

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable Jocelyn J. Newman, Circuit Court Judge

VICTOR MCCOY WELDON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-0020000

APPENDIX

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No Exhibits Introduced.

1           THE COURT: This is *Victor Weldon vs. The State of*  
2           *South Carolina*, 2016-CP-14-00002. Applicant is presently  
3           confined in the South Carolina Department of Corrections  
4           pursuant to orders of commitment of the Clarendon County  
5           Clerk of Court. Applicant was true-bill indicted at the  
6           January 2011 term of the Clarendon County Grand Jury for  
7           burglary first degree, attempted murder, armed robbery,  
8           grand larceny, kidnapping, and possession of a weapon  
9           during a violent crime. John Knobloch, Esquire,  
10          represented the applicant.

11          Applicant proceeded to a jury trial before the  
12          Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced  
13          applicant to thirty years for armed robbery, running  
14          consecutively to a sentence of thirty years for burg first.  
15          Judge Cothran further sentenced applicant to five years for  
16          grand larceny, twenty years for kidnapping, and five years  
17          for possession of a weapon during a violent crime, all to  
18          run concurrent.

19          A timely notice of appeal was filed on applicant's  
20          behalf; the South Carolina Court of Appeals affirmed the  
21          applicant's conviction and sentence. Applicant filed a  
22          petition for a *writ of certiorari* to the South Carolina  
23          Supreme Court, and the petition was denied via an order  
24          filed January 23, 2015. The remittitur was issued on May  
25          8, 2015.

1           Applicant filed a timely application for  
2 post-conviction relief on January 5, 2016, alleging that he  
3 was being held unconstitutionally for the following  
4 reasons: ineffective assistance of counsel, due-process  
5 violation, prosecutorial misconduct, judicial bias, and  
6 jury violation. The state filed a return on April 11,  
7 2016, and the applicant is present today in the courtroom  
8 and represented by Mr. Lance Boozer.

9           THE COURT: And Mr. Boozer.

10           MR. BOOZER: Thank you, Your Honor. May it please the  
11 court? Judge, I do have one preliminary matter, and that  
12 would be -- I discussed this with Madame Attorney General  
13 this past week about making just an oral amendment on the  
14 record, and I don't believe they're opposing it.

15           And, Judge, specifically the amendment would be for  
16 ineffective assistance of counsel for failing to object,  
17 and for the court's information, the specific testimony  
18 which would've been objectionable is in volume four of the,  
19 of the transcripts, volume four of five. And specifically  
20 it's on page 76, and it would be lines 19 through 20, and  
21 we'll of course address that with the applicant and his  
22 former counsel.

23           THE COURT: Is there any opposition?

24           MS. COLEMAN: No objection.

25           THE COURT: Okay.

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

5

1 All right, Mr. Boozer, you may proceed.

2 MR. BOOZER: Thank you, Your Honor. I will call Mr.  
3 Weldon to the stand.

4 VICTOR M. WELDON, BEING DULY  
5 SWORN, TESTIFIES AS FOLLOWS:

6 BAILIFF: Please state your full name. Spell your  
7 last name for the record.

8 WITNESS: Victor McCoy Weldon, W-e-l-d-o-n.

9 (A PAUSE.)

10 DIRECT EXAMINATION BY MR. BOOZER:

11 Q. Mr. Weldon, how are you?

12 A. Fine.

13 Q. Okay. Mr. Weldon, do you know why you're here today?

14 A. Yes, sir.

15 Q. All right. Why? What have you filed with the court  
16 today?

17 A. I filed ineffective assistance of counsel on my  
18 lawyer, John Knobloch, prosecution misconduct, jury  
19 violation, judicial bias, and due process.

20 Q. Okay, and we'll talk at length about each one of those  
21 claims, but you filed an application for post-conviction  
22 relief?

23 A. Yes, sir.

24 Q. All right, and do you understand what it is that  
25 you're asking this court to do for you?

1 A. Yes, sir.

2 Q. What is that? What are you asking this court to do?

3 A. To look into these arguments that I raised for a new  
4 trial.

5 Q. Okay, and what is it that you want the court to do?

6 A. I want them to -- I want, I want a new trial really.

7 Q. Okay. You understand that the only relief this court  
8 can give you is to basically start you over and you have a  
9 new trial on all the original charges you face?

10 A. Yes, sir.

11 Q. And that's what you want to do?

12 A. Yes, sir.

13 Q. All right. Now, did you previously -- did you have a  
14 trial?

15 A. Yes, sir.

16 Q. And what were the charges?

17 A. Attempted murder, kidnapping, first-degree burglary,  
18 armed robbery, grand larceny, and possession of a weapon  
19 during a violent crime.

20 Q. All right, and ultimately what was the sentence that  
21 you received?

22 A. Thirty years ran consecutive with another thirty.

23 Q. All right. So, you've got a total, a sixty-year  
24 sentence?

25 A. Yes, sir.

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

7

1 Q. Okay. Now, who represented you at your trial?

2 A. John Knobeloch.

3 Q. And was he appointed or retained to represent you?

4 A. He was appointed.

5 Q. Okay. Where, where was it alleged that all these  
6 events occurred?

7 A. Clarendon County, Manning.

8 Q. All right. Where do you live?

9 A. Sumter County.

10 Q. Where did you live at the time that all of this was  
11 supposedly -- all this occurred?

12 A. In Sumter County.

13 Q. All right. Now your lawyer, where is he from?

14 A. Charleston County.

15 Q. Why do you -- why did you have a Charleston County  
16 lawyer representing you?

17 A. They said my victim was closely connected to all of  
18 the bar members in Clarendon, Sumter, Lee, Kingstree, and  
19 so I had to get one, I guess, far away.

20 Q. Okay. Now, where were you first arrested on the  
21 charges?

22 A. July 20th.

23 Q. All right, July 20th of what?

24 A. 2010.

25 Q. And when did you first get Mr. Knobeloch to represent

1 you, if you recall?

2 A. I want to say October. I'm not sure. I think it's  
3 October.

4 Q. All right, and your trial was when?

5 A. May 2012.

6 Q. All right. Between October of 2010 and 2012, how many  
7 times did you either meet with or talk to your lawyer?

8 A. The minimum, max? Maybe four. Maybe.

9 Q. Okay. What would y'all discuss during your meetings?

10 A. The first meeting I remember was about a bond hearing.  
11 The second one was he was asking was I willing to go to  
12 trial. I told him yes, and he was filing different type of  
13 motions, and he asked did I still want to be represented by  
14 him. Then I think the last one I remember when he was  
15 talking about who he was calling up to the stand to  
16 testify, did I want to testify, stuff like that.

17 Q. What was it alleged that you did?

18 A. They said I went in to Mr. Gibbons's house, robbed  
19 him, beat him with a gun, and took some cash, and left with  
20 his car.

21 Q. Was it, was it alleged that you were by yourself or  
22 were there other people?

23 A. No. They said it was more than one person.

24 Q. Okay. Do you recall when they alleged the crime  
25 occurred?

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

9

1 A. No. I don't remember when it occurred.

2 Q. Okay.

3 A. I just know when I got locked up.

4 Q. Well, the crime was alleged to have occurred on May  
5 15, 2010, based on testimony at the trial between 6 a.m.  
6 and 6:30 a.m. at trial. Would you agree with that?

7 A. Yeah.

8 Q. Okay. Did you have any discussion with your lawyer  
9 about where you were at that time?

10 A. Yeah.

11 Q. Tell the court about those discussions.

12 A. Told the lawyer, he asked could I remember around the  
13 time it happened where I was. I told him I lived with my  
14 mom and this girl and sister and that I was at the house  
15 with my mom. When she come back from work, she usually at  
16 home. I mean, when she come from work, I'm usually at home  
17 with, with my sister waiting for her to go to school.

18 Q. Okay. So on May 15, 2010, where is it that you were  
19 telling your lawyer you were?

20 A. At the house.

21 Q. All right. What were you doing at the house at the  
22 time between 6 and 6:30 when this crime occurred?

23 A. We was just getting up with my sister, waiting for my  
24 mother to come home.

25 Q. Okay. What time does your mom usually get home?

1 A. 7, between 7, 7:15.

2 Q. Let's, let's back up a little bit. You were living at  
3 that house?

4 A. Yes, sir.

5 Q. And what, what was the address of that house?

6 A. [REDACTED] Drive.

7 Q. And who all lived there?

8 A. My sister, my mom, my little brother occasionally, and  
9 my girl who stays with me occasionally.

10 Q. What's your sister's name?

11 A. Jessica Weldon.

12 Q. And what's your mom's name?

13 A. Debra Weldon.

14 Q. Okay. The day before, or let's say the night before  
15 this crime -- so the night before would be May 14, 2010?

16 A. Yeah.

17 Q. Where would you have been then?

18 A. Home. Sleep maybe.

19 Q. Okay. Do you have any idea probably what time you  
20 went to bed that night?

21 A. I would say about 11 maybe. I usually watch TV until  
22 I fall asleep. I'd say about 11.

23 Q. Was your sister home when you went to bed?

24 A. Yeah.

25 Q. Okay. Do you know what time you got up the next

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

11

1 morning?

2 A. Well, at about 6:40, 6:45 maybe, around that time,  
3 estimate.

4 Q. And did you, did you see anyone when you got up that  
5 morning?

6 A. My sister.

7 Q. Your sister was there?

8 A. Yeah.

9 Q. All right. Did you talk to her?

10 A. Yeah.

11 Q. All right, and then when did you see your mom?

12 A. When she walked through the door.

13 Q. Do you know when she walked through the door?

14 A. Usually about 7, maybe 7:15.

15 Q. Okay. Did you tell your lawyer all that?

16 A. Yeah, I told my lawyer.

17 Q. What was his response?

18 A. He said he would fill a motion out to call them to the  
19 stand to testify on my behalf.

20 Q. All right. Now, was it your understanding that your  
21 mom and your sister would be there to testify to that at  
22 trial?

23 A. Yes, sir.

24 Q. Were your mom and your sister physically present at  
25 trial?

1 A. Yes, sir.

2 Q. Was anyone else there on your behalf?

3 A. I had, I had family members that were not just to  
4 testify, but I had my brothers, uncles. My dad was there a  
5 couple of times.

6 Q. Okay, and did your mom and your sister, did they ever  
7 testify at trial?

8 A. No, sir.

9 Q. Do you know if they were under subpoena to be there?

10 A. I think they was. I'm not sure.

11 Q. All right. Was it your understanding that they were  
12 going to testify at trial?

13 A. Yes, sir.

14 Q. And to your knowledge, would they have also testified  
15 that you were there at the house at the time that this  
16 crime had occurred?

17 A. Yes, sir.

18 Q. And did you testify at trial?

19 A. No, sir.

20 Q. All right. Did you want to testify at trial?

21 A. Yes, sir.

22 Q. All right. Why didn't you?

23 A. My lawyer said he wanted the closing argument, the  
24 last, the last argument. Something that he wanted to go  
25 last with the closing argument.

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

13

1 Q. Why did he -- what does that have to do with you  
2 testifying? Do you know?

3 A. I don't know.

4 Q. Okay. Did y'all present any witnesses?

5 A. No, none.

6 Q. All right. What you testified to today, would you  
7 have testified to that at your trial had you been called as  
8 a witness?

9 A. Oh, yes, sir.

10 Q. All right. Did you ask him during the trial why your  
11 mom and sister weren't testifying?

12 A. No. I didn't even ask.

13 Q. Were you concerned that they weren't testifying?

14 A. Yes, I was.

15 Q. Why didn't you ask him?

16 A. Nervous. Never been in a trial before.

17 Q. Okay. Without you testifying and without your sister  
18 and your mother testifying, was there any other way for the  
19 jury to hear where you were that day?

