. SHAFFER: And I apologize, your Honor. I think it's pretty clear that from a fair reading of both sections, that -- what -- what's happened here is Mr. Beech did a *Jackson v. Denno* motion, and wanted to exclude his statement. The Judge said, any objection other than my prior -- subject to my prior ruling. And then allowed the State to admit his statement, that the judge previously found was not improper. He's not making a specifically objection.

Your Honor, I certainly don't read it that way, otherwise, I would have alleged ineffective assistance of appellate counsel. I think that that is -- there is absolutely no reason that you would ever not raise that issue if it was property preserved, but I can't tell where that's properly preserved from reading it, even after he pointed out to me, and I still can't tell that it's properly preserved.

What he would have to do is properly preserve is fairly asked the judge, make objection to the GSR, make objection to

the search, ask the judge to make a ruling on it, and then renew his objection whenever it came up. It didn't that's not what happened. He said -- the judge asked, hey, I'm going to admit that -- or when they were about to admit the tape, do you -- other than the subject of my prior ruling, the *Jackson v. Denno* ruling, do you have any other objection. No, there was no other objection. That's not what -- that's not preserved. I don't think that any responsible appellate attorney would ever be able to say, hey, I'm going to raise that issue because it's properly preserved. It's not, your Honor.

I think that there is plenty of cases out there. I'm happy to supply the Court with some, if you'd like me to, where they say you can't raise an issue -- you can't object to something down the road, and then argue something different on appeal. Okay? He's arguing prejudice. Even if you assume that they're talking about the GSR and the search of the car, he's arguing prejudice. How is that appellate attorney going to make a *Fourth Amendment* off of that? You're not. I don't think that that has any bearing in this case, that -- that objection.

And there was some comment about a sword versus a shield, and some of that came from *Fourth Amendment* case law. *Fourth Amendment* case law, for example, there's a case called McNatt that basically says that you can't use -- the defendant can't -- can't use it as a sword versus a shield. What he -- what

that case -- the facts of that case involve a traffic search, a traffic stop, where they said that, no, you can't search my car. They end up doing a inventory search. They find drugs in it. It's not, oh, they just found drugs in it, it must be his. In that case, they actually -- which is what Simmons was. In this case, they actually -- in McNatt, the defendant actually goes further than that and says, no, you planted the drugs on me, and that was his defense is you planted those drugs on -- in that car. Well, how can you say, you planted the drugs in the car if he didn't allow them to search on the roadside in front of, you know, the camera. That is using it as a sword and not a shield. This is a different situation. He said -- he invoked his right not to search the car. He invoked his right not to do a GSR. It doesn't open the door into it merely because he's saying, no, I'm not guilty or no, I'm not, you know, the State's evidence is not sufficient. That's not opening the door into it, because it's not directly related to the GSR or the search of the car.

Your Honor, I think that Simmons certainly is controlling here. I think that for finding deficient performance, obviously, Gant is controlling. But the Court needs to look at the statement made in Gant, which was, he didn't want to cooperate and he knew his rights. That's very different than saying his argument's no good because of the fact he refused to -- refused a search. That's a very different use of those --

that piece of evidence, your Honor. And I ask that the Court please grant PCR.

THE COURT: I'm going to ask both of you all to prepare a detailed order, a proposed order, and I'll -- I'll review both of those and give this consideration and review the transcripts for it.

MR. SHAFFER: And your Honor, may I -- your Honor, may -- something just came up. My client just pointed out something to me. He has a letter from Bob Dudek saying it wasn't preserved and that's why he didn't raise it. I would like to ask to leave the record open so I could get a affidavit from Bob Dudek, confirming that this was his letter saying I didn't raise this. *See 'Simmons v. State'; I didn't raise this because it wasn't preserved.*

I -- I have no reason to doubt that this is Bob Dudek's. It looks like his signature.

THE COURT: Well, ask him if he'll agree to it.

OFF-THE-RECORD DISCUSSION BETWEEN MR. SHAFFER AND MR. NEELY.

MR. NEELY: Your Honor, I would object, just to the fact if that's an argument we're going to make here, in the amended application I received, there was no allegation that appellate consent made a mistake here, and there's no PCR application against appellate counsel. I wasn't prepared to argue that appellate counsel made a mistake. I do think that's what

they're going forward on. And my understanding is that if they don't allege and argue with and give me some notice with specificity, that that ground is lost. And so, I -- I --

What I'm asserting is that they're trying to raise a new ground at this date and time, at the end of PCR hearing, so the State would object on that ground.

MR. SHAFFER: Your Honor, I'm not trying to raise a new ground. He brought it up. I -- I didn't think it was preserved by reading it. That's the reason I asked him to point out the specific facts. He brought up, oh, it's an appeal issue, it's already been raised.

THE COURT: Well, really and truly, what Dudek had to say about it is really not determinative either, is it?

MR. SHAFFER: No, your Honor, I don't think it necessarily would matter. I don't think it's -- obviously, it's your decision to make whether or not it was preserved or not.

THE COURT: Ultimately, the appellate entities in Columbia.

MR. SHAFFER: Yes, your Honor. And I -- I could -- and -- and your -- your Honor, you're -- you're correct. It's a question of law, not of fact, so it doesn't really matter for --

THE COURT: It doesn't really doesn't matter, I don't think. All right. So I'm going to ask that you all prepared

proposed orders. How much time do you all need to do that?

MR. NEELY: Your Honor, I mean, I think the normal is to ask for thirty days.

THE COURT: All right.

MR. SHAFFER: That's good.

THE COURT: All right. And we'll stand at ease with regard to this particular case. And I'll receive those within the next thirty days.

MR. NEELY: Thank you, your Honor.

MR. SHAFFER: Thank you, your Honor.

END PROCEEDING 12:39 P.M.

CERTIFICATE OF REPORTER

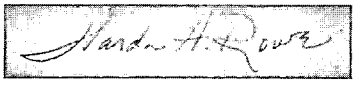
OCTOBER 18, 2016 POST-CONVICTION RELIEF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I hereby certify that the foregoing October 18, 2016 Post-conviction Relief Hearing was taken by and before me and at the time and place set forth; that the foregoing is a true and accurate record of the proceeding had, with the exception of any time the word *inaudible* is inserted, as Judge Nettles instructed me not to interrupt the proceedings to ask for clarification, even if I could not hear what was being said; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

Witness my signature July 6, 2019.



Wanda H. Rowe
Post Office Box 146
Beaufort SC 29901-0146
843-415-8565

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Andre Richardson, #356692 Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-15-0442 **ORDER OF DISMISSAL**

PATRICIA C. HEARD
COLLETON COUNTY
COMMON PLEAS
2016 DEC 30 AM 8:45

This Court convened an evidentiary hearing into the matter on October 18, 2016, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Harris Beach, Esquire (hereinafter "trial counsel") is deceased. No testimony was elicited. Legal arguments were heard based on the trial transcript. The Court had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Applicant was indicted at the June 2009 term of the Colleton County Grand Jury for financial identity fraud (2009-GS-15-0116) and murder (2009-GS-15-0129). Applicant was represented by trial counsel.

