THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Jennifer B. McCoy Circuit Court Judge

App. Case No.: 2020-001077

Antonio Collins, 357630, Petitioner,

vs.

State of South Carolina, Respondent.

APPENDIX
VOLUME III OF III

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A. Yes.
Q. Do you recall reaching out to anyone from appellate defense for their assistance in formulating and presenting the issues on behalf of Mr. Collins?
A. Yes. I recall sitting down and -- I recall going down to the office and sitting down and speaking to someone about my progress, looked over what I had done, and just ask questions. Yes.
Q. Do you know who that person was?
A. I -- I don't.
Q. Do you --
A. I don't recall. I can try to find out, but I don't recall.
Q. Okay. And you don't have your file with you there today?
A. No. Because anytime you call, and I called most the time, anybody available isn't very helpful about that.
Q. And just to clarify, how did you sign up for this class, or become involved in this class?
A. Well, the South Carolina Bar had continuing education classes on their website, and it was a continuing education class.
Q. And then, as a result of taking that CLE, you were assigned Mr. Collins' case; is that correct?
A. Yes.

Q. Okay.
A. That's correct.
Q. If I could just pause one second.
MS. BLANCHETTE: Your Honor, would you like me to move on from that point?
THE COURT: Sure. Thank you.
MS. BLANCHETTE: Okay.
BY MS. BLANCHETTE:
Q. Ms. Metts, have you recently reviewed the appellate decision in this case?
A. I got the appellate decision and I reviewed it, but the appellate decision -- it's been a couple of weeks, I won't pretend that I remember exactly what it contained. No, ma'am.
Q. Okay. So I'll just read from it since you're not here, and don't have the advantage of looking at documents.
MS. BLANCHETTE: Unless there's an objection to that?
MR. LIMBAUGH: No, no.
MS. BLANCHETTE: Okay.
BY MS. BLANCHETTE:
Q. The Court, in the second line of their decision says: Collins argues there was no probable cause for his arrest, and the Circuit Court erred in admitting DNA evidence. Now, the last issue you raised was, there was no probable cause for his arrest. Do you recall seeing where, in the

transcript of the records that would have been available for the appeal, that that had been argued at trial by the Defense attorney?
A. Because I don't have it front of me, no, ma'am.
Q. Okay. Do you recall how you came up with arguing that as your third issue in this case?
A. It came from Mr. Collins.
Q. Okay. And then, the other two arguments revolve around the DNA. And the Court goes into a string cite -- what I call a string cite decision. They cite to State versus Lindsey and say: issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief, but not supported by authority. So my question to you is, is there any reason, or did anybody point out to you that you needed to include authority in your first two arguments in your brief?
A. In the -- in regards to DNA that we're talking about?
Q. Yeah. The first two issues you argued, there's no citation to legal authority. So did you write this --
A. I never found any -- I'm sorry, go ahead.
Q. You can offer your explanation for why you did not. Please go ahead.
A. I never found any legal authority to support it, although she raised the issue and stated that there were documents that he signed. I never found those documents, so

I've never found any case law to -- to support the issue, although it was something that he was insistent had happened.

Q. And so, in the class or in reaching out to, whether it be random or a name, the appellate defender, no one made you aware that you needed to cite to legal authority?

A. They had legal authority available. I didn't see, I mean, I thought if the authority was available you'd put it, but I did Westlaw searches for anything that would support that argument, but I never found anything specific to that argument.

Q. Now, in your third argument that is entitled -- one moment.

MS. BLANCHETTE: Ms. Metts, we're testing sound. Can you speak for us again?

MILDRED METTS: Is this better?

MS. BLANCHETTE: That is much better. Thank you.

BY MS. BLANCHETTE:

Q. All right. Ms. Metts, I kind of lost my train of thought, so I'm going to ask you the same question. I apologize. The remainder -- the remainder of the appellate decision, the string cite, address how a motion in limine must be renewed for it to be preserved for appeal. A contemporaneous objection is required to preserve an issue for appeal. A timely objection is needed when the evidence

is presented. In reviewing the pretrial transcripts and trial transcripts, did you have concerns with whether or not counsel had properly preserved the admission of the DNA evidence for the appeal?
A. Well, the impression I got from Mr. Collins is that it wasn't much of an issue for his trial attorneys. He felt that his trial attorney should have brought it up more, but didn't. So if it wasn't an issue that he and his trial attorneys discussed, I didn't think a trial attorney would've raised that as objection.
Q. Now, I apologize, but in this class did they not teach you about issue preservation in South Carolina is what we call an issue preservation state?
A. I am familiar that if you don't preserve an issue at trial, then you can't raise it for the first time on appeal. What I'm saying is, I felt that the DNA issue was something that Mr. Collins was raising for the first time to me then.
Q. Okay. So you don't feel that it was raised in the hearing with Judge Dennis and the hearing with Judge McDonald?
A. No. What I'm saying is, I didn't think it was something -- you asked me about whether I thought his attorney had preserved it. I didn't get the impression that he and his attorney had presented it during the trial.
Q. Okay.

MS. BLANCHETTE: If I could beg the Court's indulgence just one moment.

THE COURT: Um-hmm.

BY MS. BLANCHETTE:

Q. Now, are you familiar with the State's brief that was filed in response to the brief that you submitted?

A. Yes.

Q. Okay. And in that brief, I just want to go through some of the things that the State argued that did not appear to be in your brief. Is that a reason you didn't argue, or submit an argument regarding the voluntariness of the consent of the Florida sample in this case?

A. Mr. Collins -- no, I did not make it a -- an issue, because Mr. Collins told me he voluntarily gave DNA. He even gave it for a different purpose.

Q. Okay. So then, you didn't see the need to address the totality of the circumstances under a Fourth Amendment suppression analysis?

A. No. He never said he had a problem giving the DNA. He said he gave it for a different purpose.

Q. Right. But if it was given for a different purpose, wouldn't that be a factor under the Fourth Amendment? When we're addressing DNA, the Court looks at the totality of the circumstances. Factors can be deceit, age, circumstances, location. So what you're telling me is, he was telling you

about some of the factors of why he consented, but is there a reason why you didn't argue that, under the totality of those factors, the evidence should have been suppressed?
A. Well, I didn't think it was an issue of circumstances or location, because he said he never felt threatened or pressured to give the DNA. So, no, I didn't think that that was an argument.
Q. Okay. And did you see -- did you not see, then, Ms. Campbell's arguments regarding that in the record that you reviewed?
A. Yes, I did.
Q. Okay. And did you see his testimony at the hearing in front of Judge McDonald regarding those matters, that he felt threatened?
A. Yes, I did.
Q. And do you agree that what you can present to the Court, with proper citation, is what's in the record, not what Mr. Collins tells you at meeting at a prison?
A. Yes, I do understand that.
Q. Okay. Let me ask you a little bit more. Did you ever research and look into whether the Schmerber order for DNA was tainted by the prior improperly obtained DNA, because there was no attenuation?
A. I do recall looking at it. Yes, ma'am.
Q. Okay. And that was a matter that the State addressed

in their brief; is that correct? Why that attenuation had taken place?
A. Yes.
Q. Okay. Now, did you look into or have a reason why you did not address the exclusionary rule and why it should apply in this case, because of police deception or misconduct?
A. I'm sorry. Say that again?
Q. I'd be happy to. In your review of the case or preparation of your brief, is there any reason why you did not address, as raised in the State's brief, the exclusionary rule?
A. Well, with the exception of his testimony, I didn't think I had anything to support it.
Q. And is there any reason that you did not address the exception of inevitable discovery and the finding of Judge McDonald, that even if it was suppressible, that it would've been inevitably discovered?
A. I'm sorry. I'm having trouble hearing you now.
Q. Okay.
A. Would you repeat that, please?
Q. Yes. I'm really close, but I'll get closer. Can you hear me now?
A. Okay. It's a little bit better.
Q. Okay. In the State's brief and in Judge McDonald's

ruling, she addressed inevitable discovery. Why was that not addressed in your brief?
A. I didn't think it was an issue.
Q. And finally, in the State's brief, they address the good-faith exception. What is your reasoning that it should not apply in this case, since Florida lied about getting a warrant and deception was used by Mr. Segovia?
A. Okay. I'm sorry. You're going in and out with me right now. Could you please repeat that for me?
Q. Do you have a reason why you did not argue that the good-faith exception, as addressed in the State's appellate brief, should not apply in this case?
A. No.
Q. Did you look into the testimony that Florida told him that they could go get a warrant, threats that were made, or deception as saying those should exclude the good-faith exception from being utilized?
A. I'm sorry. You said the transcript -- say that for me again.
Q. Based upon the transcript, why did you not argue that the good-faith exception should not apply in this case?
A. I didn't think it was a strong argument, and I didn't bring it up.
Q. Okay.
A. I didn't.

Q. Once you received the State's brief, did that go to you, or did that go to appellate defense?
A. I think it went to appellate defense, but like I said, I guess I really wanted to be there, and I really needed my case file. I know I was copied on everything that came, but once I turned over my brief, I wasn't responsible to do a response.
Q. That's what I was going to ask. What was your reasoning for not doing a reply brief to the State's brief, if they raised all these additional issues you didn't address?
A. So I don't recall having to do a reply brief; so I don't recall having to do that.
Q. Do you recall reviewing the State's brief?
A. Yes.
Q. Okay.
A. It was sent to be by the office of appellate defense.
Q. All right. Ms. Metts, I'm just going to -- because I've been up here kind of yelling into the cell phone -- I'm going to go look at my notes for just a moment, and then I may come back with further questions. Okay?
A. Okay. I'll be here.
MS. BLANCHETTE: Can I beg the Court's indulgence?
BY MS. BLANCHETTE:
Q. Ms. Metts, this is Tricia Blanchette again. Are you

there?
A. Okay. I'm still here, yes.
Q. Okay. Do you recall any further interactions with Mr. Collins after his appeal was denied?
A. I think he sent me a letter, and I know I responded to his letter. I can't tell you what it said, but I recall him sending a letter, and I recall someone from his family reaching out to me, and me responding. But I do know -- but I do know I responded and referred his family to the office of appellate defense.
Q. Do you recall him asking to try to further appeal his case to the South Carolina Supreme Court?
A. Yes.
Q. Okay. Do you recall him asking you about further petitioning the Court of Appeals; was the issue of a re-hearing ever discussed?
A. And -- no, not a re-hearing. He asked me what further -- what further steps he could take. And I referred -- I sent him a letter explaining to him the nature of my involvement, and referred him to the office of appellate defense; and I referred any correspondence that he sent to me to the office of appellate defense.
Q. Okay.
MS. BLANCHETTE: Your Honor, if I could beg the Court's indulgence one more time. Just one more brief moment,

Ms. Metts.

MILDRED METTS: Okay.

MS. BLANCHETTE: Ms. Metts, I'm just going to inform the Court that I have no further questions at this time.

MILDRED METTS: Okay.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q. Good afternoon, Ms. Metts. This is Ben Limbaugh.

A. Good afternoon.

Q. So again, how did you go over which issues to address in your brief?

A. Well, I read through the transcript, and then I went to the prison to go over the transcript, and I divided the parts of the transcript up for each issue that was covered, and I went over those with Mr. Collins. And after Mr. Collins and I talked, I was doing some research, and I was trying to find the argument that I felt might actually be the stronger argument, that he had the most compelling chance of winning, that -- and I chose those.

Q. So what was your reasoning behind believing that the DNA issues were properly preserved?

A. Well, I didn't think they necessarily were. I felt like in talking to Mr. Collins that while he thought these statements should've been mentioned, I didn't think he and his attorney was -- I think he -- his attorney's trial

strategy was different, and I didn't think that he and his attorney had discussed this is a -- as something that he wanted as a main issue. And when I was talking with him, I got the impression, because he said he wished his attorney had did this, or he wished his attorney had did that, which led me to believe -- and when I asked directly, he felt that his attorney didn't discuss things that he wanted his attorney to discuss. So I didn't think it was preserved, and he's telling me that, I wanted my attorney to mention this, and she didn't. And that's what he told me about the DNA; he felt that his attorney didn't put the issue the way he wanted to.

Q. Okay. And in regards to the drafting of the brief, did you have a supervisor of some kind, or were you basically solo, working on the project? h

A. Well, you can -- they have someone who will monitor you, and someone well who will help you, but you're doing the research and whatnot on your own. You submit everything to them, you know, to review. But you actually research it yourself. So, no, there's no one who just sits there with you while you do the research if that's what you're asking me.

Q. Ms. Metts, that's actually all the questions I have for you. I appreciate it.

A. Okay.

MR. LIMBAUGH: That's all I have, your Honor.
THE COURT: Any redirect?
MS. BLANCHETTE: No, Your Honor.
THE COURT: All right. Ms. Metts, we will -- we're finished with your testimony for the purposes of today's hearing. Thank you very much for being available by phone.
MILDRED METTS: Okay. Thank you.
MR. LIMBAUGH: Thank you. Goodbye.
MILDRED METTS: Okay. Bye-bye.
THE COURT: Next witness?
MS. BLANCHETTE: I would call Mr. Collins as my last witness, your Honor.
THE COURT: Just raise your hand to the best of your ability. Thank you so much.
(WHEREUPON, THE WITNESS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

BY MS. BLANCHETTE:
Q. Can you please state your name, for the record?
A. Antonio Collins.
Q. And Mr. Collins, do you have up there with you your copies of the appellate briefs and transcripts that you need?
A. Yes, ma'am.
Q. Okay. If at any time you need water, or you need

anything, or even need help getting those documents, please let us know.
A. All right.
Q. Mr. Collins, I'm going to start with the first attorney that's been here to testify today. I want to talk about the representation you received from Ms. Trasi Campbell.
A. Okay.
Q. Do you recall approximately how many times you met with her, and how long she represented you prior to your trial?
A. Well, she represented me for pretty much the whole twenty-three months that I was up there.
Q. Okay.
A. And I believe I saw her about no more than five times, when she actually came to the detention center and actually spoke to me.
Q. Okay.
A. Five times.
Q. And at any time did she communicate a plea offer to you; that you remember?
A. Yeah. She came, I believe it was June, I think 2012, and she came and she told me that the State was offering me a plea for thirty years. And I told her that I wasn't taking no plea, and she told me that if I didn't take the plea that I was going to get a life sentence. And I told her -- I told her that I was going to take my chances at

trial, and she told me she would be back in thirty days, so she came back, like, July 2012, and she told me that the State was willing to drop the charge from murder to manslaughter or something like that. And I told her I still wasn't taking no plea; I was going to trial.

Q. And so, you were not going to accept a plea in this case?

A. No.

Q. Okay.

A. And she -- she throw it in my face again about the -- about the life thing, so.

Q. Okay. At some point, did you have some concern regarding your representation and reached out to another attorney?

A. Yeah, because after she left -- well, she throw it in my face about -- about me getting life if I go to trial, so I got pretty -- I got kind of nervous, and I -- I got my -- I got my family to make -- make a down payment with a lawyer. I believe his name is Donald Colongeli. So my family got in contact with him, and they made a down payment with him, and they didn't give him the whole entire amount that he wanted, so he's -- he spoke with my mom and my family and said that he would assist Trasi Campbell on my case, so he assisted her on my case. And when he got involved, her whole demeanor and attitude changed. She went

from -- she went from me trying to take a plea to, like, she was actually trying to fight for me.
Q. And was there any of the court proceedings that you remember him being present at, this other attorney?
A. At the -- I believe the pretrial suppression hearing, I believe.
Q. Okay. Now, we talked a little bit about, kind of, your representation, just in general, regarding Ms. Campbell. I want to talk with yow in detail about the DNA and how the DNA was obtained in your case. Okay?
A. All right.
Q. Now, you were sitting in Florida, in county jail, in 2011? Is that correct?
A. Yes, ma'am.
Q. And where were you, and why were you there?
A. I was there for, I believe it was a strong-armed robbery charge, and it was -- it was a disturbing the peace charge, too. A strong-armed robbery and a disturbing the peace charge at the Miami-Dade Detention Center.
Q. And did you have an attorney appointed on those charges?
A. Yes, I had a public defender.
Q. Okay. And we've already introduced some documents that establish that on March 14th of 2015, Juan Segovia, who worked for Miami-Dade Police Department, was contacted by

Beaufort County, to ask for his assistance in getting a DNA sample from you. And then, we have a voluntary consent form that you signed on March 15th of 2011. You, in fact, signed that document. Is that correct?

A. Yes, I signed it.

Q. Okay. Let's talk a little bit about what happened before you signed that document. You were sitting in the Miami-Dade County Jail, and how did you come into interaction with Mr. Segovia?

A. Well, they pulled me out the cell one day, and they -- and they took me downstairs inside of a interview room, and it was him and another officer. He pretty -- I pretty much went inside the interview room, and he sat down and he told me that he had a list of, like, ten names, and somebody said that my name was similar to a rape -- to a -- to a name -- to a name that was mentioned in a rape. And he said he just needed -- he just needed to get my -- to get my -- my DNA, to exclude me from that rape. So I was like, I been to jail, like, the last nine, ten, eleven months, and I ain't gonna rape nobody's old lady. So I know I had a -- I don't know what you're talking about. So he was like, no problem, just -- just give me your name and I'll just ex -- I mean, just give me your DNA, and I'll just exclude you from the rape. So I was he -- I was kind of hesitant about it, and eventually he told me if I didn't give him my DNA, he was

going to go to a judge and make me get a DNA regardless. So I pretty much went -- I felt like I had no -- had no other chance -- I mean, I felt like I didn't have another way out, so I gave him the DNA.

Q. Okay. And you testified at the suppression hearing in front of Judge McDonald on September 19th, 2012; is that correct?

A. Yes.

Q. Before you testified at that hearing, what preparation did you have with Trasi Campbell, regarding what you would be testifying to?

A. My last time seeing her was when she offered me a plea for thirty years, and -- and I didn't see her any more until that suppression hearing.

Q. Okay. Now, you testified to some of the exact things that you've said here on this stand, on Page 55 of that hearing, you testified that you were told that your DNA was excluded -- was needed to exclude you from rapes in north Dade County; is that correct?

A. Right.

Q. You testified that they had several names, but you were easiest to find because you were in the detention center. Is that correct?

A. Yes. At the suppression hearing.

Q. Yes.

A. Yes.
Q. Pages 56 through 57 you talked about -- well, you just talked about it -- that if you didn't sign it that they could just go to a judge and get it that way. Is that correct?
A. Yes. Yes.
Q. Pages 56 through 58, you explain that it was your belief, from what he said, that you had nothing to worry about because you had been sitting in jail for so long?
A. Right.
Q. Now, you didn't explain what you inferred from that at the suppression hearing. What did you infer from him saying that; if you been sitting here so long, then you got nothing to worry about?
A. Yeah. He pretty much -- I -- from what I took from it was, he was pretty much telling me I ain't got nothing to worry about; he just needed to do his job and just get my -- get my -- get my name and my DNA to exclude -- to exclude me from the list of names that he had.
Q. Okay. You explained on Page 59 you thought he was a public defender at first, so you were confused about who he was?
A. Yeah, because when he walked in the room, it was like, I mean, he -- he -- I mean, we in Miami, he's a city -- a city detective. So he was kind of being like, real -- real

city-slick like, so he didn't -- he didn't really come out and -- and say, hey, I'm -- I'm a Miami-Dade detective, here's my badge. I'm here for such-and-such crime. He didn't say any of that. He just came inside the room with a piece of paper, and he was -- he said, "Hey, I need your DNA, for a rape."

Q. And he admitted, his testimony, that you were pretty suspect of him and started asking him questions, correct?

A. Yeah, because he didn't -- he never -- he never presented his badge; he never said he was the police. He just -- he just said he needed my DNA for a rape.

Q. You testify on Page 60 that you never read the form, you just signed it. Why did you sign that form?

A. I took -- I took him at his word, and I -- I just wanted to get it over with.

Q. Okay.

A. I took him at his word and believed him.

Q. Now, you said Trasi Campbell didn't meet with you and prepare you to testify for that hearing. Is that correct?

A. No.

Q. Why did you not testify about the fact that you had a public defender in Florida on the charges that you were at the county jail for?

A. I mean, I'm not that big on the law, so I mean, I really -- I mean, I really didn't understand the law at that

time, ma'am. So I -- I really didn't know that I needed to tell her that, because I didn't know until now.
Q. Is that -- is that something you would've wanted the Court to know?
A. Yes, yes. Yes, now I do.
Q. Do you think that -- do you think that's something your attorney should have submitted to the Court?
A. Yes, I -- yes. Now that I can comprehend better, yes.
Q. Now, you did testify that Mr. Segovia told you that, hey, you just need to sign this form -- and I'm paraphrasing -- because I can just go get a court order from the State's attorney. Were you understanding that he was talking about, I'm a Miami-Dade police officer. I can go to Miami-Dade State's Attorney's Office for this Miami-Dade charge. Is that correct? That was your understanding?
A. That's what he was -- that -- yeah, that was my understanding, yeah.
Q. Did he ever say to you, I am here about a South Carolina homicide, and I believe I can go to the Miami-Dade State's Attorney's Office to get an order for a Florida judge to get your DNA, to send it back to South Carolina? Did he tell you that?
A. That's pretty much what he said, yeah.
Q. Well, let me rephrase that. I think I confused you. He told you that, I'm from Miami-Dade, I'm going to go to

the prosecutor's office in Miami-Dade and get a court order. Is that correct?
A. Yes, that's pretty much what he said.
Q. Did he say -- did he ever say this to you: I'm here for a South Carolina murder case; I'm going to go to a Miami-Dade prosecutor's office, get a Miami-Dade judge to give me an order, and send your DNA, once I get it back to South Carolina, did he ever disclose the South Carolina aspect of it?
A. No. He never said anything about South Carolina at all.
Q. If he would've told you that, would you have questioned, how can you get Florida to order my DNA to go back to South Carolina?
A. Yeah, I would've questioned it, yes.
Q. But he didn't give you the proper facts; is that correct?
A. No. No, he didn't.
Q. Is that something that Ms. Campbell ever talked about with you?
A. No.
Q. Did you feel like you had an option beyond signing that form?
A. No. I felt like I was cornered. I mean, I felt like if I didn't do it, he was going to make me do it, because

that's what he said. He said if I didn't do it, he was going to the -- to the judge and get a warrant, and he'd be back in a day or two, and he was going to get the DNA regardless. So I felt like I was cornered, didn't have no choice.

Q. If he would've walked in there and said, "I'm here on behalf of Beaufort County, South Carolina, to get your voluntary consent for a DNA sample, to be compared against evidence in a Beaufort, South Carolina case, would you have signed that consent order?

A. No, ma'am, I would not have signed it.

Q. Now, when you met with Christine Wilson on March 31st of 2011, and we have one taped interview of that, that the Court's going to review.

A. Right.

Q. She walked in and told you that, didn't she?

A. Yeah, she told me what she was there for, yeah.

Q. And what did you do?

A. I refused to talk to her.

Q. And did you refuse to talk to her despite her trying her best efforts for twenty-eight minutes, and feeding you information about the case, and calling you names, like a monster?

A. I refused the whole twenty-eight minutes.

Q. Now, what is your position regarding the one recording

that we have? Do you think there's other recordings?
A. Yes, because the whole time that I was in -- inside the interview room at the Miami-Dade Police Department, I was -- I pretty much was inside the interview room the whole time. And it's kind of strange that -- that they only have that twenty-eight minutes, but I was -- I was -- I was inside the interrogation room the whole time, it was other stuff that happened that's not on that tape.
Q. Can you explain to us the other stuff that happened, since we do not have it on the tape?
A. Well, Juan Segovia, when he -- when he first picked me up from the detention center to take me to the -- to the Miami-Dade Police Department, and when he first put me inside the interrogation room he brought me orange juice and a sandwich. And I after I refused the sandwich, he told me to leave it inside the interrogation room; don't throw it away. So I felt that kind of suspicious, like, why, why you want my -- my cup? I mean. And after that, he took me out of that -- out of that interrogation room and put me inside another interrogation room; and that's when he walked out the interrogation room, and the South Carolina detective, Chris Wilson, Chris Wilson walked in, and she pretty much told me that she was there for out-of-state -- for a out-of-state murder. And that's when I immediately told her, I don't know what you're talking about, and where's my lawyer.