20 A. No, sir.

21 Q. Do you think that that prejudiced your trial?

22 A. I do.

23 Q. All right. Do you know if your lawyer had ever filed  
24 what's called a notice of alibi defense?

25 A. Yes, he did.

1 Q. Do you know what that defense was going to be, or what  
2 the basis of the motion of the notice was?

3 A. I don't remember. I don't remember, but I know he  
4 filed one. I remember seeing the motion.

5 Q. Okay. You've got a number of allegations, and we need  
6 to go through each one of those. If you would, you've got  
7 ineffective assistance of counsel. Your attorney filed a  
8 motion to be relieved of the case. Explain to the court  
9 what you mean by that.

10 A. My lawyer wasn't, I felt he wasn't representing me the  
11 way he should communicate. So, I think I filed something  
12 on it. I can't remember what it's called, but a couple  
13 months later he asked me did I still want to be his lawyer  
14 and stop writing him up. I told him I hadn't talking to  
15 him for about nine, ten months, and I think a couple months  
16 later he wrote a motion to be relieved off my case, and I  
17 hadn't heard nothing from him for almost a year until it's  
18 time to go to trial.

19 Q. All right, was that motion -- did anything happen to  
20 that motion? He was never relieved, was he?

21 A. No.

22 Q. Okay.

23 A. He stayed my lawyer.

24 Q. Did you want him relieved?

25 A. I didn't want him to represent me, not if he ain't

1 studied my case.

2 Q. All right. Did you feel that he had done everything  
3 he could to know about your case?

4 A. No, I didn't.

5 Q. All right. You've also got that -- and this -- these  
6 are your words. None of, none of your alibis were called  
7 to testify on your behalf. Have we covered that with your  
8 testimony earlier today?

9 A. Yeah, we just covered that, sir.

10 Q. Okay, and then also your third allegation was that you  
11 were never called to, to the stand to testify. Have we  
12 also covered that?

13 A. Yes, sir.

14 Q. All right, lack of communication, do you think we  
15 covered that?

16 A. Yes, sir.

17 Q. All right, and you've got another one that says you  
18 were forced into a joint trial. Explain that.

19 A. I told my lawyer that I didn't want it to go to trial  
20 with my co-defendant because he had people testifying on  
21 him and him sitting beside me, I felt that kind of  
22 prejudiced me to make me look like I was with him. So, I  
23 told my lawyer I didn't want to go to trial with him, but  
24 he said I had to go.

25 Q. Did your lawyer ever file a motion to sever your cases

1 or anything like that?

2 A. No.

3 Q. You've also got an allegation that you were offered a  
4 joint plea instead of an independent plea. What -- explain  
5 that.

6 A. My lawyer came to me and said they offered me a  
7 fifteen-year plea, but my co-defendant had to take the plea  
8 with me. Otherwise, it would've been no good. It was,  
9 like, a joint plea. Both of us had to take it.

10 Q. You got sixty years in this case. Did your lawyer  
11 ever make you aware that you could potentially get a  
12 sixty-year sentence?

13 A. I didn't think I'd get sixty. I knew the max was  
14 thirty. I didn't think sixty, no.

15 Q. Okay, and you didn't want to take the plea?

16 A. I wasn't willing to take the plea, no.

17 Q. All right. Also, you've got a due-process violation  
18 claim in that you were denied your motion for change of  
19 venue?

20 A. Yeah.

21 Q. Explain that.

22 A. I felt because the motion that my lawyer wrote out  
23 saying the victim was closely connected to 500 members of  
24 the bar, which is lawyers and judges, that I wouldn't get a  
25 fair trial if I was tried in Clarendon County, but the

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

17

1 motion, I don't know what happened to it.

2 Q. Well, do you know if the motion was ever argued, or  
3 was it pursued? Do you know?

4 A. My lawyer said something in trial about the motion,  
5 but he said that it wasn't right and it still not -- I  
6 don't understand it. I think cold or something. I don't  
7 know what he was talking about.

8 Q. Okay, we'll discuss that with your attorney when he  
9 testifies. You've also got an allegation that you were  
10 given a joint trial, and is that the same as your  
11 allegation that you were forced into a joint trial?

12 A. Uh-huh.

13 Q. Okay. So we've covered that?

14 A. Yes, sir.

15 Q. All right. You also got an allegation of  
16 prosecutorial misconduct in that you were offered a joint  
17 plea instead of an independent plea, and we covered that  
18 issue?

19 A. Yes, sir.

20 Q. All right. Now, you also have judicial bias in that  
21 you feel the judge and the victim were acquaintances?

22 A. Yes, sir.

23 Q. If you would explain that to the court?

24 A. Being that 500 members of the bar are closely  
25 connected to my victim, which is judges, solicitors,

1 lawyers, I feel that they was pretty close.

2 Q. Did you, did you, did you ever express that to your  
3 lawyer?

4 A. Yeah. I told him, I told him I, I didn't want to get  
5 tried nowhere near Clarendon County. I told him the  
6 reason.

7 Q. All right. Did he ever do anything as a result of  
8 that?

9 A. Nothing ever happened.

10 Q. All right. You've also got that you feel there was a  
11 jury violation when you say: Charge the jury -- charged the  
12 jury when proven clearly of a lesser-included offense.  
13 Explain what you mean by that.

14 A. When they charged -- he charged the jurors how he --  
15 to me is how he charged it. Like, he was saying if, if you  
16 believe it's a armed robbery, then charge him armed  
17 robbery. If you believe it's a strong-arm robbery, charge  
18 him strong-arm robbery. I believe he persuaded the jury to  
19 charge me regardless of either or instead of not guilty.

20 Q. Okay. Also, you've got the charge of the jury made  
21 you look guilty. Is that what you mean by that?

22 A. Yeah.

23 Q. All right. Now, today we've made an oral amendment to  
24 your application regarding some testimony at trial, and do  
25 you, do you recall ---

V. WELDON - DIRECT EXAMINATION BY MR. BOOZER

19

1 MR. BOOZER: Court's indulgence, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. BOOZER:

4 Q. Do you recall in your trial an investigator  
5 testifying? It begins on page 75 of volume four of the  
6 transcript on through page 76 where I guess a search  
7 warrant was executed at the house you were living at.

8 A. Yes, sir.

9 Q. All right, and, and it says that the search warrant,  
10 that nothing was found as a result of the search warrant at  
11 in your house. Is that right?

12 A. Yes, sir.

13 Q. All right, and then the solicitor continues to  
14 question the investigator, and on page 76 the solicitor  
15 asks:

16 Did you go there looking to see if there were --  
17 if there was a -- some boots or a mask there at  
18 the house, you were hoping to find it, right?

19 Answer: Yes.

20 Question: But how many -- eight weeks had gone  
21 by?

22 Answer: Yes. Easily evidence could have been  
23 destroyed by then.

24 Did your lawyer object at that point?

25 A. No, sir.

1 Q. Okay. Was there any other evidence offered that  
2 evidence had been destroyed?

3 A. Repeat?

4 Q. Sure. Was there anything -- there was nothing to --  
5 strike that. Mr. Weldon.

6 A. Yes, sir.

7 Q. We've covered your allegations that you have in your  
8 PCR application and also the oral amendment that was made  
9 today.

10 A. Yes, sir.

11 Q. Is there anything that we have not covered regarding  
12 your application or regarding your allegations in support  
13 of your PCR?

14 A. No. All things have been covered.

15 Q. All the things have been covered? Okay.

16 MR. BOOZER: Thank you, sir. Please answer any  
17 questions the state may have for you.

18 CROSS-EXAMINATION BY MS. COLEMAN:

19 Q. Good morning, Mr. Weldon. How are you?

20 A. Good morning. Fine.

21 Q. How many times did you meet with your attorney before  
22 your trial?

23 A. Four. Three, four.

24 Q. Do you recall reviewing discovery with your attorney  
25 before the trial?

V. WELDON - CROSS-EXAMINATION BY MS. COLEMAN

21

1 A. The motion discovery?

2 Q. Yes, or any of the discovery materials?

3 A. Yes.

4 Q. State's evidence against you. Did you give your  
5 attorney any leads or witnesses to investigate?

6 A. I gave him just the alibis.

7 Q. So, you told him about your alibi? You told your  
8 attorney that?

9 A. Yes, ma'am.

10 Q. Okay, and what witnesses did you want him to present  
11 to testify?

12 A. My mother and my sister, Debra and Jessica Weldon.

13 Q. And are they here today?

14 A. Yes, ma'am.

15 Q. Are they going to testify today?

16 A. They will.

17 Q. Okay. Did you tell your attorney that you wished to  
18 testify at trial?

19 A. Yes, ma'am.

20 Q. Now, you have an allegation. You testified that the  
21 judge and the victim were acquaintances. Do you know for a  
22 fact that the judge and the victim know each other?

23 A. Not a hundred percent, no, ma'am.

24 Q. Okay.

25 MS. COLEMAN: No further questions. Thank you.

1 THE COURT: Any redirect?

2 MR. BOOZER: No redirect, Your Honor.

3 THE COURT: All right, thank you, sir. You can go sit  
4 back next to your lawyer.

5 WITNESS: All right.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: All right, Mr. Boozer.

8 MR. BOOZER: Thank you, Your Honor. At this time we  
9 call Ms. Debra Weldon to the stand.

10 DEBRA L. WELDON, BEING DULY SWORN,  
11 TESTIFIES AS FOLLOWS:

12 BAILIFF: Please state your full name, and spell your  
13 first and last name for the record, please.

14 WITNESS: Debra L. Weldon, D-e-b-r-a W-e-l-d-o-n.

15 DIRECT EXAMINATION BY MR. BOOZER:

16 Q. Ms. Weldon, how are you today?

17 A. I'm okay.

18 Q. Okay. You nervous?

19 A. A little sleepy. I just got off of work.

20 Q. Well, let's talk it. It sounds like you're a  
21 hard-working woman.

22 A. Yeah.

23 Q. Where do you work?

24 A. I work at Tuomey Hospital, and I also work at the  
25 Barbecue Hut.

D. WELDON - DIRECT EXAMINATION BY MR. BOOZER

23

1 Q. Okay. Now, do you know Victor Weldon?

2 A. That's my second oldest son.

3 Q. All right. So, you're his mom?

4 A. Right.

5 Q. All right, and are you aware that your son was accused  
6 of committing a crime that occurred back on May 15, 2010?

7 A. Yes, I am.

8 Q. All right. Are you also aware they allege that that  
9 crime occurred sometime between 6 and 6:30, 7 a.m. that  
10 day?

11 A. Yes. Yes, I am.

12 Q. All right. Were you present for a jury trial for your  
13 son on those charges in May of 2012?

14 A. Yes, I was.

15 Q. How, how many days was that trial? Do you remember?

16 A. I think it was just one day.

17 Q. Okay, but you were present?

18 A. Uh-huh.

19 Q. Why were you there?

20 A. Supposed to be the witness.

21 Q. You were going to be a witness?

22 A. Yes, sir.

23 Q. Okay, and what, what was your testimony going to  
24 consist of? What were you going to tell the court?

25 A. That once I got off from work, Victor was at the

1 house.

2 Q. Well, let's talk about that. So, the crime was  
3 alleged to have occurred on -- or the crime occurred on May  
4 15, 2010, and on May 14, 2010 -- well, let me ask you this  
5 as a general question. During that time, who was living at  
6 the house, your house?

7 A. Well, okay, I had my daughter.

8 Q. What's her name?

9 A. Jessica Weldon.

10 Q. Okay.

11 A. My baby boy, Marcus Weldon. He -- his friend, his  
12 girlfriend would be in and out; and then Rell [phonetic],  
13 Victor's ex, would be in and out; my oldest son, Matthew;  
14 and myself.

15 Q. All right. So, let's start on May 14th of 2010. When  
16 did you get home that evening or when did you leave the  
17 house to either go to work or go somewhere else that  
18 evening?