Applicant proceeded to trial and was convicted. On September 2, 2009, Applicant was sentenced by the Honorable Perry M. Buckner to life imprisonment for murder and a concurrent sentence of five years for financial identity fraud.

Applicant filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the Office of Appellate Defense. Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Richardson, No. 2013-UP-223 (S.C. Ct. App. May 22, 2013). The Remittitur was issued on June 14, 2013.

II. ALLEGATIONS

On October 18, 2016, at the evidentiary hearing, Applicant amended his application to move forward on two legal grounds:

1. Counsel was ineffective for failing to move to suppress Applicant's refusal to consent to search his car. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights.
2. Counsel was ineffective for failing to move to suppress Defendant's refusal to consent to a GSR test. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court reviewed the record in its entirety and heard the arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's

performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S.at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

Applicant alleges trial counsel's performance was below the standard of reasonableness under the prevailing standards of the profession for failing to object to a question and a closing argument by the solicitor regarding the Applicant's failure to consent to a gun-shot residue (hereinafter "GSR") kit or a search of his vehicle.

Applicant alleges the purported deficiencies prejudiced him and resulted in an unfair trial. The Court finds Applicant was not prejudiced by trial counsel's lack of objection. Applicant failed to meet his burden to prove prejudice sufficient to undermine confidence in the result of the trial for constitutional concerns raised in Doyle v. Ohio, 426 U.S. 610, 96 S. Ct. 2240, 49 L.Ed. 2d 91 (1976) as applied by Gantt v. State, 354 S.C. 183, 80 S.E.2d 133 (2003). The Court in Gantt applied the Doyle factor analysis to a non-Doyle set of facts. Therefore, this analysis will be referred to as a Gantt analysis hereafter. This Court begins with a strong presumption trial

counsel made all significant decisions in the exercise of reasonable professional judgment. Applicant has not overcome this presumption. This Court finds it can be reasonably inferred from the transcript that trial counsel chose not to object to the Gantt violation in order to cross-examine law enforcement on their failure to obtain forensic evidence, consistent with his prior attacks on the evidence of the case. Therefore, this Court finds trial counsel was not deficient. This Court also finds Applicant was not prejudiced by the actions of trial counsel.

A. **Trial counsel was ineffective for failing to suppress Applicant's refusal to consent to a search of his vehicle and refusal to consent to a GSR test. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights.**

The grounds alleged by Applicant are ineffective assistance of trial counsel for failing to suppress testimony concerning Applicant's refusal to consent to a search of his vehicle and refusal to consent to a GSR kit examination. The Court finds these grounds are both related to trial counsel's failure to object to Gantt violations in direct testimony taken at trial and during the solicitor's closing argument. The alleged violations occur at the same time and involve the same subject matter. Therefore, the Court will handle both allegations as one issue.

At the evidentiary hearing, Respondent conceded there was a potential Gantt violation. Respondent argued trial counsel's lack of objection was a strategic decision not to object to the Gantt violation. Respondent argued this was a reasonable trial strategy and consistent with trial counsel's theme throughout the trial; law enforcement failed to obtain any forensic evidence. Respondent also argued if trial counsel was deficient there was no prejudice. Thus, trial counsel's failure to properly object and preserve the issue for appeal[1] would be excused.

[1] During the evidentiary hearing, Respondent argued trial counsel properly preserved the issue for appeal. Ineffectiveness of appellate counsel was not alleged.

1. Trial counsel's performance was not deficient.

This Court finds trial counsel's lack of objection to the Gantt violation was a decision, not a mistake. Trial counsel is deceased and, therefore, unable to testify in his own defense. The Court strongly presumes trial counsel's decisions were reasonably made. When trial counsel cannot be present to defend their strategy, all articulable arguments, which can be inferred from the transcript as trial strategy, can be argued in favor of competence. "A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't to have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record." Wood v. Allen, 558 U.S. 290, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010). Strickland itself recites that there are countless ways to provide effective assistance and even the best lawyers would not defend a particular client in the same way. 466 U.S. at 689. When counsel focuses on some issues to the exclusion of others, there is a strong presumption of doing so for tactical reasons rather than sheer neglect, Yarborough v. Gentry, 540 U.S. 1, 8, 124 S.Ct. 1,5, 157 L.Ed.2d 1 (2003).

In the transcript, trial counsel's cross-examination and closing argument show his strategy was to attack the State's lack of direct evidence. The State had no direct evidence to convict Applicant. On cross-examination, trial counsel pinned this lack of evidence on the failure of law enforcement to obtain it. "[A]ny attempt to attain any fingerprints or anything like that from the house? Any forensic evidence from the house that would bear on this statement?" App. p.340. In closing argument, trial counsel argued the lack of evidence failed to overcome the State's burden of guilt beyond a reasonable doubt. "[Y]ou have to have something to convict somebody of murder. You have to have real evidence, not that circumstantial evidence isn't real evidence, but you have to have evidence that adds up to he did it beyond a reasonable doubt. Most cases are a lot simpler. Most cases you've got somebody pointing at him saying he did it or

you've got a big old pile of forensic evidence, fingerprints, DNA, and all this stuff that you see on CSI and programs like that that point to that person. You don't have that here."

Trial counsel cross-examined Detective Allen Inabinett on Applicant's refusal to consent to a GSR kit. During cross-examination, trial counsel exposed the fact for the GSR kit to be accurate it must be completed within six hours of the gunshot. Law enforcement did not attempt to obtain the GSR kit from Applicant until more than eleven hours after the gunshot. Thus, the test would have been inconclusive and of no evidentiary value.

> Q: I believe you said you had offered a gunshot residue test to the defendant and he had refused to take it?
>
> A: I did. That was the night of 10-27-08.
>
> Q: And about what time was that?
>
> A: Between 11:45 and then midnight to the early morning hours of 10-28-08.
>
> Q: And what time did the, to the best of your knowledge, did this shooting occur?
>
> A: We had an approximate timeframe of 12:50 p.m. Well, let me back up, between 12:30 and 12:50 pm, approximately, on the afternoon of 10-27-08.
>
> Q: Isn't it true that gunshot residue dissipates after about six hours?
>
> A: That's approximately correct. Yes, about six hours.

App. p.328-329.