I immediately asked -- I immediately asked for my lawyer. Soon as she told me why she was there, I said I want -- I don't know what you're talking about, where's my lawyer. So she walked out the room, and he came back in -- he came back in, Juan Segovia, the Miami-Dade detective, and I told him the same thing. I said, I want my lawyer. And so, he left out the room, both of them left out the room, and he told me he was going to try to get in contact with my lawyer. Ten minutes later he come back and told me he couldn't get -- get in contact with my lawyer, but they -- but they continued to interrogate me. And that's when the twenty-eight minutes of that tape came about. After I -- after I asked them to have my lawyer present for that interview.

Q. During those twenty-eight minutes, you were just refusing to talk. Is that correct? You didn't want to talk to them?

A. And after the whole interview, he also, Juan Segovia, made me strip down to my boxers, in the interrogation room, and took pictures of me; after the whole -- after the whole interview was over. It was -- all of this happened inside the interrogation room, but you don't --

Q. Well --

A. -- but you don't have all that on that tape.

Q. But we do have a tape where, for over twenty-eight minutes, you refused to talk?

A. Right, right.
Q. You refused to sign Miranda --
A. Right.
Q. -- the Miranda form?
A. Right.
Q. But how long would you say your interaction was with Mr. Segovia when he got your consent sample, your voluntary consent signed?
A. How long?
Q. Um-hmm.
A. I mean, it probably was six, seven minutes, some -- somewhere up in there. You're talking about the first --
Q. Um-hmm. --
A. -- the first time when he came?
Q. With Segovia, when you signed the voluntary consent form.
A. I mean, it might -- between six to ten minutes, somewhere up in there.
Q. But when all they were asking you to do was talk, you held out for over twenty-eight minutes, despite her best efforts to get you to talk?
A. Right.
Q. So if Mr. Segovia had told you what he was there for, just that simple thing, not even all the other things that happened, about going to get the court order, he would've

just simply told you what Christine Wilson told you, would you have signed that consent form?
A. No, I would not have signed it.
Q. Do you feel -- or let me just say it this way. It's not about your feelings -- you are alleging here today, by way of your amendment, the testimony and evidence we're presenting, that Ms. Campbell and Mr. Bax, and your appellate attorney, Ms. Metts, did not properly present the issue of the first DNA sample to the Court or to the appellate court; is that correct?
A. Yes, they didn't.
Q. Okay. And are you alleging today that the arguments that they made were limited, insufficient, and then not properly preserved or presented?
A. Yes. It was limited because they didn't present all the -- all of the evidence. They didn't present everything.
Q. Okay. And there are additional evidence and arguments that you would've wanted all three of your attorneys to make on your behalf. Is that correct?
A. Yes, ma'am.
Q. Okay. But you're not an attorney. It's not your job to make those arguments; is that right?
A. Exactly.
Q. You just heard Ms. Metts testify. She testified she went and met with you, and based upon that meeting, she

raised the issues you wanted raised. Did you know you were in charge of deciding what issues were going to be raised on appeal?
A. I mean, be honest with you, that's -- I don't comprehend the law that well. That's -- that's why I needed a lawyer. So I really don't understand what she's talking about.
Q. Okay. And that's what I was saying. Do you have any legal professional training? Gone to law school?
A. No, ma'am.
Q. Done any legal research before this?
A. No, ma'am.
Q. Okay. Sorry, I'm going to -- went down the road we were on and I want to go back a little bit to the DNA issue and how it came up before trial. What was conveyed to you after the suppression hearing, what was the defense going to be regarding the DNA at your trial?
A. I mean, it's kind of -- I really -- it was really kind of confusing, which -- you're talking about Ms. Campbell, right?
A. Yes. What did Ms. Campbell, what were you -- what was she telling you, or what were you two working together on, as far as the DNA and how it was going to be addressed at trial?
A. I mean, she was saying something about she was going to

argue something about my DNA being contaminated, and -- and she asked me -- she asked me a question about did I ever give me DNA in Miami before, and was -- was my DNA ever -- ever inside the national database. And I really couldn't comprehend what she -- what she was asking me, but I mean she -- her argument pretty much was, I guess, about the contamination or something, something -- something to that nature, I guess.

MS. BLANCHETTE: Your Honor, I'd like to beg the Court's indulgence and look through the exhibits real quick.

BY MS. BLANCHETTE:

Q. I'm going to hand you what's been admitted as Applicant's Number 9. It's a letter from Ms. Campbell to yourself. I'll give you a chance to look over that. Let me know when you're done.

A. All right.

Q. From that letter, and from your discussions with her leading up to trial, was it your understanding that you thought you had a strong argument against the DNA evidence?

A. Yeah. She said - I heard her say the DNA evidence was very flawed. The case remains strong; the State's case hinges on questionable witness testimony that's flawed, and the DNA, that may be flawed as well.

Q. Okay. And so, did you feel that you have a favorable defense going into your trial?

A. Yes -- well, I mean, yes, from when she -- well, no, no, to be honest, because I never got this letter from here right here.
Q. Okay. Explain.
A. I got this letter from you, once you got on my case. I didn't even know nothing about this.
Q. Okay. But was she conveying to you that she thought you had good arguments to attach the DNA at trial?
A. I'm going to say it like this. She was -- her whole argument, I mean her -- the whole thing was, she was trying to get me to take a plea until the other lawyer, Colongeli, got involved in my case. Once -- once he got involved in my case, that's when she actually started acting like she was fighting me. So her whole -- the whole trial thing was, she was -- I mean, she had a argument talking about the DNA, but I really don't know if it was strong or not. I mean, I can't really --
Q. Okay. Now, I'm just asking what you understood, so that's perfectly fine.
A. Right.
Q. And just for clarification, we're trying to build a proper record here. Do you mean the attorney that you retained to assist her at some point?
A. Yes.
Q. Okay. Just wanted to be clear.

A. Right, right, right.
Q. Okay. Did you know anything about her utilizing a DNA expert before you went to trial?
A. Yeah. She told me about -- well, she came and saw me once before -- before we went -- before we went to trial, her and Mr. Bax.
Q. Um-hmm.
A. And she told me that she was going to get the -- a DNA person or something.
Q. Did you know about his involvement in the Duke Lacrosse case before it came out on the cross-examination?
A. No, no.
Q. Being there in the courtroom, would you have wanted him utilized as an expert in your case?
A. I mean, now -- now that I -- now that I can kind of comprehend -- comprehend what's going on, no, I wouldn't have wanted him; no.
Q. Why?
A. Because in reality, common sense, he hurt my case. Because they -- they looked at him like he was a -- like he was a -- like he was a, like -- like he was a liar. And -- and if he was going -- if he lied and -- if he lied then, then he probably was going to be lying in my case, too, so. He -- I mean, it look like he hurt my case. I mean, because the State, they just -- they bashed him. I mean, they

talked about the -- the Duke Lacrosse situation, and they -- it hurt my case.

Q. They did really cross-examine him about his reports and the information he gave to the prosecutors and everything that had been --

A. Yeah.

Q. -- fully exposed and already litigated in that Duke case.

A. Right.

Q. The State tried to go back through all of that. Is that correct?

A. Yes.

Q. Okay. And let me ask you -- I told the judge at the beginning we had a DNA issue and a leg issue. Is there anything else regarding the DNA issue you would like to offer in support of your allegations before I move on to the leg issue?

A. Say it again.

Q. I told the judge at the beginning we kind of had two major issues; the DNA issue, and then the leg issue.

A. Right.

Q. Is there anything else you want to testify about the DNA issue before I move on to the leg issue?

A. The DNA issue, I mean I just wish that she would've argued more about how they -- how the DNA was handled in

Miami. I mean, she didn't -- she -- she never brought it up at trial at all. So I wish she would've argued more about the Segovia thing and -- and how it was handled.
Q. And too, you would've wanted the issue preserved and properly presented on appeal; is that correct?
A. Yes. Yes.
Q. Okay. Now, let me ask you, what did you know about the outcome of the x-ray that was done on your body prior to trial?
A. Well, she gave me a copy of the -- she gave me a copy of the x-ray report.
Q. Um-hmm.
A. And once I got the copy back, it pretty much said I was excluded from any gunshot wounds or whatever, whatever. But she never brought that up at trial, either, so.
Q. And did you think that was going to be used at trial, in your advantage?
A. Yes, I thought it was -- yes, very much I thought she was going to use it, yes.
Q. Okay. And when she got up at closing and started by saying there's a gaping hole in the State's case, but there's not a gaping hole in the leg of Mr. Collins, did you think she was going to introduce some evidence to corroborate or show what she was saying in closing argument?
A. I would've thought she was going to do that, yeah.

Q. And are you alleging today that she was ineffective for not doing that?
A. Yeah, she didn't do it. She didn't do it.
Q. Now, we've touched on your appeal a little bit. Ms. Metts, in her testimony, talked about meeting with you. How many times do you recall meeting with her?
A. She came and saw me once.
Q. Okay. And after that, were you able to get in contact with her very easily?
A. No, it was very, very hard to get in contact with her.
Q. When you received the brief, what did you do then?
A. Once I got the -- the brief from Ms. Metts?
Q. Yeah, once you got her brief.
A. I pretty much just -- I went over it a couple of times, and I waited for the State to do the initial brief, I believe.
Q. Um-hmm.
A. And once I saw it got the -- once I saw it was denied, that's pretty much when I got in contact, trying to do my PCR.
Q. Okay. But you -- I asked her, and she recalled you contacting her after your case got denied. Is that correct?
A. Yes.
Q. Okay.
A. I got in contact with her after my -- the appeal got

denied, and I asked her to appeal it, to appeal the decision. But she never got back in contact with me. I wrote her. I did write her, but she never responded back. She never responded back to my letter when I asked her to appeal the -- the decision.

Q. Okay.

A. She never responded back.

Q. And that's when you moved forward with filing your PCR?

A. Yes, yes.

Q. When you met with Ms. Metts, she was detailing some concerns you had about what your attorneys did and didn't do at your trial regarding the DNA. Did she ever tell you those are possible PCR issues, those aren't issues you can't raise on direct appeal?

A. No, she -- no, no, no, Ms. Metts never talked to me about any of that stuff, no.

Q. Did she ever tell you that South Carolina is like what I like to call an issue preservation state? We have a line of cases, I think Dunbar is one of them that says that an issue's not properly preserved; you can't raise it on appeal. Did she tell you that what she could raise would be limited to what was in the transcripts and the issues your attorneys properly preserved?

A. No. She never talked to me about any of that, no.

Q. Okay. And you said once the appeal was denied, you

didn't have any further contact with her, as far as you recall?
A. I wrote her and asked her to appeal the decision, but she never responded back.
Q. Okay. Mr. Collins, I'm in the last stage of it. I think we've been working on this case together two or three years; and we've met a lot. You've given me a lot of information about your case. I've done the best job that I can to go through everything and present allegations to the Court by way of your amendment, through testimony and evidence here today. But is there anything else you'd like to tell the Court in support of your allegations that your trial and appellate attorneys were ineffective, and you were prejudiced as a result?
A. I mean, I would just like to tell the courts that I mean, I don't comprehend the law that well. That was -- that was my sole purpose in trusting in my lawyers to help me. And it seemed to me, once I got you, Ms. Blanchette, you was -- you exposed a lot of things that I -- that I didn't know; that -- that my trial lawyer and my direct appeal lawyers was doing wrong, things that I couldn't see for myself. So I mean, thank you. I mean, besides that.
Q. Well, guess what, Mr. Collins, I've made mistakes, too, because I forgot at the very beginning to ask you some questions I usually start with. I think I was so excited to

have a live witness that I forgot.
A. Okay.
Q. So let me ask you this. You and me, we've met all these times, you said you appreciate what I've done for you. But I had to explain to you what the relief is you can get as a result of this hearing today, right?
A. Yes.
Q. And what is the relief that you're asking the Court for?
A. Reversing this condition and a retrial.
Q. A new trial?
A. Yes.
Q. You would accept a new trial in this case?
A. Yes.
Q. I have explained to you a new trial is kind of a funny term that we use in PCR land. It essentially means your conviction is set aside, and you're put back in the position you were before you were ever convicted, as if that conviction had not happened.
A. Right.
Q. Do you understand that?
A. Yes, ma'am.
Q. Okay. And in this case you received a concurrent term of thirty-three years, with a five-year sentence for the weapons possession. You understand that if this court sets

that aside and gives you a new trial, there's no guarantee of less time. There's risks associated because you didn't get the maximum sentences. Do you understand that?

A. Yes, ma'am.

Q. Okay. And like I said, I usually ask this at the beginning, but knowing that, you still want to go forward with this hearing, and with asking the Court for a new trial?

A. Yes, ma'am.

Q. Okay.

MS. BLANCHETTE: Your Honor, I have no further questions with this witness.

THE COURT: Thank you. Mr. Limbaugh.

MR. LIMBAUGH: Briefly, Your Honor.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q. And just to follow up on one last question in that line with Ms. Blanchette, you understand that's functionally the minimum sentence you would receive if convicted at trial?

A. You're saying that's the minimum sentence?

Q. Functionally, yes. Thirty-three years, it would be thirty for murder ---

A. You asked me do I understand it?

Q. I'll rephrase. It's on the very lower end of what you could possibly receive if you were convicted at that trial;

you understand that?
A. Okay. Yes, yes.
Q. You did sign the consent to get your DNA form in Miami. Is that correct?
A. Yes, I signed it, yes.
Q. Okay. And in that form, there are -- it says that you are not required to give your DNA, that you can refuse. Do you remember seeing that in there?
A. Yes, it did say that.
Q. Okay.
A. But it never said anything -- it never said anything about me having my lawyer, a lawyer present either, though.
Q. And you said you were very willing to give your DNA because it had to do with a rape, you're saying, and you knew you didn't commit the rape; is that correct?
A. He said he wanted my DNA for a rape that happened in Miami. And I knew I -- I knew I didn't have anything to do with -- with any rape. And I'm still kind of hesitant to do it because I was already in jail for a series of crimes, like he said, in this -- in the transcripts. He was there for a series of crimes, so I was kind of confused on why he was there.
Q. So you were willing to do it because you knew you didn't have anything to do with this alleged rape; is that correct?

A. Yeah, by his misleading, yeah.
Q. Okay.
A. Yeah, I was, yeah.
Q. So what changes if someone told you they were from Beaufort County and investigating a murder? Because if you knew you didn't do the rape, then why that murder's involved do you suddenly not want to give DNA?
A. Well, to be honest with you, I didn't want to do it then. He cornered me by telling me that he was going -- going to the magistrate to get a warrant to make me do it. So I really didn't want to do it, either. I felt threatened; I felt cornered. That's why I did it. So it really don't make any difference if it's the murder thing here or -- or the rape in Miami. I didn't want to do it. He told he was going to a judge to make me give it. That's -- that was his -- that's -- it's in the transcripts. I mean, that's what he said.
Q. Okay. But you did testify earlier that you gave it because you knew you didn't commit the rape. I was just curious as to what changed; the murder?
A. I mean, but it's in the transcripts also that he said that if I didn't do it, that he was going to the magistrate and he was going to make me give the DNA. So I felt like I didn't have a choice.
Q. I was just asking you about your testimony earlier.

A. Right, right, right.

MR. LIMBAUGH: That's actually all I have for this witness, your Honor

THE COURT: Any follow-up on redirect?

MS. BLANCHETTE: No, Your Honor.

THE COURT: All right. You may step down from the witness stand and return to your seat, Mr. Collins. Any other witnesses you wish to call at this time, Ms. Blanchette?

MS. BLANCHETTE: No, Your Honor. I just have a couple of cases that I will submit at the proper time.

THE COURT: State wish to call any additional witnesses?

MR. LIMBAUGH: State does not, Your Honor. State rests.

THE COURT: All right. Ms. Blanchette, I'm happy to hear from you.

MS. BLANCHETTE: Your Honor, in my years of doing PCR, I'd like to defer to what the judge would like. You sat here and listened to a lot of testimony. I know you have a lot of documents in front of you. You've got a lengthy transcript, along with two pretrial transcripts. What I have prepared is, I have several cases that I just thought were pertinent to this case for you to review. I'm happy to do a memo; a proposed order at a later time. I'm also happy to provide some oral argument if that would be helpful to The Court. But I don't want to carry on for thirty minutes

and summarize everything you just heard if that's not helpful to The Court.

THE COURT: Sure. No, I don't need you to summarize, you know, what we just heard. Obviously, I've been in here during this hearing and reviewing the transcripts, obviously. As I stated earlier, I will also be conducting an in-camera review of the twenty-eight-minute interview tape that you provided as one of your exhibits on behalf of your client today.

I would like to know if, in light of the developing testimony of the appellate counsel. It seemed like you were not aware that she was sort of under the -- as she stated, the umbrella, or the supervision of appellate counsel, if it might not be necessary, or if you would need to call Mr. Dudek as a witness, and we would need to finish this hearing another time, when he can be available to answer some of your questions.

MS. BLANCHETTE: Your Honor, I appreciate your bringing that up. I didn't mean to cut you off if I did. I believe Christian Seville is handling this case for the State, so I don't think Mr. Limbaugh, you know, can agree with this happening, and I'm speaking from memory here. Mr. Dudek did sign his signature informing Rita Metts, if you look at the appellate documents. And so, I thought that was a little odd, as I stated, and I know I can't testify, I'm just

explaining. When I get a conflict appeal, I file the brief but they do the records. So it does have appellate defense on it, so that seems normal. This class information, we've heard a little bit about it, so I actually did contact Mr. Dudek, and I believe Christian did as well at that time, and we discussed possibly just having him do an affidavit saying that he did not have any involvement in this case, is my understanding. What she said today was different than what Mr. Dudek had previously told us. So if the Court would be agreeable, just an affidavit from Mr. Dudek, stating what his involvement was, if any, was in this case. You know, I don't know how you'd like to handle that matter, but that was -- it seemed worthless before we heard that testimony today that, you know, he was just signing off on what somebody filed with the Court.

THE COURT: I want to see what the State has to say?

MR. LIMBAUGH: I definitely need to speak with Mr. Dudek again before I just agree to have him submit an affidavit, because if Ms. Metts' testimony today is correct, and he had some supervisory role that either he forgot about when we spoke to him earlier, or needs to review it, I'd just -- I would rather question him if we're going to go that route than submit an affidavit, but that's my thoughts and concern with this matter.

THE COURT: That would be my concern as well if you've

got conflicting testimony.

MS. BLANCHETTE: Your Honor, I think her testimony ---

THE COURT: You know, your client-- and I just want to make sure that we have exhausted fully, for the record, what did transpire with this appeal, because it's -- it's clear to me that this was a little bit different than a regular appeal. Okay? So I think it would make me more comfortable as the Court reviewing this PCR application to have a complete record, and I think that would include testimony of Mr. Dudek, be it by affidavit or have him appear as a live witness, and me just making myself available, you know, as soon as possible for that purpose, if necessary. We could do that, and obviously we can have it in another county if we need to, in order to expedite that process.

MS. BLANCHETTE: And your Honor, I remember, looking back at the original application, I did list Mr. Dudek. And I really appreciate Your Honor addressing this, because I felt like in a way she was kind of trying to pass the buck, but yet never named the attorney, but his name is on the document. So I guess he would be the attorney. I mean, she didn't identify if it was a male or female, or whom it was at appellate defense, but his name is on the documents.

THE COURT: Okay. All right. Well, aside from that, I'm happy to entertain any supplemental memoranda that either side needs to submit. If there's anything you want

to state for the record, of course you're welcome to it, by way of argument. But I'd like to get the -- this witness issue developed before I make you submit any proposed orders or anything of that nature, obviously. But anything else, either party or either attorney needs to say on the record today?

MR. LIMBAUGH: We will be glad to submit a proposed order when the time comes, after we take the testimony.

THE COURT: Okay.

MR. LIMBAUGH: We have the testimony from counsel, and I can make a prejudice argument if you would like me to at this time, but we can certainly submit a proposed order when needed.

THE COURT: I think that will suffice. Anything else?

MS. BLANCHETTE: No, Your Honor. And since we're further developing this appellate issue, I was just going to point out that we'd ask you to review the appellate documents. I think on their face ---

THE COURT: Okay. Sure.

MS. BLANCHETTE: --- the appellate documents speak to deficiency. I also think the State's brief is very pertinent, and I didn't print all the cases that were in their brief, because I think they make the appropriate arguments that his appellate counsel failed to make. But I did print out a couple of cases that weren't in their brief

that I thought may be helpful to the Court, and since I have the paper here, I'll hand those up if that's okay.

THE COURT: Sure, that would be fine.

MS. BLANCHETTE: I printed out the case of State v. Copeland. In that case -- if I can just flip through here I'll tell you why I'm handing it up. I apologize, your Honor. I've shuffled everything one too many times. These cases all deal with the DNA suppression issue. State v. Copeland, State v. Adams, State v. Owens, State v. Harvin, and then Schneckloth, I think I'm saying that correctly, v. Bustamonte, which is cited in the State's brief. That goes into the totality of circumstances, those type of things. But a couple of these cases, one goes into attenuation, which you heard me say a couple times today, removing the taint of an invalid consent; and also whether or not a consent can be voluntary if he has an attorney on other charges, which the answer to that is yes, it can be. But I felt I had a duty to provide a pertinent case on that. And then, a case that just recently came out that I like to hand up in PCR cases because I think it's really helpful, is Smalls v. State. Oftentimes, the State likes to argue overwhelming evidence of guilt, and that became something that got really perverted over a number of years. And in Smalls v. State, our Supreme Court explains how evidence of guilt should be weighed appropriately in PCR cases when

you're looking at the prejudice prong. I know Your Honor is aware of that case, but I just printed out a copy for you to have.

THE COURT: Sure. Appreciate that. Thank you. Okay. I will review these, and I will be reviewing the interrogation video as well. Is it audio and video, or just audio?

MS. BLANCHETTE: It's audio and video.

THE COURT: Audio and video?

MS. BLANCHETTE: Yes.

THE COURT: Okay. And I will wait for you to get back to me on the issue of whether or not it would be necessary to hold another part of hearing for Mr. Dudek's testimony. Okay? And if counsel could just keep me aware of -- you can e-mail me and my law clerk on that, hopefully in the next few weeks, that would be helpful. Okay?

MR. LIMBAUGH: Thank you, your Honor.

THE COURT: Thank you very much.

MS. BLANCHETTE: Thank you, your Honor.

THE COURT: Okay.

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF COLLETON)

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas/PCR for Beaufort County, South Carolina, on the 26th day of August 2019.

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

May 22, 2020

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

M056720

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	2011 NOV 29 PM 4:09
COUNTY OF BEAUFORT	)	
	)	JERRI ANN ROSENEAU
STATE OF SOUTH CAROLINA	)	BEAUFORT COUNTY SC NOTICE OF MOTION AND
	)	CLERK OF COURT ORDER
	)	
v.	)	Indictment No. 2011-GS-07-2279 Application
	)	
Antonio Collins,	)	
Defendant.	)	
	)	

TO: Defendant, Antonio Collins, by and through his counsel, Trasi Campbell.

The above named defendant shall take notice that the Solicitor of the Fourteenth Judicial Circuit will move before the Presiding Judge during the General Sessions Term of court beginning December 12, 2011 at the Beaufort County Courthouse to request that the defendant submit to the taking of buccal swabs for DNA testing purposes.

This motion is made on the following grounds:

1. That on June 29, 2009, Ronald Coleman lived at in Seabrook, SC in Beaufort County.
2. That at around 9 pm on June 29, 2009, Enrique Miles went to Coleman's house.
3. That upon approaching the house, Miles saw 2 black men in white t shirts and black pants at the back door of Coleman's house.
4. That these men approached Miles.
5. That Miles did not know these men.
6. That the men pulled out a gun and held it to Miles's head.
7. That one of the men was Antonio Collins.
8. That Collins forced Miles to go to the front door at gun point.