19 A. Okay, I got off work at the Barbecue Hut 8:30 that  
20 night.

21 Q. Okay. Keep going.

22 A. Okay, and when I go to Tuomey Hospital -- that's if I  
23 even work because on some of the weekends, I'm usually  
24 home. So, usually I'm home on Saturday and Sunday. I  
25 would be working every other weekend. At that time I was

D. WELDON - DIRECT EXAMINATION BY MR. BOOZER

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1 PRN, but now I'm full time, so I do a whole weekend  
2 straight.

3 Q. Okay. Well, after getting done with the Barbecue Hut  
4 at 8:30, where did you go?

5 A. I went home.

6 Q. You went home. All right, how long were you home for?

7 A. I stayed home until at least about 10:30 that night.

8 Q. All right. At 10:30 that night, you then left. Did  
9 you leave at 10:30 that night to go somewhere else?

10 A. Probably to the store or something if I didn't work.

11 Q. Okay. Do you know if you worked that night?

12 A. No. I don't work on the -- if it was on the weekend,  
13 I don't work on the weekend.

14 Q. Okay. Well, let me ask you this. At 10:30 that night  
15 -- well, let me ask you this. When did you go to bed that  
16 evening?

17 A. I usually lay on the sofa because where we stay was a  
18 trailer, and the sofa's right there and the door's, you  
19 know, right in front of there. So, I usually lay on the  
20 sofa, and then I'll get up latter, go get in the bed.

21 Q. Okay. Do you have an independent recollection of that  
22 night of seeing your son there at the house?

23 A. Yes, because he was one who made me get off the sofa  
24 and go to bed.

25 Q. Okay. So, do you know what time you went to bed that

1 night?

2 A. Probably -- so long ago. Probably about midnight.

3 Q. All right. What time did you get up then the next  
4 morning?

5 A. 8:00.

6 Q. All right. When you got up, who was at the house?

7 A. Victor, Jessica, myself. My baby boy, I think he was  
8 there that night, too.

9 Q. All right. So on May 15, 2010, you think you got up  
10 at what time?

11 A. About 8:00.

12 Q. And Victor was there?

13 A. Yeah.

14 Q. All right. Did anything seem unusual or out of the  
15 ordinary?

16 A. No. Victor's usually Victor. You know, wanting to  
17 know -- make sure I take my medicine and tell me, you know,  
18 to eat my breakfast and stuff.

19 Q. Okay. To your knowledge, had Victor left the house  
20 that evening or that morning?

21 A. No. He usually don't go nowhere; he's a homebound  
22 person.

23 Q. Does he have a car?

24 A. No.

25 Q. Okay. Did he have access to a car?

D. WELDON - DIRECT EXAMINATION BY MR. BOOZER

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1 A. Not at that time. I only had a car, and he wasn't  
2 using mine.

3 Q. Okay. Let me ask you. Did you ever discuss that,  
4 what you've just testified to, did you ever discuss that  
5 with his lawyer, Mr. Knobeloch?

6 A. No, I don't think so.

7 Q. Did he ever -- did your lawyer -- did his lawyer ever  
8 ask you any questions about where you were on May 14th or  
9 May 15, 2010?

10 A. I believe he did.

11 Q. And do you know what you would have told him?

12 A. At home.

13 Q. All right. Do you know if you would have also told  
14 him that Victor was at home?

15 A. Yes.

16 Q. Did his lawyer ever ask you to come to trial and  
17 testify?

18 A. Yes, he did.

19 Q. All right. When did that -- when did he ask you that?

20 A. The same day that they had the trial, he asked me to  
21 testify, but they never called me to the stand.

22 Q. And do you know what the purpose of your testimony  
23 was?

24 A. You know, tell whether Victor was at the house at the  
25 time of the crime.

1 Q. All right. Everything that you've testified to today  
2 about your whereabouts and as well as Victor's from May 14,  
3 2010, to May 15, 2010, is that what you would have  
4 testified to at trial had you been called as a witness?

5 A. Yes, sir.

6 Q. And what's the address of the house that y'all were  
7 living in?

8 A. What? Now?

9 Q. At the time.

10 A. Oh. Okay. It was Country Spring, [REDACTED],  
11 I believe.

12 Q. And where is that? Sumter County?

13 A. Yes, sir.

14 Q. Okay.

15 MR. BOOZER: Thank you. That's all the questions I  
16 have for you.

17 WITNESS: Okay.

18 CROSS-EXAMINATION BY MS. COLEMAN:

19 Q. Good morning. How are you?

20 A. I'm okay.

21 Q. Good. What were you doing on May 13th of 2010?

22 A. Well, I was at home being a mom. Probably cooking,  
23 cleaning, fussing.

24 Q. Okay, and what were you doing on May 17th of 2010?

25 A. At home or at work.

D. WELDON - CROSS-EXAMINATION BY MS. COLEMAN

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1 Q. Do you remember specifically the times that you did  
2 anything?

3 A. Well, if I know what -- what day was the 17th?

4 Q. May 17th would be Monday.

5 A. Oh, okay. Yeah, I was at home.

6 Q. Okay. This was six and a half years ago?

7 A. Right.

8 Q. Yeah. So, it's kind of hard to remember?

9 A. Yeah.

10 Q. Okay. You said that you do not work on the weekends.  
11 Is that right?

12 A. I didn't at that time.

13 Q. Okay, at the time and May 15th, the day that this  
14 crime occurred, was a Saturday, correct?

15 A. Yes.

16 Q. Okay. So, you testified that you went to bed the  
17 night before around midnight, and what ---

18 A. I worked at the Barbecue Hut, and I go in at 9 and get  
19 off at 8:30.

20 Q. Okay.

21 A. Then I come straight home, but I was not working at  
22 the hospital at the time.

23 Q. Okay.

24 A. On the weekends because I had just got hired.

25 Q. So on Saturday, May 15, 2010, you testified that you

1 woke up about 8 a.m.?

2 A. Yeah.

3 Q. Okay, and this crime occurred about -- between 6 and  
4 6:30 a.m. Is that correct?

5 A. That's what I was told, yeah.

6 Q. Okay.

7 MS. COLEMAN: Thank you. No further questions.

8 WITNESS: Okay.

9 THE COURT: Mr. Boozer.

10 MR. BOOZER: Just briefly.

11 REDIRECT EXAMINATION BY MR. BOOZER:

12 Q. Going back to that date, May 15, 2010, that's a pretty  
13 important date, isn't it?

14 A. Yeah.

15 Q. It's an important date because your son was alleged to  
16 have committed a very serious crime. Is that right?

17 A. That's right.

18 Q. Is that one way that you're able to recall the events  
19 of that day and the evening before that?

20 A. Yes.

21 MR. BOOZER: Thank you, Your Honor. No further  
22 questions.

23 THE COURT: All right, thank you, ma'am. You can go  
24 back and have a ---

25 MS. COLEMAN: Excuse me, Your Honor. One more

D. WELDON - RE-CROSS-EXAMINATION BY MS. COLEMAN

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1 question.

2 THE COURT: Oh, I'm sorry.

3 MS. COLEMAN: Sorry. Just one more.

4 RE-CROSS-EXAMINATION BY MS. COLEMAN:

5 Q. Your son testified that he was waiting for you to get  
6 home from work about 7:15 a.m. Is that correct?

7 A. He -- well, you mean that morning?

8 Q. Yes.

9 A. I was at home.

10 Q. Okay, you were at home and ---

11 A. Yes.

12 Q. --- and asleep until 8 a.m.?

13 A. Yeah.

14 Q. Okay.

15 A. I didn't work that weekend!

16 Q. Okay.

17 MS. COLEMAN: Thank you. That's all.

18 WITNESS: All right.

19 THE COURT: Now you can go back.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Mr. Boozer, any other witnesses?

22 MR. BOOZER: One other witness, Your Honor. That  
23 would be Ms. Jessica Weldon.

24 JESSICA WELDON, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

1           BAILIFF: State your full name. Spell your last name  
2 for the record.

3           WITNESS: Jessica Shanika Weldon, W-e-l-d-o-n.

4 DIRECT EXAMINATION BY MR. BOOZER:

5 Q. Ms. Weldon, how are you?

6 A. I'm doing all right.

7 Q. Good. Do you know Victor Weldon?

8 A. Yes, sir.

9 Q. How are -- are you related to him?

10 A. Yes, sir. That's my brother.

11 Q. That's your brother? All right. What you do for a  
12 living?

13 A. What I do?

14 Q. Uh-huh.

15 A. Right now I'm a mother right now. I don't do nothing.

16 Q. That's a full-time job.

17 A. No. Yeah, it really is.

18 Q. Okay.

19 A. It's a job with responsibilities.

20 Q. All right. Now, are you aware that your brother,  
21 Victor, was accused of committing a crime on May 15, 2010,  
22 in Clarendon County?

23 A. Yes, sir.

24 Q. All right, and are you aware that that crime allegedly  
25 occurred sometime between 6 and 6:30 a.m., there or about

J. WELDON - DIRECT EXAMINATION BY MR. BOOZER

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1 give or take some time?

2 A. Yes, sir.

3 Q. All right, and then he was convicted after a jury  
4 trial for those charges some time in May of 2012?

5 A. Yes, sir.

6 Q. You're aware of that?

7 A. Yes, sir.

8 Q. All right. Were you actually at a trial for Victor?

9 A. Yes, sir. I was at -- I think they had, like, two  
10 days for his trial. I know I didn't come -- I didn't come  
11 to the sentencing.

12 Q. But you were there for the actual trial itself?

13 A. Yes, sir.

14 Q. All right. Why were you there?

15 A. I was supposed to come and testify for him.

16 Q. All right. Who told you that you would be testifying?

17 A. His lawyer.

18 Q. And who was his lawyer? Do you remember?

19 A. I can't pronounce his name. His last name was --  
20 John. I can't pronounce his last name.

21 Q. Is it Knobloch? Did it have a K in it?

22 A. Yes, sir.

23 Q. All right. Prior to the trial in May of 2012, did you  
24 ever have any discussions with his lawyer, Mr. Knobloch?

25 A. Yes, sir.

1 Q. What did you two discuss?

2 A. I remember it was in Manning court, and he asked me  
3 was I around at the time. I told him, I told him yes, and  
4 he asked me would I be willing to testify for Victor, and I  
5 said yes, sir, I will.

6 Q. Do you know if you were under a subpoena to testify,  
7 or were you there just voluntarily?

8 A. I think I was just there voluntarily.

9 Q. And did you end up testifying at the trial?

10 A. No, sir.

11 Q. Were you ever told why you weren't called as a  
12 witness?

13 A. No, sir.

14 Q. Was it your intention to testify while you were there?

15 A. Yes, sir.

16 Q. All right. Let's go back to May 15, 2010, which is  
17 the date the crime occurred. Where were you living at that  
18 time?

19 A. [REDACTED] Drive, Sumter, South Carolina.

20 Q. Okay, and who did you live with?

21 A. My mother, Debra Weldon; and my brother Victor Weldon;  
22 my other brother Marcus Weldon; Victor Weldon girlfriend;  
23 and Marcus Weldon girlfriend.

24 Q. All right. The day before, on May 14, 2010, that  
25 evening, what time did you go to bed?

J. WELDON - DIRECT EXAMINATION BY MR. BOOZER

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1 A. That evening, I know, like, I got out of school at  
2 4:00. I got off the bus and he was outside, and I ain't  
3 went to sleep til late because it was Friday night. I  
4 ain't had, I ain't had to go to school, so I didn't went to  
5 sleep til around, I'm going to say, 12:00.

6 Q. 12 a.m.?

7 A. Yeah. Like, a little bit past 12.

8 Q. Okay. When you went to sleep, who was there?

9 A. My brother Victor; his girlfriend, Rell; and my  
10 brother girlfriend Kathy, the other -- Marcus girlfriend,  
11 Kathy.