The testimony elicited by trial counsel was not available without opening the door for the State to question the witness about Applicant's lack of consent. It can be reasonably inferred from the transcript, trial counsel made the strategic decision to use Applicant's refusal to consent to show law enforcement failed to obtain any forensic evidence. App. p.342. Applicant's refusal of the GSR kit was of no evidentiary value because of its inherent faultiness due to the time

frame. Applicant's refusal to consent to a vehicle search was cured by law enforcement processing his vehicle numerous times without any evidence being found. The Court finds Applicant's silence was used by trial counsel as a shield to defend his client. The Court finds Applicant has failed to prove the strategy was unreasonable.

2. Applicant failed to show trial counsel was deficient.

There are factors enumerated by Gantt to determine whether a trial counsel's failure to object to a Gantt violation results in prejudice:

> An applicant for PCR, however, must show prejudice from counsel's deficient performance. *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002). When a *Doyle* violation has occurred, as alleged here, we will consider the following factors in determining prejudice on PCR: 1) whether the reference to the accused's exercise of his constitutional right was a single reference; 2) whether the State tied the exercise of this right directly to the accused's exculpatory account; 3) whether the accused's exculpatory account was totally implausible; and 4) whether the evidence of guilt was overwhelming.

i. Whether the reference to the accused's exercise of his constitutional right was a single reference.

In Gantt, the Court stated, "The reference to respondent's refusal to comply with the search warrant, however, was only a single reference and not tied to respondent's guilt." The 'single reference' Gantt refers to is a question by the solicitor on direct, "What was [respondent's] response to you in the request for these samples? That he did not want to do it? Did he refuse? Yes, sir." Id. And a mention of the defendant's refusal to consent in closing arguments, "[T]he solicitor referred once to respondent's refusal in the context of "he knew his rights" when police arrived with the search warrant." Id. Based on these facts, the court in Gantt overturned the lower court's granting of post-conviction relief because Applicant failed to show a reasonable probability that the result of the trial would be different, but for trial counsel's error.

In the instant case, there is a question regarding Applicant's refusal by the solicitor on direct, "[H]e refused to give a GSR kit and he also refused consent to search his vehicle; is that right? That is correct." App. p.306. And a mention of the Applicant's refusal in closing arguments, "[W]ho refused a gunshot residue test, and refused consent to search their vehicle, who also happened to be kidnapped by these four people." App. p.402. The other two mentions of Applicant's failure to consent in the transcript are responses to questions asked by trial counsel. Trial counsel was able to show the GSR kit would have been unreliable and Applicant's vehicle was searched; no forensic evidence was found. The dialogue concerning Applicant's exercise of his constitutional rights in this case closely resembles the dialogue in Gantt. The Court finds, as in Gantt, there is a 'single reference' by the State.

ii. Whether the State tied the exercise of this right directly to the accused's exculpatory account.

In State v. Simmons 308 S.C. 481, 483, 419 S.E.2d 225, 226 (1992), the solicitor argued in closing, "[W]hat reason would he have not to let him search the car? Just a rental car. He said he had never went in the trunk. Why didn't he want him to search the car? Right here, folks, right here. They picked it (cocaine) up in Miami and they were bringing it back home to Georgetown." This argument amounted to an unconstitutional comment on the accused's exercise of a constitutional right because it correlated the accused's silence with a guilty conscious and implied knowledge of drugs found via a search. Id. Unlike Simmons, the solicitor did not present the lack of consent as evidence of knowledge or guilt. Instead, he mentioned the lack of consent in concert with other voluntarily statements Applicant presented to law enforcement. Doyle and Simmons are primarily concerned with the accused's constitutional silence being used as a sword against him. In this case, Applicant's constant dialogue with law enforcement encompassed a large part of the circumstantial evidence against him.

iii. Whether the accused's exculpatory account was totally implausible.

Applicant's exculpatory accounts were totally implausible. Applicant's first story to law enforcement was a complete lack of knowledge of the incident in question. After that first account, he gave various other accounts. His last account was a four (4) hour-long video testimony. The account he gave to law enforcement was four (4) men in jump suits, with masks, and black make-up, who sounded like white men trying to sound like black men, kidnapped Applicant and the victim. According to Applicant's account, these men in jumpsuits attempted to take himself and the victim to the bank, but headed the opposite way out of town. They then drove Applicant and the victim to a remote location in the woods. They attempted to convince the victim to give them money. When the victim refused, they shot and killed him. However, the victim was also found with $139 in his pocket along with an expensive watch. They warned Applicant, the only eyewitness, not to tell anyone and then let him go. Applicant proceeded to get his hair cut and over the next few months used the victim's credit card to pay his bills. This story, and each of Applicant's prior stories, was refuted by a witness. A witness testified that he had seen Applicant's distinctive car, which he knew by sight, driving toward the location where the victim's body was found. He also testified there were no other people, jumpsuits on or otherwise, in the vehicle with Applicant. A large portion of the solicitor's closing argument centered on the ridiculousness of the defendant's final account to law enforcement.

iv. Whether the evidence of guilt was overwhelming.

Applicant gave multiple statements to law enforcement, all of which were disproven by witnesses. Applicant originally disclaimed all knowledge and said he was at home. Applicant then changed his story to being at a barber shop at the time of the incident. Applicant's final four-hour-long videotaped story to law enforcement was intrinsically implausible. Applicant

placed himself in the own with the victim the day of the murder. Applicant then placed himself at the murder scene later that day. Applicant used the victim's credit card multiple times after the victim's death. Applicant had access and ample opportunity to steal the murder weapon, a firearm, from a coworker. The coworker had a work shift following Applicant's own shift the day the firearm went missing. There is no reasonable explanation, by which all these factors can be explained, other than Applicant's guilt. The only reasonable explanation is that Applicant committed the murder and told successive lies to cover it up. Therefore, the evidence of Applicant's guilt is overwhelming.

The Court finds that Applicant failed to meet the four elements of the Gantt analysis. The Court finds, as in Gantt, the reference by the solicitor was a single reference. One mention in direct and one in closing argument. The Court finds the State did not tie the Applicant's exercise of his right directly to his exculpatory account. Unlike in Simmons, the State never accused Applicant of hiding something or imputed guilty knowledge. The Court finds the exculpatory account Applicant gave to law enforcement was completely implausible. The State's key argument in the case revolved not around the Applicant's silence, but his voluminous implausible testimony. The overwhelming evidence in this case defies any outcome other than a verdict of guilty for murder. These factors taken together preclude any potential prejudice Applicant could have incurred and the Court so finds.

The four elements of Gantt were unable to be met by Applicant. Therefore, the Court finds Applicant failed to establish prejudice based on trial counsel's failure to object to the Gantt violation.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the 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.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of December, 2016.

THE HONORABLE MICHAEL G. NETTLES
Presiding Judge

Florence, South Carolina

FORM 5 17-CP-15-383

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Colleton)

Full name and prison number (if any) of Applicant.
Andre T. Richardson II
v. #336692

State of South Carolina

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.