9. That the Defendant made Miles attempt to lure Coleman to the door.

10. That the Defendant held a gun at Miles's head the entire time.

11. That Miles did try to alert Coleman to the situation.

12. That the Defendant threw Miles to the ground.

13. That the Defendant kicked open the front door that was nailed shut.

14. That a gunfight ensued between the Defendant and Coleman.

15. That Coleman was shot 5 times in his left side.

16. That Coleman died from his injuries.

17. That the Defendant was struck with a bullet and left a blood trail.

18. That the blood trail extended from Coleman's house to the middle of the road.

19. That Miles notified the police.

20. That a witness observed 2 black men run by her window just prior to Miles reporting the crime.

21. That numerous gun casings were found at the scene.

22. That numerous blood samples were taken from Coleman's home and roadway.

23. That a gun was located at the scene.

24. That Miles took and passed a lie detector test.

25. That a composite of the Defendant was made.

26. That a 1993 or 1994 Gold or beige Cadillac was observed in the neighborhood prior to the shooting.

27. That Law Enforcement received information regarding who was involved with the shooting.

28. That Law Enforcement interviewed Jeremy Murphy as the possible getaway driver.

29. That Murphy owns a 1995 cream colored Cadillac.

30. That Law Enforcement obtained a search warrant for Murphy's car.

31. That Murphy stated he lent his car to the Defendant and George Savage the night of the murder.

32. That Murphy's alibi did not corroborate his story.

33. That Law Enforcement observed what appeared to be blood stains in the back seat of Murphy's car.

34. That Law Enforcement collected samples of the blood in Murphy's car.

35. That a hold was placed on the Defendant when he was arrested in Miami-Dade County on unrelated charges.

36. That a consent sample was taken of the Defendant's DNA.

37. That the Defendant's DNA sample matched the blood samples taken from Murphy's car.

38. That the Defendant's s DNA sample matched the blood samples taken from the crime scene in Seabrook.

39. That the Defendant is now back in Beaufort County.

40. That another DNA sample is needed to confirm the Defendant is the person whose DNA was on the swab from Miami-Dade County.

41. That such confirmation will aid in further substantiating or eliminating the Defendant as the perpetrator of this crime.

42. That such a procedure is minimally intrusive and can be conducted in complete safety to the defendant.

43. That such an order is necessary and compelling in order to further the ends of justice.

Therefore, the State prays for an Order from this Court to require the defendant to submit to such an examination for the taking of a buccal swab for a DNA sample.

Meredith Bannon
Assistant Solicitor
14th Judicial Circuit

Beaufort, South Carolina
November 29, 2011

SCHMERBER MOTION FOR ANTONIO COLLINS

In that on June 22, 2009, Ronald Coleman lived at 46 Seabrook Road in Seabrook, SC in Beaufort County.

In that at around 9 pm on June 22, 2009, Enrique Miles went to Coleman's house.

In that upon approaching the house, Miles saw 2 black men in white t shirts and black pants at the back door of Coleman's house.

In that these men approached Miles.

In that Miles did not know these men.

In that the men pulled out a gun and held it to Miles's head.

In that one of the men was Antonio Collins.

In that Collins forced Miles to go to the front door at gun point.

In that the Defendant made Miles attempt to lure Coleman to the door.

In that the Defendant held a gun at Miles's head the entire time.

In that Miles did try to alert Coleman to the situation.

In that the Defendant threw Miles to the ground.

In that the Defendant kicked open the front door that was nailed shut.

In that a gunfight ensued between the Defendant and Coleman.

In that Coleman was shot 5 times in his left side and died from his injuries.

In that the Defendant was struck with a bullet and left a blood trail.

In that the blood trail extended from Coleman's house to the middle of the road.

In that Miles notified the police.

In that a witness observed 2 black men run by her window just prior to Miles reporting the crime.

In that numerous gun casings were found at the scene.

In that numerous blood samples were taken from Coleman's home and roadway.

In that a gun was located at the scene.

In that Miles took and passed a lie detector test.

In that a composite of the Defendant was made.

In that a 1993 or 1994 Gold or beige Cadillac was observed in the neighborhood prior to the shooting.

In that Law Enforcement received information regarding who was involved with the shooting.

In that Law Enforcement interviewed Jeremy Murphy as the possible getaway driver.

In that Murphy owns a 1995 cream colored Cadillac.

In that Law Enforcement obtained a search warrant for Murphy's car.

In that Murphy stated he lent his car to the Defendant and George Savage the night of the murder.

In that Murphy's alibi did not corroborate his story.

In that Law Enforcement observed what appeared to be blood stains in the back seat of Murphy's car.

In that Law Enforcement collected samples of the blood in Murphy's car.

In that a hold was placed on the Defendant when he was arrested in Miami-Dade County on unrelated charges.

In that a consent sample was taken of the Defendant's DNA.

In that the Defendant's DNA sample matched the blood samples taken from Murphy's car.

In that the Defendant's s DNA sample matched the blood samples taken from the crime scene in Seabrook.

In that the Defendant is now back in Beaufort County.

In that another DNA sample is needed to confirm the Defendant is the person whose DNA was on the swab from Miami-Dade County.

In that such confirmation will aid in further substantiating or eliminating the Defendant as the perpetrator of this crime.

In that such a procedure is minimally intrusive and can be conducted in complete safety to the defendant.

In that such an order is necessary and compelling in order to further the ends of justice.

In that there is probable cause to believe that s/Antonio Collins did commit the offense of Murder of Ronald Coleman on June 22, 2009.

Further, in that there is probable cause to believe that s/Antonio Collins did commit the offense of kidnapping of Enrique Miles on June 22, 2009.

Additionally, there is probable cause to believe that s/Antonio Collins did commit the offense of Burglary 1st at in Seabrook, SC on June 22, 2009.

In that based on the above, there is evidence to believe Antonio Collins provided a DNA sample in Miami that matches the DNA found at the scene of the crime and in the getaway car.

Affiant: Christine L. Wilson

Date: November 29, 2011

Notary Public: Jody R. Hiers

Expiration of Commission: April 21st, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	ORDER
	)	
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	Indictment No. 2010-GS-07-2279
	)	
Antonio Collins,	)	
Defendant.	)	
	)	

This matter came before the Court on December ____, 2011, upon the motion of the State, represented by Assistant Solicitor Meredith Bannon. The defendant was represented by counsel, Trasi Campbell, Esquire.

It appears to this Court that the State requires a DNA sample from the defendant in order to further the investigation of this case. The Court orders the collection of a buccal swab from defendant and finds the taking of said sample to be reasonable and justifiable intrusions which do not violate the defendant's Fourth Amendment Rights.

Accordingly, it is hereby

ORDERED that the State may collect a DNA sample via buccal swab from the defendant.

_____
Presiding Judge

Beaufort, South Carolina
This _____ day of December, 2011

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT STATE OF SOUTH CAROLINA v. Antonio Collins, Defendant.	)	IN THE COURT OF GENERAL SESSIONS CONSENT ORDER Indictment No. 2011-GS-07-2279

This matter came before the Court upon the motion of the State to request that the Defendant submit to the taking of buccal swabs for DNA testing purposes.

By agreement of all parties hereto, the Defendant, Antonio Collins, consents to the taking of his DNA sample for testing purposes.

The Court finds that the agreement is sufficient and agreed to by the parties.

AND IT IS SO ORDERED.

_____
Presiding Judge
14th Judicial Circuit

Beaufort, South Carolina
This _____ day of _____, 2011

WE SO MOVE, AGREE, AND CONSENT:

_____
Trasi Campbell,
Attorney for the Defendant

_____
Meredith Bannon
Attorney for the State

_____
Antonio Collins
Defendant

M056720

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	ORDER
	)	
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	Indictment No. 2016-GS-07-2279
	)	
Antonio Collins,	)	
Defendant.	)	

DEFENDANT'S EXHIBIT 2 8.26.19

2012 FEB -9 AM 9:13

BEAUFORT CLERK OF COURT S.C.

This matter came before the Court on ~~December~~ January 25, ~~2011~~ 2012, upon the motion of the State, represented by Assistant Solicitor Meredith Bannon. The defendant was represented by counsel, Trasi Campbell, Esquire.

It appears to this Court that the State requires a DNA sample from the defendant in order to further the investigation of this case. The Court orders the collection of a buccal swab from defendant and finds the taking of said sample to be reasonable and justifiable intrusions which do not violate the defendant's Fourth Amendment Rights.

Accordingly, it is hereby

ORDERED that the State may collect a DNA sample via buccal swab from the defendant.

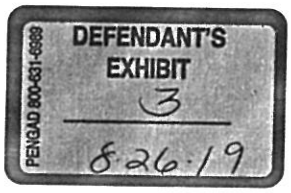
R M Mullen

Presiding Judge

Beaufort, South Carolina
This 25th day of ~~December, 2011~~ January

2011650723 78
2011650723 79
2011650724 03

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	Indictment No. 2011-GS-07-2279; 2011-GS-07-2379
COUNTY OF BEAUFORT)	2011-GS-07-2378, 2011-GS-07-2403
)	STATE'S RESPONSE TO DEFENSE
STATE OF SOUTH CAROLINA)	MOTION TO SUPPRESS BUCCAL SWAB
)	
v)	
)	
Antonio Collins,)	
Defendant.)	
)	



COMES NOW, the State of South Carolina, by the 14th Circuit Solicitor and through the undersigned Assistant, hereby asks this Court to deny the Defendant's motion to suppress and find that both buccal swabs were lawfully acquired from the Defendant.

ISSUE

Whether a buccal swab taken with the Defendant's consent and a buccal swab taken pursuant to a *Schmerber* Order are admissible at the Defendant's murder trial?

FACTS

On June 29, 2009, Ronald Coleman lived at in Seabrook, SC in Beaufort County. At around 9 pm on June 29, 2009, Enrique Miles, Coleman's childhood friend, went to Coleman's house. A 1993 or 1994 Gold or beige Cadillac was observed in the neighborhood prior to the shooting. Upon approaching the house, Miles saw two black men in white t-shirts and black pants at the back door of Coleman's house. The two men approached Miles and he did not recognize them. One of the men, who has been identified as Antonio Collins, pulled out a gun and held it to Miles's head. Miles was forced to go to the front door of the house and attempt to lure Coleman to the door. Miles was able to alert Coleman to the

situation prior to Collins throwing Miles to the ground and kicking in the door which had been nailed shut. A gunfight between Coleman and Collins ensued. Coleman was struck with five bullets in his left side and died from his injuries. The Defendant was hit with a bullet and left a blood trail to his getaway car. The blood trail extended from Coleman's house to the middle of the road.

A neighbor observed two black men run by her window just prior to Miles notifying Law Enforcement of the crime. Numerous shell casings were found at the crime scene. A gun was located on the scene. Samples were taken from suspected blood stains both in Coleman's home and in the roadway. Miles submitted to and passed a lie detector test. A composite sketch of the Defendant was created.

Through the course of the investigation, Law Enforcement received information regarding who was involved with the shooting. This led to Law Enforcement interviewing Jeremy Murphy as the possible getaway driver. Murphy owns a 1995 cream colored Cadillac. Murphy stated he lent his car to the Defendant and George Savage the night of the murder. Murphy's alibi did not corroborate his story. Law Enforcement obtained a search warrant for Murphy's car. Law Enforcement observed what appeared to be blood stains in the back seat of Murphy's car. Law Enforcement collected samples of the blood in Murphy's car. The samples did not match either Murphy or the Victim. An informant came forward and revealed the name of the Defendant as the person who killed the Victim pursuant to a federal plea agreement. This informant provided Law Enforcement with Antonio Collins's name and identifying information.

In the fall of 2010, a hold was placed on the Defendant when he was arrested in Miami-Dade County, Florida on unrelated charges. Inv. Chris Wilson and MSGT. Jeff Purdy contacted Detective Juan Segovia with the Miami-Dade Police Department. In their conversations,

MSGT. Purdy off handedly suggested to Det. Segovia that he tell the Defendant that he was a suspect in a series of brutal child rapes to secure the Defendant's consent to a buccal swab.

On March 13, 2011, Det. Segovia met with the Defendant in the Miami-Dade County jail. He advised him of his rights and asked him to consent to a buccal swab. No mention of the crime for which he was submitting the DNA was made. Further, Det. Segovia provided the Defendant with a written "Consent to Provide DNA Specimen for Laboratory Analysis" contemporaneous with collecting his buccal swab. (See Exhibit A). Det. Segovia made no allusions or direct statements concerning the Defendant's status as a suspect in a series of molestations nor was the Defendant lied to in order to obtain his consent. This meeting lasted six minutes. This buccal swab was sent via Federal Express to the Sheriff's office. This sample matched the blood samples taken from Murphy's car and the blood samples taken from the crime scene. (See Exhibit B).

A *Schmerber* hearing was conducted on January 25, 2012 in front of Judge Markley Dennis where probable cause for another buccal swab was found. An analysis of this buccal swab again showed that the Defendant was a DNA match to the blood samples taken from Murphy's car, the roadway and the victim's porch. (See Exhibit C).

LAW

Voluntary Sample

A DNA buccal swab constitutes a search and seizure under the Fourth Amendment. "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." *State v. Pichardo*, 367 S.C. 84, 105, 623 S.E.2d 840 (S.C.Ct. App. 2005). The police do not have to tell a person that he has the right

to refuse consent. *State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2001). Threats of future prosecution do not negate consent. *State v. Battle*, 304 S.C. 191, 403 S.E.2d 331 (Ct. App. 1991)*(where Defendant freely and voluntarily consented to a search of his home where he was told by officers that his girlfriend "could go to jail for what was in the house;" was told that he could sign a written consent to the search or the officers would seek a search warrant; was advised of his Miranda rights, and pointed out to the officers the location of the cocaine in a dresser.)*. One being in custody does not negate their consent to search. *State v. Brannon*, 347 S.C. 85, 552 S.E.2d 773 *(Ct. App. 2001)(where the police detained and handcuffed defendants because of the fear of flight, evidence found after they signed a written consent to search their car was admissible.)*.

The prosecution has the burden of establishing that the consent was willful. *State v. Pichardo*, 367 S.C. 84, 105, 623 S.E.2d 840 (S.C.Ct. App. 2005). Voluntary consent "is a question of fact to be determined from the totality of circumstances." *State v. Adams*, 377 S.C. 334, 339, 659 S.E.2d 272 (S.C. Ct. App. 2008). Once consent is given for a buccal swab, the privacy of the DNA is relinquished when given "without any limitation on the scope on consent." *State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (S.C. Ct. App. 2002). The *McCord* court cites *Bickley v. State*, 489 S.E.2d 167 (Ga. Ct. App. 1997), which states "DNA results are like fingerprints which are maintained on file by law enforcement authorities for use in further investigations." *McCord*, 349 S.C. at 484, 562 S.E.2d 689 (S.C. Ct. App. 2002).

This "totality of the circumstances" test for consent on a buccal swab is similar to the "totality of the circumstances" test used to determine whether a confession is made voluntarily. Both the South Carolina Supreme Court and the US Supreme Court have held that misrepresentations made by law enforcement in obtaining a confession, while not encouraged, is

not by itself conclusive that the confession is coerced. *State v. Von Dohlen* 322 S.C. 234, 244 (1996). Instead, such misrepresentations are one of many factors in the totality of the circumstances for the court to consider. For example, in *State v. Myers* 359 S.C. 40 (2004), police misrepresented to the defendant that his DNA matched DNA found at the scene. While the Court acknowledged that the misrepresentation was a relevant factor to consider, it nonetheless determined that the confession was voluntary based on the fact that the defendant had been advised of his rights multiple times, that no interrogation lasted longer than a couple of hours, and that the police made sure that the defendant was well rested. *Id.* at 47.

Exceptions to the Fruit of the Poisonous Tree Doctrine

Under the Fruit of the Poisonous Tree Doctrine, "evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality." *State v. Copeland*, 321 S.C. 318, 323, 468 S.E.2d 620 (S.C. 1996). Just because evidence was discovered through the illegal actions of the police does not necessarily mean that it is the "fruit of the poisonous tree." *Wong Sun v. United States*, 317 U.S. 471, 83 S. Ct. 407 (1963).

"If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained." *State v. Spears*, 393 S.C. 466, 482, 713 S.E.2d 324 (S.C. Ct. App. 2011). The State does not have to prove the absence of bad faith on the part of the police. *Nix v. Williams*, 467 U.S. 431, 104 S. Ct. 2501(1984) (*where police would have discovered victim's body even if defendant had not given information as result of improper interrogation*). "Suppression of evidence, however, has always been our last resort, not our first impulse. The exclusionary rule generates 'substantial social costs,' which sometimes include

setting the guilty free and the dangerous at large. We have therefore been 'cautio[us] against expanding' it, and 'have repeatedly emphasized that the rule's 'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application,'. We have rejected '[i]ndiscriminate application' of the rule, and have held it to be applicable only 'where its remedial objectives are thought most efficaciously served,' that is, 'where its deterrence benefits outweigh its 'substantial social costs.'" (Citations omitted.) *Michigan v. Hudson*, 547 U.S. 586, 591 126 S.Ct. 2159, 2163 (2006).

The benefits of deterrence must outweigh the substantial social costs of suppression. The standard is high: "[t]he rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application." *Herring v. U.S.*, ___ U.S. ___, 129 S.Ct. 695, 701 (2009). Suppression is not an automatic consequence of a Fourth Amendment violation. Instead, the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct. *Id.* The prerequisites to the suppression of evidence under the exclusionary rule are as follows:

1. "The exclusionary rule applies only where exclusion of the evidence would result in appreciable deterrence, *i.e.*, exclusion would appreciably deter Fourth Amendment violations by law enforcement in the future. The extent to which the exclusionary rule is justified varies with the culpability of the law enforcement conduct." *Herring v. U.S*, *supra*.

2. 'To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. ...[T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or

systemic negligence." *Id.* at 702

"Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial.... Suppression, in these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of justice." *Nix v. Williams*, 467 U.S. 431 at 446-447, 104 S. Ct. 2501 at 2510. The inevitable discovery exception to the exclusionary rule does not apply without a showing that a required warrant would have actually been sought and obtained. *United States v. Allen*, 159 F.3d 832 (4th Cir. 1998) and *State v. Jenkins*, 727 S.E.2d 761, 2012 S.C.App. LEXIS 166, (2012), (*where the trial court initially found the search warrant for DNA to be valid. The Court of Appeals found that the search warrant was defective. The State argued that the DNA should nevertheless be admitted based on the inevitable discovery exception to the exclusionary rule. In a footnote, the Court says that the prosecutor must establish that the DNA would have inevitably been obtained and that it could have been used.)*

Argument

1. The Miami buccal swab is admissible due to consent.

Collins signed a consent form stating that he freely and voluntarily consented to the taking of his DNA for laboratory analysis. The form further states that he had been informed of his right to refuse to give the sample. Additionally, the form explicitly states the DNA swab was being given exclusively for investigative purposes which may result in criminal prosecution. Further, Det. Segovia's report indicates that he met with Collins starting at 4:24pm and that Collins consented to give the sample at 4:30pm. The consent form also indicates that Collins signed the form at 4:30pm. A six minute long conversation can hardly be characterized as

unduly burdensome. Det. Segovia did not convey any threats or misrepresentations to Collins to obtain the buccal swab. There is no indication that Collins was tired or malnourished or otherwise altered when he signed the form. There is no indication that he suffered from a mental condition that would prevent him from understanding the form. Based on all of these circumstances, Collins knowingly and voluntarily gave Det. Segovia his buccal swab.

2. <u>The Miami buccal swab is admissible through consent obtained by misdirection.</u>

Assuming one disregards the voluntary waiver sheet and Det. Segovia's testimony and one believes that Det. Segovia followed MSGT. Purdy's advice, the buccal swab from Miami is still admissible. Law Enforcement can lie and make misrepresentations to a suspect. Here, if the Defendant was told he was a suspect in a series of molestation cases, he still would be aware he was giving a sample of bodily fluids to be used by Law Enforcement for comparison with evidence. As in *McCord*, one cannot limit the scope of the sample given. Therefore, if the Defendant consented to giving Law Enforcement a buccal swab in one case, he did not have an expectation of privacy that the results of the swab would not be used in another case. Additionally, no allegations of force or threats have been alleged. Misdirection by law enforcement is not so powerful as to overbear the independent thought and decision making process of the Defendant. Therefore, he gave Law Enforcement willing consent to take his buccal swab for an investigation. As such, the consent exception to the warrant requirement is met.

3. The Miami buccal swab is admissible by both exceptions to the Fruit of the Poisonous Tree Doctrine.

If the Court finds that the misdirection by Law Enforcement is so severe as to warrant the suppression of the Miami buccal swab, the buccal swab taken pursuant to the *Schmerber* hearing is still admissible under the Independent Source and Inevitable Discovery exceptions to the Fruit of the Poisonous Tree Doctrine. A *Schmerber* hearing was conducted in front of a Circuit Court judge where probable cause was found to substantiate the collection of a buccal swab from the Defendant. This buccal swab provided an independent source of the Defendant's DNA from the Miami buccal swab. The *Schmerber* buccal swab was not obtained through any misdirection or exertion of police power. Therefore, regardless of the admissibility of the Miami swab, the *Schmerber* buccal swab should be admissible.

Additionally, the fact that the Circuit Court ordered the buccal swab to be taken supports that the Defendant's DNA, regardless of what happened in Miami, would have been inevitably discovered by the State. In contrast with the situation in *Jenkins*, this case has already had another buccal swab ordered and the inevitable discovery argument is timely. Again, the *Schmerber* buccal should be admissible regardless of the Miami buccal due to being independently collected and ultimately ordered by the Court. The Miami buccal should be admissible under the Inevitable Discovery Doctrine.

Applying the *Herring* test, these circumstances do not meet the prerequisites for suppression even if a violation is found to have occurred. The deterrent value of suppressing the buccal swab which would have been inevitably discovered would add nothing to the integrity of a criminal trial. Rather, just as posited in *Nix*, suppression in this instance would unfairly burden the justice system without a benefit of prevention.

CONCLUSION

Generally, a buccal swab which is given with consent is admissible. Alternatively, if deception was found to be used to obtain the Defendant's buccal swab, his consent is still valid as he was aware he was giving his DNA to Law Enforcement for investigative purposes and as such a buccal swab obtained under such circumstances is admissible. Further, a buccal swab which was obtained through a probable cause *Schmerber* hearing in front of a Circuit Court Judge is admissible as it offers proof that the buccal swab was going to be inevitably taken. As the source of the buccal swab through the *Schmerber* hearing is different than the consent buccal swab, it is from an independent source and not subject to suppression by virtue of the Fruit of the Poisonous Tree Doctrine. Therefore, the subsequently obtained buccal swab from the *Schmerber* hearing is admissible. As such, the undersigned humbly requests this Court to find the DNA results from the Miami buccal swab and the DNA results from the *Schmerber* buccal swab to be admissible at trial.

Meredith Bannon
Assistant Solicitor
14th Judicial Circuit

Beaufort, South Carolina
September 19, 2012

EXHIBIT A

MIAMI-DADE POLICE DEPARTMENT
CONSENT TO PROVIDE DNA SPECIMEN FOR LABORATORY ANALYSIS

NAME: COLLINS, ANTONIO EUGENE RACE: BLACK SEX: MALE DOB: ___

ADDRESS: _____

S.S. NUMBER: ___ ___ I.D. TYPE & NUMBER _____

I, Antonio Collins, JAIL # [illegible], HEREBY FREELY AND VOLUNTARILY CONSENT TO PROVIDE MDPD POLICE OFFICERS WITH A MOUTH SWAB SPECIMEN FOR INVESTIGATIVE PURPOSES. I HAVE BEEN FULLY INFORMED THAT THIS SPECIMEN WILL BE ENTERED INTO A DNA DATABASE AFTER ANALYSIS.

I HAVE BEEN FULLY INFORMED THAT THE INFORMATION MAY BE AVAILABLE TO MY PHYSICIAN UPON MY REQUEST, AND IT WILL REMAIN CONFIDENTIAL AND BE USED FOR NO PURPOSES OTHER THAN INVESTIGATION, WHICH MAY LEAD TO CRIMINAL PROSECUTION.