12 Q. How about your mom? Do you know if she was there?

13 A. Yes, sir. She was there. I forgot to say her.

14 Q. All right. Where was your brother when you went to  
15 bed?

16 A. In a room with his girlfriend.

17 Q. How close was that to the room that you sleep?

18 A. Right there.

19 Q. It's very close?

20 A. Very close.

21 Q. Is it next door?

22 A. No. It's a bathroom is next door, but if he come out  
23 his room, like, when he come out his room, he pass my room,  
24 I see everything coming out his room, going in.

25 Q. Okay. Now, what time did you get up the next day on

1 May 15th?

2 A. I got up around 5 something because my friend Dina  
3 called me. So when I get up, I try to sneak a cigarette  
4 from his girlfriend at the time, and he was in the room.

5 Q. So, you were trying to sneak a cigarette from Victor's  
6 girlfriend?

7 A. Yes, sir.

8 Q. Okay, and that was at what time?

9 A. 5 something.

10 Q. All right.

11 A. It was in the morning, 5 a.m.

12 Q. Was Victor in the room?

13 A. Yeah. He was sleep at the time.

14 Q. All right.

15 A. There. I guess when I opened the door --- because I  
16 was outside. I smoked the cigarette outside the house. I  
17 did see him peek out the window.

18 Q. All right, from let's say 6 a.m. to 7 a.m. on May 15,  
19 2010, where were you?

20 A. I was at the house.

21 Q. All right. Where was Victor?

22 A. In the house.

23 Q. Where was he?

24 A. In the room with his girlfriend.

25 Q. All right. Do you know when Victor probably got up

J. WELDON - DIRECT EXAMINATION BY MR. BOOZER

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1 that morning? When's the next time you saw him get out of  
2 the room?

3 A. I see him part open the door a little bit. I'm going  
4 to say around 9, a little bit after because he had two  
5 cats, and he let the cats out so they could play outside.

6 Q. And the testimony that you've just given, is that what  
7 you would have stated at Victor's trial in May of 2012 if  
8 you had been called as a witness?

9 A. Yes, sir.

10 Q. And what you've told me -- or, excuse me, what you've  
11 told this court today, is that what you told Victor's  
12 lawyer?

13 A. I told him -- had, like -- I ain't going to say I tell  
14 him the whole thing because I don't recall, but, like, tell  
15 him the whole thing about -- I mean, just having a  
16 conversation with him to ask was I around at the time..

17 Q. Okay, and how is it you're able to recall the events  
18 around that time?

19 A. After my brother got locked up, that all we talk  
20 about.

21 Q. Do y'all still talk about this to this day?

22 A. Yes, sir.

23 Q. Okay.

24 MR. BOOZER: Thank you, Your Honor. That's all the  
25 questions I have of this witness.

1 Thank you, Ms. Weldon.

2 THE COURT: All right, Ms. Coleman.

3 MS. COLEMAN: No questions for this witness.

4 THE COURT: All right, thank you. You can go back and  
5 have a seat in the back of the courtroom.

6 WITNESS: Yes, ma'am.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: All right, Mr. Boozer.

9 MR. BOOZER: Yes, ma'am. We would call former counsel  
10 John Knobeloch to the stand.

11 THE COURT: All right.

12 JOHN KNOBELOCH, BEING DULY SWORN,

13 TESTIFIES AS FOLLOWS:

14 BAILIFF: Please state your full name and spell your  
15 last name for the record.

16 WITNESS: It's John Knobeloch, K-n-o-b-e-l-o-c-h.

17 DIRECT EXAMINATION BY MR. BOOZER:

18 Q. Good afternoon, or morning still, Mr. Knobeloch. How  
19 are you?

20 A. Good.

21 Q. It may be afternoon by the time we get done here.

22 Mr. Knobeloch, where do you currently practice law?

23 A. Charleston County, Mount Pleasant.

24 Q. All right. How long have you been practicing in  
25 Charleston?

J. KNOBELOCH - DIRECT EXAMINATION BY MR. BOOZER

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1 A. Twenty years, give or take a year.

2 Q. Now, you represented Mr. Weldon for his trial?

3 A. Correct.

4 Q. And how is it that you, a Charleston lawyer, became  
5 involved in Clarendon County?

6 A. I think that they amended Rule 608 about a year before  
7 his trial and took Clarendon from Florence and gave it to  
8 Charleston, and I think that's how it came about. The ---

9 Q. Do you -- go ahead. I'm sorry.

10 A. I was going to say the, the, the letter of appointment  
11 from the clerk stated that the reason was that all of the  
12 attorneys in Clarendon County and the neighboring counties  
13 had such a close, personal relationship with the victim  
14 that no attorney in those counties could represent Mr.  
15 Weldon.

16 Q. Did that cause you any concern?

17 A. It, it did. I thought that that was an odd reason for  
18 an appointment, and I did draft a motion for change of  
19 venue. I do not recall -- I, I believe that I presented  
20 the motion but withdrew it on the spot at court, but I  
21 don't recall. I may have actually argued it.

22 Q. And let -- we'll circle back to that in just a second.  
23 We'll keep moving forward with sort of the background. Do  
24 you know when you were appointed to represent Mr. Weldon?

25 A. I don't recall the exact date.

1 Q. Do you know how many times you may have met with Mr.  
2 Weldon prior to his trial?

3 A. I recall at least twice. There was, of course, a  
4 distance between us, so there would have been some  
5 communications by mail, and I believe that the courthouse  
6 -- I mean, the jail he was in allowed phone calls, I  
7 believe.

8 Q. So, you may have had some phone calls with him as  
9 well?

10 A. Possibly.

11 Q. All right. What were the allegations against Mr.  
12 Weldon?

13 A. Attempted murder, kidnapping, burg first, armed  
14 robbery, and I believe possession of a weapon during a  
15 violent crime.

16 Q. And what were the facts that were supporting these  
17 allegations?

18 A. In the early morning, I believe it was just before  
19 sunrise to meet the elements of, of burg first, a number of  
20 people -- I forget the exact number. I think it may have  
21 been three. It may have been four. All wearing masks  
22 entered Mr. Gibson's [sic] garage and attacked him as he  
23 was leaving for the morning. Beat him pretty severely and,  
24 I believe, took the money that he had in his wallet.

25 Q. In meeting with Mr. Weldon, did y'all talk about the

J. KNOBELOCH - DIRECT EXAMINATION BY MR. BOOZER

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1 evidence and what was -- what he was facing?

2 A. Yes.

3 Q. How, how would you categorize the evidence or  
4 characterize the evidence against Mr. Weldon in this case?

5 A. I recall after receiving the discovery that I reached  
6 out to the assistant, the assistant solicitor with no  
7 tongue-in-cheek thinking that I had received the wrong  
8 discovery package because he's not mentioned in it.

9 Q. Okay, and throughout the course of your representation  
10 in the trial, was the discovery -- was evidence against Mr.  
11 Weldon lacking?

12 A. Initially the only evidence that I saw was -- there  
13 was DNA evidence which took a while to get from the  
14 solicitor's office, but I did eventually get that, that DNA  
15 was found on a piece of duct tape.

16 Q. And it was linking Mr. Weldon?

17 A. The, the DNA did match Mr. Weldon.

18 Q. Did you take issue, though, with the way in which the  
19 evidence -- with the evidence itself?

20 A. I don't think that I did on the record. I, I, I, I  
21 investigated trying to suppress it based on the fact that  
22 the hit came from a CODIS database. It's been a while  
23 since I've done the research, but I was, I was attempting  
24 to say that those -- that sample in the database should  
25 have been expunged and was not, and that that's another one

1 I think that I ended up was unable to connect the dots on  
2 my argument, and I don't know if I made that argument.

3 Q. What type of investigation did you perform in the  
4 case?

5 A. I requested funds for an expert witness to -- who I  
6 did not call but to review the DNA evidence, and I also  
7 requested a private investigator because there were  
8 numerous second and third-hand accounts in the officer's  
9 notes from confidential informants, and I used the private  
10 investigator to try and track those people down.

11 Q. Prior -- or at the trial, what was the trial strategy  
12 in the case?

13 A. The, the, the trial strategy was to attack the DNA,  
14 which was the only evidence linking Mr. Weldon to the  
15 crime. There were no witnesses. All of the defendants  
16 were wearing masks. There was, there was nothing linking  
17 him except for the DNA. And I guess the -- our, our theory  
18 on weakness of the DNA evidence was that the police  
19 officers did take a sample from both the outside of the  
20 duct tape and the sticky side of the duct tape, the  
21 significance being that if, you know, the DNA is found on  
22 the sticky side, it's much more likely that you were  
23 present because you had to expose the sticky side at --  
24 where, where -- when the, when the sample, DNA sample was  
25 put on it, even though the police officers took samples of

J. KNOBELOCH - DIRECT EXAMINATION BY MR. BOOZER

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1 both sides, they didn't label them. So, they were unable  
2 to say whether the, whether the DNA sample came from the  
3 outside or the sticky side of the duct tape.

4 Q. Did you raise that issue at trial?

5 A. I believe I did, but I don't recall. It's been a  
6 while.

7 Q. Okay. If you did, it'd be in the transcript and ---

8 A. That's correct.

9 Q. --- of course if you didn't, it wouldn't?

10 A. That's correct.

11 Q. And if you, if you didn't raise it, is that something  
12 you feel like you should have ---

13 A. Absolutely.

14 Q. --- raised? Do you think if you would have been able  
15 to keep that DNA evidence out, that that would -- could  
16 have changed the outcome of the trial?

17 A. Absolutely.

18 Q. In favor of Mr. Weldon?

19 A. In favor. There was no other evidence except for  
20 that.

21 Q. But you'll defer to the transcript?

22 A. I will defer. It was several years ago, and I will  
23 absolutely defer to the transcript.

24 Q. Have you been in the courtroom since we've called --  
25 or since this case has been called for a hearing?

1 A. Yes.

2 Q. Have you heard the testimony of Debra Weldon and  
3 Jessica Walton today?

4 A. I have.

5 Q. All right. Did you ever have any contact with either  
6 Jessica Walton or Debra Weldon prior to the trial?

7 A. I, I recall speaking with his mother, Debra Weldon,  
8 several times, and reviewing my notes I believe I did also  
9 speak with his sister.

10 Q. So, both Debra and Jessica you would have spoken to?

11 A. Correct.

12 Q. Did you have any discussion with either Jessica or  
13 Debra about where Victor was the day that this crime  
14 occurred?

15 A. Yes.

16 Q. Do you know what the substance of that discussion  
17 would have been?

18 A. It, it would have been very similar to the testimony  
19 that they gave earlier today.

20 Q. Do you think that that's what they indicated to you  
21 back then when you were investigating then?

22 A. I don't recall verbatim, but the, the general essence  
23 of what they testified to today would have been the same  
24 thing.

25 Q. Now at trial, did you call any witnesses on Mr.

1 Weldon's behalf?

2 A. We did not.

3 Q. All right. Why were no witnesses called on his  
4 behalf?

5 A. I do not know. The -- we did file a notice of alibi  
6 and I did prepare -- in the trial notebook there is a spot  
7 where I had prepared to ask Debra, at least the mother,  
8 Debra Weldon, questions supporting the alibi. Possibly we  
9 did not call a witness so that we could have final  
10 argument, but so honestly I, I don't know why we would not  
11 have called them as alibi witnesses.

12 Q. So, you think that -- well, let me ask you this. You  
13 did file a notice of alibi?

14 A. Correct.

15 Q. All right, and was that notice of alibi, was that for  
16 the testimony of Debra Weldon and Jessica Weldon?

17 A. Correct.

18 Q. And that would have been alibi for where Mr. Weldon  
19 was on May 15, 2010?

20 A. Correct.

21 Q. And it's your understanding that, based on your  
22 investigation of the -- Ms. Weldon and her daughter,  
23 Jessica Weldon, and discussions with Victor Weldon, that he  
24 was at their house in Sumter when all this allegedly  
25 occurred?