PATRICIA C. HILL
COLLETON COUNTY
COMMON PLEAS
2017 MAY 17 AM 10:23

1. Place of detention Lieber Correctional Inst.
2. Name and location of Court which imposed sentence Colleton County
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) 2009-GS-15-0116 (financial Identity fraud)
   (b) 2009-GS01500129 (murder)
   (c) ____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) 9/2/09 (5 years) concurrent
   (b) 9/2/09 (35 years) concurrent

...ed 4/2003

(c) ____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ____

(b) after a plea of not guilty V Trial by Jury

(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. Affirmed Convictions And Sentences

ii. ____

iii. ____

(c) the date of each such result:

i. 5/13/13

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: My Attorney first P.C.R. Attorney failed to file An Appeal.

(a) ____

(b) ____

(c) ____

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

(a) My Attorney HAS Stated He fAiled to file AN

(b) ____Appeal of my first P.C.R.

(c) ____

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

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

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

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

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

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

(a) the specific nature thereof:

i. ____

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) first time filing

(b) ____

(c) ____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ____

(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? No

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. Harris Beach / Colleton County Public Defender

ii. "Same" As Above"

iii. Robert Dudek / South Carolina Appellate Defense

(b) the proceedings at which each such attorney represented you:

i. Trial And Sentence

ii. Same As Above

iii. Direct Appeal

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

Belated Appeal of 2013-CP-15-0442 Pursuant to Austin V. State

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

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of)

I, , 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.

Hubert Richardson

SWORN to and subscribed before me this 5th day of May, 2017.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

CAROLINA W. GRAY
COLLETON COUNTY
COMMON PLEAS
2017 MAY 17 AM 10: 23

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

I, , 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.

Andre Richardson
Applicant

SWORN or affirmed to and subscribed before me this 5th day of May, 2017.

Ludreen Bryant
Notary Public

My Commission Expires: May 26, 2026

2017 MAY 17 AM 10:23
COMMON PLEAS
COLLETON COUNTY

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	COURT OF COMMON PLEAS FOR THE 14th JUDICIAL CIRCUIT Case No.: 2017-CP-15-00383
Andre T. Richardson, #336692, Applicant, v. State of South Carolina.	AMENDED POST-CONVICTION RELIEF APPLICATION

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on May 17, 2017 to add the following:

1. Ineffective Assistance of PCR Counsel – Counsel failed to raise in the first PCR ineffective assistance of appellate counsel in that the malice instructions allowing for inference of malice by the use of a deadly weapon (ROA p. 428, lines 8-14) given by the Court were no longer good law in South Carolina as of October 12, 2009, approximately one month after the Applicant's trial, when the opinion of State v. Belcher, 385 SC 597 (2009), was released.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

November 27, 2018

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Christian A. Saville
Assistant Attorney General
csaville@scag.gov

This 27th Day of November, 2018.

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	
Andre Taft Richardson, II, #336692,	)	Case No.: 2017-CP-15-0383
	)	
Applicant,	)	
	)	**RETURN (Austin Review)**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on May 17, 2017, would respectfully show this Court:

I.

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The June 2009 term of the Colleton County Grand Jury indicted Applicant for murder (2009-GS-15-0129) and financial identity fraud (2009-GS-15-0116). The charge resulted from an October 2008 incident in which Applicant killed his grandfather by shooting him ten times with a 9mm handgun and left him to die on the side of a road. Tr. p. 153, ll. 1-4. Applicant's distinctive white Mustang with black tinted windows, racing stripe, and spoiler was seen multiple times driving back and forth in the area that morning, and Applicant gave several conflicting versions of events to law enforcement. Tr. p. 153, ll. 5-12. Less than a month later, Applicant stole money from his deceased grandfather's checking account on November 20, 2008. Tr. p. 153, ll. 12-14.

Harris S. Beach, Esquire, represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case. On September 1, 2009, Applicant proceeded to a jury trial before the Honorable

Perry M. Buckner, III. Applicant was found guilty as indicted of murder and financial identity fraud. On September 2, 2009, Judge Buckner sentenced the Applicant to confinement for thirty-five years for murder and five years for financial identity fraud, to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Dudek perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue:

> Did the circuit court err in denying Richardson's motion for a directed verdict on his murder charge in light of State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, Op. No. 27084 (S.C. Sup. Ct. filed Dec. 28, 2011) (Shearouse Adv. Sh. No. 46 at 87)?

Briefs were subsequently filed pursuant to the order. The South Carolina Court of Appeals affirmed Applicant's convictions on May 22, 2013. State v. Richardson, Op. No. 2013-UP-223 (Ct. App. 2013). The remittitur was issued on June 14, 2013.

2013-CP-15-0442

Applicant filed his first application for post-conviction relief on June 6, 2013, and later amended his application to include the following allegations:

1. Ineffective Assistance of Trial Counsel
    a. "Failing to move to suppress Applicant's refusal to consent to search his car. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights."
    b. Failing to move to suppress Applicant's refusal to consent to a GSR test. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights."

An evidentiary hearing into the matter was convened on October 18, 2016, at the Beaufort County Courthouse before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Ruston W. Neely

represented Respondent. Judge Nettles denied and dismissed Applicant's application with prejudice by an order of dismissal signed December 20, 2016, and filed December 30, 2016.

II.

In his second and current application for post-conviction relief, Applicant raises the following allegations:

1. "My first PCR attorney failed to file an appeal."
   a. "My attorney has stated he failed to file an appeal of my first PCR."

Attached to this Return and incorporated by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, appellate records, and the records from Applicant's previous post-conviction relief action. Applicant's records from the South Carolina Department of Corrections will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent lacks sufficient information to admit or deny this allegation. Respondent therefore requests an evidentiary hearing limited to this ground for relief.

IV.

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

V.

WHEREFORE, Respondent requests that an evidentiary hearing be held limited to Applicant's claim that he was denied his right to appeal the dismissal of his PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

11/5, 2018

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	IN THE COURT OF COMMON PLEAS 2017-CP-15-383
ANDRE T. RICHARDSON, II, #336692, Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	AFFIDAVIT OF SERVICE BY MAIL

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 (Austin Review)** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
Mac | Vance Attorneys, LLC
Post Office Box 5501
West Columbia, South Carolina 29169

DATED this the 6th day of November, 2018.

Caroline Collins, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	)	**2017-CP-07-00383**
Andre T. Richardson,	)	
Plaintiff,	)	
Vs	)	**Transcript of Record**
State of South Carolina,	)	**December 6, 2018**
Defendant.	)	

B E F O R E:

The Honorable Jennifer McCoy
Beaufort County Courthouse
Beaufort, South Carolina

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

Ashley McMahan, Esquire
Attorney for Plaintiff

Christian Saville, Esquire
Attorney for

Sallie Beth Todd
Circuit Court Reporter

INDEX

EXHIBITS

THE COURT: I've received in my hand an Amended Post

Conviction Relief Application filed on behalf of Andre T. Richardson. Is that your name, sir?