I FULLY UNDERSTAND THAT I HAVE A RIGHT TO REFUSE TO GIVE THIS SPECIMEN. I HAVE READ AND UNDERSTAND THE ABOVE STATEMENT AND I CONSENT TO PROVIDE THIS SPECIMEN OF MY OWN FREE WILL WITHOUT ANY THREATS OR PROMISES HAVING BEEN MADE TO ME.

ADDITIONALLY, IN THE EVENT I CANNOT PROVIDE PROPER IDENTIFICATION, I VOLUNTARILY AGREE TO PROVIDE MY THUMB PRINTS AT THE TIME OF THE SWAB COLLECTION TO MDPD POLICE OFFICERS.

Antonio Collins
SIGNATURE OF CONSENTING INDIVIDUAL

3/15/11
DATE AND TIME

DET. JUAN SEGOVIA Juan Segovia 4684
WITNESS (Print and Sign) Badge No.

4:30 p.m.
DATE AND TIME

9105 NW 25 ST. MIAMI, FL 33172
ADDRESS

3/15/11 - 4:30 PM

DET. JONATHAN SABEL 4471
WITNESS (Print and Sign) Badge No.

3/15/11 4:30 p.m.
DATE AND TIME

9105 NW 25 ST. MIAMI, FL 33172
ADDRESS

LEFT THUMB

RIGHT THUMB

32.04.61-502

SCANNED 5/26/2011

EXHIBIT B

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

REGINALD I. LLOYD
Director

Sgt. Chris Wilson
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS
March 25, 2011
SLED LAB: L09-07639
Your Case No: 20090622659
Incident Date: 6/22/2009
[V] Ronald Coleman, Jr.
[S] Antonio Collins

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

13	Buccal swabs from Antonio Eugene Collins
1	Swabs from Seabrook Rd.
2	Swabs from Smith & Wesson Model SW40C S/N WAP0205
6	Swabs from front porch of Seabrook Rd.
8	Swab from underneath backseat
10	Swab from underneath rear console vent

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RESULTS

The DNA profile developed from items 1, 6, 8, and 10 matches the DNA profile of Antonio Collins. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 4.9 quadrillion.

The partial DNA profile developed from item 2 also matches the DNA profile of Antonio Collins.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Jennifer L. Clayton
Forensic Scientist

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo-genin
13 Antonio Collins	14,15	29,33.2	9,11	10	14,16	6,9.3	9,12	11	21	13,14.2	16,17	8,11	15	12	19,25	XY
1 Seabrook Rd.	14,15	29,33.2	9,11	10	14,16	6,9.3	9,12	11	21	13,14.2	16,17	8,11	15	12	19,25	XY
2 Smith and Wesson	14,15	29,33.2	(9)	10	14,(16)	6,9.3	-	11	-	13,14.2	16,17	8,(11)	15	12	-	XY
6 Front porch	14,15	29,33.2	9,11	10	14,16	6,9.3	(9,12)	11	21	13,14.2	16,17	8,11	15	12	19,25	XY
8 Backseat	14,15	29,33.2	9,11	10	14,16	6,9.3	9,12	11	21	13,14.2	16,17	8,11	15	12	19,25	XY
10 Vent	14,15	29,33.2	9,11	10	14,16	6,9.3	9,12	11	21	13,14.2	16,17	8,11	15	12	19,25	XY

( ) = alleles between 75 and 149 rfu - =no results

1064

EXHIBIT C

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

Sgt. Chris Wilson
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS
May 21, 2012
SLED LAB: L09-07639
Your Case No: 200906220659
Incident Date: 6/22/2009
[V] Ronald Coleman, Jr.
[S] Antonio Collins

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

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14	**Buccal swabs from Antonio Collins**
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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

JUN 06 2012

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Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

/Jennifer Clayton

Jennifer L. Clayton
Forensic Scientist

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

JUN 06

Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo-genin
13 Antonio Collins	14,15	29,33.2	9,11	10	14,16	6,9.3	9,12	11	21	13,14.2	16,17	8,11	15	12	19,25	XY
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( ) = alleles between 75 and 149 rfu - =no results

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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

DEFENDANT'S EXHIBIT 4 8.26.19

PENGAD 800-631-6989

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Case # 2011-GS-07-2379 - ~~2379~~ 2379 & 2378 & 2403

EXHIBITS

Plaintiff(s) State

vs.

Defendant(s) Antonio Collins

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1	1	#2 Supplemental Rpt. DNA Analysis
2	2	#1 Miami-Dade PD Consent to Provide DNA
3	3	#3 - SC DNA Analysis Items Analyzed
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

Court Reporter Sandra Rowe Trial Judge McDonald

Clerk of Court Tammy D. Burch

Date 9-19-12

MIAMI-DADE POLICE DEPARTMENT
CONSENT TO PROVIDE DNA SPECIMEN FOR LABORATORY ANALYSIS

NAME: COLLINS, ANTONIO EUGENE RACE: BLACK SEX: MALE DOB

ADDRESS:

S.S. NUMBER: I.D. TYPE & NUMBER

I, Antonio Collins, HEREBY FREELY AND VOLUNTARILY CONSENT TO PROVIDE MDPD POLICE OFFICERS WITH A MOUTH SWAB SPECIMEN FOR INVESTIGATIVE PURPOSES. I HAVE BEEN FULLY INFORMED THAT THIS SPECIMEN WILL BE ENTERED INTO A DNA DATABASE AFTER ANALYSIS.

I HAVE BEEN FULLY INFORMED THAT THE INFORMATION MAY BE AVAILABLE TO MY PHYSICIAN UPON MY REQUEST, AND IT WILL REMAIN CONFIDENTIAL AND BE USED FOR NO PURPOSES OTHER THAN INVESTIGATION, WHICH MAY LEAD TO CRIMINAL PROSECUTION.

I FULLY UNDERSTAND THAT I HAVE A RIGHT TO REFUSE TO GIVE THIS SPECIMEN. I HAVE READ AND UNDERSTAND THE ABOVE STATEMENT AND I CONSENT TO PROVIDE THIS SPECIMEN OF MY OWN FREE WILL WITHOUT ANY THREATS OR PROMISES HAVING BEEN MADE TO ME.

ADDITIONALLY, IN THE EVENT I CANNOT PROVIDE PROPER IDENTIFICATION, I VOLUNTARILY AGREE TO PROVIDE MY THUMB PRINTS AT THE TIME OF THE SWAB COLLECTION TO MDPD POLICE OFFICERS.

Antonio Collins
SIGNATURE OF CONSENTING INDIVIDUAL

3/15/11
DATE AND TIME

DET. JUAN SEGOVIA Juan Segovia 4684
WITNESS (Print and Sign) Badge No.

4:30 p.m.
DATE AND TIME

9105 NW 25 ST. MIAMI, FL 33172
ADDRESS

3/15/11 - 4:30PM

DET. JONATHAN SABEL 4471
WITNESS (Print and Sign) Badge No.

3/15/11 4:30 p.m.
DATE AND TIME

9105 NW 25 ST. MIAMI, FL 33172
ADDRESS

LEFT THUMB

RIGHT THUMB

EXHIBIT
Count 1

PENGAD 800-631-6989

32.04.61-502

SCANNED 3/22/2011

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

REGINALD I. LLOYD
Director

Sgt. Chris Wilson
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS
March 25, 2011
SLED LAB: L09-07639
Your Case No: 20090622659
Incident Date: 6/22/2009
[V] Ronald Coleman, Jr.
[S] Antonio Collins

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

13	Buccal swabs from Antonio Eugene Collins
1	Swabs from Seabrook Rd.
2	Swabs from Smith & Wesson Model SW40C S/N WAP0205
6	Swabs from front porch of Seabrook Rd.
8	Swab from underneath backseat
10	Swab from underneath rear console vent

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RESULTS

The DNA profile developed from items 1, 6, 8, and 10 matches the DNA profile of Antonio Collins. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 4.9 quadrillion.

The partial DNA profile developed from item 2 also matches the DNA profile of Antonio Collins.

Note: **Any remaining evidence and/or packaging will be returned to the requesting agency.**

Jennifer L. Clayton
Forensic Scientist

Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSFIPO	D3S1358	THO1	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo-genin
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( ) = alleles between 75 and 149 rfu - =no results

1073

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Laboratory Analysis Electronic Packing Slip

Case Information
Sent electronically to Lab: (04/11/2012 @ 10:41)
SLED Forensic Services

Department Case:200906220659 Submission # 2

- Department: Beaufort County Sheriffs Office [SC0070000] / User Name: Beaufort County Sheriff's Office
- Department Case: 200906220659
- Submission Number:2
- Officer Name: Wilson, Chris
- Officer Email: jsnider@bcgov.net
- Officer Phone: 843-255-3409
- Offense Date: 06/22/2009
- Offense Location: 46 Seabrook Road, Seabrook, SC 29940
- County: Beaufort
- Case Type: HOMICIDE
- Case Comments: Additional submission
- Cross Reference: L09-07639

L09-07639
Sub# 4 Received (4/11/2012)
Beaufort County Sheriff's Office
Agency Case #: 200906220659

Submission Information

- Comments: BCSO item#98 is a DNA known standard from Antonio Collins. Please compare to SLED items 1,2,6,8 and 10.
- Date Sent: 04/11/2012

Name Information

Name Type	Full Name	Date Of Birth	Sex	Race
Victim	Coleman Jr, Ronald		Male	Black/African American
Suspect	Collins, Antonio		Male	Black/African American

Analysis Request Information

Item Number	Package	Item Type Code	Item Description	Serial Number	Exam Requests	Date Collected
98	paper bag	[009]Buccal swab	Antonio Collins		DNA-Known Standard	01/25/2012 12:40

14

Tox Questions

Death:

(●) Yes ,if yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accident ☐ Natural ☐ Unexplained
( ) No

Traffic Fatality:

☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other

Other Causes:

☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease
☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other

DUI: Felony ( ) Yes (●) No Resulting in Death ( ) Yes (●) No (if yes, victim required) Breath Test Given ( ) Yes (●) No if yes, reading:

Drugs Suspected ( ) Yes (●) No if yes, list drugs:

Signature

J A. Snider

Print Name

APR 19 2012

https://ilab.sled.sc.gov/webprelog.dll/EXEC

4/11/2012

This Space Reserved For Lab Barcode Label

SLED LABORATORY
FORENSIC SERVICES REQUEST

SLED LAB No. L09-07639
Submission: 4 4/11/2012 10:46:57AM

Name of Investigating officer: Sgt. Christine Wilson
Agency: Beaufort County Sheriff's Office Phone No: 843-470-3200
Fax No: Email:
Mailing Address: PO Box 1758
City / State / Zip: Beaufort, SC 29901
CC:

ORI No: SC0070000
Agency Case No: 200906220659
Offense: HOMICIDE
County: Beaufort
Offense Date:
Officer Involved Shooting ☐ Yes
Rush: ☐ Yes

Is this evidence related to another lab number?
☐ Yes ☒ No
If yes, Lab Number:

SLED ITEM NO LABTRACK	Agency Item No.	Description of Evidence	Analysis Requested
14	98	Buccal swab - Antonio Collins	DNA ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
Antonio Collins	M	B		

Victim(s)	Sex	Race	DOB	SSN
Ronald Coleman, Jr	M	B		
Ronald Coleman Jr	M	B		

Comments
Case Comments: Additional submission

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.

APR 19 2012

This Space Reserved For Lab Receipt Barcode

SLED LABORATORY
FORENSIC SERVICES REQUEST

SLED LAB No. L09-07639
Submission: 4 4/11/2012 10:46:57AM

Submitted By :

J Snider

Jennifer Snider

Received By :

Nikki P Hughes

Nikki Perry Hughes
Forensic Technician

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

Sgt. Chris Wilson
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS
May 21, 2012
SLED LAB: L09-07639
Your Case No: 200906220659
Incident Date: 6/22/2009
[V] Ronald Coleman, Jr.
[S] Antonio Collins

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

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14	**Buccal swabs from Antonio Collins**
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EXHIBIT

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

JUN 06 2012

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Forensic Scientist

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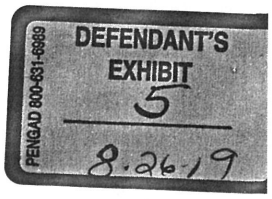
( ) = alleles between 75 and 149 rfu - =no results

1080

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

M05 6720
2011GS0702378
2011GS0702379
2011GS0702403

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	
	)	Order Denying Defense Motion to
STATE OF SOUTH CAROLINA	)	Suppress Buccal Swabs
	)	
v.	)	Indictment No. 2011-GS-07-2279
	)	2011-GS-07-2378
Antonio Collins,	)	2011-GS-07-2379
Defendant.	)	2011-GS-07-2403
	)	



This matter came before the Court on September 19, 2012, pursuant to the Defendant's Motion to Suppress the two buccal swabs collected from the Defendant, Antonio Collins. The Defendant's objection to the evidence is based on violations of the Defendant's Fourth, Fifth, and Sixth Amendment rights. After reviewing the evidence presented during the hearing on this matter, including witness statements, a voluntary consent order, and DNA lab reports, this Court hereby **DENIES** the Defendant's Motion to Suppress both buccal swabs collected from the Defendant.

FACTS

On June 29, 2009, Ronald Coleman lived at , in Seabrook, South Carolina, which is located in Beaufort County. At around 9:00 pm on June 29, 2009, Enrique Miles, Coleman's childhood friend, went to Coleman's house. A 1993 or 1994 gold or beige Cadillac was observed in the neighborhood prior to the shooting. Upon approaching the house, Miles saw two black men in white t-shirts and black pants at the back door of Coleman's house. Although Miles did not recognize them, the two men approached him. A gunfight ensued between Coleman and Collins. Coleman was struck with five bullets in his left side and died from his injuries. The Defendant was also hit with a bullet, and left a blood trail from Coleman's house to the middle of the road, where he entered his getaway car.

A neighbor observed two black men run by her window just prior to Miles notifying law enforcement of the crime. Numerous shell casings and a gun were found at the crime scene. Samples were taken from suspected blood stains both in Coleman's home and in the roadway, and a composite sketch of the Defendant was created.

Through the course of the investigation, Law Enforcement received information regarding the men involved with the shooting. This information led Law Enforcement to interview Jeremy Murphy, who owns a 1995 cream colored Cadillac, as the possible getaway driver. Murphy stated he lent his car to the Defendant and George Savage the night of the murder. Law Enforcement obtained a search warrant for Murphy's car. Law Enforcement observed what appeared to be blood stains in the back seat of Murphy's car and collected samples of the blood observed in Murphy's car. The samples matched neither Murphy nor the Victim. Subsequently, Gussie Goldwire came forward, and revealed the name of the Defendant as the person who killed the Victim pursuant to a federal plea agreement. Goldwire provided Law Enforcement with Antonio Collins's name and identifying information.

In the fall of 2010, a hold was placed on the Defendant when he was arrested in Miami-Dade County, Florida on unrelated charges. MSGT. Jeff Purdy contacted Det. Juan Segovia with the Miami-Dade Police Department. In their conversations, MSGT. Purdy suggested that Segovia tell the Defendant that he was a suspect in a series of brutal rapes to secure the Defendant's consent to a buccal swab.

On March 13, 2011, Segovia met with the Defendant. He advised him of his rights and asked him to consent to a buccal swab. No mention of the crime for which he was submitting the DNA was made. Further, Segovia provided the Defendant with a written "Consent to Provide DNA Specimen for Laboratory Analysis" contemporaneously with collecting his buccal swab.

(Court's Exhibit One). Segovia testified that he made no allusions or direct statements concerning the Defendant's status as a suspect in a series of molestations and that he did not lie to the Defendant to obtain his consent. Their meeting lasted six minutes. This buccal swab was sent via Federal Express to the Sheriff's office. This sample matched the blood samples taken from Murphy's car and the blood samples taken from the crime scene. (Court's Exhibit Two).

Judge R. Markley Dennis, Jr. found probable cause existed for another buccal swab at a *Schmerber* hearing conducted on January 25, 2012. An analysis of that buccal swab again showed that the Defendant was a DNA match to the blood samples taken from Murphy's car, the roadway, and the victim's porch. (Court's Exhibit Three).

ISSUES AND ANALYSIS

The Defendant moves this Court to suppress the buccal swab collected in Miami, Florida alleging violations of his Fourth, Fifth and Sixth Amendment rights. The Defendant further moves for an order suppressing the buccal swab collected pursuant to Judge Dennis' order following the *Schmerber* hearing, due to the Fruit of the Poisonous Tree Doctrine.

The issues before the Court are (1) whether the buccal swab in Miami constitutes an illegal search and seizure, (2) whether the protections of *Miranda* are required when Law Enforcement obtains the Defendant's consent for a buccal swab, (3) whether the Sixth Amendment right to counsel attaches to a defendant who is being held in a detention center on unrelated charges, and (4) whether the buccal swab collected pursuant to the *Schmerber* order should be suppressed as the Fruit of the Poisonous Tree.

1. The Court finds that the consensual taking of a buccal swab is a valid exception to the Fourth Amendment's requirement for a search warrant.

A DNA buccal swab constitutes a search and seizure under the Fourth Amendment. "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." *State v. Pichardo*, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005). The police do not have to tell a person that he has the right to refuse consent. *State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2001). Threats of future prosecution do not negate consent. *State v. Battle*, 304 S.C. 191, 403 S.E.2d 331 (Ct. App. 1991) (where Defendant freely and voluntarily consented to a search of his home where he was told by officers that his girlfriend "could go to jail for what was in the house;" was told that he could sign a written consent to the search or the officers would seek a search warrant; was advised of his Miranda rights, and pointed out to the officers the location of the cocaine in a dresser). One being in custody does not negate their ability to give consent to search. *State v. Brannon*, 347 S.C. 85, 552 S.E.2d 773 (Ct. App. 2001) (where the police detained and handcuffed defendants because of the fear of flight, evidence found after they signed a written consent to search their car was admissible.)

The prosecution has the burden of establishing that the consent was willful. *State v. Pichardo*, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005). Voluntary consent "is a question of fact to be determined from the totality of circumstances." *State v. Adams*, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008). Once consent is given for a buccal swab, the privacy of the DNA is relinquished when given "without any limitation on the scope on consent." *State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 (Ct. App. 2002). The *McCord* court cites *Bickley v. State*, 227 Ga.App. 413, 489 S.E.2d 167 (Ga. App. 1997), which states "DNA

APM
-4-

results are like fingerprints which are maintained on file by law enforcement authorities for use in further investigations." *McCord*, 349 S.C. at 484, 562 S.E.2d at 693 (Ct. App. 2002).

Analyzing the testimony presented under a totality of circumstances test as posited in *State v. Myers*, the Court finds the buccal swab collected in Miami does not need to be suppressed. *State v. Myers*, 359 S.C. 40, 596 S.E.2d 488 (2004). The Defendant was fully informed of his right to deny consent to the buccal swab. Det. Segovia did not use force or threats to obtain the Defendant's consent. The Defendant's meeting with Det. Segovia lasted for six minutes. The Defendant was provided a notice of his right to refuse consent in writing and signed the waiver form. The Defendant was aware that Law Enforcement was seeking a sample of his bodily fluids for investigative purposes. Under a totality of the circumstances, the Court finds the Defendant willingly consented to providing a DNA sample in Miami.

2. As the collection of DNA is nontestimonial, the protections of *Miranda* do not apply.

Pursuant to *Nix v. Williams* and its progeny, the protections of *Miranda* do not apply to the collection of nontestimonial evidence. *Nix v. Williams*, 467 U.S. 431, 104 S. Ct. 2501 (1984). As the collection of bodily fluids is nontestimonial, the Defendant was not required to be informed of his Fifth Amendment right against self-incrimination. Further, as the Defendant did not make any statements, either inculpatory or exculpatory, *Miranda* is inapplicable in the case at bar.

3. As the Sixth Amendment right to counsel is case specific, the Defendant's rights were not violated when Det. Segovia spoke with him without his counsel on the Florida charges present.

APM
5-

The Sixth Amendment right to counsel is offense-specific, and the mere fact that an attorney was appointed in one matter does not invoke the right to counsel in an unrelated matter. *State v. Harvin*, 345 S.C. 190, 547 S.E.2d 497 (2001). Police can interrogate a suspect after *Miranda* on an investigation of a related but not yet charged offense. *Texas v. Cobb*, 532 U.S. 162, 121 S. Ct. 1335 (2001). Here, the Defendant was being detained in the Miami-Dade Detention Center on domestic violence charges completely unrelated to the murder investigation in South Carolina, which was uncharged at the time of the buccal swab collection. As such, the Defendant's Sixth Amendment right to counsel was not violated.

4. As the Miami buccal swab is found to be lawfully collected and admissible, the Fruit of the Poisonous Tree Doctrine is inapplicable. Further, as the second buccal swab was collected after a Circuit Court Judge made a finding that probable cause existed for a court order for DNA collection, the *Schmerber* buccal swab should not be suppressed and is admissible.

Under the Fruit of the Poisonous Tree Doctrine, "evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality." *State v. Copeland*, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (S.C. 1996). The Fruit of the Poisonous Tree Doctrine pivots on the existence of an illegal search. If a search is found to be legal, the Fruit of the Poisonous Tree Doctrine is inapplicable. As there was no illegal search of the Defendant and no violation of his Fourth, Fifth and Sixth Amendment Rights, the Fruit of the Poisonous Tree Doctrine is not triggered. Therefore, the *Schmerber* buccal swab will not be suppressed and is admissible.

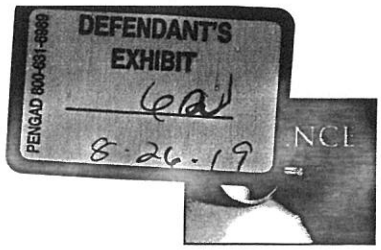
DPM
-6-

In light of the foregoing, the Court hereby **DENIES** the Defendant's Motion to Suppress the two buccal swabs collected in the above captioned case.

AND IT IS SO ORDERED.

The Honorable Stephanie P. McDonald
Presiding Judge

October 9, 2012
Beaufort, South Carolina



BEAUFORT COUNTY SHERIFF'S OFFICE
EVIDENCE SECTION
Post Office Box 1758 - Beaufort, SC, 29901
EXTERNAL EVIDENCE TRANSFER FORM

☐ **FOIA** ☒ **Subpoena** ☐ **Rule 5** *(Discovery)* ☐ **Active Investigation** *(Case has NOT been adjudicated)*

☐ **No Evidence Available**

Requestor: Law Office of Tricia A. Blanchette
PO Box 2147, Leesville, South Carolina 29070
State -vs- : Collins, Antonio

Offense(s): Homicide / Burlgary

Evidence Listing:

Case #:	Description(Property# / ID#):
2009-0622-0659	Item #96: One (1) DVD-R said to contain video recording of interview of Antonio Eugene Collins 3-31-11

Jacqueline D. LeGree — 11/13/2018
Evidence Personnel: **Date/Time**

AGENCY CODE	GANG RELATED	CIRCLE ONE: White Pink Blue Yellow	NARRATIVE CONTINUATION	Juvenile In Report	1. Original 2. Supplement	2
Date of Supplement: 3/16/2011		MIAMI-DADE POLICE DEPARTMENT		Agency Report Number: PD110316106464		
Original Date Reported	Original Primary Offense Description: A.O.A. BEAUFORT COUNTY		Victim #1 Name: COLEMAN, RONALD			
Original OFF/INC Location: BEAUFORT, S.C.	Primary Offense Changed To	A - Attempted C - Committed	New Statute Violation Number			

Applicant

DEFENDANT'S EXHIBIT 7 8.26.19 PENGAD 800-631-6989

NARRATIVE/CONTINUATION

On Monday, March 14, 2011, this investigator was contacted by Master Sergeant Jeff Purdy of the Beaufort County Sheriff's Office, South Carolina. Master Sergeant Purdy advised that a person by the name of Antonio Eugene Collins, B/M, DOB: was currently incarcerated in the Miami-Dade County Corrections Department. Master Sergeant Purdy advised that a DNA specimen sample from Mr. Collins was needed as part of a Homicide Investigation being conducted by his agency. Master Sergeant Purdy requested this investigators assistance in obtaining the DNA sample from Mr. Collins.