1 A. That is correct.

2 Q. All right. Had you present -- was there any other way  
3 if Mr. Weldon didn't testify and Ms. Jessica Weldon didn't  
4 testify and Debra Weldon didn't testify, was there any  
5 other way to convey that to the jury?

6 A. No.

7 Q. Do you think that that was important testimony for the  
8 jury to consider?

9 A. I do.

10 Q. Okay. Looking back, should you have called them as  
11 witnesses in the trial?

12 A. I believe so, yes.

13 Q. And do you think that that could have changed the  
14 outcome of Mr. Weldon's trial?

15 A. I do.

16 Q. Now, going back to a few of Mr. Weldon's allegations,  
17 was there a motion to be relieved filed in the case, if you  
18 recall?

19 A. There -- I cannot remember if I brought that motion  
20 before the court, but I do remember speaking with Mr.  
21 Weldon because he did have concerns about my representation  
22 and asking him if he wanted me to stay on the case. And I  
23 recall that at the end of that conversation, we decided  
24 that I would remain his attorney. I don't recall whether  
25 or not I filed a motion before the court to be relieved.

J. KNOBELOCH - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. And, and if it's -- if the transcript notes that  
2 you're not pursuing the motion to be relieved, would you  
3 agree that's what occurred?

4 A. Correct.

5 Q. Okay, and going back to Jessica Weldon and Debra  
6 Weldon, were they actually at the trial?

7 A. I remember his mother being there, and I believe his  
8 sister was also.

9 Q. And you indicated that you may have considered having  
10 last argument versus presenting witnesses?

11 A. With, with hindsight, you know, reading the PCR  
12 application, I'm scratching my head wondering why we would  
13 not have called our alibi witnesses, and that's the only  
14 thing I can come up with, but I don't see that in my notes  
15 that were taken at the time of trial.

16 Q. So, you're not even sure if you made that decision?

17 A. Correct.

18 Q. But you would -- even if you had made that decision,  
19 would you agree that calling alibi witnesses would have  
20 been a much more favorable strategic decision versus not  
21 calling alibi witnesses and trying to get the last  
22 argument?

23 A. I do.

24 Q. Because there's no other way to present an alibi  
25 defense.

1 A. That's right.

2 Q. He was tried with a co-defendant?

3 A. Correct.

4 Q. All right. Did y'all have any discussion about trying  
5 to separate those trials?

6 A. I don't specifically recall discussing that with Mr.  
7 Weldon.

8 Q. Did you make any sort of motion with regard to that?

9 A. I do not believe I did.

10 Q. Do you think that that's something that may have been  
11 successful at the time, or do you recall?

12 A. I don't know whether the court would have granted that  
13 or not.

14 Q. Well, were there any statements that were being made  
15 against one another?

16 A. From memory, I do not believe that either defendant  
17 pointed the finger at the other.

18 Q. Do you have any recollection of some sort of a joint  
19 plea being offered to both defendants, that it was  
20 contingent upon both of them accepting it?

21 A. I looked through my file again, and I did not see a  
22 written plea offer in my file from the solicitor's office.  
23 I, I did not recall it until I heard Mr. Weldon testify  
24 today, but it does vaguely sound familiar, but I do not  
25 specifically recall that.

J. KNOBELOCH - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. And, and obviously he didn't end up accepting that.

2 A. Correct.

3 Q. Was he pretty adamant about having a trial?

4 A. Yes.

5 Q. Now, did you also file a motion for change of venue?

6 A. I did.

7 Q. Okay. What was your reason for the motion for change  
8 of venue?

9 A. My understanding is that the standard for a change of  
10 venue is pretty high, and that it's not that the community  
11 knows about the facts of the case. It's that the community  
12 cannot set aside its either prejudice or bias to give a  
13 fair trial. And so the premise of my motion is if three to  
14 500 attorneys who certainly have a -- an -- should  
15 certainly be able to take on a case, even if they do have  
16 connections to the community. If three to 500 attorneys in  
17 all of the counties couldn't set aside their own prejudices  
18 or biases, that I did not believe that the community as  
19 jurors could.

20 Q. Do you have any recollection as to whether the motion  
21 was ever ruled upon?

22 A. I believe that we did file it, and I believe that we  
23 withdrew it during preliminary motions prior to the jury  
24 selection.

25 Q. Okay.

1 MR. BOOZER: Your Honor, may I approach the witness?

2 THE COURT: Yes, sir.

3 BY MR. BOOZER:

4 Q. Mr. Knobloch I'm going to turn to -- this is volume  
5 one of the trial transcript, and specifically I'm looking  
6 at page 12, and I'm looking at beginning at line 8 through  
7 line 12. If you would, just take a moment and review that  
8 to yourself.

9 (A PAUSE.)

10 A. Okay.

11 Q. Have you had a moment to take a look at that?

12 A. I have.

13 Q. Okay. Sitting here looking at it, it appears you're  
14 addressing the court and you say based on page 12, line 8:  
15 And from memory, the motion to be relieved, I'm not  
16 pursuing. So, you weren't pursuing the motion to be  
17 relieved?

18 A. Correct.

19 Q. And you go on to say:

20 And I think the other motion that I filed at --  
21 the last time we were here was for a change of  
22 venue, which was not moved -- I mean, it was not  
23 ripe and it still is not.

24 Do you have any idea what that meant?

25 A. I, I can't tell from reading that if I was trying to

J. KNOBELOCH - DIRECT EXAMINATION BY MR. BOOZER

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1 say that the, the not -- if there was a -- if the court  
2 even ruled on the motion and I was addressing the court's  
3 ruling, or if I was referring to the underlying motion  
4 itself.

5 MR. BOOZER: Your Honor, may I approach the witness  
6 again?

7 THE COURT: Yes, sir.

8 BY MR. BOOZER:

9 Q. All right, Mr. Knobeloch, I want to direct your  
10 attention. This is volume four of the transcript, and  
11 specifically it's page 76. If you would just take a moment  
12 and read to yourself, and you may want to start at the top  
13 to orient yourself to the transcript. Just take a moment  
14 to read that to yourself.

15 (A PAUSE.)

16 Q. Have you had a moment to review that section?

17 A. I have.

18 Q. Okay, and does this appear to you to be portions of  
19 testimony from one of the investigators?

20 A. Correct.

21 Q. All right, and looking at it, it appears that -- or  
22 would you agree that it appears to be testimony discussing  
23 that investigator executing a search warrant at the house?

24 A. The, the testimony has to do with the investigator  
25 searching the house pursuant to a warrant that was issued

1 approximately eight weeks after the crime.

2 Q. And that -- was that a search of Mr. Weldon's house?

3 A. It was, it was, I believe it was either Mr. Weldon's  
4 house or his father's house, but I think it was Mr.  
5 Weldon's house.

6 Q. Okay, and then it goes on, that question at line 15:

7 Did you go there looking to see if there was a --  
8 some boots or a mask there at the house you were  
9 hoping to find it, right?

10 Investigator responds: Yes.

11 Question: But how many -- eight weeks had gone  
12 by?

13 Answer: Yes. Easily evidence could have been  
14 destroyed by then.

15 In the transcript, there's no objection noted. Do you  
16 know if you objected to that?

17 A. I do not recall objecting.

18 Q. Okay. Do you believe that that's something that is  
19 objectionable?

20 A. Yes.

21 Q. Okay, and do you believe that it's prejudicial for the  
22 investigator to insinuate that ---

23 A. Correct.

24 Q. --- evidence has been destroyed when there is no  
25 evidence of that?

1 A. That's correct.

2 Q. Okay. Is that something you should have objected to?

3 A. I should have.

4 Q. Was any curative instruction requested with regard to  
5 that?

6 A. I do not, I do not believe so.

7 Q. You've heard Mr. Weldon's allegation that he believed  
8 that the judge had some sort of bias because the judge and  
9 victim were acquaintances. Do you, you have any  
10 recollection of that, or did you have any discussion with  
11 Mr. Weldon about that?

12 A. I am -- I'm not from Clarendon County, but I certainly  
13 knew that the victim, Mr. Gibson, had significant ties to  
14 the community. That was the whole basis of my appointment,  
15 and I do recall as he entered the courtroom, it seems that  
16 he shook hands with every bailiff, every janitor, every  
17 attorney, prosecutor. And so I, I would, I would  
18 absolutely believe that there was a, a -- at least an  
19 acquaintanceship between Mr. Weldon and the judge.

20 Q. Did you make any sort of motion or request for a -- I  
21 guess other than the change of venue, did you make any sort  
22 of motion for the judge to recuse himself or anything like  
23 that?

24 A. We did not.

25 Q. Okay. Also, Mr. Weldon made some allegations about, I

1 guess, the jury charges and he alleges that he feels like  
2 (A) the charge itself made him look guilty, and (B) that  
3 his interpretation is that the charges given to the jury  
4 really only gave them two options, both of which were to  
5 find him guilty of either armed robbery or strong-arm  
6 robbery. Do you recall anything about the jury charges?

7 A. I don't recall the jury charges.

8 Q. And would you, I guess, have objected had there been  
9 an issue with them?

10 A. Is he -- is Mr. Weldon referring to lesser-included  
11 charges? Is that what he -- I'm not sure I'm following  
12 what...

13 Q. That's my understanding, yes, sir.

14 A. I would have to look at the statutes to see the  
15 sentences. I feel, my gut feeling would be that we would  
16 want to include the lesser-included charges because of the  
17 mandatory minimum on, on some of the, on some of the  
18 charges that were pending.

19 MR. BOOZER: Mr. Knobloch, that's all the questions I  
20 have, and I appreciate your time.

21 WITNESS: Thank you.

22 CROSS-EXAMINATION BY MS. COLEMAN:

23 Q. Hi. How are you?

24 A. Good.

25 Q. You've already testified quite a bit with Mr. Boozer

1 about your interactions with the applicant and how you  
2 investigated and prepared for trial. Let's see, I'll start  
3 with the alibi witnesses that were presented today. You  
4 testified that you had spoken to these witnesses before.

5 Is that correct?

6 A. Correct.

7 Q. Okay, and they -- did they tell you a similar story  
8 that was presented today?

9 A. Yes.

10 Q. Okay, and you choose not to use them at trial,  
11 correct?

12 A. Correct.

13 Q. Did you -- are you concerned at all today with the  
14 fact that the witnesses, all three witnesses today, their  
15 stories didn't quite match up?

16 A. Like I testified earlier, I don't recall the specific  
17 -- I don't recall the minutia, the detail of, of those  
18 conversations, but I do recall in general that they were  
19 alibi witnesses, and I do recall that I spoke with them  
20 about that.

21 Q. Right, and if they had -- if these witnesses had been  
22 presented at trial and if they had testified with the  
23 discrepancies that they presented today with -- for  
24 example, the question about the time they woke up, whether  
25 or not or the mother was there, whether she worked that

1 day, things like that, if those had been presented to a  
2 jury, would that have made them -- made the case better or  
3 worse?

4 A. Well, if we had called all three witnesses then yes,  
5 but if we only called one witness, I think it would have  
6 made the case better.

7 Q. Okay. If you thought that these -- or that one, at  
8 least one of these witnesses would have been helpful at the  
9 time, would you have called them as a witness?

10 A. With hindsight, I have no idea why I did not call the  
11 alibi witnesses.

12 Q. Right.

13 A. Usually I will in my notes at least have an internal  
14 discussion with myself that I -- you know, weighing pros  
15 and cons and reviewing my notes, I don't, I don't know why  
16 I did not call them.

17 Q. So at the time, if it had been an issue, you think you  
18 would have had a discussion with yourself and made that  
19 decision, a conscious choice not to do that?

20 A. I would think so.

21 Q. Okay.

22 MS. COLEMAN: Beg the court's indulgence.

23 (A PAUSE.)