MR. RICHARDSON: Yes, ma'am.

THE COURT: You're Mr. Richardson, good morning.

MR. RICHARDSON: Good morning.

THE COURT: You can have a seat. You don't need to stand. I appreciate it though, but you can stay seated.

Alright, Mr. Richardson, we're here today for your PCR hearing. Is that your understanding as well?

MR. RICHARDSON: Yes, ma'am.

THE COURT: You're are represented today by Ms. McMahan.

MR. RICHARDSON: Yes, ma'am.

THE COURT: Okay. Ms. McMahan, I'll be happy to hear from you.

MS. MCMAHAN: Yes, Your Honor, Mr. Richardson, I believe -- let me back up. Mr. Saville's done a good job in the Return addressing the procedural issues in the situation. Mr. Richardson did have a prior PCR; I believe it was back in 2013 and for whatever reason Mr. Shaffer did not file an appeal for that. So, regarding that issue we will call Mr. Richardson to the stand at this time.

THE COURT: Okay.

MR. RICHARDSON, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: Alright, if you'll come around here, sir, and

sit in this box in the seat right by me, okay.

DIRECT EXAMINATION OF MR. RICHARDSON BY MS. MCMAHAN:

Q: Would you state your name for the record, please?

A: Andre Richardson.

Q: Mr. Richardson, did you file this PCR application?

A: Yes, ma'am.

Q: And did you have a prior PCR?

A: Yes, ma'am.

Q: And who represented you in that PCR?

A: Mr. Shaffer.

Q: What was -- do you remember his first name?

A: Tristan.

Q: Okay. I'm going to show you -- I haven't marked it yet, but I'm going to show you this. Do you -- can you identify that for me?

A: Yes, ma'am. That's a letter that Mr. Shaffer sent me.

Q: What -- regarding what?

A: In regards to how to file my PCR.

Q: This PCR that we're here today on?

A: Yes, ma'am.

Q: And what's the main issue today in your PCR? Is it that you -- he never appealed your first one?

A: Yes.

Q: Okay. Is this a true and accurate copy of that letter that Mr. Shaffer sent you?

A: Yes, ma'am.

MS. MCMAHAN: Your Honor, at this time I'd like to move this in as applicant's one.

MR. SAVILLE: No objection.

THE COURT: In without objection.

(PLAINTIFF'S EXHIBIT NUMBER ONE IS ADMITTED INTO EVIDENCE.)

BY MS. MCMAHAN:

Q: Is there anything else during that PCR that Mr. Shaffer didn't do that you asked him to do?

A: Umm.

Q: Any issues that you wanted him to raise that he didn't raise?

A: I wanted him to raise all of my issues.

Q: Okay, but he only went forward on the gunshot residue?

A: Yes.

Q: Okay, and the other issues that you're talking about, were those the ones that you initially wrote in your PCR application?

A: Yes, ma'am.

Q: Okay. Anything else that you want to tell the Court today about your prior PCR?

A: No, that's it.

Q: Okay, nothing further. If Mr. Saville has any questions, please answer those.

MR. SAVILLE: No questions, Your Honor.

THE COURT: Okay, you can step down, sir, and have a seat back at the table with your attorney.

MS. MCMAHAN: Your Honor, as to our amended application, you know, I fully recognize that State case law basically says you can't PCR your PCR attorney, which is Aice v. State. We felt we needed to preserve our record so to speak for any future collateral issues that may arise, which is why we put that in there. However, we do feel that if you look in the trial transcript there is a Belcher issue in the closing, in the jury instructions, I believe on page -- the record on appeal pages 427 and 428, specifically inferred malice can arise when the deed is done with a deadly weapon. That's 428 lines 8 through 9. And other than that, that's my case, Your Honor.

THE COURT: Alright, Mr. Saville. What would you like to tell me?

MR. SAVILLE: Your Honor, the State is actually prepared to consent to Austin review in this case based on what we've heard from Mr. Shaffer actually and based on Mr. Richardson's testimony. The State has no problem with him now having a belated appeal of this PCR. The State does move to dismiss any other allegations as inappropriate PCR grounds. As Ms. McMahan noted, Aice v. State and Austin v. State make it pretty clear that the only real grounds to PCR your PCR

attorney on is failure to file an appeal. So, that's -- we consent to the belated appeal, but we move to dismiss all other allegations. Thank you.

THE COURT: Ms. McMahan, anything else?

MS. MCMAHAN: No, Your Honor.

THE COURT: Alright, I'm going to ask that you each send me a proposed order on those issues which cannot be resolved by consent no later than 45 days from today's date.

MS. MCMAHAN: Your Honor, I believe Mr. Saville and I can get together and send you one order.

THE COURT: That will be great if you could.

(ADJOURNED)

Case # 2017-CP-15-0383

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBITS

Plaintiff(s) Andre T. Richardson
vs.
Defendant(s) State

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Letter from T. Shaffer dated 5/2/17	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

GEN. SESSIONS COURT
Common Pleas
2019 MAR -1 AM 8:24

Court Reporter Sibrad (Sally Beth Todd)
Trial Judge McCoy
Clerk of Court Georgia Harmon (Joseph Henson)
Date 12.6.2018

The Law Office of Tristan M. Shaffer

Litigation • Juvenile Law • Criminal Defense

May 2, 2017

Andre Richardson, II # 0036692
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC 29472

Dear Mr. Richardson,

I am writing to inform you that the Notice of Appeal on your PCR was not filed. I am not certain what caused this error because I prepared one for you.

I have been in touch with the Attorney General on your case. He will consent to a belated appeal pursuant to Austin v. State. The state will want you to file a new PCR application, but you should not have to wait on a new hearing. He has stated he would sign a consent order.

For a proper Austin PCR the following sections should have these responses.

Section 10: "My attorney first PCR attorney failed to file an appeal"
Section 11: "My attorney has stated he failed to file an appeal of my first PCR."
Section 19: "Belated appeal of 2013-CP-15-0442 pursuant to Austin v. State."

If you add anything else, they will probably move for a hearing.

I have included a PCR application. Please fill it out and send it back to the Colleton County Clerk of Court. When you receive, a copy send it to me and I will forward it to the Attorney General with a consent order for the belated appeal.

Sincerely,

Tristan M. Shaffer

[illegible] • www.shafferlaw.com

CLERK OF COURT
Common Pleas
2018 MAR -1 AM 8:24

PLAINTIFF'S EXHIBIT #1
12.06.2018

Office of the Clerk of Court

Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901-1128
(843)255-5050 Fax: (843)255-9412

Jerri Ann Roseneau
Clerk

Melissa Kilby
Judgment Administrator

February 19, 2019

The Honorable Patricia C. Grant
Colleton County Clerk of Court
P. O. Box 620
Walterboro, SC 29488-0028

Re: 2017CP1500383 Exhibit From 12/6/18 Hearing Before Judge McCoy

Dear Ms. Grant:

Enclosed please find an exhibit in the above referenced matter per the Exhibit Sheet enclosed. Please acknowledge receipt and return a copy to me. Thank you.