On Tuesday, March 15, 2011, this investigator along with Detective Jonathan Sabel, ID# 4471, of the Miami-Dade Police Department Homicide Bureau, responded to the Miami-Dade County Department of Corrections Training and Treatment Center, where Antonio Eugene Collins was incarcerated under Jail # 100078678. This investigator along with Detective Sabel then met with Antonio Collins in an interview room at the Training and Treatment Center.

At approximately 4:24 p.m., this investigator along with Detective Sabel formally introduced our selves to Antonio Collins. Antonio Collins was then presented with a Miami-Dade Police Department Consent to Provide DNA Specimen for Laboratory Analysis Form requesting permission for Miami-Dade Police Department investigators to obtain buccal swabs from him. Antonio Collins read the form and signed the form at 4:30 p.m. indicating that he consented to provide a buccal swab specimen for investigative purposes.

Detective Jonathan Sabel signed the form as a witness along with this investigator at 4:30 p.m.

This investigator then swabbed Antonio Collins for DNA specimen.

The buccal swabs along with the consent form were provided to Master Sergeant Jeff Purdy.

[no mention of "rape" allegations]

Suspect Code: S - Suspect A - Arrestee	Code #	Offense Indicator: 1 #1 3 Both 2 #2	Residence Type: 1 City 3 Florida 2 County 4 Out of State	Citizenship	Drug Indication: 1 Yes 8 Unknown 2 No	Alcohol Indication: 1 Yes 8 Unknown 2 No
Drug Activity: N N/A P Possess S Sell B Buy T Traffic R Smuggle D Deliver E Use K Dispense/ Distribute M Manufacture/ Produce/ Cultivate Z Other				Drug Type: N N/A A Amphetamine B Barbiturate C Cocaine E Heroin H Hallucinogen M Marijuana O Opium/Drv P Paraphernalia/ Equipment S Synthetic U Unknown Z Other		

☐ 1 Parent ☐ 2 Legal Guardian ☐ 3 Other — Name of Parent or Custodian (Last, First, Middle)

Address (Street, Apt. Number) (City) (State) (Zip) — Residence Phone — Business Phone

Notified By: (Name) — Date — Time — Juvenile Disposition: 1. Handled/Processed Within Dept. and Released 2. Turned Over to DYS/CYF 3. Incarcerated (County Jail)

Released To: (Name) — Relationship — Date — Time

Person/Unit Notified — Time — Related Report Number(s): BEAUFORT COUNTY SOUTH CAROLINA 2009-0622659

Officer (s) Reporting: DETECTIVE J. SEGOVIA — ID. Number(s)/Locator Code: 4684-47 — Unit: 3187 — Date: 3/16/2011

Officer Reviewing (If Applicable) — ID Number: 4419 — Routed To — Referred To — Assigned To — By — Date

Case Status: EC — Clearance Type: 1. Arrest 2. Exceptional 3. Unfounded 4. Open Pend. — 2 — A - Adult J - Juvenile — Date Cleared — Jail Number — Number Arrested: 0

Exception Type: 1. Extradition Declined 2. Arrest on Primary Offense Secondary Offense Without Prosecution 3. Death of Offender 4. V/W Refused to Cooperate 5. Prosecution Declined 6. Juvenile / No Custody — OBTS Number — Page 1 of 1

32.02.09-2-1585-1.6

Case Number: 2009-0622-0659

BEAUFORT COUNTY SHERIFF'S OFFICE

STATEMENT OF MIRANDA RIGHTS

PLACE Miami-Dade Police Dept

DATE 3-31-11 TIME 0940

BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS.

( ) 1. You have the right to remain silent.

( ) 2. Anything you say can and will be used against you in a court of law.

( ) 3. You have the right to talk to an attorney for advice before we ask you any questions.

( ) 4. If you cannot afford an attorney, one will be appointed for you before any questioning, if you-wish.

( ) 5. If you decide to answer questions now, without an attorney, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to an attorney.

WAIVER OF RIGHTS

( ) I have read this statement of my rights and I understand what my rights are.

( ) I cannot read and the statement has been read to me sufficiently so that I understand what my rights are.

( ) I am willing to make a statement and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Refused to sign
SIGNATURE

Re: Antonio Eugene Collins

AMOUNT OF EDUCATION: I have completed 12th , grade in school.

Refused to sign
SIGNATURE

DATE _____ TIME _____

Witness _____

Witness _____

Witness _____

Applicant

DEFENDANT'S EXHIBIT S 8/26/19

PENGAD 800-631-6989

BCSD Form 101 (12-01-02)

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE PUBLIC DEFENDER
Human Services Building 1905 Duke Street (Room 210) P.O. Box 525
Beaufort, South Carolina 29901-0525
Phone: (843) 255-5805 Fax: (843) 255-9494

June 27, 2013

Antonio Collins
BCDC

Re: Pending Criminal Charges

Dear Mr. Collins:

I am writing to let you know that I will be visiting you next week at the Beaufort County Detention Center.

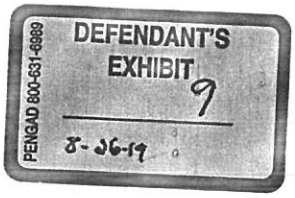
I have received a date certain for your Murder trial. **It is set for October 21, 2013**. We will be in heavy trial prep now until that date. I have my investigative staff and summer law school interns working on aspects of the case. In particular, I am about to retain a DNA expert and a Radiology expert. We will be meeting with them to work with them on the critical science evidence in your case. I already have the Court Orders allowing for payment of these experts. Your case remains strong for you. The State's case hinges on questionable witness testimony that is flawed and the DNA that may be flawed as well. And, finally, as we both know, the photos and the x-rays show that you have no bullet wounds to your legs. I continue to work diligently on your case.

Thank you for your continued patience and I look forward to seeing you soon.

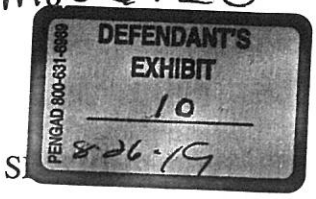
Sincerely,

Trasi Campbell
Chief Public Defender

P.S. just retained the DNA expert today. Sent him the file. Can meet with him July 2, 2013. Talked to your family too!



M056120



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL S
	)	
COUNTY OF BEAUFORT	)	
	)	
STATE OF SOUTH CAROLINA	)	NOTICE OF MOTION AND ORDER
	)	
v.	)	Indictment No. 2011-GS-07-2279
	)	
Antonio Collins,	)	
Defendant.	)	
	)	

2012 NOV 13 PM 4:07

TO: Defendant, Antonio Collins, by and through his counsel, Trasi Campbell.

The above named defendant shall take notice that the Solicitor of the Fourteenth Judicial Circuit will move before the Presiding Judge during the General Sessions Term of court beginning November 26, 2012 at the Beaufort County Courthouse to request that the defendant submit to the taking of an X-ray of both of the Defendant's legs for testing purposes.

This motion is made on the following grounds:

1. That on June 29, 2009, Ronald Coleman lived at Road in Seabrook, SC in Beaufort County.
2. That at around 9 pm on June 29, 2009, Enrique Miles went to Coleman's house.
3. That upon approaching the house, Miles saw 2 black men in white t shirts and black pants at the back door of Coleman's house.
4. That these men approached Miles.
5. That Miles did not know these men.
6. That the men pulled out a gun and held it to Miles's head.
7. That one of the men was Antonio Collins.

8. That Collins forced Miles to go to the front door at gun point.

9. That the Defendant made Miles attempt to lure Coleman to the door.

10. That the Defendant held a gun at Miles's head the entire time.

11. That Miles did try to alert Coleman to the situation.

12. That the Defendant threw Miles to the ground.

13. That the Defendant kicked open the front door that was nailed shut.

14. That a gunfight ensued between the Defendant and Coleman.

15. That Coleman was shot 5 times in his left side.

16. That Coleman died from his injuries.

17. That the Defendant was struck with a bullet and left a blood trail.

18. That the blood trail extended from Coleman's house to the middle of the road.

19. That Miles notified the police.

20. That a witness observed 2 black men run by her window just prior to Miles reporting the crime.

21. That numerous gun casings were found at the scene.

22. That numerous blood samples were taken from Coleman's home and roadway.

23. That the Victim's gun was located at the scene.

24. That Miles took and passed a lie detector test.

25. That a composite of the Defendant was made.

26. That a 1993 or 1994 Gold or beige Cadillac was observed in the neighborhood prior to the shooting.

27. That Law Enforcement received information regarding who was involved with the shooting.

28. That Law Enforcement interviewed Jeremy Murphy as the possible getaway driver.

29. That Murphy owns a 1995 cream colored Cadillac.

30. That Law Enforcement obtained a search warrant for Murphy's car.

31. That Murphy stated he lent his car to the Defendant and George Savage the night of the murder.

32. That Murphy's alibi did not corroborate his story.

33. That Law Enforcement observed what appeared to be blood stains in the back seat of Murphy's car.

34. That Law Enforcement collected samples of the blood in Murphy's car.

35. That a hold was placed on the Defendant when he was arrested in Miami-Dade County on unrelated charges.

36. That a consent sample was taken of the Defendant's DNA.

37. That the Defendant's DNA sample matched the blood samples taken from Murphy's car.

38. That the Defendant's s DNA sample matched the blood samples taken from the crime scene in Seabrook.

39. That the Defendant is now back in Beaufort County.

40. That the Defendant appears to have a bullet entry wound on his leg.

41. That medical professionals believe an X-Ray is necessary to determine if the bullet remains in the Defendant's leg.

42. That such confirmation will aid in further substantiating or eliminating the Defendant as the perpetrator of this crime.

43. That such a procedure is minimally intrusive and can be conducted in complete safety to the defendant.

44. That such an order is necessary and compelling in order to further the ends of justice.

Therefore, the State prays for an Order from this Court to require the defendant to submit to such an examination for the taking of an X-Ray of both of the Defendant's legs.

Meredith Bannon
Assistant Solicitor
14th Judicial Circuit

Beaufort, South Carolina
November 13, 2012

SCHMERBER MOTION FOR ANTONIO COLLINS

In that on June 22, 2009, Ronald Coleman lived at in Seabrook, SC in Beaufort County.

In that at around 9 pm on June 22, 2009, Enrique Miles went to Coleman's house.

In that upon approaching the house, Miles saw 2 black men in white t shirts and black pants at the back door of Coleman's house.

In that these men approached Miles.

In that Miles did not know these men.

In that the men pulled out a gun and held it to Miles's head.

In that one of the men was Antonio Collins.

In that Collins forced Miles to go to the front door at gun point.

In that the Defendant made Miles attempt to lure Coleman to the door.

In that the Defendant held a gun at Miles's head the entire time.

In that Miles did try to alert Coleman to the situation.

In that the Defendant threw Miles to the ground.

In that the Defendant kicked open the front door that was nailed shut.

In that a gunfight ensued between the Defendant and Coleman.

In that Coleman was shot 5 times in his left side and died from his injuries.

In that the Defendant was struck with a bullet and left a blood trail.

In that the blood trail extended from Coleman's house to the middle of the road.

In that Miles notified the police.

In that a witness observed 2 black men run by her window just prior to Miles reporting the crime.

In that numerous gun casings were found at the scene.

In that numerous blood samples were taken from Coleman's home and roadway.

In that the victim's gun was located at the scene.

In that Miles took and passed a lie detector test.

In that a composite of the Defendant was made.

In that a 1993 or 1994 Gold or beige Cadillac was observed in the neighborhood prior to the shooting.

In that Law Enforcement received information regarding who was involved with the shooting.

In that Law Enforcement interviewed Jeremy Murphy as the possible getaway driver.

In that Murphy owns a 1995 cream colored Cadillac.

In that Law Enforcement obtained a search warrant for Murphy's car.

In that Murphy stated he lent his car to the Defendant and George Savage the night of the murder.

In that Murphy's alibi did not corroborate his story.

In that Law Enforcement observed what appeared to be blood stains in the back seat of Murphy's car.

In that Law Enforcement collected samples of the blood in Murphy's car.

In that a hold was placed on the Defendant when he was arrested in Miami-Dade County on unrelated charges.

In that a consent sample was taken of the Defendant's DNA.

In that based on the above, there is evidence to believe Antonio Collins was shot in the leg by the Victim and that the bullet may remain in the Defendant's leg.

Affiant: _____

Date: 11-9-12

Notary Public: _____

Expiration of Commission: 17 March 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	
	)	CONSENT ORDER
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	Indictment No. 2011-GS-07-2279
	)	
Antonio Collins,	)	
Defendant.	)	
	)	

This matter came before the Court upon the motion of the State to request that the Defendant submit to the taking of an X-Ray by a physician.

By agreement of all parties hereto, the Defendant, Antonio Collins, consents to the taking of his X-Ray for testing purposes.

The Court finds that the agreement is sufficient and agreed to by the parties.

AND IT IS SO ORDERED.

_____
Presiding Judge
14th Judicial Circuit

Beaufort, South Carolina
This _____ day of _____, 2012

WE SO MOVE, AGREE, AND CONSENT:

_____
Trasi Campbell,
Attorney for the Defendant

_____
Meredith Bannon
Attorney for the State

_____
Antonio Collins
Defendant

M056720

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	ORDER
STATE OF SOUTH CAROLINA	)	
v.	)	Indictment No. 2010-GS-07-2279
Antonio Collins, Defendant.	)	

This matter came before the Court on November 29, 2012, upon the motion of the State, represented by Assistant Solicitor Meredith Bannon. The defendant was represented by counsel, Trasi Campbell, Esquire.

It appears to this Court that the State requires an X-Ray of the defendant's legs in order to further the investigation of this case. The Court orders an X-Ray of the Defendant to be taken and finds the taking of said X-Ray to be reasonable and justifiable intrusions which do not violate the defendant's Fourth Amendment Rights.

Accordingly, it is hereby

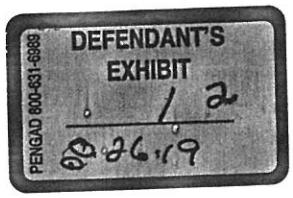
ORDERED that the State may conduct an X-Ray of the defendant's legs.

Presiding Judge

Beaufort, South Carolina
This 27 day of November, 2012

11-2279

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	
STATE OF SOUTH CAROLINA,	)	WARRANT NO. M056720
	)	
	)	
versus	)	MOTION AND ORDER
	)	
ANTONIO COLLINS,	)	
	)	
Defendant.	)	



Defendant, through counsel, Trasi Campbell, Beaufort County Chief Public Defender, hereby moves this court for an order allowing for payment of a Gunshot Wound Expert and a DNA Expert.

The Defendant is charged with Murder. He is indigent. It appears to the Court's satisfaction that the services of a Gunshot Wound Expert and a DNA Expert are reasonably necessary to assist in the defense and representation of the Defendant. Pursuant to Section 17-3-80, Code of Laws of South Carolina, 1976, amended, due to the nature of the case, it appears that the relief requested is reasonable, necessary and proper.

NOW THEREFORE, for good cause shown,

IT IS ORDERED that the Beaufort County Public Defender's Office is authorized to retain the services of a Gunshot Wound Expert and a DNA Expert and,

IT IS FURTHER ORDERED that counsel is authorized to incur reasonable fees therefore, not to exceed Fifteen Hundred Dollars ($1,500), per expert, subject to the approval of the Court as authorized by law, without further order of the Court. Attorney for Defendant may apply to this Court for further relief if necessary, pursuant to Section 17-3-50(C), Code of Laws of South Carolina, 1976, as amended.

AND IT IS SO ORDERED.

Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina
NOV - 29, 2012

I SO MOVE:

Trasi Campbell
Chief Public Defender

Received By:

STATE OF SOUTH CAROLINA

FOURTEENTH JUDICIAL CIRCUIT on:

Post Office Box 1880
Bluffton, South Carolina 29910

Telephone (843) 255-5880
Facsimile: (843) 255-9512

ISAAC MCDUFFIE STONE, III

SOLICITOR

December 11, 2012

Ms. Trasi Campbell

Public Defender

1905 Duke Street

Beaufort, SC 29902

Reference: State v. Antonio Collins

Dear Ms. Campbell,

Please find enclosed a copy of the Southeast X-Ray, Inc. report and a copy of the disk of images. If you believe you are missing any information, please contact my office immediately.

Please do not hesitate to call me at . should you require additional information or have any questions.

Very Truly Yours,

Meredith A. Bannon

Assistant Solicitor

Southeast X-Ray, Inc.
102 North 17th Street, Ozark, AR 72949
Phone: (479) 667-4000 | reports@sxrmedical.com | Fax: (479) 667-9729

IMAGES SUBMITTED BY: United Mobile Imaging 336-245-2670

Radiology Interpretation

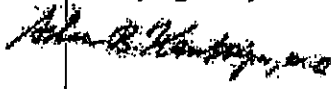
PATIENT NAME: ANTONIO COLLINS
DATE OF BIRTH:
RAD NUMBER:
PHYSICIAN: bush
FACILITY: Beaufort Co Detention
DATE OF EXAM: 2012-12-20
HISTORY: LOOKING FOR POSSIBLE FOREIGN METAL FRAGMENTS THROUGHOUT LEG (POSSIBLE BULLET REMNANTS)

LEFT HIP SERIES:
There is some mild narrowing of the joint space laterally. This is not very marked. No fractures are identified.
IMPRESSION:
1. Some minimal arthritic changes are noted about the left hip.
2. No radiopaque foreign bodies are identified.

RIGHT HIP SERIES:
No fractures are identified. The hip joint space appears to be within normal limits. No radiopaque foreign bodies are identified. There is dystrophic calcification noted within the proximal femur.
IMPRESSION:
Dystrophic calcification within the soft tissues involving the proximal mid leg.

LEFT FEMUR:
There is calcification noted about the medial aspect of the femur, which could be either dystrophic calcifications as suggested on the hip films or vascular calcifications. No fractures are identified. No radiopaque foreign bodies are identified.
IMPRESSION:
1. No fractures are noted.
2. There is one area of calcification noted involving the medial aspect of the lower leg, which could be either dystrophic calcifications or vascular calcifications.
3. No radiopaque foreign bodies are identified.

Electronically Signed By: Dr. Alan Kantsiper M.D.



RIGHT FEMUR:
AP and lateral views of the right femur show no evidence for fracture or other significant bone or soft tissue abnormality.
IMPRESSION:
Negative right femur.

---

disc given to Director Foote 12/31/12 for M. Benton

LEFT KNEE:
AP and lateral views of the left knee reveal no fracture, subluxation or other significant bone, joint or soft tissue abnormality. No change since 12/04/2012.
IMPRESSION:
Negative left knee.

RIGHT KNEE:
AP and lateral views of the right knee reveal no fracture, subluxation or other significant bone, joint or soft tissue abnormality. No change since 12/04/2012.
IMPRESSION:
Negative right knee.

LEFT TIBIA-FIBULA:
AP and lateral views of the left tibia-fibula show no evidence for fracture or other significant bone or soft tissue abnormality. No change since 12/04/2012.
IMPRESSION:
Negative left tibia-fibula.

RIGHT TIBIA-FIBULA:
AP and lateral views of the right tibia-fibula show no evidence for fracture or other significant bone or soft tissue abnormality. No change since 12/04/2012.
IMPRESSION:
Negative right tibia-fibula.

Electronically Signed By: Dr. John Thomas M.D.

John R. Thomas MD.

Report Completed: 2012-12-20 18:19:11 CST
TS: cz
Dictation: Kantsiper_DPM_1600.DSS

Southeast X-Ray, Inc.
102 North 17th Street, Ozark, AR 72949
Phone: (479) 667-4000 | reports@sxrmedical.com | Fax: (479) 667-9729

IMAGES SUBMITTED BY: United Mobile Imaging 336-245-2670

Radiology Interpretation

PATIENT NAME: ANTONIO COLLINS
DATE OF BIRTH:
RAD NUMBER: 265793715
PHYSICIAN: bush
FACILITY: Beaufort Co Detention
DATE OF EXAM: 2012-12-04
HISTORY: EXAMS REQUESTED BY COURT

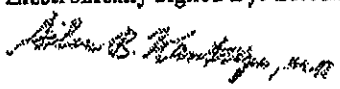
LEFT KNEE:
Multiple views of the left knee reveal there are no fractures. The joint spaces are well-maintained.
IMPRESSION:
No abnormal findings.

RIGHT KNEE:
A spur is noted from the anterior superior aspect of the patella. No fractures are identified. Mild narrowing of the joint space medially is noted. No fractures are identified.
IMPRESSION:
1. No fractures are identified.
2. Mild narrowing of the joint space medially is demonstrated.
3. A small spur is noted from the anterior superior aspect of the patella.

LEFT TIBIA-FIBULA:
Multiple views of the left tibia-fibula reveal no fractures. The joint spaces are well-maintained.
IMPRESSION:
No abnormal findings.

RIGHT TIBIA-FIBULA:
Other than arthritic changes about the knee, no fractures are identified. Joint spaces appear to be within normal limits
IMPRESSION:
No significant abnormalities are identified, other than minimal arthritic changes noted about the knee.

Electronically Signed By: Dr. Alan Kantsiper M.D.



Report Completed: 2012-12-04 14:28:24 CST
TS: nm
Dictation: Kantsiper_DPM_1436.DSS

no acute fx
12/5/12

12/5/12

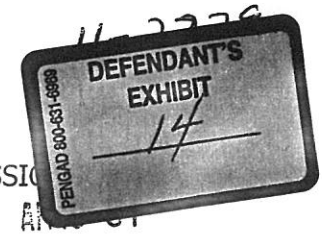
SEARCH WARRANT INVENTORY

CASE NO.: 2009-01122-0659 PAGE: 1 OF 1

LOCATION: Beaufort County Detention Center DATE: 2-17-12

Ribaut Rd, Beaufort, SC BEGIN: 1350 END: 1400

ITEM NO.	DESCRIPTION	LOCATION	LOCATED BY	TIME
	12 photos of right and left leg of Antonio Collins	—	—	1350 1400
	Officer, Sgt, 1650	—		



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSI
	)	2013 APR -3 A
COUNTY OF BEAUFORT	)	
STATE OF SOUTH CAROLINA,	)	WARRANT NO. M056720
	)	
versus	)	MOTION AND ORDER
	)	
ANTONIO COLLINS,	)	
	)	
Defendant.	)	

BEAUFORT COUNTY, S.C.
CLERK OF COURT

Defendant, through counsel, Trasi Campbell, Beaufort County Chief Public Defender, hereby moves this court for an order allowing for payment of a licensed and board certified medical doctor specializing in wound care, trauma care and radiology.

The Defendant is charged with Murder. He is indigent. It appears to the Court's satisfaction that the services of a licensed and board certified medical doctor specializing in wound care, trauma care and radiology are reasonably necessary to assist in the defense and representation of the Defendant. Pursuant to Section 17-3-80, Code of Laws of South Carolina, 1976, amended, due to the nature of the case, it appears that the relief requested is reasonable, necessary and proper.

NOW THEREFORE, for good cause shown,

IT IS ORDERED that the Beaufort County Public Defender's Office is authorized to retain the services of a licensed and board certified medical doctor specializing in wound care, trauma care and radiology and,

IT IS FURTHER ORDERED that counsel is authorized to incur reasonable fees therefore, not to exceed Fifteen Hundred Dollars ($1,500), per expert,

subject to the approval of the Court as authorized by law, without further order of the Court. Attorney for Defendant may apply to this Court for further relief if necessary, pursuant to Section 17-3-50(C), Code of Laws of South Carolina, 1976, as amended.

AND IT IS SO ORDERED.