24 BY MS. COLEMAN:

25 Q. You testified that one of the reasons you didn't call

1 witnesses might have been to have the final closing  
2 argument, correct?

3 A. Correct.

4 Q. And you did, in fact, have the final closing argument,  
5 correct?

6 A. Correct.

7 Q. You testified that your, your strategy in this case  
8 was to attack the credibility of -- or the admissibility of  
9 the DNA evidence, correct?

10 A. Correct.

11 Q. And you did, in fact, vigorously cross-examine the  
12 state's witnesses that they presented on this evidence,  
13 correct?

14 A. Correct.

15 Q. Okay. You also made a motion to suppress all DNA  
16 evidence before the trial began. Is that right?

17 A. Correct.

18 Q. And you also made a motion for directed verdict on the  
19 basis of the DNA evidence, right?

20 A. I believe so, correct.

21 Q. Also in volume four on page 119 of the transcript,  
22 which is your cross-examination of the state's witness,  
23 would you agree that you did get the opportunity to argue  
24 the issue of DNA evidence on the front of the duct tape  
25 versus the sticky side? If that's in the transcript, would

1 you dispute it?

2 A. If it's in the transcript, I don't dispute it, no.

3 Q. Okay.

4 MS. COLEMAN: And, Your Honor, that began -- that  
5 cross-examination begins on page 111 and ends on page 120  
6 of volume four.

7 BY MS. COLEMAN:

8 Q. And that DNA evidence did match up to the applicant,  
9 correct?

10 A. Correct.

11 Q. And you think that's -- do you think that's strong  
12 evidence against him?

13 A. I don't know if that one piece of evidence is enough  
14 for me personally to think that it overcomes the, the, the  
15 standard of beyond a reasonable doubt.

16 Q. Okay. As far as the joint trial goes, you testified  
17 that you, you do not recall discussing this at all with the  
18 applicant. If the applicant had asked you to file a motion  
19 to split the trial, would you have done it?

20 A. I certainly would have considered it. I just can't  
21 remember. We may have discussed it; I may have discussed  
22 it with another attorney just bouncing ideas off. I just  
23 don't recall one way or the other on that issue of severing  
24 the, the defendants.

25 Q. And had you done a joint trial like this before?

J. KNOBELOCH - CROSS-EXAMINATION BY MS. COLEMAN

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1 A. I'm a real estate attorney, so I don't do criminal  
2 trials. I, I -- well, in twenty-something years, I may  
3 have done one or two but generally I don't ---

4 Q. Right.

5 A. --- try criminal cases.

6 Q. And at the time of the trial, if you had thought that  
7 the joint trial would have prejudiced him in some way,  
8 would you have made a motion to split the trial?

9 A. If I thought it was going to prejudice him, prejudice  
10 him, then yes, I assume I would have.

11 Q. Okay. As far as the issue of judicial bias, of course  
12 you testified about how this is a small town, and everyone  
13 seems to know each other. Did the judge ever indicate to  
14 you or to the jury or to anyone that he knew the victim in  
15 this case?

16 A. I don't recall specifically, but I believe -- I think  
17 that he did, but I cannot recall specifically.

18 Q. And it's also -- would you agree with me that trials  
19 like this, jury trials happen in small towns here and all  
20 across the state every day, every week, every month without  
21 having to change the venue even though people might know  
22 each other ---

23 A. As ---

24 Q. --- and be familiar with each other?

25 A. As, as far as what you were touching on earlier about

1 the relationship with the judge, I don't think I ever would  
2 have filed a motion to, to ask the judge to recuse himself  
3 even if there was a relationship. As far as the change of  
4 venue, I think having three to 500 attorneys not be able to  
5 take the case because of their close ties to the victims is  
6 unusual. With hindsight, the -- on the first day of the  
7 trial, the *voir dire* didn't show up. We didn't have enough  
8 people show up to participate in the jury, and so I think  
9 venue is an issue in this, in this particular case even  
10 though it is often that trials are tried in small towns.

11 Q. Now, the amended allegation that they added today,  
12 volume four, page 75, the objection that he was talking  
13 about that was not made about the search warrant, what  
14 objection specifically would you have made to this?

15 A. That the, that the officer was, was entering his own  
16 opinion and not stating a fact.

17 Q. But it had, in fact, been eight weeks since crime. Is  
18 that correct?

19 A. I wouldn't have objected to that part.

20 Q. Just that he was inserting his own ---

21 A. Correct.

22 Q. Okay, but at the time -- and can you just kind of walk  
23 me through your strategy when it comes to objecting to  
24 things in court, how you generally decide what to object to  
25 and what not to?

J. KNOBELOCH - CROSS-EXAMINATION BY MS. COLEMAN

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1 A. I, I probably would not have objected to that. You  
2 know, I honestly -- in reality, it's probably that it just  
3 went by me and I didn't catch it. But I will also say that  
4 I probably would not have objected to it anyway. Things  
5 that are not significant, I don't want to stop the flow or  
6 draw attention to it, so I probably would not have objected  
7 to that even if I had caught it.

8 Q. Okay.

9 MS. COLEMAN: Beg the court's indulgence one moment.

10 (A PAUSE.)

11 MS. COLEMAN: Your Honor, may we have just one moment?

12 THE COURT: Absolutely. In fact, let's take a quick  
13 three-minute break.

14 MS. COLEMAN: Thank you, Your Honor.

15 THE COURT: Don't discuss your testimony with anyone.

16 (OFF THE RECORD.)

17 THE COURT: If the state's ready?

18 MS. COLEMAN: Yes.

19 THE COURT: Okay.

20 MS. COLEMAN: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 BY MS. COLEMAN:

23 Q. You testified that you believe you did draft a motion  
24 to be relieved in this case that you did not go forward on.  
25 Is that correct?

1 A. I, I think so. I know that there was a -- I, I  
2 remember for sure discussing me staying on the case with  
3 Mr. Weldon.

4 Q. Okay, yes, and I believe that's in volume one of the  
5 transcript on the record where you decided not to go  
6 forward on that motion, and was that after you had  
7 discussed it with your client and decided not to?

8 A. I, I know that he and I reached a resolution on that  
9 and agreed that he wanted me to stay on the case. So, I  
10 would assume that that's why I withdrew that motion.

11 Q. Okay. Thank you. Going back to the alibi witnesses,  
12 you testified that you probably would have just called one  
13 of them if their stories hadn't matched up to avoid being  
14 more harmful than helpful?

15 A. Well, I don't recall their stories not matching up, so  
16 I can't say that I would have only, only called one. And  
17 you, I think, had asked me if it would've been helpful or  
18 hurtful. I was just replying that if we'd only called one,  
19 if would've been ---

20 Q. Right.

21 A. --- not been an issue.

22 Q. Okay, and if you, hypothetically speaking ---

23 A. Sure.

24 Q. --- if you had only called one of them, is it possible  
25 that the state could have called the other witnesses to

1     rebut their testimony?

2     A.    Sure, it's possible.

3     Q.    Were you ever in contact with the girlfriend that they  
4     testified about today who was allegedly in the room with  
5     applicant that whole morning?

6     A.    I remember speaking with her at one of the hearings  
7     prior, much prior to the trial.

8     Q.    Okay, and did she testify to a story that matched with  
9     the -- with testimony given today?

10    A.    Again, I don't recall the specifics, but I do recall  
11    in general the people in the household being part of an  
12    alibi.

13    Q.    Okay.  If her story had not matched up, is it possible  
14    that the state could have called her as a witness again to  
15    rebut their testimony?

16    A.    Absolutely.

17    Q.    Okay, and at that point, if that happened, would you  
18    agree that it would be more harmful than helpful to you?

19    A.    Yes, it would be harmful for the alibi witnesses not  
20    to have the same story.

21    Q.    Right, and if that were the case and you had presented  
22    the alibi witnesses, then you would not have the final  
23    closing argument, correct?

24    A.    That is true; yes, that's true.  If I present a  
25    witness, I would not have final argument.

1 Q. Okay. Okay.

2 MS. COLEMAN: No further questions. Thank you.

3 THE COURT: Any redirect?

4 MR. BOOZER: No redirect, Your Honor.

5 THE COURT: All right. Thank you, sir.

6 WITNESS: Thank you.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Anything further from the applicant?

9 MR. BOOZER: Nothing further from the applicant, Your  
10 Honor.

11 THE COURT: Does the state have any witnesses?

12 MS. COLEMAN: The state has no witnesses, Your Honor.

13 THE COURT: All righty.

14 MS. COLEMAN: Your Honor, at this time I would request  
15 to leave the record open for the purposes of, like we did  
16 yesterday, obtaining a criminal background check on the  
17 alibi witnesses just to see if there is the existence of an  
18 admissible prior history for impeachment purposes, and also  
19 the venue, the motion for venue. It was referenced in the  
20 first transcript, but I don't believe we have a copy of  
21 that. I'd like to request permission to see if that  
22 transcript exists and possibly order it to add it to the  
23 record.

24 THE COURT: Okay. I will give you, as with the case  
25 yesterday, ten days to provide me with any rap sheets or

1 any information about the existence of impeachable offenses  
2 for the alibi witnesses. Within that same ten days, if you  
3 will determine whether a transcript exists regarding the  
4 motion to, what was it, to change venues?

5 MS. COLEMAN: Yes, the motion for venue.

6 THE COURT: The motion to be relieved or the motion to  
7 change venue?

8 MS. COLEMAN: Venue, the motion to change venue.

9 THE COURT: Okay.

10 MS. COLEMAN: Thank you, Your Honor.

11 THE COURT: Let me know about that and if it exists  
12 and some additional time is needed. I don't know if the  
13 applicant has any objection to that.

14 MR. BOOZER: We do not, Your Honor.

15 THE COURT: Okay.

16 MR. BOOZER: On the motion to change venue. I guess  
17 on the initial request by the state, which is on the  
18 background of the witnesses presented today, I provided the  
19 dates of birth for both folks so they can perform the  
20 check, and I guess I just would request that it's obviously  
21 limited just to submitting to the court just for you to  
22 look at. There's not going to be any brief or arguments  
23 on, on any of that.

24 THE COURT: Absolutely.

25 MR. BOOZER: Or recalling the witnesses.

1 THE COURT: Absolutely. That's understood, right, Ms.  
2 Coleman?

3 MS. COLEMAN: That's understood.

4 THE COURT: No narrative or, you know, editorial about  
5 the meaning of those convictions or anything. Just the  
6 existence of the convictions, if any exist.

7 MS. COLEMAN: Yes, Your Honor.

8 THE COURT: I'll take that. Within that ten days  
9 you'll let me know. If you need additional time to obtain  
10 a transcript -- if one exists -- of course then, you know,  
11 we'll have to leave it open for another thirty or sixty  
12 days, however long it takes to obtain the transcript, but  
13 we'll deal with that at that time.

14 MS. COLEMAN: Thank you.

15 THE COURT: Okay, thank you.

16 All right, anything from the applicant?

17 MR. BOOZER: Your Honor, I just, I guess if for  
18 whatever reason if the, if the court is inclined to grant  
19 the PCR, I, I certainly don't want it to lay too far out  
20 just for the motion to change venue. I guess that is an  
21 issue, but I don't want to get ninety days or anything like  
22 that, and I'm not sure -- I know there's obviously rules  
23 for court reporters in responding to requests. Certainly  
24 have to abide by those, but I don't want to get in a  
25 situation where we're putting it off too far.

1 MS. COLEMAN: And we could if, if the record exists,  
2 we could order it and expedite it to be brought in as  
3 quickly as possible.

4 THE COURT: If necessary. So, let's conduct all of  
5 this via email.

6 MS. COLEMAN: Okay.

7 THE COURT: And you'll certainly copy Mr. Boozer on  
8 that email so that, you know, if you need thirty days or  
9 sixty days. I mean, contact the court reporter, of course,  
10 and let me know how much time is necessary. If there is  
11 some specific objection to the length of time that the  
12 court reporter needs, then Mr. Boozer will be on those  
13 emails as well, and he can let me know that objection at  
14 that time, okay?