Sincerely,

Melissa Kilby
Judgment Administrator

COLLETON COUNTY
CIRCUIT SESSIONS COURT
Common Pleas
2019 MAR -1 AM 8:24

Received Exhibits:

Patricia C. Grant
Colleton County Clerk of Court

3/1/19
Date

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Andre Taft Richardson, #336692, Applicant, v. State of South Carolina, Respondent.	)	2017-CP-15-0383 **CONSENT ORDER GRANTING BELATED REVIEW PURSUANT TO AUSTIN V. STATE**[1]

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2017 FEB -8 AM 9:11

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 17, 2017. Applicant is represented by Ashley A. McMahan, Esquire. Respondent is represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The June 2009 term of the Colleton County Grand Jury indicted Applicant for murder (2009-GS-15-0129) and financial identity fraud (2009-GS-15-0116). Harris S. Beach, Esquire, represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case. On September 1, 2009, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III. Applicant was found guilty as indicted of murder and financial identity fraud. On September 2, 2009, Judge Buckner sentenced Applicant to confinement for thirty-five years for murder and five years for financial identity fraud, to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Dudek perfected

[1] Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue:

> Did the circuit court err in denying Richardson's motion for a directed verdict on his murder charge in light of State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, Op. No. 27084 (S.C. Sup. Ct. filed Dec. 28, 2011) (Shearouse Adv. Sh. No. 46 at 87)?

Briefs were subsequently filed pursuant to the order. The South Carolina Court of Appeals affirmed Applicant's convictions on May 22, 2013. State v. Richardson, Op. No. 2013-UP-223 (Ct. App. 2013). The remittitur was issued on June 14, 2013.

2013-CP-15-0442

Applicant filed his first application for post-conviction relief on June 6, 2013, and later amended his application to include the following allegations:

1. Ineffective Assistance of Trial Counsel
   a. "Failing to move to suppress Applicant's refusal to consent to search his car. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights."
   b. Failing to move to suppress Applicant's refusal to consent to a GSR test. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights."

An evidentiary hearing into the matter was convened on October 18, 2016, at the Beaufort County Courthouse before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Ruston W. Neely represented Respondent. Judge Nettles denied and dismissed Applicant's application with prejudice by an order of dismissal signed December 20, 2016, and filed December 30, 2016.

II. ALLEGATIONS

In his second and current PCR application, Applicant alleges he is being held in custody

unlawfully for the following reasons:

1. "My attorney failed to timely appeal the order of dismissal from my PCR hearing dated October 26, 2017."

On November 27, 2018, Applicant amended his application through Counsel to allege the following additional ground for relief:

1. Ineffective Assistance of PCR Counsel – Counsel failed to raise in the first PCR ineffective assistance of appellate counsel in that the malice instructions allowing for inference of malice by the use of a deadly weapon (ROA p. 428, lines 8-14) given by the Court were no longer good law in South Carolina as of October 12, 2009, approximately one month after the Applicant's trial, when the opinion of State v. Belcher, 385 S.C. 597 (2009), was released.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Belated Review Pursuant to Austin

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application because his prior PCR counsel, Tristan M. Shaffer, Esquire, did not timely file his appeal. This allegation is corroborated by representations from Mr. Shaffer. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

Respondent informed this Court of their consent to allow Applicant a belated review of the denial of his PCR application (2013-CP-15-0442). In light of the information provided to this court, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. Accordingly, this Court grants Applicant a belated review of the denial of post-conviction relief pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, Applicant must appeal from this Order.

Ineffective Assistance of PCR Counsel

Applicant's contention that he received ineffective assistance of counsel on his prior post-

conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin, which recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Austin "is limited to its particular factual situation . . . ." Aice, 305 S.C. at 452, 409 S.E.2d at 394. For these reasons, this Court finds that while Applicant is entitled to belated review of his previous PCR dismissal pursuant to Austin, the allegation of ineffective assistance of PCR Counsel is dismissed.

[Conclusion and signature on following page]

IV. CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2013-CP-15-0442 pursuant to Austin v. State;
2. That all other PCR allegations are waived and dismissed with prejudice;
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25th day of January, 2019.

JENNIFER B. McCOY
Presiding Judge
Fourteenth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	INDICTMENT # 2009-GS-15-0129
COUNTY OF COLLETON	)	# 2009-GS-15-0116
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
v.	)	VERDICT
	)	
ANDRE TAFT RICHARDSON II	)	
	)	
Defendant.	)	
	)	

1) We, the jury, by unanimous consent, find the Defendant Andre Taft Richardson II in Indictment No. 2009-GS-15-0116:

✓ Guilty of Financial Identity Fraud.

_____ Not Guilty of Financial Identity Fraud.

2) We, the jury, by unanimous consent, find the Defendant Andre Taft Richardson II in Indictment No. 2009-GS-15-0129:

✓ Guilty of Murder.

_____ Not Guilty of Murder.

FOREPERSON

Walterboro, South Carolina
September 02, 2009

Please indicate your finding by checking the appropriate line and certify this finding by the foreperson's signature. Please inform the bailiff when you have reached your verdict

0-10 years and/or life in discretion of Court

656

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)
STATE)
vs. Andre Taft Richardson, II)
AKA:)
Race: B Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: 1516 Stewards Lane)
City, State, Zip: Ruffin, SC 29475)
DL# [redacted] SID# SC01868260)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009 -GS- 15 - 0116
A/W#: M100775
Date of Offense: Nov. 20, 2008
S.C. Code §: 16-13-0510
CDR Code #: 2813

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Financial Identity Fraud
In violation of § 16-13-0510 of the S.C. Code of Laws, bearing CDR Code # 2813
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As indicated, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____ 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: 2009-GS-15-0129
☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. Or Job Corp _____
May serve W/E 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: _____

*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	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7(SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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

Clerk of Court/~~Deputy Clerk~~ Patricia C. Grant
Court Reporter: Rebecca Hall
Presiding Judge _____
Judge Code: C1-2
Sentence Date 9/2/09

CERTIFIED TRUE COPIES OF RECORDS

SCCA/217 (06/2009)

Patricia C. Grant
CLERK OF COURT, GENERAL SESSIONS COURT
COLLETON COUNTY, SOUTH CAROLINA
DATE: 9/2/09

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

INDICTMENT

2009-GS-15-0116

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

FinanTC / Financial Identity fraud

That in Colleton County, South Carolina, on or about November 20, 2008, the Defendant, Andre Taft Richardson II, unlawfully and knowingly, without the authorization or permission of Frederick Steward, and/ or his estate, and with the intent to unlawfully appropriate the financial resources of Frederick Steward, and/or his estate, to his own use or the use of a third person, did access or attempt to access the financial resources of Frederick Steward, and/or his estate, to wit; the defendant did use the victim's personal bank account to pay for the defendant's Safe Auto car insurance, some 24 days after the victim's death. All in violation of Section 16-13-510, Code of Laws of South Carolina, (1976, as amended).