Honorable Carmen T. Mullen
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina
4-2, 2013

I SO MOVE:

Trasi Campbell
Chief Public Defender

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Antonio Collins, 357630, Applicant, v. State of South Carolina, Respondent.	)	2017-CP-07-1493 MEMORANDUM REGARDING MATTERS RELATED TO DNA

Around 9:00 p.m. on June 22, 2009, Ronald Coleman's home at was forcibly entered, and Ronald Coleman ("Coleman") was shot and killed. About eight hours later, Enrique Miles ("Miles") came forward. As he subsequently testified to at trial, he told law enforcement that he was en route from his home on Seabrook Road to Miles' home around 7:30 p.m. when he was approached by two black males and one (Applicant) put a gun to his head and forced him onto Coleman's porch. Trial pp. 185-6. The gunman kicked in the front door that was nailed shut, shots were fired and Miles ran. Trial pp. 187. He told law enforcement he thought he had the shooter's blood on his shirt, but it turned out to be his own blood. Trial pp. 210-211. He admitted his cousin (Coleman) sold marijuana and did not have a job, and he told law enforcement he thought Coleman's murder was a hit resulting from a murder in Atlanta. Trial pp. 177, 209.

When law enforcement responded to the scene, Officer Christine Wilson, lead investigator, took swabs from dried blood stains on the porch. Trial pp. 76-77. About twenty fours later, Officer Hiers responded to a call from Miles regarding blood in the roadway. Trial pp. 60, 199, 268. He met with Miles and followed a blood trail that led to the recovery of a gun. Trial pp. 62-63. He took swabs from the blood in the roadway and the gun. Trial p. 68, 275-76. Officer Lauver testified about bringing out a cadaver dog to follow the blood trail on an unknown later date. Trial pp. 92-95.

Miles told officers he recalled seeing a Cadillac Sedan Deville "pacing up and down on Seabrook Road." Trial p. 191, lns. 5-9. He said it was a 1993-1995 model, and it could have been dark in color. Trial p. 191. Officer Wilson testified that the case had turned cold, when she got information from Hampton County Sheriff's Office that resulted in her locating a 1995 Cadillac Sedan Deville, tan in color, registered to Jeremy Murphy in Jasper County. Trial p. 330. The vehicle was seized and a search warrant obtained for it. Trial p. 33102. Officer Donahue testified that he took swabs from stains in the Cadillac. Trial pp. 101-102. At that time, there was not a suspect to run the DNA against. Trial p. 329.

On April 27, 2010, an interview was conducted with Gussie Goldwire during which he provided the name of his cousin Tonio Wilson (Applicant) in Florida. Trial pp. 338-339. As a result, Officer Wilson developed Antonio Eugene Wilson as a suspect and located him in Miami, Florida. Trial pp. 339-40. At trial, she stated that authorities in Florida assisted in obtaining a DNA sample from him, Applicant was arrested and brought to South Carolina and a DNA sample was taken in South Carolina. Trial p. 340.

On March 16, 2011, a report was generated by Detective J. Segovia of Miami Dade Police Department. The one page report details Detective Segovia's being contacted by Jeff Purdy of the Beaufort County Sheriff's Department on March 14, 2011 and a meeting with Applicant, along with Detective Jonathan Sabel, at the Miami Dade County Department of Corrections Training and Treatment Center on March 15, 2011. The report states that the meeting began at 4:24 p.m., and Applicant signed a Miami Dade Police Department Consent to Provide DNA Specimen for Laboratory Analysis Form at 4:30 p.m.

On March 25, 2011, a DNA Analysis report was issued by Jennifer L. Clayton ("Clayton"), Forensic Scientist with the State Law Enforcement Division. Court Exhibit #2. In

sum, Clayton reported that the DNA profile from Applicant's buccal swab (item 13) matched the DNA profile developed from the swabs taken from Seabrook Road, the front porch, and underneath the backseat and rear console vent of the Cadillac (Item 1, 6, 8, 10). She also reported the partial DNA profile developed from the swab (Item 2) taken from the gun matched the DNA profile of Antonio Collins.

On March 31, 2011, Officer Wilson travelled to Miami and met with Applicant. Applicant, through counsel, has been provided a recording from Officer's Wilson's interrogation of Applicant in Miami.[1] At the outset, Applicant was provided a Miranda Form, which Office Wilson completed as "refused to sign." The recording reflects statements being made and questions presented to Applicant for approximately eight minutes before the form is completed. Thereafter, Officer Wilson informs Applicant of the evidence she has against him and offers him the opportunity to tell her the death was an accident and not intentional (Time 10:47). At the 15:48 mark, Applicant informs Officer Wilson he is done. At the 22 minute mark, Officer Wilson asks Applicant if he is a monster. From there, she continues on and shares DNA results from the swab obtained by Segovia at the 27 minute mark.

On November 29, 2011, the State filed a Notice of Motion and Order requesting Applicant submit to the taking of buccal swabs for DNA purposes. The Motion contained forty-three listed items, an Affidavit of Christine Wilson and proposed orders. Beginning at item thirty-five, the motion detailed that Applicant was arrested in Miami Dade County on unrelated

[1] Applicant, through counsel, received a single interrogation video from trial counsel. Applicant asserts there was more interaction on that date in Miami that should have been recorded. Subject to the Discovery Order issued by the Honorable R. Ferrell Cothran, Jr., on August 28, 2018, Applicant's counsel issued a subpoena to the Beaufort County Solicitor's Office on October 1, 2018 for Applicant's discoverable file, to include copies of all audio and video recordings. Upon receiving a response that the file did not contain any audio or video recordings, Applicant's counsel contacted and issued a subpoena to the Beaufort County Sheriff's Department for the same items on November 13, 2018. In response, counsel received a cd, which contained one interview of Applicant by Officer Wilson.

charges when a consent sample was obtained. Beginning at item thirty-seven, in pertinent part, the motion stated:

> 37. That the Defendant's DNA sample matched the blood samples taken from Murphy's car.
>
> 38. That the Defendant's DNA sample matched the blood samples taken from the crime scene in Seabrook.
>
> 40. That another DNA sample is needed to confirm the Defendant is the person whose DNA was on the swab from Miami-Dade County.
>
> 41. That such confirmation will aid in further substantiating or eliminating the Defendant as the perpetrator of this crime.

On January 25, 2012, a Schmerber hearing was conducted in front of the Honorable R. Markley Dennis at the Beaufort County Courthouse. Applicant was represented by Trasi Campbell, Public Defender. The State was represented by Meredith Bannon, Assistant Solicitor.

At the beginning of the hearing, Ms. Bannon explained that the State was "asking for a second sample so we can assure that the person who gave the sample in Florida, that matched, is Mr. Collins who is actually here and that it does in fact match the DNA left at the crime scene." Motion p. 4, lns. 5-10. She further explained: "Additionally, the State is seeking this Schmerber Motion in anticipation of a Motion in limine at the murder trial so that we can argue discovery by an alternate source, to bring the DNA results out." Motion p. 5, lns. 12-16. The State argued that the voluntariness or suppression of the consent sample is an "issue for later in time," since they were just there to address probable cause for the Schmerber Motion. Motion pp. 4-5.

Ms. Campbell argued that the State had not disclosed the manner in which Applicant was tricked to give a sample in Florida and categorized it as "flagrant police misconduct" in violation of the Fourth Amendment. In response, the court asked the State if Florida was put aside if there was "other probable cause other than the DNA?" Motion p. 7, lns. 19-21.

Since the defense objected to an affidavit, the State called Officer Wilson. Motion p. 9. Notably, she testified that the interview with Goldwire where he provided Applicant's name, was not recorded. She also testified that Applicant's DNA sample was obtained in Florida, and the lab report found that Applicant was a match. Motion pp. 16-17.

After hearing argument from both parties, the court found:

> Clearly probable cause has been established, clearly the blood that they follow – the potential that he was the person, because of Gussie's testimony, who was the one being removed from the car with the gunshot wound. I think we can eliminate that situation quickly. Very quickly.

Motion p. 33, ln. 20 – p. 34, ln. 1. Thereafter, the court granted the State's motion. Motion p. 34.

Following the court's ruling, Ms. Campbell questioned whether the Order needed to include that "there is no limitation based on that ruling on the full argument that we would need to make at trial?" Motion p. 34, lns. 17-22. In response, the court stated he was not dealing with "that" and he did not have to deal with "that." He went on to reference the "fruit of a poisonous tree" and it being challengeable but not from a probable cause standpoint. Motion pp. 34-35.

On January 25, 2012, a written Order was issued by the Honorable R. Markley Dennis, which was filed on February 9, 2012.

On May 21, 2012, Jennifer Clayton (SLED) issued another DNA analysis report. Court Exhibit #3. The Supplemental Report had an additional item listed as buccal swabs from Antonio Collins (Item 14). The report found:

> The DNA profile developed from items 1, 6, 8, and 10 matches the DNA profile of Antonio Collins. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 4.9 quadrillion.
>
> The partial DNA profile developed from item 2 also matches the DNA profile of Antonio Collins.

On September 19, 2012, a suppression hearing was conducted in front of the Honorable Stephanie McDonald at the Beaufort County Courthouse. Applicant was present and represented by Trasi Campbell, Public Defender. The State was represented by Meredith Bannon, Assistant Solicitor. On September 19, 2012, the State filed a written Response, with exhibits.

At the beginning of the hearing, Ms. Campbell explained that Applicant was moving to suppress the DNA evidence obtained in Miami and moving to suppress the subsequent collection of his DNA pursuant to the order of Judge Dennis. In response, the court stated:

> Well, I don't know what was argued before Judge Dennis exactly. It's my understanding, from what you all shared with me before the hearing, is that he did not address the issue of the Miami DNA; that, you know, that was for another time. And so, if the issue of Miami DNA taints the probable cause that he found as Prong I under the Schmerber analysis, I believe we would get into that.
>
> I don't think that standing alone, the defense is challenging the Schmerber finding, but to the extent that they are challenging, though, Judge Dennis' finding, based on what may come out today that didn't come out, I'm going to find that they've preserved everything that they need to preserve, and we will go into that to the extent that we need to.

Suppression p. 6, ln. 18 – p. 7, ln. 8.

When called to the stand, Sergeant Purdy testified about processing the scene and finding the car and Applicant due to information obtained from Goldwire. Suppression pp. 8-9. He further testified about receiving the swab from Miami via Fed Ex. Suppression p. 10. After turning it into evidence, he explained: "A request was put in to have it processed to compare it with the DNA from the scene, from the vehicle, and the from the gun that was used. And the DNA came back as a match." Suppression p. 11, lns. 3-7.

Thereafter, Detective Segovia took the stand and explained that he was a homicide investigator with Miami Dade Police Department. Suppression p. 19. He recalled being contacted by Detective Purdy on March 14, 2011 and meeting with Applicant on March 15, 2011

with his partner at the correctional facility. Suppression p. 21. When asked what Applicant was being held on, he stated: "It was a burglary with a battery; a robbery, I believe; and something domestic related." Suppression p. 21, lns. 6-9. After being asked to describe his meeting with Applicant, the following testimony was elicited:

> Answer: They brought us out. They set us in a room at the correctional facility. I introduced myself to him. I advised Mr. Collins that there was an investigation going on, that that we need permission to obtain his DNA.
>
> Question: And what did Mr. Collins say?
>
> Answer: He asked me who I work for. Again, I told him I worked for Miami-Dade Police. He tried to look at my I.D. at that time. I don't know if he was able to see it, said homicide or not. He kind of hesitated for second; thought about it; and then I presented him with a consent form to obtain his DNA.

Suppression p. 21, ln. 16 – p. 22, ln. 1.

After admitting that Applicant asked him why he wanted his DNA swab, he explained what he told Applicant, as follows:

> I told him we were investigating a series of crimes. And I was never specific. And then he told me that he had been incarcerated for however long he was in Dade County Jail. And I told him, Well, I guess you have nothing to worry about, then.
>
> And that's when he read the whole form, and he provided his DNA.

Suppression p. 24, lns. 1-7.

After requesting a copy of Segovia's report, Applicant's counsel asked whether Applicant was given his Miranda rights, and Detective Segovia admitted he was not. Suppression pp. 27-28. He testified that there was not any audio or video that was recorded. App. p. 31. He also testified that he never mentioned anything "about a rape or clearing anybody's name." Suppression p. 33, lns. 7-14. After admitting that Applicant was inquisitive, he explained: "He

asked me what I was investigating, who I worked for, and what I was investigating. And I told him I was investigating a series of crimes." Suppression p. 36, lns. 1-4.

Thereafter, Officer Wilson took the stand and detailed how she came up with Applicant's name in July 2010. Suppression pp. 39-41. In March of 2011, she went to Miami to interview Applicant.[2] Suppression p. 41. After being asked if she Mirandized Applicant, she responded: "I did, I Mirandized Mr. Collins. We typically use a form. He wouldn't sign it, but he did not refuse to answer questions. So he was read his Miranda warning." Suppression p. 42, lns. 2-4. She

Then, she explained that she returned to South Carolina and began working on a murder warrant for Applicant. Suppression p. 42. Regarding the DNA evidence, Officer Wilson testified that Applicant's swab matched the items and was the same results as the Miami swab, but she did not know if the swabs were compared. Suppression p. 43-44. She explained that she would have moved onto another suspect if Applicant's DNA had not matched. Suppression p. 51, lns. 14-18.

Prior to Applicant taking the stand, the court addressed counsel's arguments under the Fifth and Sixth Amendment. The court stated:

> DNA evidence and the taking of a buccal swab, even the taking of blood under Schmerber itself is non-testimonial. The Fifth Amendment had no applicability. There's no adversarial proceeding that had attached for purposes of the Sixth Amendment. The Sixth Amendment is offense specific. So the fact that he was in the Miami Dade Detention Center on something else doesn't protect him on this Beaufort County homicide.

---

[2] Applicant, through counsel, received a single interrogation video from trial counsel. Applicant asserts there was more interaction on that date in Miami that should have been recorded. Subject to the Discovery Order issued by the Honorable R. Ferrell Cothran, Jr., on August 28, 2018, Applicant's counsel issued a subpoena to the Beaufort County Solicitor's Office on October 1, 2018 for Applicant's discoverable file, to include copies of all audio and video recordings. Upon receiving a response that the file did not contain any audio or video recordings, Applicant's counsel contacted and issued a subpoena to the Beaufort County Sheriff's Department for the same items on November 13, 2018. In response, counsel received a cd, which contained one interview of Applicant by Officer Wilson.

So, I say that in light of the – that may help you table your questions to limit him as much as possible.

To me, this is a Fourth Amendment issue and a voluntariness issue. You're certainly welcome to put anything you want to on regarding the Sixth Amendment, but I think that law is really clear under Pennsylvania v. Muniz, State v. Klutt, and just a whole litany of cases.

So, before you put him up there and start asking him questions, just keep that in mind. Okay?

Suppression p. 53, ln. 9 – p. 54, ln. 1.

When Applicant took the stand, he recalled the meeting with Segovia, and Segovia telling him he needed his DNA to exclude him from some rapes in North Dade County. Suppression pp. 55-56. He recalled telling Segovia that he would agree to give it because he had been sitting in jail during the time the rapes supposedly occurred, and he also received assurance from Segovia in that regard. Suppression pp. 56-57. He detailed how Segovia told him he would get a court order if he did not sign and how he felt threatened. Suppression pp. 56-57.

Following Applicant's testimony, defense counsel offered brief argument on the Fourth Amendment. Suppression pp. 62-63. In response, the State made an argument and submitted a written Response. Suppression pp. 63-64. Thereafter, the court made her ruling and concluded: "So I do find that the Miami Dade swab and the consent given was voluntary. However, even if it were not voluntary, it would have, inevitably, been discovered through the independent source of an order being issued under Schmerber for the defendant's DNA." Suppression p. 66, lns. 17-21. The court then addressed her reasons for agreeing with the Schmerber ruling. Suppression pp. 66-68. On October 9, 2012, the Honorable Stephanie P. McDonald issued an Order Denying Defense Motion to Suppress Buccal Swabs.

On October 21, 2013, Applicant was called to trial in front of the Honorable J. Ernest Kinard, Jr., and a jury. Applicant was present and represented by Trasi Campbell, Public

Defender, and Arie Bax, Assistant Public Defender. The State was represented by Hunter Swanson, Assistant Solicitor.

Prior to the start of the trial, Applicant moved to suppress the DNA evidence due to contamination. Trial p. 50. After hearing testimony, the court found that "they did a good job as most law enforcement does." Trial p. 104, lns. 10-11. He also concluded that the defense could argue to the jury, but the evidence was coming in. Trial p. 104, lns. 19-21. Thereafter, there was no mention of reviewing the grounds raised pre-trial for suppression of the DNA evidence.

During opening argument, the State informed the jury that Applicant left his mark, his DNA, all over the crime scene. Trial p. 130. During the defense opening argument, counsel argued that the crime occurred at a trap house, and it was a personal crime about drugs. Trial p. 133. Counsel also argued that the DNA findings are not reliable since the evidence was mishandled and contaminated. Trial p. 133. Counsel further argued that no DNA was taken from Gussie Goldwire and that the sketch looked like Goldwire. Trial p. 136.

Mid-trial, defense counsel requested additional funding for a DNA expert to cover travel and testimony. Trial p. 311. Counsel informed the court that she was addressing the matter "late" because she was just getting information from SLED in compliance with her subpoena. Trial p. 311, lns. 9-16.

During the trial testimony of Jennifer Clayton, Forensic Scientist SLED, she explained what she tested and verified that she found no indication of contamination. Trial p. 451, 464. While she was explaining her findings, defense counsel entered an objection to the mathematical equations being used and the jury was sent out. Trial p. 453. After hearing counsel's argument, the court denied the objection. Trial pp. 456-7. Clayton resumed her testimony, and the swabs from Applicant were entered without objection. Trial p. 463.

Following Clayton's testimony and the state resting, the defense called Dr. Brian Meehan, who was qualified as an expert in DNA and human identification.[3] Trial pp. 506-7. Dr. Meehan testified about evidence degradation and contamination possibilities. Trial pp. 509-11. In closing, the State pointed out that the defense did not even mention Dr. Meehan in their closing argument. Trial p. 573, lns. 12-22.

After the jury returned a verdict of not guilty on the kidnapping charge involving Miles and guilty on all other charges, Applicant was sentenced to a term of thirty-three years, with five years concurrent. Trial pp. 603, 609-10. A direct appeal was timely filed. M. Rita Metts, Esquire, with the assistance of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, submitted a Brief and Record on Appeal. By way of the twelve page Brief, the following issues were presented:

1. The trial judge allowed the admission of improperly obtained DNA and/or blood evidence and erred in denying the Appellant's motion to exclude the improperly obtained DNA and/or blood evidence.

2. The trial court committed reversible error when it admitted DNA and/or blood evidence, despite conflicting testimony which demonstrated improper sample collection and a tainted crime scene, which demonstrated probable tampering or altering of the samples.

3. There was no probable cause for the arrest of appellant.

As argued in Brief of Respondent, Applicant's Brief failed to cite to any legal authority in the argument on the first two issues.

In the forty-five page Brief of Respondent, the following issues were argued:

1. The lower court did not err in admitting the DNA evidence from Collins' buccal samples because Collins voluntarily consented to the giving of the DNA sample in Florida, and the second buccal sample was obtained pursuant to a lawful Schmerber order.

2. The trial judge did not err in admitting the DNA evidence because the allegation of possible cross-contamination went to the weight of the evidence not its admissibility.

[3] The State conducted a vigorous voir dire and cross-examination of Dr. Meehan regarding his involvement in the "Duke lacrosse" case.

3. Collins was properly indicted, tried and convicted for these crimes based on evidence presented to the jury in his trial; it is therefore irrelevant whether there was probable cause to arrest him for this charge, because his person is not fruit of the poisonous tree; regardless, there was probable cause to arrest Collins.

At the outset of the State's argument, it was noted that Applicant did not properly preserve the issue of the admission of the DNA evidence since no objection was made at trial nor was the issue properly presented on appeal due to the absence of citation to legal authority. State's Brief p. 15. Nevertheless, the State addressed the voluntary consent, Schmerber order, pre-trial suppression hearing and the admission of the evidence at trial. Of note, the State addressed the circumstance that Applicant had appointed counsel on his pending Florida charges when the consent sample was obtained and the circumstance of Applicant being misled by Segovia. Brief pp. 17-18.

In affirming Applicant's conviction and sentence, the South Carolina Court of Appeals affirmed under Rule 220(b) citing to legal authority on the following: an issue is deemed abandoned and will not be considered on appeal if the brief does not cite to authority; an issue must be raised and ruled upon by the lower court to be preserved for appeal; an *in limine* ruling is not final and does not preserve the issue for appeal; and a contemporaneous objection must be made at the time evidence is presented to properly preserve the issue for appeal. State v. Antonio Collins, Unpub. Op. No. 2017-UP-151 (S.C. Ct. App. filed April 5, 2017).

Respectfully submitted,

Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

August 21, 2019

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2017-CP-07-1493
	)	
	)	
	)	
ANTONIO COLLINS	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

September 26, 2019
Charleston, South Carolina

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE

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

TRICIA A. BLANCHETTE, ESQ.
Attorney for the Applicant

BENJAMIN LIMBAUGH, ESQ.
Attorney for the Respondent

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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COURT

PROCEEDINGS

THE COURT: Okay. Good morning everybody.

MS. BLANCHETTE: Good morning, Your Honor.

MR. LIMBAUGH: Good morning, Your Honor.

THE COURT: We have convened this morning or reconvened as it was I believe to hear the testimony of one other witness who was sort of identified at the initial PCR hearing in Beaufort as someone who may have some independent knowledge into one of the allegations in the petitioner's complaint and his name is Robert Dudek, South Carolina Commission on Indigent Defense -- or South Carolina Appellate Defense I suppose in his office; I think he's the head of that office.

And so I'm happy to accommodate today's hearing. He is going to attend by phone and we will call him momentarily for that purpose. Anything else the attorneys want to put on the record before we call Mr. Dudek?

MS. BLANCHETTE: Your Honor, I did have the opportunity to show Mr. Limbaugh. I know that Ms. Metz had referenced the Appellate Practice Project and this was part of the Appellate Practice Project. I intend to ask Mr. Dudek about that. But I did pull up from the South Carolina Bar's website the 2018-2019 class, the explanation of what it is, the purpose of it. I'll go

over some of this with Mr. Dudek but I just thought it may be helpful to the Court. I don't think we needed to mark it as an exhibit but just for the Court's reference.

THE COURT: Sure. I'll just take judicial notice of it if you want to hand it up that's helpful. I might actually mark it as a Court's exhibit ---

MS. BLANCHETTE: --- that's fine, Your Honor. I provided a copy to Mr. Limbaugh as well ---

THE COURT: --- for the record. I don't know if we have other exhibits marked probably most likely did. Let's mark it as Court's A. Any other previous exhibits would have been numerical.

[Whereupon, Court's exhibit A is entered into evidence by the Court]

MR. LIMBAUGH: And Your Honor, the State would just ask that you take notice as well that it was not from the specific year that she attended the course. That's all the State would ask.

THE COURT: Okay. And what year did she say she had -- this would have been in?

MR. LIMBAUGH: 2016; is that correct?

MS. BLANCHETTE: Based upon the date of the appeal if they held the course at the same time I would believe it would have to be 2016.

THE COURT: Okay.

MS. BLANCHETTE: Because this one was held in November of 2018 that I was able to find the information on.

THE COURT: Okay. All right. Anything else?

MS. BLANCHETTE: Nothing from the Applicant, Your Honor.

MR. LIMBAUGH: Nothing from the State, Your Honor.

THE COURT: All right. So you will call Mr. Dudek, is that correct?

MR. LIMBAUGH: That's correct. May I approach, Your Honor?

THE COURT: Sure.

MS. BLANCHETTE: And I believe Ben is going to call him but I'm going to question him if that's okay Your Honor.

THE COURT: Sure.

MS. BLANCHETTE: We're working together here.

[Whereupon, Mr. Dudek is contacted via phone by Mr. Limbaugh]

MR. LIMBAUGH: Hey, Mr. Dudek it's Ben Limbaugh. How are you doing this morning?

MR. DUDEK: I'm doing well, Ben.

MR. LIMBAUGH: We've got you on speaker phone in the court in front of Judge McCoy for Mr. Collins hearing. I believe Ms. Blanchette will be the first to

question you.

MR. DUDEK: Okay.

MR. LIMBAUGH: Thank you, Mr. Dudek.