15 MS. COLEMAN: Okay. Thank you, Your Honor.

16 MR. BOOZER: Thank you, Your Honor.

17 THE COURT: Thank you.

18 --- END OF TRANSCRIPT OF RECORD ---

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 27TH DAY OF JULY, 2016.

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

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 18TH, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
Victor McCoy Weldon, #350911,	)	
	)	2016-CP-14-00002
Applicant,	)	
	)	
v.	)	
	)	ORDER OF DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	

REC'D  
 CLARENCE COUNTY, SC  
 2017 AUG -2 PM 2:11

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 5, 2016. Respondent submitted its return on April 11, 2016. An evidentiary hearing was convened on July 27, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.<sup>1</sup>

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. Applicant was true bill indicted at the January 2011 term of the Clarendon County Grand Jury for burglary – first degree, attempted murder, armed robbery, grand larceny (\$2000-\$10000), kidnapping, and possession of a weapon during a violent crime (2011-GS-14-0068). John Knobloch, Esquire, represented Applicant.

<sup>1</sup> At the PCR hearing, this Court held the record open for the parties to attempt to obtain a copy of a hearing transcript regarding trial counsel's motion to change venue. During that time, this Court inadvertently caused an Order of Dismissal to be signed on November 6, 2016, and later filed November 17, 2016. The parties have represented to this Court that they were not served with notice of the entry of the Order and have requested that the Court vacate the Order and substitute this Order as the Final Order. This Court agrees and vacates its prior Order dated November 6, 2016. This Court further instructs the Clerk of Court to strike the prior Order of Dismissal filed November 17, 2016, and clock and file this Order instead. Any post-trial motions and/or appeals will be based on the date of filing of this Order.

Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant to thirty years imprisonment for armed robbery running consecutively to a sentence of thirty years imprisonment for burglary – first degree. Judge Cothran further sentenced Applicant to five years imprisonment for grand larceny, twenty years for kidnapping, and five years for possession of a weapon during a violent crime, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Weldon, 2014-UP-463 (Ct. App. filed December 17, 2014). Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. The Petition was denied via order filed January 23, 2015. The Remittitur was issued on May 8, 2015.

## II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
  - a. "Attorney file a motion to be relieved of case."
  - b. "None of my alibi's were called to testify on my behalf."
  - c. "I was never called to the stand to testify."
  - d. "Lack of communication."
  - e. "Force me into a joint trial."
  - f. "offer a joint plea instead of independent plea."
2. Due process violation
  - a. "denied my motion for a change of venue."
  - b. "gave me a joint trial."
3. Prosecutorial misconduct
  - a. "offer me a joint plea instead of independent plea."
4. Judicial Bias
  - a. "Judge and victim were acquaintance."
5. Jury violation
  - a. "charge the jury when proven clearly of a lesser included offense."
  - b. "the charge of the jury made me look guilty."

At the PCR hearing, Applicant orally amended his application to add an additional allegation of ineffective assistance of counsel for failing to object to the State's question on direct examination about destroying evidence. This was located on Volume 4, page 76 of the trial transcript, lines 15 through 21.

### III. APPLICABLE LAW

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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

##### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises several allegations arguing that Counsel was ineffective in his representation surrounding his trial. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

##### Motion to be Relieved

Applicant argues that counsel was ineffective for moving to be relieved as counsel. This argument is meritless, especially because Trial Counsel chose not to make his motion to be relieved as counsel and instead proceeded forward with the trial for which he had prepared. Trial Counsel testified that Applicant had expressed some concern and no longer wanted his representation. However, before the trial, he and Applicant resolved their issues and Applicant decided that he wanted Trial Counsel to stay on the case. Trial Counsel then, on the record, chose not to move to be relieved before the judge and decided to continue forward with trial. Even if Trial Counsel had moved to be relieved, Applicant cannot prove that anything about that motion constituted



ineffective assistance of counsel or was prejudicial to his case, and thus neither prong of the Strickland test is satisfied. Therefore, this allegation is denied and dismissed.

Alibi Witnesses

Trial Counsel's decision not to use the alibi witnesses presented at the PCR hearing was part of a valid trial strategy and was neither ineffective nor prejudicial.

Trial Counsel testified that he spoke to each alibi witness prior to the trial and had filed notice of an alibi defense. He had prepared to use their testimony at trial, but did not. Trial Counsel stated that he could not recall why he did not use their testimony.

At the PCR hearing, Applicant testified about his alibi and presented two witnesses which corroborated his alibi testimony. However, the testimony presented did not exactly match up. All three recollections of the morning in question differed slightly in time and detail. For example, Applicant testified that his mother was at work the morning of the crime and he woke up between 6:00 and 6:45 A.M. to wait for her when she came home at 7:15 A.M. However, Applicant's mother, Debra Weldon, testified that she did not work that day because it was Saturday morning and she did not work on weekends at the time; she stated she was home and did not wake up until 8:00 A.M. Jessica Weldon, Applicant's sister, testified that Applicant was in his room with his girlfriend that morning and did not wake up until around 9:00 A.M., which contradicts Applicant's testimony that he woke up around 6:00 A.M.

When asked about the discrepancies in the alibi stories, Trial Counsel agreed that presenting all three of these different stories at trial would have hurt his case. He stated that using only one of these stories would have helped his case, but agreed that the State could have presented testimony from the other two alibi witnesses to contradict his witness had he only used one.

The South Carolina Supreme Court has held that an attorney cannot be ineffective if there is evidence to support his decision not to call witness with credibility issues. "A witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions, even if that witness is a co-defendant." Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011) (citing Jackson v. State, 329 S.C. 345, 351-52, 495 S.E.2d 768, 771 (1998) (holding counsel had a valid strategic reason for not calling a co-defendant as a witness where the co-defendant's credibility was a concern and the same evidence would be presented through another witness)). Trial Counsel testified that having conflicting alibi witnesses would have hurt his case rather than help, and it is reasonable to think that he considered this as part of his strategy in not calling these witnesses.

The decision not to use contradictory alibi witnesses at trial was very likely part of Trial Counsel's trial strategy. Trial counsel must be given leeway to make reasonable strategic decisions. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Strickland at 688-89. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, "[j]udicial scrutiny of counsel's performance must be highly deferential." Id. at 689. In proving a claim of ineffectiveness, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id.

Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312

(1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546; 419 S.E.2d 778. "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).

A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't 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. See Wood v. Allen, 558 U.S. 290, \_\_\_, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010). Even though Trial Counsel did not recall his specific reasoning for choosing not to call alibi witnesses, his trial strategy can be inferred from the basis of his overall strategy, which he testified was to attack the State's DNA evidence against Applicant.

Furthermore, the testimony at the PCR hearing reflected Trial Counsel's intention to have the final closing argument at trial, which is accomplished by not presenting the alibi witnesses. Not only did Trial Counsel testify about his plan to have the final word during closing argument, but Applicant testified that Trial Counsel told him this plan at the time of the trial, thus indicating his trial strategy in not calling these witnesses.

Finally, at the PCR hearing, Trial Counsel testified that, had he thought the alibi witnesses were necessary at the time of trial, he would have called them. He stated that, in hindsight, he had no idea why he did not call them to testify, but at the time of the trial he would have weighed the pros and cons and, if he believed their testimony would have been helpful, he would have used them.

“[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). Trial Counsel's decisions at the trial were clearly made with a tactical strategy in mind and his actions were carefully chosen, even if he disagreed with them looking back in hindsight. Trial Counsel was at least reasonably competent in his decisions at the time of trial, and thus his representation was not ineffective.

Because Trial Counsel articulated, both at the PCR hearing and at the time of trial, a strategic reason for choosing not to call alibi witnesses, his performance cannot be found ineffective, and this allegation is denied and dismissed with prejudice.

*Applicant Not Called to Testify*

Applicant alleges that Trial Counsel is ineffective for failing to call him to testify at his trial. This argument is meritless. Although Applicant testified at the PCR hearing that he indicated to his attorney that he wished to take the stand, no evidence presented proves that Trial Counsel would not allow him to testify. Trial Counsel could not recall why Applicant chose not to take the stand.

If Trial Counsel advised Applicant not to testify, it would fit into the trial strategy he articulated to have the final word in closing arguments by not putting up a defense. This is a reasonable strategy that should not be questioned in hindsight. Therefore, this argument is meritless and is denied and dismissed with prejudice.

*Lack of Communication*

Applicant's allegation that Trial Counsel was ineffective because of a lack of communication is meritless. At the PCR hearing, Applicant testified that he spoke with Trial

Counsel about four times before his trial. He stated that Trial Counsel was not communicating like he should, so he filed a motion to have Trial Counsel relieved. Applicant stated that Trial Counsel filed a motion to be relieved, as well. Before the trial, however, Applicant indicated to Trial Counsel that he did want Trial Counsel to represent him, so Trial Counsel did not present his motion to be relieved and proceeded with the trial.

Trial Counsel testified that he met with Applicant at least twice. He stated that they mostly communicated by telephone or through written letters. South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. "First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation." Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter v. Estelle, 609 F.2d 756, 759 (5<sup>th</sup> Cir. 1980) (recognizing that brevity of time spent in consultation with defendant, without more, did not establish that trial counsel was ineffective)).

Regardless of the gap in Trial Counsel's communication with Applicant, Applicant had the opportunity to discuss the details of his case with his attorney and provide him with defenses, witnesses, and an alibi as well as review his discovery in preparation for trial. Trial Counsel was clearly prepared for trial and vigorously cross-examined all the State's witnesses to present a defense on Applicant's behalf. Any breakdown in communication did not result in ineffective assistance of counsel. More importantly, even if this lack of communication was ineffective, it was not prejudicial to Applicant's case because there was no further information that could have been discussed before trial that could have changed the outcome of the case. Applicant has presented

no evidence that Trial Counsel was unprepared for trial or required any additional communication with Applicant prior to trial. Thus, this allegation is denied and dismissed.

Joint Trial

Applicant's allegation that counsel was ineffective for allowing him to have a joint trial with his co-defendant is meritless. Although this argument should have been made on direct appeal, Applicant is framing the issue as one of ineffective assistance of counsel for failing to move to sever the trials.

Joint trials with co-defendants are very common and happen often. It is in the solicitor's discretion to choose how to prosecute the action, and very often it is the best use of the State's resources to combine co-defendants with the same or similar charges under the same facts into one trial. This is a standard practice, and it is only inappropriate when the court determines that it would be prejudicial or unfair to one defendant to be tried along with his co-defendant.

"A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt." State v. Spears, 393 S.C. 466, 475, 713 S.E.2d 324, 329 (Ct. App. 2011) (citing State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct.App.2005)). In Spears, the South Carolina Court of Appeals held that the defendant was not prejudiced by a joint trial with his co-defendant where the evidence against both defendants for armed robbery and kidnapping was interconnected and no specific trial right was prejudiced by the joinder of these trials. The same argument applies to this case because the facts of the cases were the same, the evidence presented was connected, and neither co-defendant's case prejudiced the other's in any way.



Applicant has not only failed to prove that he was prejudiced in any way by having a joint trial, but also that Trial Counsel is somehow ineffective for allowing this to happen. At the PCR hearing, Trial Counsel testified that, at the time of the trial, he saw no legal reason for moving to sever the trials. He stated that, if he had seen reason to move for separate trials, he would have made the proper motion. Although Applicant testified that he asked Trial Counsel to file a motion to sever the trial, Trial Counsel credibly testified that he did not recall Applicant making this request. He stated that he would have filed a motion to sever if Applicant had asked him. This evidence supports the argument that counsel was not ineffective and Applicant was not prejudiced by this action, and accordingly this allegation is denied and dismissed with prejudice.