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

Isaac M. Stone, III, Solicitor

658

ARREST WARRANT

M-100775

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Colleton

THE STATE 08-6603

against

Andre Taft Richardson, II

Address: 156 Stewards Ln

Ruffin, SC 29475-

Phone: SSN:

Sex: M Race: B Height: 5 8 Weight: 180

DL State: SC DL #:

DOB: Agency ORI #: SC0150000

Arresting Agency: Colleton County Sheriff

Arresting Officer: Jeff Scott - D391

Offense: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of

Offense Code: 2813

Code/Ordinance Sec: 16-13-0510

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

Copy of this arrest warrant was delivered to defendant Andre T. Richardson, II on 2/20/09

Andre T. Williams #333

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 620
101 Hampton Street
Walterboro, SC 29488

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Colleton

ORIGINAL

AFFIDAVIT

Form approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Jeff Scott who being duly sworn deposes and says that defendant Andre Taft Richardson, II did within this county and state on or about 11/20/2008 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Colleton) in the following particulars:

DESCRIPTION OF OFFENSE FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of other unlawfully

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT NOVEMBER 20, 2008 AT 156 STEWARDS LANE, RUFFIN, SC WHICH IS IN THE COUNTY OF COLLETON THE DEFENDANT ANDRE RICHARDSON DID COMMIT THE CRIME OF FINANCIAL IDENTITY FRAUD. THE DEFENDANT DID WITHOUT AUTHORIZATION OR PERMISSION AND WITH THE INTENT TO PERMANENTLY DEFRAUD THE DECEASED VICTIM FREDDIE STEWARD. THE DEFENDANT DID USE THE VICTIMS PERSONAL ACCOUNT (B B &T) FOR HIS PERSONAL GAIN IN PAYING HIS SAFE AUTO INSURANCE PAYMENT IN THE AMOUNT OF $211.50. PROBABLE CAUSE IS BASED ON EVIDENCE RECOVERED DURING THE EXECUTION OF A SEARCH WARRANT AT THE RESIDENCE OF THE DEFENDANT AND ON STATEMENTS MADE BY THE DEFENDANT TO INSURANCE. OCA#08-6603

Signature of Affiant 391

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Colleton

Affiant's Address 119 Benson Street
Walterboro, SC 29488-

Affiant's Telephone (843)549-2211

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 11/20/2008 defendant Andre Taft Richardson, II did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Colleton) as set forth below

DESCRIPTION OF OFFENSE: FinanTC / Financial identity fraud, obtains/records identify. info., access/att. access finan. records of other unlawfully

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 02/20/2009 (L.S.)

Signature of Issuing Judge

Kenneth Arthur Campbell Jr.

Judge Code: 5675

Judge's Address 40 Klein Street
Walterboro, SC 29488-1732

Judge's Telephone (843)549-1122

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

INDICTMENT

2009-GS-15-0129

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County on or about October 27, 2008, with malice aforethought, the defendant, Andre Taft Richardson II, did kill and murder the victim, Frederick Steward, by means of shooting the victim multiple times, and that Frederick Steward did die in Colleton County as a proximate result thereof on October 27, 2008; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

Isaac M. Stone, III, Solicitor

30 years to life

660

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)
STATE)
VS. Andre Taft Richardson II)
AKA:)
Race: B Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: 1516 Stewards Lane)
City, State, Zip: Ruffin, SC 29475)
DL# [redacted] SID# SC0181682160)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009 -GS- 15 - 0129
A/W#: M100778
Date of Offense: Oct. 27, 2008
S.C. Code §: 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murder
In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As indicated, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | SC Bar # | Defendant | Attorney for Defendant | SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 35 ~~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: 2009-65-15-0116
☒ 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 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	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7(SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

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: _____

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

Clerk of Court/~~Deputy Clerk~~ Patricia C. Grant
Court Reporter: Rebecca Hill

Presiding Judge _____
Judge Code: 0122
Sentence Date 9/2/09

SCCA/217 (06/2009)

CERTIFIED TRUE COPIES OF RECORDS
Patricia C. Grant
CLERK OF COURT, GENERAL SESSIONS COURT
COLLETON COUNTY, SOUTH CAROLINA
DATE: 9/3/09

661

ARREST WARRANT

M-100778

STATE OF SOUTH CAROLINA
[X] County/ [ ] Municipality of
Colleton

THE STATE 08-5702
against
Andre Taft Richardson, II

Address: 156 Stewards Ln
Ruffin, SC 29475-

Phone: SSN:
Sex: M Race: B Height: 5 6 Weight: 180
DL State: SC DL #:
DOB: Agency ORI #: SC0150000
P ting Agency: Colleton County Sheriff
F ting Officer: Jeff Scott - D391
Offense: Murder / Murder

Offense Code: 0116
Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the
[ ] County/ [ ] Municipality of
. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)
Signature of Judge

Date:

RETURN

I received this arrest warrant and delivered to defendant Andre T. Richardson II on 2/24/09

Andre T. Williams #333
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
P O Box 620
101 Hampton Street
Walterboro, SC 29488

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STATE OF SOUTH CAROLINA
[X] County/ [ ] Municipality of
Colleton

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Jeff Scott who being duly sworn deposes and says that defendant Andre Taft Richardson, II did within this county and state on or about 10/27/2008 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Colleton) in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

THAT ON OR ABOUT OCTOBER 27, 2008 AT THE 3000 BLOCK OF BETHEL RD., RUFFIN, SC WHICH IS IN THE COUNTY OF COLLETON THE DEFENDANT ANDRE RICHARDSON DID COMMIT THE OFFENSE OF MURDER. THE DEFENDANT DID WILFULLY, UNLAWFULLY, AND WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF VICTIM FREDDIE STEWARD BY SHOOTING HIM MULTIPLE TIMES AND LEAVING HIM LYING IN THE ROADWAY. PROBABLE CAUSE IS BASED ON THE VICTIM SUCCUMBING TO THE INJURIES AND THE AUTOPSY PERFORMED AT MUSC. OCA#08-5702

Signature of Affiant

STATE OF SOUTH CAROLINA
[X] County/ [ ] Municipality of
Colleton

Affiant's Address 119 Benson Street
Walterboro, SC 29488-
Affiant's Telephone (843)549-2211

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 10/27/2008 defendant Andre Taft Richardson, II did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Colleton) as set forth below