MR. DUDEK: Yes, sir.

MS. BLANCHETTE: Your Honor, I would call Robert Dudek to the stand. It's my understanding he is here with us via speaker phone.

THE COURT: Sure. If he could just raise his right hand wherever he is.

MR. DUDEK [Via Phone]: I have it raised.

THE COURT: Thank you, Mr. Dudek. We'll have our Clerk swear you in. Go ahead.

CLERK OF COURT: Mr. Dudek, do you swear or affirm that the testimony you shall give before the Court shall be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

CLERK OF COURT: For the record please state your full name spelling your last.

THE WITNESS: Robert M. Dudek, D-U-D-E-K.

- - - - -

ROBERT DUDEK [Via Phone],

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BLANCHETTE:

Q. Mr. Dudek, this is Tricia Blanchette. I'm going to go ahead and question you at this time. Can you hear me okay?

A. I can.

Q. Okay. Mr. Dudek, can you tell us your current occupation?

A. I'm the Chief Appellate Defender for the Office of Appellate Defense, which is a division of the Commission on Indigent Defense.
Q. And how long have you been the Chief?
A. Its going on ten years.
Q. And prior to that or in total how long have you been with the Division of Appellate Defense?
A. Thirty years.
Q. During those 30 years do you have any idea the number of criminal appeals you have handled?
A. No, I don't. I guess a way of guessing, a conservative guess might be if you went 100 appeals a year including that being as you know Ms. Blanchette direct appeals and PCRs say 100 a year. You know 30 years conservative I guess we'd be talking over 3,000 appeals.
Q. Okay. And you said that includes direct appeals and PCRs. Any idea how your case load is split between PCR appeals and direct appeals?
A. For a number of years I was in a two person capital unit or death penalty unit so I only did death penalty and murder direct appeals and no PCRs.

That said I would therefore guess overall it would probably be about 70 percent direct appeals and 30 percent PCR appeals; a guess.

Q. Okay.
A. An educated one.
Q. And we're here today about a case that was assigned pursuant to the Appellate Practice Project. Are you familiar with that project?
A. Yes, I am.
Q. Okay. And are you familiar with the appeal of Antonio Collins?
A. Yes, I am.
Q. Okay. I want to ask you a little bit about the Division of Appellate Defense then about the Practice Project and then we'll talk about the specific case, okay?
A. Okay.
Q. At the Division of Appellate Defense how many attorneys do you currently have up there that handle the criminal appeals for the indigents in the state of South Carolina?
A. We currently have 12 appellate defenders including myself.
Q. And you said you were the Chief of that division, is that correct?
A. That's correct.
Q. When you hire a new appellate defender and they come in what is the process by which they are assigned

appeals? Are they immediately given their own caseload or are they supervised for a period of time?
A. Well, they are given a caseload but what I do is I talk with them, with the new appellate defenders about their cases, the facts, the issues that they see. Then they write the brief or cert petition and then I read it before it is followed -- I mean before it is filed.

Now I've been much more stringent about that in the past five years as far as always being sure I talk to them about every case. And I try and do that for say a year before I feel comfortable letting them out on their own.

So that's sort of the process. Now I don't have a process where I start them off with say probation revocations and then you know in a matter of time they work themselves up to other more serious crimes because I mean a criminal trial with the exception of a death penalty rules of error and error preservation and those type things are all the same. I'm not sure the reason for your question but I hope that helps.
Q. It does. Thank you so much. I next want to ask you about the Appellate Practice Project. How long have you been involved in that continuing legal education course?
A. I think we have done it either three or four times is what we have. The first year with then Chief Judge

Few in the Court of Appeals we had 50 cases, 50 private lawyers. And then I think the next couple of years it was 25 lawyers.

And this year we did it a little differently whereas under Chief Judge Few the lawyers were appointed before the CLE and then they were assigned cases and they brought their case to the CLE having been told to have read the transcript in advance so that we could discuss it in the various -- discuss the cases in the various breakout groups, which we had about five.

And then the last year we did it differently where they were not assigned cases in advance. We did a teleproject CLE where they were asked to read one of three different cases, older cases so that in the breakout sessions my appellate defenders and the group leaders could for lack of a better term rate them on how they thought the potential appellate project lawyers were.

So anyway I believe we're on I think this is year four on it. And the purpose of the CLE was to explain and go into detail about error preservation, how to write an initial brief, how to cite to the record.

We explained to them how to do a record on appeal, a final brief; those were some of the tools of the trade. And we also had we would mail out emails on again

reminders how to do an initial brief and a lot of detail on the record on appeal because we do the printing for Appellate Project lawyers but all their documents, their briefs and the record on appeals were supposed to come to the Division of Appellate Defense quote print ready unquote.

All that meant was my administrative assistants should just be able to print them as a print shop would without us being involved and correcting things that needed to be corrected.

That didn't always work out totally but we did -- we did not correct anything without telling the Appellate Project lawyer in advance what we thought should be corrected and getting their approval because they were the lead counsel and responsible for the case.

Q. Now I was able to find on the South Carolina Bar's website a printout from the 2018-2019 Appellate Practice Project that goes over the goals, the format; much of what you just explained.

But taken upon the dates here this appeal was filed in 2017. Would you agree then that Ms. Metts was likely part of one of the first Practice, would that be the 2016 class?

Q. That sounds right. Yes, and let me -- if I could maybe help you. This was one originally Susan Hackett

was the appellate defender who was originally assigned the case before it went into the Appellate Project. I'm trying to see if its 2015 or '17. Bear with me just a second, Ms. Blanchette.

Q. Okay. Thank you.

A. Yeah, I believe -- I can't verify it but it was one of the earlier years.

Q. So she would have been part of the class where she was given the transcript ahead of time or had the opportunity to do these breakout sessions like you just discussed.

A. I can't verify that 100 percent but that's what would have made sense to me; she would have already been appointed prior to the CLE.

Q. Okay. And in the literature on the Bar's website it gives the two purposes. It says the class has changed somewhat, but summarizing that the two purposes are to provide indigent clients high quality representation and to provide a public service and for practicing lawyers to get an unprecedented opportunity to gain appellate experience.

It goes on to explain though that these attorneys have the opportunity to consult with experienced appellate practitioners prior to the filing of their brief. So who would have been the person your office

assigned to Ms. Metts as far as Mr. Collins case is concerned?

A. Well, any calls for advice should have come to me as the Chief Appellate Defender because I mean part of the initial reason for the project; Appellate Project was that it would take some of the stress of the workload off of the assistant appellate defenders.

So if they were being inundated with calls for advice that would defeat the purpose of it, part of the purpose of it. So I made it known at the CLEs for the Appellate Project that all calls for advice should come to me.

Now in some cases you know I would hear from the lawyers on more than one occasion or several occasions some of them wanting to talk about the issues procedurally, error preservation, the merits of the case.

And others you know I would not hear from hardly at all or at all until it was time to do the printing for the briefs or the record on appeal, so it varied. But the advice should have come from me.

Q. Okay. And do you have a specific recollection of interacting with Ms. Metts on Antonio Collins direct appeal?

A. I remember there being made aware that there were problems with the appeal. For example there was a

deficiency letter from the Court of Appeals on the record on appeal and of Sean Flynn who I usually left the assistant who was with the attorney who had the case originally.

In Mr. Collins case that was Susan Hackett. So Sean was Susan's assistant so he remained on the Collins case as the assistant handling the printing of the briefs and the record on appeal. And I remember talking with Jenny Kitchens [phonetic] the Clerk, about the problems with the record.

And I think at some point although it wasn't part of the Appellate Project rules it was I believe we agreed that my office would just re-do the record on appeal and try and get it into shape sufficient for filing.

And my memory was that on the record on appeal in the final brief I believe Ms. Metts did not want us just to take it over. She wanted to come in and talk to me.

And I remember I think one specific meeting in our big conference room with Ms. Metts for about probably 15 minutes maybe a half hour but probably more like 15 minutes where I attempted to explain the process entailed in the rule and how to put together a record in the final brief.

And my memory was she wanted to add to the final brief as far as the issues. And I think that was

explained to her that you need to not add to a final brief. All you can do in your final brief was correct typographical errors.

And you could add citations to the record but you could not add you know you could not beef up your final brief besides correcting typographical errors, grammatical errors and adding more citations to the record. So after about 15 minutes Ms. Metts said she understood and we parted company and that was it.

Q. So you testified about the fact that she had submitted an initial brief and then had confusion over the fact that she could not change that brief and add additional contents before submitting the final brief, is that correct?

A. That's correct.

Q. Do you recall meeting with her before she submitted her initial brief and going over the brief with her or discussing that with her?

A. No, I really do not. And -- I do not. I don't have a memory of it. In looking back now I would think that if such a meeting took place I mean that I would have talked to her about the -- as you know from the final opinion all of the issues were deemed either procedurally barred, abandoned, or not supported by any authority in the brief and therefore were deemed abandoned. So I

don't have any memory of meeting with her at all before the initial brief and think I would have said something if I had.

I mean my role or the only reason I signed the briefs for them was I signed all the Appellate Project briefs was because we did the printing and I was here and could provide an original signature.

Q. So as part of the Appellate Practice Project that Ms. Metts was involved in who would have been her supervisor or been there to offer her assistance or is there not such a thing?

A. That's a bad word I think ---

Q. --- okay ---

A. --- and misnomer as far as supervisor. She is appointed by the Court of Appeals as lead counsel. I remain on the case as a second -- as the appellate defender as the second attorney.

It is made known to them that they have -- that I'm available for advice but the issue selection and the writing of the brief that is their responsibility. I am not a supervisor. I am here for advice if requested.

Q. Okay. So she would have had to solicit the help. It's not something where she just comes into your office and you review the work that she is doing?

A. No, I am not a supervisor on an Appellate Project

case. For example I do not go to the oral arguments. I have gone to a couple of oral arguments where Cert has been granted from the Court of Appeals. But I am not lead counsel.

I do not attend oral arguments. I do not tell Appellate Project lawyers no, that's wrong; you need to you know you need to -- I'll offer advice if requested but I am not responsible for issue selection and I -- we do not even change a word in the brief.

My assistants are told by me without running it by the Appellate Project lawyers first. Now most Appellate Practice lawyers if we say we usually do this and such and such a way do you want us to change it? We usually get back a perfunctory email or phone call saying yeah, that's good; go ahead and change it. Thank you.

But again we do not change things and I do not -- I am not their supervisor. I'm merely second counsel if they want my advice. I do not intrude if my advice is not asked for.

Q. So for example on page six of her brief it should read insufficient probable cause and it says insufficient probably case your office isn't even reading those to check for typos, is that correct?

A. Let me go to page six. I think I remember what you talking ---

Q. --- yeah, it's line three. There are multiple examples but that's just the first one there.
A. Okay, on page -- where are you reading from Ms. Blanchette?
Q. Page six the first paragraph under argument one.
A. It was insufficient probably case. Yeah, I mean bad typo obviously. But no, I mean I didn't -- we didn't -- I don't have my assistants proofread the briefs.
Q. And you already mentioned the appellate decision in this case that goes into issues are deemed abandoned if there is no citation to legal authority.

You indicated that if you had read the brief you would have pointed out the issues and errors that the Appellate Court has addressed in their opinion, is that correct?
A. I think, I think I probably would have picked up the phone or emailed and said you know this does not have a citation to authority and the Court is going to deem it abandoned if there is no citation of authority. I think that's fair, yes.
Q. And as a result would you agree that if the Court is not even going to review it did Mr. Collins even have a proper direct appeal in this case?
A. Could you ask that again, please?
Q. You said that if the Court is going to find the

issue abandoned they're not even going to review it. If the Court is not going to review it would you agree that Mr. Collins didn't even have a proper chance at a direct appeal in this case?

A. Well if the Court does not rule on something as they did several times here because it was procedurally -- I mean because the issue was abandoned I mean you know that is the fault of the appellate attorney. I won't -- does that answer your question?

A. It does. And in the second half of the appellate opinion it goes into issue preservation specifically saying that a holding in limine ruling is not final and doesn't preserve an issue for appeal. Is that what you're referring to as the procedural defaults in this case?

A. That -- yes. I mean I'm looking at a couple of things they cite State v Byers holding for an objection to be timely it must be made at the time evidence is presented. We know that.

Then they cite Torrence which is obviously on the end of informed -- death penalty case but just holding a contemporaneous objection required to properly preserve an issue.

So they found trial level -- I mean they found that the issues have to be, as you know Ms. Blanchette you

have to raise the objection in the Appellate Court in the same manner it was raised to the trial judge. Otherwise, it's not fair to the trial judge.

So they found both the issues were not raised in the same manner on appeal if they were preserved at trial and also that there was an abandonment of issues because authority had not been cited in the brief.

Q. And with your vast experience in handling all the appeals you've handled are you in agreement with State v Hughes that a holding that a motion in limine is not final and that you have to renew that motion at trial for it to be preserved?

A. Yes. I mean the purpose of that I mean yes, a motion in limine does not preserve the issue because if there is any time between the say pretrial argument or ruling on the issue if there is any time for the judge to change his or her mind then at the time the evidence is introduced before the jury you have to renew your objection to give the judge a chance to change his or her mind. And if you don't do that then the issue is not preserved for appellate review.

Q. And would you also agree that Byers is still good law or was good law at this time that an objection has to be made, such as here counsel didn't object to the DNA evidence when it was admitted. So would you agree that

an objection would have needed to be made?
A. Yes. I mean if again there is a motion in limine to keep out certain evidence, blood evidence whatever evidence of that type when it is introduced again before the jury you have to renew your objection.

It doesn't have to be obviously the whole objection. Sometimes it can just be previous objection. And the judge says overruled then you are good to go but you have to renew your objection at the time the evidence is introduced during the trial.

Q. Okay. And I want to now ask you a little bit about the filings in this case. I asked Ms. Metts about why a reply brief or nothing further was filed after the State submitted a lengthy brief.

It's my understanding her response was something to the effect of all of that went to appellate defense and she didn't receive any further documents.

Whose responsibility is it to do reply briefs or petition for rehearing or anything subsequent to filing the final brief in the Appellate Practice Project?
A. Well, you asked a couple of different questions there. One, I mean whether a reply brief should have been filed that again would be up to the Appellate Project lawyer as lead counsel on the case if they thought a reply brief was necessary. If they did they

would simply do the reply brief, ask for an extension of they needed one just like you would do for your initial brief and then we would do the printing on a reply brief. Now it's my understanding no reply brief was filed in this case.

Now you second question sort of as I understood it went more to what happens after I guess the final brief or after the Court's opinion?

Q. Yes, what would ---

A. --- and that as far as a rehearing?

Q. Yes. Would she have received the final -- would she have received the opinion and been responsible for filing for rehearing?

A. Yes. She would have gotten a copy of the opinion and could have again consulted maybe with me on rehearing if she thought it was necessary. Now really a rehearing is not often sought unless you're also going to do a Certiorari petition to the Supreme Court.

On this particular case everything was procedurally barred so there would be no serious thought of going Certiorari or going rehearing. But I don't ever remember having a conversation with her about going for a rehearing.

And as a matter of fact our records indicate that there was some contact between Mr. Collins and appellate

same inquiry. On that date my assistant Sean Flynn corresponded with you via email. It is my understanding that you told Mr. Flynn you had filed the record on appeal but you did not have an unbound scanned copy that you could send to us.

We checked the website for the Court of Appeals and the record on appeal and did not appear on the website. I would greatly appreciate it if you could provide our office with an update concerning Mr. Collins' appeal.

Like I say that was in February and then there was a deficiency letter to Ms. Metts from the Court of Appeals

dated March 10, 2016. And then that's what I'd like to say my office had -- I had talked with believe with Jenny Kitchens [phonetic] at the Court of Appeals and we intervened as far as more than we usually would on getting the record on appeal ready in this case.

And then there was later Ms. Hackett, appellate defender Hackett, sent Mr. Collins a copy of the remittitur in the case and advised him, which we always advise our clients, you've got one year from the date of the court's opinion to file for a PCR.

Don't miss that deadline and just the usual advice that we give to our clients on you only have one year to file a PCR if the opinion, I mean if the direct appeal is affirmed.

So those were a couple of very unusual things in this case that happened as far as again us having to intervene which we usually do not and here Susan Hackett becoming involved and actually sending documents or the opinion and the remittitur to Mr. Collins just to be sure his PCR rights were protected.

I have no idea if Ms. Metts communicated that to Mr. Collins before he heard from Ms. Hackett or not. But this should hopefully give you some context on what happened next.

Q. I appreciate that. Now based upon your experience

as an appellate practitioner, your firsthand experience in this case where here we have the trial counsel that failed to preserve the issues as we've been discussing and it's addressed in the appellate decision and we have an appellate counsel that failed to submit a brief without proper citation to legal authority. What would you argue is the appropriate relief?

A. Well I mean ---

MR. LIMBAUGH: --- Your Honor, outside the scope ---

A. --- certainly ---

Q. --- just a second Mr. Dudek. The AG is speaking ---

THE COURT: --- we have an objection. Go ahead.

MR. LIMBAUGH: Thank you, Your Honor. I don't think Mr. Dudek is qualified to be giving his opinions on relief sought in the post-conviction relief action.

MS. BLANCHETTE: Your Honor, I believe he is uniquely qualified. The number of PCR appeals he's handled he has argued these type of cases to our highest courts. I believe he would be the one person in the State that could answer this.

If the State wants me to qualify him as an expert I think he qualifies as an expert. And the one case that we have where an attorney wasn't allowed to offer if we're going to call this opinion testimony it was because that attorney in Green v State didn't have firsthand

experience in the case and the court ruled it wasn't relevant. Here I believe it is relevant. He's handled this case. He's offered testimony. I think it would help the trier of fact in reaching a decision but that's obviously up to Your Honor.

THE COURT: I'll allow it over the objection of the State. Go ahead.

Q. [Ms. Blanchette] Go ahead Mr. Dudek.

A. Well, in my opinion the issue being held abandoned and the rest of them being found to be not preserved would constitute ineffective assistance of counsel since I'm allowed to answer the question.

Q. And what would be the relief that you would request if you were making the argument in this case?

A. Well, I mean the only relief possible would be granting him a new trial that I'm aware of. I don't know of any other remedy. I mean there is no way to go back that I'm aware of and re-do the appeal.

So I think my answer would have to be the only remedy I respectfully and humbly am aware of would be the granting of a new trial.

Q. Because in a case where the issues aren't properly preserved you can never raise those properly on direct appeal, is that correct?

A. You cannot do a re-do of the direct appeal. So I

don't -- you know may be wrong; I don't think I am. But I don't know of any way to go back and say well if we did a re-do here was this meritorious albeit maybe winning issue that was never brought to the attention of the Court of Appeals or if it had been they would have reversed.

So I mean I just think it's such a fundamental breakdown in the adversarial process if you will that that would be the only remedy I would be aware of as being possible.

Q. Thank you Mr. Dudek. I have no further questions.

THE COURT: Mr. Limbaugh?

MR. LIMBAUGH: Your Honor, may I approach?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q. Good morning, Mr. Dudek. Ben Limbaugh here.

A. Hey Mr. Limbaugh.

Q. Just to go over a few things with you quickly. So you stated multiple times that your role in this case was not as supervisor of Ms. Metts, is that correct?

A. That's absolutely correct.

Q. Okay. And in these -- the documents about the Appellate Practice Project and kind of what it is that Ms. Blanchette was discussing earlier it states multiple times they have the opportunity to consult with you, is that correct?

A. I don't have it in front of me but from my memory yes, there is the opportunity to consult with me as the Chief Appellate Defender and certainly at the CLE itself we have usually those were headed up by private attorneys; one private attorney who is an experienced appellate attorney and also by two of my assistant appellate defenders.

So there is a chance at the CLE to discuss it. And later I take any and all phone calls from Appellate Project lawyers that want to call in and talk about the case. I always make myself available to do that.

Q. Okay. And you stated earlier your office was

essentially just responsible for the printing of the record on appeal and things of that nature?
A. That's correct.
Q. Okay.
A. Now on things of that nature I want to be careful because we again, make it clear and any order that goes out from the court that we cannot say pay for anything. We do the printing.

We don't even pay for the Appellate Project lawyers to take it to a private printer. We do not pay for travel or anything else. So I'm just being careful on when you said things of that nature. But yes, we are responsible for printing.

Q. I appreciate that. You said you do recall I think it was a 15 to 20 minute conversation with Ms. Metts, is that correct?
A. That I do remember, yes sir.
Q. Okay. And you I believe testified you mentioned to her that citations could be added to the record if necessary?
A. I don't remember telling her that as far as to the -- now by citations Mr. Limbaugh I mean to say you can add record citations. So in other words as I read the rule on final briefs you can add in what would be transcript cites would be record cites. So you could

beef up your citations to the trial transcript. I do not mean by that that you could add case citations to the final brief. My understanding was that that would be totally improper to start inserting legal citations into the final brief that were not in the initial brief.

And as a matter of fact in the year assistant Attorney Generals would lose their mind I believe. And people did that; starting inserting legal citations in the final brief that were not in the initial brief. By citations I mean citations to the trial record.

Q. I appreciate that. I was just trying to get some clarification.

A. Okay.

Q. So I believe Ms. Blanchette went over in great detail everything else I was going to ask you except for on that final question about the remedy.

And you said you believe there was ineffective assistance of counsel. Do you mean deficiency exclusively or are you speaking on both because there are two prongs to this?

A. Yes. And I understand under Strickland you have deficient performance and then prejudice. Certainly I mean I think under appellate counsel on the deficiency prong all the issues the Court refusing to address any of the three issues for procedural reasons I would

respectfully submit would constitute deficiency under that prong.

Now on prejudice I guess there would be two ways of looking at it. One is prejudice was he never had the merits of his direct appeal of any issue addressed by the Appellate Court. So I think that would mean the prejudice prong as I understand the case law.

And since there is no do-over on direct appeal that's why Mr. Limbaugh I said I think the only remedy would be a new trial because I do not know of any procedure, and I might be wrong, I don't think I am where you could go back and pinpoint an issue and say if this issue had been brought up properly before the Court they would have granted a new trial.

I don't know if that is for lack of a better term that monkey is not on the back of the Applicant in PCR to point out the winning issue where none of his issues were addressed for procedural reasons.

Q. Okay.

A. Maybe I'm wrong about that but that's the best I can answer your question.

Q. Okay. So you're not aware of Anderson v State that says the Applicant must prove that he could have been successful on any appellate deficiency in terms of those issues?

Q. I'm not aware of the case off the top of my head. Now usually in any normal appeal, in any normal appeal let's say from an Anders brief I mean I think you know in that context like that the Applicant would be responsible for citing if appellate counsel had raised this issue there is a reasonable likelihood that I would have prevailed on appeal.

But the reason I say that is here we're addressed with the situation where all of the issues for one reason or another were considered procedurally defaulted.

So I don't know if it is a smooth transition to applying what you're talking about or what the Court meant to this situation. It is a most highly unusual situation we are dealing with here.

Q. I would agree with you on that one. I believe that's actually all I have for you, Mr. Dudek.

A. I'm sorry?

Q. I believe that's all I have for you.

MS. BLANCHETTE: I have nothing, Your Honor.

Q. [Mr. Limbaugh] Ms. Blanchette has nothing further for you as well.

THE COURT: Okay. Mr. Dudek, thank you very much for your participation today and for being available for this Court. And we certainly appreciate your service.

THE WITNESS: You are more than welcome. And thank

you for allowing me to participate.

THE COURT: Absolutely. We'll go ahead and hang up. Thank you so much.

THE WITNESS: Yes, ma'am. Thank you, Judge.

MR. LIMBAUGH: Thank you Mr. Dudek.

THE COURT: Okay. Any other witnesses or do you want to say any other remarks?

MS. BLANCHETTE: I have two requests of the Court; and that's all I have, Your Honor.

THE COURT: Okay.

MS. BLANCHETTE: First, Your Honor, I would request the opportunity and the time to get the transcript from the first proceeding that we had as well as today before submitting you any written arguments or proposed orders or however you'd like to proceed.