Joint Plea

Applicant alleges that Trial Counsel was ineffective for obtaining a joint plea rather than an independent plea. This argument is meritless, primarily because Trial Counsel has no direct control over any plea offer, if any, which the State chooses to extend to Applicant. While trial counsel may negotiate with the State to obtain a favorable plea deal, they cannot have the final say in what the State chooses to offer. Furthermore, Applicant has no constitutional right to a plea offer, whether independent from his co-defendants or otherwise. Thus he has been deprived of no right or necessity in his case. The only way Trial Counsel could have been ineffective in regard to a plea offer is by failing to convey the offer to Applicant, and this was not the case in Applicant's situation.

Furthermore, Applicant can show no prejudice from the offer of a joint plea deal. Whether the State offered a satisfactory plea deal to Applicant that he may or may not have accepted has no bearing on the outcome of his trial. Applicant chose to go to trial rather than plead guilty, and the



existence of an independent plea offer would not have changed the jury's verdict. Thus, the second prong of the Strickland test is not met.

Applicant can show no ineffective assistance of counsel and no prejudice from the offer of a joint plea, and thus has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

Failure to Object

Applicant alleges that Trial Counsel was ineffective for failing to object to the State implying that Applicant could have destroyed the evidence that was not found during the execution of the search warrant. This Court finds that failure to object was not ineffective.

At the PCR hearing, Trial Counsel testified that he did not object to the testimony in question and that he did not ask for a curative instruction from the court. He stated that, in hindsight, he did think that he should have objected to the testimony at trial. However, he testified that, at the time the statement was made, if he had thought it was objectionable, he probably would have objected. He also stated that, if he had found it objectionable, he might not have objected to the statement anyway because he did not want to stop the flow of questioning and draw unnecessary attention to the statement.

As explained above, our courts do not expect defense counsel to act based on the knowledge that comes with the benefit of hindsight. Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003). If Trial Counsel acted reasonably and strategically at the time the statement was made, then he cannot be found ineffective.

Furthermore, under the Strickland standard, because Trial Counsel articulated a strategic reasoning for choosing not to object to this statement, his inaction cannot be deemed ineffective. Therefore, this allegation is denied and dismissed with prejudice.



"Jury Violation": Lesser Included Offense

This Court interprets Applicant's allegation about a jury violation as one of ineffective assistance of counsel for failing to ask for the lesser included offense. Applicant has failed to present sufficient evidence to prove that counsel was ineffective on these grounds for any reason, and this allegation is denied and dismissed.

"Jury Violation": Jury Charge

This Court interprets Applicant's allegation regarding jury charges that made him look guilty as one of ineffective assistance of counsel for failing to object to the jury charges. Applicant has failed to present sufficient evidence to prove that counsel should have objected to any statements by the court during jury instructions that would have prejudiced him in any way, and this allegation is denied and dismissed.

In General

Trial Counsel's testimony at the PCR hearing combined with his actions at trial supported by the trial transcript evidence the fact that Trial Counsel performed above the standard level of competence required of defense counsel.

Trial Counsel testified that his trial strategy was to attack the State's DNA evidence against Applicant, which he did fully. Applicant's fingerprints were found on the piece of duct tape which was placed on the victim by his attackers during the armed robbery, and the fingerprints were matched to Applicant through a CODIS database hit which linked to him. Trial Counsel took several steps to investigate the evidence, he moved to suppress the evidence based on the fact that it matched through the CODIS database, and he questioned the integrity of the evidence in front of the jury. Trial Counsel vigorously cross-examined the State's witnesses about the reliability of

the fingerprints, about whether they were on the sticky side of the duct tape rather than the smooth side and how that affected them, and whether or not it was possible that his fingerprints could have been on the tape from before the robbery. He also moved for a directed verdict at the close of the State's case and provided the court with case law supporting his arguments.

Additionally, Trial Counsel moved for a change in venue based on what he believed was an unusual circumstance because the victim was well acquainted with every attorney in the county. Although his motion was not granted, Trial Counsel acted competently in moving for this relief on behalf of his client.

Even if Trial Counsel doubted his actions in hindsight based on the result of the trial or his fairly limited experience practicing criminal law, it is clear from the record and evidence presented that he was well prepared for trial, he vigorously argued for his client, questioned the evidence presented, and made the proper motions and arguments to support Applicant's case. Trial counsel acted well above the standard levels of competence required by Strickland. Thus, these allegations of ineffective assistance of counsel must be denied and dismissed.

#### OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314



S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

Applicant's fingerprints were found on the duct tape that was placed on the victim by his attackers during the robbery. Trial Counsel argued vigorously about the reliability of this evidence at trial, and while it was essentially the only direct evidence tying Applicant to the crime, it was an exact DNA match and cannot be rebutted easily. This evidence was overwhelming and it is unlikely that any other actions by Trial Counsel could have prevented a jury from convicting Applicant based on this DNA evidence.

Applicant did not dispute the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of Trial Counsel could have reasonably changed the outcome of trial, and this Court finds that this application should be denied.

#### DUE PROCESS VIOLATION

##### *Change of Venue*<sup>2</sup>

Applicant's allegation that he was denied due process because his motion to change venue was denied is meritless and should be denied.

The testimony presented at the PCR hearing established that the victim in this case was a well-known figure throughout the local community and was personally connected to nearly every attorney in the county, which is why Trial Counsel, who practiced in another county, was appointed

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<sup>2</sup> This Court notes that the parties attempted to recover the transcript from the change of venue motion hearing to make a part of the record before the Court, but because it had been longer than five years since the hearing, the tapes had been destroyed and no longer exist.

to represent Applicant. Applicant alleges that, because the victim is so connected within the community, it was impossible for him to receive a fair trial in the venue in which he was tried. Trial Counsel filed a motion to change venue before his trial and it was denied.

First, the denial of Applicant's motion for change of venue is a direct appeal issue and should have been raised when he appealed his conviction. Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). This argument is inappropriate for post-conviction relief and should be denied on that ground.

Furthermore, even if it had been raised in the direct appeal, South Carolina case law supports the trial court's denial of the motion absent an abuse of discretion, which Applicant has not proven.

Empaneling a jury pursuant to § 17-21-85 is similar in effect to a change of venue and is subject to the same scope of review. State v. Longworth, 313 S.C. 360, 438 S.E.2d 219 (1993), cert. denied, 513 U.S. 831, 115 S.Ct. 105, 130 L.Ed.2d 53 (1994). A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. State v. Patterson, 324 S.C. 5, 482 S.E.2d 760, cert. denied, 522 U.S. 853, 118 S.Ct. 146, 139 L.Ed.2d 92 (1997); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). An abuse of discretion occurs when the judge's ruling has no evidentiary support. Gooding v. St. Francis Xavier Hosp., 317 S.C. 320, 454 S.E.2d 328 (Ct.App.1995), affirmed in part, reversed in part, 326 S.C. 248, 487 S.E.2d 596 (1997).

State v. Manning, 329 S.C. 1, 7-8, 495 S.E.2d 191, 194 (1997).

Finally, even if the victim in this case was well-known throughout the local community, the *voir dire* process would have eliminated any potential jurors who were acquainted with him

and biased for that reason. Applicant has shown no evidence to support an argument that the jurors were tainted by alleged personal connections to any of the participants of this trial. Therefore, Applicant has failed to meet his burden of proof and cannot show a due process violation on these grounds. This allegation is denied and dismissed with prejudice.

Joint Trial

For the reasons argued above, Applicant's allegation that he was denied due process because he was given a joint trial with his co-defendant is meritless. See State v. Spears, 393 S.C. 466, 475, 713 S.E.2d 324, 329 (Ct. App. 2011) ("A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt."). Applicant has proven no such prejudice based on his joint trial. Furthermore, this is a direct appeal issue that was not argued in Applicant's appeal, and thus this issue should be deemed abandoned and is denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Joint Plea Offer

Applicant's allegation of prosecutorial misconduct based on the State's offer of a joint plea deal with his co-defendant rather than an individual plea offer is meritless. As discussed above, Applicant has no constitutional right to a plea offer from the State and was not entitled to relief by pleading guilty to this crime. It is in the State's discretion whether to offer any kind of benefit for choosing to plead, and they are simply not required to do so.

Applicant has not proven any misconduct or inappropriate behavior from the prosecutor and therefore this allegation is denied and dismissed with prejudice.

### JUDICIAL BIAS

#### *Judge's Relationship to Victim*

Applicant's allegation that the trial judge was acquainted with the victim in his case which resulted in inappropriate judicial bias is meritless and must be dismissed.

No evidence presented at the PCR hearing indicated that the judge was acquainted with the victim. Both Applicant and Trial Counsel testified that they did not know for a fact that the Judge had a personal relationship with the victim. Applicant's allegation is not based on fact or evidence. Furthermore, he has shown no prejudice resulting from this alleged bias. Even if the judge was familiar with the victim, Applicant has not proven that the judge's failure to recuse himself from the case changed the jury's guilty verdict. The jury likely would have made the same decision with a different judge presiding. Therefore, this allegation is denied and dismissed with prejudice.

### 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, this Court finds the Applicant failed to present

any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### V. CONCLUSION


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

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

#### IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28th day of July 2017.

  
JOCELYN NEWMAN  
Presiding Judge  
Third Judicial Circuit

Columbia, South Carolina

DOCKET NO. 2011-GS-14-0068

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

MICHAEL WILSON CHARLIE PEARSON  
VICTOR MCCOY WELDON

WITNESSES

Kenneth Clark Clarendon County Sheriff

ARREST WARRANT NUMBER

M084242, M084531 (1) M084243, M084530 (2)

M084244, M084528 (3) M084245, M084529 (4)

M084247, M089533 (5) M084246, M084532 (6)

ACTION OF GRAND JURY

TRUE BILL

Robert Stephens

Foreperson of Grand Jury

Date:

1/28/11

VERDICT

Foreperson of Petit Jury

Date:

588

CLERK OF COURT  
CLARENDON COUNTY  
SOUTH CAROLINA  
JAN 28 2011

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CLARENDON )

INDICTMENT FOR  
 BURGLARY 1<sup>ST</sup>; ATTEMPTED MURDER; ARMED ROBBERY;  
 GRAND LARCENY (\$2,000-\$10,000); KIDNAPPING;  
 POSSESSION OF A WEAPON DURING A VIOLENT CRIME

At a Court of General Sessions, convened on January 26, 2011 the Grand Jurors of  
 CLARENDON County present upon their oath:

**COUNT ONE - BURGLARY 1<sup>ST</sup>**

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, enter the dwelling of Edward "Slick" Gibbons, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

**COUNT TWO - ATTEMPTED MURDER**

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, feloniously, willfully and with malice aforethought, either expressed or implied, attempt to murder one Edward "Slick" Gibbons.

**COUNT THREE- ARMED ROBBERY**

That on or about May 15, 2010, in Clarendon County, South Carolina, at , the Defendants, MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of with the intent to permanently deprive they of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

**COUNT FOUR - GRAND LARCENY (\$2,000 - \$10,000)**

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, take and carry away the personal goods of Edward "Slick" Gibbons, having a value of more than two thousand (\$2,000.00) dollars, described as follows: money, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B)(2), S. C. Code of Laws, 1976, as amended.

**COUNT FIVE - KIDNAPPING**

That in Clarendon County, South Carolina, on or about May 15, 2010, the Defendants, MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Edward "Slick" Gibbons, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

**COUNT SIX - POSSESSION OF A WEAPON DURING A VIOLENT CRIME**

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County, on or about May 15, 2010, possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

CERTIFIED TRUE COPY  
 OF ORIGINAL FILED IN THIS OFFICE

DATE 1/5/2016 Solicitor

Baileh H. Roberts  
 CLERK OF COURT  
 CLARENDON COUNTY, SC.

*Edwards*  
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