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 02/24/2009 (L.S.)
Signature of Issuing Judge
Kenneth Arthur Campbell Jr.
Judge Code. 5675

Judge's Address 40 Klein Street
Walterboro, SC 29488-1732
Judge's Telephone (843)549-1122
Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

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CMTI330D              SCDC OFFENDER MANAGEMENT SYSTEM                 11/06/18
OMCOMITA                    RELEASE DATE SCREEN                       C056427
SCDC# >  336692                                          LOC: LIEBER
RICHARDSON, II, ANDRE TAFT                SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE  SEXUAL REGISTRY..: N
                                           SEXUAL PREDATOR..: NOT APP
                                           DNA STATUS.......: COMPLETED
                                           GPS REQUIREMENT..: N
                                           PREA DECISION....:
PREA VICTIM.....:                          PREA PERP..:
CURRENT SENTENCE: 035-00-000       CONSECUTIVE SENTENCE ..: N
                  035-00-000       CURRENT SENT START DATE: 02/24/2009
PROJECTED COMPLETION DATES
  MAXOUT DATE .....: 02/16/2044    CURRENT EWC .: 3 F 5
  YOA SIX YEAR DATE:   /  /        CURRENT EEC .: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000    NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .......: 000000    LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000831    LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000     CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS .: 000       SUPERVISED REENTRY DATE..: 00/00/00
TOTAL SERVICE TIME EARNED ..: 003492    ISS.....................:

PFKEYS:      5:HISTORY OF DATE CHANGES
```

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, November 6, 2018

Classification Summary Reports

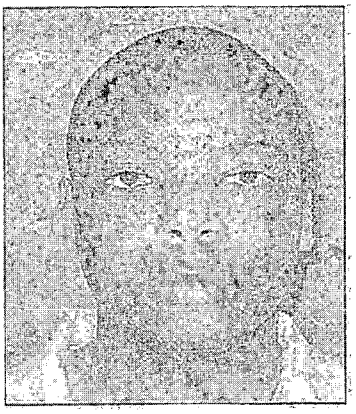
Inmate Number 336692 Submit

Classification Summary Report for RICHARDSON, II, ANDRE TAFT :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 11/06/2018

SCDC# 00336692 RICHARDSON, II, ANDRE TAFT FBI# 88203DD1



OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: LIEBER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC SENT: 35 YRS 0 MOS 0 DAYS

VICTIM WITNESS: [redacted] SEPREQ:N

MED CLASS: [redacted]

INST RESTRICT: NO RESTRICTION

MENTAL CLASS: [redacted]

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 31

RESIDENT STABILITY: UO

DORMROOMBUNK_CODE: EA 0057 B

PROJ MAXOUT DATE: 02/16/2044

PROJ PAROLE DATE: -

EWC JOB: WARDKEEPER ASSISTANT

ASSIGNMENT: BUILDING #1

EWC LEVEL: 3F5 EEC LEVEL:

EDUC PGM: NO CURR EDUC PROGRAM

SECURITY THREAT GROUP DESCRIPTION: NONE

SECURITY THREAT GROUP STATUS: NONE

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	SENTENCE COUNTY	START	SENTENCE V/NV	CAT	INDICT
FINANCIAL IDENT. FRAUD	5	0	0	COLLETON	02/24/2009	N		09GS15-0116
MURDER	35	0	0	COLLETON	02/24/2009	V		09GS15-0129

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

06/26/2012	POSSESSION OF A WEAPON	NOT GUILTY	MAJOR DISC. HEARING		N
12/05/2010	FIGHTING WITH A WEAPON	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT	Y

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

07/07/2018	EVADING A SECURITY DEVICE	NOT GUILTY	MAJOR DISC. HEARING
02/22/2018	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
10/23/2017	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
06/18/2017	INTERFERING WITH COUNT	CLOSED	OTHER ACTION TAKEN/INFORM
06/18/2017	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
04/21/2017	POSSESSION OF CONTRABAND	DISMISSED	MAJOR DISC. HEARING
04/21/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
04/24/2015	EVADING A SECURITY DEVICE	CONVICTED	MAJOR DISC. HEARING
03/23/2015	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
04/21/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
03/28/2014	EXHIBITIONISM AND PUBLIC MASTURBATION	NOT GUILTY	MAJOR DISC. HEARING
09/10/2013	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
07/15/2013	EVADING A SECURITY DEVICE	CONVICTED	ADMINISTRATIVE RESOLUTION
09/24/2012	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	NOT GUILTY	MAJOR DISC. HEARING
07/07/2012	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
12/05/2010	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	NOT GUILTY	MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

06/05/2017	LIEBER	INCARCERATED	ADMINISTRATIVE
06/05/2017	KIRKLAND	INCARCERATED	MEDICAL
05/08/2017	LIEBER	INCARCERATED	ADMINISTRATIVE
05/08/2017	KIRKLAND	INCARCERATED	MEDICAL

05/04/2017	LIEBER	INCARCERATED	ADMINISTRATIVE
05/04/2017	TRIDENT REGIONAL	AUTH ABSENCE (AWL)	MEDICAL
10/19/2016	LIEBER	INCARCERATED	ADMINISTRATIVE
10/18/2016	KIRKLAND	INCARCERATED	RETURN FROM COURT
10/17/2016	COLLETON CO	AUTH ABSENCE (AWL)	TO COURT
10/26/2015	LIEBER	INCARCERATED	ADMINISTRATIVE
10/21/2015	KIRKLAND	INCARCERATED	RETURN FROM COURT
10/20/2015	COLLETON CO	AUTH ABSENCE (AWL)	TO COURT
10/30/2014	LIEBER	INCARCERATED	ADMINISTRATIVE
10/29/2014	KIRKLAND	INCARCERATED	RETURN FROM COURT
10/28/2014	COLLETON CO	AUTH ABSENCE (AWL)	TO COURT
10/07/2009	LIEBER	INCARCERATED	ADMINISTRATIVE
09/08/2009	KIRKLAND	INCARCERATED	R&E PROCESSING
09/08/2009	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	10/20/2016	-		3F5
WARDKEEPER ASSISTANT	01/21/2016	10/19/2016	INSTIT TRANSFER	3F5
RECREATION AIDE	10/26/2015	01/19/2016	INMATE REQUEST	3F5
RECREATION AIDE	10/31/2014	10/20/2015	INSTIT TRANSFER	3F5
RECREATION AIDE	08/13/2014	10/30/2014	INSTIT TRANSFER	3F5
WARDKEEPER ASSISTANT	05/27/2014	08/12/2014	INMATE REQUEST	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	02/05/2013	05/20/2014	POOR ATTENDANCE
LVL 5 - FULL TIME(NO EWC)	01/06/2011	01/10/2011	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	03/26/2010	01/05/2011	CUSTODY REVIEW

********** END OF REPORT **********

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