I personally was surprised by some of the testimony offered at the evidentiary hearing. We kind of even further delved into issues unexpected today so I know it would be a service to myself in preparation. I believe I've talked to Mr. Limbaugh and he is not in opposition to that. But that's obviously within your discretion if we could have time to order the transcript.

THE COURT: Sure. I don't have a problem granting that request at all. So what else can I do for you?

MS. BLANCHETTE: And then secondly, Your Honor as I said I was surprised by some of the testimony at the evidentiary hearing specifically if my recollection is correct which is why I want to get a transcript I recall both attorneys disagreeing with the issue preservation findings of the Appellate Court in stating that they did

not have to renew the objection at the trial, that a motion in limine was a final ruling and they did not have to object to the evidence when it was admitted.

And then furthermore we have the testimony today. So pursuant to 15(b) I'd like to move to amend to ask this Court to also consider presumed prejudice under the Cronic case and I have a copy of that for Your Honor.

If you'd like I could provide a brief explanation of why I'm asking that. We're not abandoning the Strickland analysis but I'd also like to ask the Court to consider it under Cronic. And typically when I do that I put that in a written amendment but I just was not anticipating the testimony in this case to be what it was.

THE COURT: Okay.

MS. BLANCHETTE: So I'd like to make sure that I've clearly moved on the record that I'm asking the Court to also consider this case under the Cronic standard.

THE COURT: Okay. You want to respond Mr. Limbaugh to that?

MR. LIMBAUGH: Just as it wasn't formally -- and I understand that it came up during the hearing and things of that nature; it just wasn't formally admitted and the State didn't have an opportunity to prepare to address those things so ---

THE COURT: --- right, sure ---

MR. LIMBAUGH: --- the State would object on that issue, Your Honor.

THE COURT: Okay. I will allow you to amend and certainly go forward on those grounds given the fact that they came up during some of the evidence that was presented during these hearings. Of course the State will have, will be granted time to respond accordingly.

I'll certainly be generous with the timeframe allowed given that we need to get the transcript from the first hearing that they've amended the complaint to a degree and I give the State plenty of time to respond accordingly.

MR. LIMBAUGH: Thank you.

THE COURT: Okay. What else can I do for y'all today?

MS. BLANCHETTE: Your Honor, I have nothing further. Those were the two matters I thought I needed to address with the Court.

THE COURT: Sure. Anything else from the State?

MR. LIMBAUGH: Nothing further, Your Honor.

THE COURT: Okay. Well, this is an interesting situation. And I look forward to us all getting better educated on some of these nuances that we are delving into. All right.

MS. BLANCHETTE: Your Honor, once we receive the transcript would you like us to notify your Clerk to get further direction at that point?

THE COURT: That would be great. And if you don't mind once you discuss a possible timeframe with the court reporter who handled that matter if she gives you some sort of a date she expects to have it ready if you could just kind of keep us apprised along the way that would be great.

MS. BLANCHETTE: I'll be communicating with two court reporters and I'll keep you informed of both of the two hearings.

THE COURT: Oh that's right, correct. Thank you so much. I appreciate it.

MS. BLANCHETTE: Thank you, Your Honor.

MR. LIMBAUGH: Thank you, Your Honor.

THE COURT: All right. We'll be adjourned.

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

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 26th day of September, 2019.

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

October 7, 2019

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	
Antonio Collins, #357630)	Case No.: 2017-CP-07-1493
)	
Applicant,)	**ORDER OF DISMISSAL**
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter came before the court by hearing dated August 26, 2019 in Beaufort County upon Applicant's request for Post-Conviction Relief (PCR). A subsequent hearing was held on September 26, 2019 to elicit further testimony. The Applicant, Antonio Collins, made several arguments in support of his claims of ineffective assistance of trial counsel and appellate counsel. Those arguments and the Court's findings on each are discussed below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted by the Beaufort County Grand Jury on December 15, 2011 for murder, burglary 1st degree, kidnapping, and possession of a weapon during a violent crime (Ind. #s 2011-GS-07-2279, 2378, 2379 & 2403). Applicant was represented on the charges by Trasi Campbell and Arie Bax, Esquires. Applicant proceeded to a jury trial from October 21-24, 2013 before the Honorable Ernest Kinard, Jr., Circuit Court Judge. At the trial's conclusion, the jury found Applicant guilty of murder, burglary 1st degree, and possession of a weapon during a violent crime. Judge Kinard sentenced Applicant to thirty-three (33) years confinement for murder, thirty-three (33) years for burglary 1st degree, and five (5) years for possession of a weapon during a violent crime. The sentences on each indictment

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were ordered to run concurrently. (R. pp. 1, 13-17, 148-51, 174-90, 603, 609-10).

Applicant perfected an appeal. On May 5, 2016 M. Rita Metts (Appellate Counsel), Esquire, filed a brief on Applicant's behalf. On April 5, 2017, the Court of Appeals affirmed the trial court's rulings. State v. Collins, No. 2017-UP-151 (Ct. App. 2017). Remittitur was issued on April 21, 2017.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
    a. Failure to prepare and investigate
    b. Failure to object and preserve errors for appellate review.
2. Ineffective Assistance of Appellate Counsel
    a. Failure to raise issues on appeal.

Applicant amended his application on July 25, 2018 to include the following allegations:

1. Ineffective assistance of trial and appellate counsel for matters related to the DNA evidence, specifically, but not limited to the following:

    a. Pursuing but not completely developing or preserving a contamination argument.
    b. Failure to preserve all arguments related to the DNA for appellate review by failing to make a motion in limine for suppression, object to the admission of the DNA evidence, and properly renew prior motions and objections.
    c. Failure to properly argue at pre-trial, trial or appeal the following:
        i. Under the totality of the circumstances, to include but not limited to police deception and failure to contact Applicant's appointed counsel, suppression was required since voluntary consent was not obtained for Applicant's swab in Florida.
        ii. Probable cause did not exist to support the Schmerber order issued by the Honorable R. Markley Dennis and later re-examined by the Honorable Stephanie McDonald.
        iii. Suppression of the evidence should have been granted by the Honorable Stephanie McDonald.
        iv. Applicant's DNA samples were obtained as fruit of the poisonous tree and were not a result of inevitable discovery.

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2. Ineffective assistance of trial counsel for failure to present available evidence in support of the defense argument that Applicant did not suffer a gunshot wound. Transcript p. 562, lns. 5-20.
3. Ineffective assistance of appellate counsel for failure to properly raise issues with citation of legal authority and reply to erroneous information in the State's Brief.
4. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Applicant further amended his application at the subsequent hearing to include for the Court's consideration presumed prejudice under United States v. Cronic, 466 U.S. 648, 660, 104 S. Ct. 2039, 2047, 80 L. Ed. 2d 657 (1984).

STATEMENT OF FACTS ADDUCED AT TRIAL

On the night of June 22, 2009, Applicant Antonio Collins ("Collins") murdered Ronald Coleman ("the victim") during a burglary of the victim's home on Seabrook Road on Seabrook Island in Beaufort County. Collins was assisted by an unknown male; however, Collins was the shooter or trigger-man in the murder. Collins was not from South Carolina but Miami, Florida. (R. pp. 175-201, 241-48, 316-21, 384-91, 415-29, 444-66, 603).

The victim lived in a rural area of Beaufort County that was sparsely populated, and his residence was surrounded by the homes of many of his relatives. The victim was a "small time" marijuana dealer. On the night of June 22, 2009, the victim's cousin and childhood friend, Enrekae Miles ("Miles"), was going to visit the victim. The victim and Miles "hung out" together regularly and played *Madden NFL* video games, and Miles wanted to attempt to console the victim whose brother had died recently. At approximately 9:00 p.m., Miles walked from his residence, which was nearby, to the victim's residence located at To get there, Miles walked a regular footpath that took him behind an uncle's residence and which eventually came out behind the victim's residence in the victim's backyard. (R. pp. 175-201, 224-27, 253-54).

As Miles arrived in the victim's back yard, he saw two (2) men standing near the back door

of the victim's residence, and they appeared to be fidgeting or nervous. Miles had never seen the two (2) men before. Miles hollered at the two (2) men. The two (2) men turned and walked toward Miles. As the two (2) men approached Miles, one (1) of the men [Collins] drew a pistol. Miles immediately fell down on the ground and begged Collins not to shoot him. Collins and the other man patted Miles down for weapons. Miles was unarmed. (R. pp. 175-201; 241-48, 316-21, 384-91, 415-29, 444-66, 603).

Collins put the gun to the back of Miles' head and told Miles that he [Miles] was going to help the two (2) men lure the victim out of his home. Collins then pushed or forced Miles at gun point to the front of the victim's residence and up onto the front porch. The other man stayed on the front porch steps or at the foot of the steps. Collins then tried to get Miles to persuade the victim to come out the front door of the residence, but Miles signaled the victim that danger was afoot. Collins was unaware the victim only used his back door *and* the victim's front door was nailed shut. (R. pp. 175-201; 241-48, 316-21, 384-91, 415-29, 444-66, 603).

Collins then pushed Miles out of the way and kicked the front door of the victim's residence in. Collins stepped into the doorway of the victim's home armed with the handgun and a shot was fired, apparently by the victim. Miles heard a "ping" and someone say: "[A]h." Collins then raised his gun and fired his gun multiple times into the victim's home. The victim returned fire. The victim suffered four (4) gunshot wounds. (R. pp. 175-201; 241-48, 316-21, 384-91, 415-29, 444-66, 603).

Miles fled from the porch during the gunfire but not before seeing the gun Collins was shooting was a semi-automatic with a clip and seeing the two (2) men, including the gunman Collins, flee up Seabrook Road. Miles ran to an aunt's house and told her what had occurred and then ran to another relative's home and asked an uncle for a shotgun to protect himself. One (1)

relative of the victim, who lived nearby, had already called 911 as soon as the gunshots were fired (R. pp. 175-201; 224-27; 241-48, 316-21, 384-91, 415-29, 444-66, 603).

When police arrived, they found the victim face down, inside his home, but near the front door, with his .45 caliber semi-automatic pistol still in his hand. The victim was dead. He had died from the gunshot wounds inflicted by Collins. Police found blood just outside the victim's bedroom door in the living room. Police also found numerous fired .45 caliber shell casings inside the victim's residence where the victim had returned fire when Collins kicked in the front door and started shooting. These fired shell casings were later forensically matched to the victim's gun. (R. pp. 141-45; 148-51; 159-65, 241-48, 316-21, 384-91, 415-29).

On the front porch itself, police found blood droplets. Collins had been struck by one (1) of the bullets the victim fired when Collins' forced his way into the victim's home. Police collected samples of these blood drops to develop a D.N.A. profile. (R. pp. 312-23, 329).

Police also found numerous *.40* caliber fired shell casings that were ejected from the burglar's [shooter's] gun when he [Collins] shot the victim. These casings, including some inside the victim's home and two (2) on the front porch, were collected for later comparison if a murder weapon was located. (R. pp. 245-49).

The following day, approximately sixty (60) additional blood drops or bloody foot-impressions were found on Seabrook Road leading away from the victim's residence. The blood drops or impressions stretched from near the victim's residence for approximately 700 feet and then stopped in the middle of Seabrook Road. Police believed the perpetrator and the individual with him had gotten into a vehicle at this location and fled the scene. Immediately across the road from where the blood trail stopped, police found a *.40* caliber semiautomatic pistol with blood stains on it lying in the grass. Police seized the discarded weapon and collected samples from the

bloody shoe impressions on Seabrook Road and from the discarded *.40* caliber pistol for later D.N.A. testing. (R. pp. 268-82, 285-93, 368-69, 542-44).

The State Law Enforcement Division (SLED) forensic lab compared the fired *.40* caliber shell casings found at the victim's residence to test casings fired from the *.40* caliber weapon recovered where the blood trail ended on Seabrook Road. It was determined the fired *.40* caliber shell casings from the crime scene were fired by the *.40 caliber* gun found near where the blood trail ended. (R. pp. 415-29).

In the days following the murder, witnesses who lived in the area, including Miles, informed police they had seen a strange car in the area before the murder. The car was traveling up and down Seabrook Road before the murder, or was seen stopped in the area. The witnesses described the vehicle as being a beige or cream colored Cadillac Deville. Miles, while he was near his uncle's residence after the murder, had also seen this vehicle slow down and pause and then take off. (R. pp. 224-26, 191-94).

Several months later, police developed a suspect in the case, Applicant Antonio Collins, with the assistance of the Drug Enforcement Administration (DEA) and the Hampton County Sheriff's Office. These agencies had an informant, Gussie Goldwire, who was related to Applicant Collins; Goldwire and Collins are cousins. Goldwire informed police Collins committed the murder. Police also received information from Goldwire that the vehicle used in the crimes belonged to another individual who lived in Jasper County, Jeremy Murphy. (R. pp. 293-99, 300-04, 330-31, 337-39).

Murphy's residence was staked out, and Murphy was stopped in the vehicle as he left his residence. The vehicle, a Cadillac Deville, was similar in color to that described by witnesses who lived near the victim, and the vehicle was seized by police. Police obtained a search warrant for

the Cadillac and processed it. Inside the car, police located blood stains that had soaked through the back seat of the vehicle into the cushion of the back seat and some into the carpet at the bottom of the seat. Samples were taken from the interior of this car and forwarded to SLED to see if SLED could find human blood and D.N.A. (R. pp. 305-09, 330-37, 369-72, 403, 406, 444-66).

Police interviewed Jeremy Murphy. Murphy informed police he had loaned his car [the Cadillac Deville] to a man named Antonio from Florida and another man named George Savage. According to Murphy, the two (2) men were supposed to just use the car to go buy something illegal, and they would return the car in an hour. According to Murphy, an hour came and went and the vehicle was not returned. Then he noticed the car just appeared back in his yard. He went out to feed his dogs and looked in the car, and there was blood all over the car. Murphy said he later talked to George Savage and Savage said they went to "do a lick" but it went bad. (R. pp. 687-88).

Through further investigation, using names of relatives of Collins provided by Goldwire, including the names of Collins' father and mother, Beaufort County police determined Collins was Antonio Eugene Collins and he was a resident of Miami, Florida. At the time Collins was developed as a suspect, which was months after the murder, Collins was detained in the Miami / Dade County Jail on unrelated charges [burglary, felonious assault/CDV charges]. At the request of Beaufort County authorities, police in Miami requested a D.N.A. sample from Collins [a buccal swab], which he consented to and provided. When Collins was returned to South Carolina for prosecution, another D.N.A. sample [a buccal swab] was taken pursuant to a Schmerber Order. Both of these samples were submitted to S.L.E.D. for D.N.A. analysis. (R. pp. 689, 338-42, 362-63, 412-15, 734, 444-66, Schmerber Order).

SLED's D.N.A. laboratory was able to develop a D.N.A. profile from the blood drops on

the front porch of the victim's home. SLED was also able to develop a D.N.A. profile from the bloody shoe impressions found on Seabrook Road leading away from the victim's residence. SLED was also able to develop a D.N.A. profile from the swab of the *.40* caliber gun found beside Seabrook Road near where the blood trail stopped. And, SLED was also able to develop a D.N.A. profile from the blood that soaked through the seat cushions of the Cadillac recovered in Jasper County. The D.N.A. profile developed from each of the above locations was determined to be that of one (1) and the same person. (R. pp. 444-66).

SLED also subsequently developed a D.N.A. profile from the buccal swabs taken from Applicant Collins' mouth. It was determined all of the D.N.A. samples listed above, i.e. from the victim's porch, Seabrook Road, the *.40* caliber pistol, and the Cadillac, matched the D.N.A. profile of Applicant Antonio Collins. (R. pp. 444-66).

After hearing the evidence listed above, the jury convicted Collins of the victim's murder, the burglary of his home, and the weapon charge. (R. p. 603).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. 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).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

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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 [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors,

the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U. S., at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even

under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Allegation: Failure to Develop or Preserve Contamination Argument

Applicant alleges trial counsel was ineffective for failing to fully develop or preserve the defense's argument that the DNA should be excluded due to potential contamination. Counsel

moved to suppress the DNA evidence by way of pre-trial motion where the contamination issue was argued in camera before Judge Kinard. Numerous officers testified to; responding to the crime scene, preservation of the scene, collection of blood evidence, returning to the scene and collection of further blood samples, recovery and processing of the *.40* caliber firearm, processing of the Cadillac Deville, and the preservation of evidence. (R. pp. 51-102). At the conclusion of the hearing, Judge Kinard denied the motion to suppress finding Collins' arguments went to the weight of the evidence, which he could bring out before the jury and argue, but not its admissibility. Judge Kinard determined the testimony established the collection and preservation of the evidence by Beaufort police was sufficient to allow its admissibility and overruled Collins objection to this evidence on this basis. (R. pp. 102-105). Counsel did not make a contemporaneous objection to the introduction of the DNA evidence at trial, thus failing to preserve the issue for appellate review. However, Applicant has failed to show any resulting prejudice from counsel's failure to preserve the issue for appellate review or developing the argument any further.

An issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a post-conviction relief claim alleging ineffective assistance of counsel. McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013) (citing McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003); Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999)). However, to be entitled to relief on such a claim, an applicant must establish the underlying claim is meritorious and would have resulted in a reversal on appeal to a reasonable probability. McHam, 404 S.C. at 475–76, 746 S.E.2d at 47 ("Since the Fourth Amendment issue was not considered on direct appeal because it was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong in McHam's PCR claim."). Therefore, before a post-conviction relief court can grant relief

on a claim of ineffective assistance of trial counsel for failing to preserve a ground for appellate review, the court must determine the underlying claim was meritorious and a reasonable probability that it would have resulted in reversal and a new trial.

This Court finds that Applicant has failed to meet his burden in showing that counsel's failure to preserve the issue for appeal resulted in any prejudice. Here, Applicant would have to show that the trial court would have abused its discretion in denying a timely objection to the introduction of the DNA evidence considering the contamination argument made by counsel. The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). The testimony concerning DNA evidence complied with the requirements set forth in State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). The Court held: "Any evidence concerning contamination, therefore went to the weight of the testimony, not its admissibility." Ramsey, 345 S.C. at 616. The Court finally noted that the mixture of DNA evidence is not a basis for the exclusion of the DNA testing. Id., *referencing* Oregon v. Lyons, 124 Or. App. 598, 863 P.2d 1303 (1993)(finding the potential for DNA contamination presents an "open field" for cross examination at trial, but does not indicate the PCR method of DNA testing is inappropriate for forensic use).

Under the Rule 702 analysis used by the Court in Ramsey, Collins has not shown that possible contamination or cross-contamination indicates *the method of DNA testing used in this case* is inappropriate for forensic use. *DNA testing* whether PCR or STR is scientifically reliable. *See* Ramsey; Council, 335 S.C. 1, 515 S.E.2d 508; State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990).

Furthermore, in State v. Holmes, 361 S.C. 333, 605 S.E.2d 19 (2005), *reversed on other grounds* Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006)(reversed on issue of 3rd party guilt evidence), our Supreme Court held: "[T]he fact the forensic evidence may have been compromised by the unprofessional manner in which the evidence was collected goes to the weight of the evidence, not its admissibility." Holmes, 361 S.C. at 343, fn 8, *citing* State v. Carter, 344 S.C. 419, 544 S.E.2d 835, (2001); State v. Smith, 326 S.C. 39, 482 S.E.2d 777 (1997). Given Collins' assertion on appeal, this appeal must be dismissed with prejudice. State v. Holmes.

Here, the trial judge would have been well within their discretion in overruling any potential objection to the DNA evidence on the contamination ground and thus the issue would not have been meritorious on appeal. There was no evidence presented that the DNA samples were in fact contaminated or that the procedures used by SLED were unreliable. Even if evidence was presented that the samples could have been contaminated, the trial court should allow the evidence to be presented to the jury for their consideration as to how much weight to give that fact. Therefore, Applicant has failed to show how he was prejudiced by counsel's failure to preserve or more fully develop the contamination issue. This Court finds that Applicant has failed to meet his burden and dismisses this allegation with prejudice.

Allegation: Failure to Preserve for Appellate Review all Argument relating to the Suppression of the DNA Evidence

Applicant alleges counsel was ineffective for failing to preserve all arguments concerning the suppression of the DNA evidence for appellate review. Applicant alleges counsel failed to preserve the voluntariness of the buccal swab conducted in Florida, sufficiency of the probable cause to support the Schmerber order, the denial of the suppression motion by Judge McDonald, and the DNA samples being fruits of the poisonous tree that would not be inevitably discovered.

Counsel failed to properly preserve these issues for appellate review, however, Applicant has failed to show prejudice where these issues would not have been meritorious on appeal if properly preserved.

This Court finds that Applicant has failed to meet his burden in showing that counsel's failure to preserve the issue for appeal resulted in any prejudice. Here, Applicant would have to show that the trial court committed clear error in allowing the DNA evidence from the 1st Buccal swab in at trial. "The standard of review of Fourth Amendment search and seizure issues on appeal is deferential and is limited to determining whether any evidence supports the trial court's finding, with this Court only being able to reverse the ruling of a trial judge where there is clear error. State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013). As a result, if there is any evidence to support the trial judge's ruling as to the validity of a search, with or without a warrant, it will be affirmed on appeal. Id.; State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012)."

A DNA buccal swab constitutes a search and under the Fourth Amendment. "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." State v. Pichardo, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005). It is well established that one of the well-delineated exceptions to the search warrant requirement is a search conducted pursuant to a valid consent given by the proper party. Davis v. United States, 328 U.S. 582, 66 S.Ct. 1256 (1946); Zap v. United States, 328 U.S. 624, 66 S.Ct. 1277 (1946); Palacio v. State, 33 S.C. 506, 511 S.E.2d 62 (1999). When the prosecution seeks to rely upon the consent of the defendant to justify the search, they have the burden of proving that the consent was, in fact, freely and voluntarily given. Scheckcloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973); Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788 (1968); State v. Brannon, 347 S.C. 85, 552 S.E.2d 773 (Ct. App. 2001). Whether a

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defendant voluntarily consents to a search is a question to be determined by the trial judge based on the totality of the circumstances. United States v. Mendenhall, 446 U.S. 544, 558-59, 100 S.Ct. 1870, 1879 (1980); State v. Harris, 277 S.C. 274, 286 S.E.2d 137 (1982); State v. Bailey, 276 S.C. 32, 274 S.E.2d 913 (1981); State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272, 275 (Ct. App. 2008). When the issue of voluntary consent is contested by contradictory testimony, it is an issue of credibility for the trial judge to resolve. State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977); State v. Greene, 330 S.C. 551, 499 S.E.2d 817 (Ct. App. 1997).

Here, given the totality of the circumstances, Judge McDonald properly found the State had proven Collins had freely and voluntarily consented to the taking of the buccal sample at the Miami/Dade County Jail. (R. pp. 649-709; Court's Exhibit 1 (Consent Form); Order Denying Defense Motion to Suppress Buccal Swabs). Schneckloth v. Bustamonte; United States v. Mendenhall. The credible testimony at the suppression hearing showed Collins was not threatened or coerced by Detective Segovia. Schneckloth. No physical punishment or threat of punishment was used to by Segovia to obtain consent. Id. Collins was not misled by Detective Segovia to get him to give the buccal sample. Segovia testified the only thing he informed Collins of was he was being investigated for a series of crimes. Although police were not required to, Collins was fully informed of his right to deny consent to the buccal swab. Id.; State v. Forrester, 334 S.C. 567, 514 S.E.2d 332 (Ct. App. 1999)(though not required, whether defendant was informed and knew he had the right to deny consent is a factor to be considered in determining if the consent was freely and voluntarily made), *reversed on other grounds*, 343 S.C. 637, 541 S.E.2d 837 (2001); Wallace, 269 S.C. 547, 238 S.E.2d 675 (same); State v. Newman, 261 S.C. 352, 200 S.E.2d 82 (1973)(similar). The meeting between Collins and Segovia lasted six (6) minutes. Schneckloth. Collins reviewed and executed a Voluntary Consent to give his buccal sample. (R. p. 719, Court's

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Ex. 2). Collins was informed in the notice that he had the right to refuse consent [Schneckloth]; but, he did not refuse and signed the waiver form.

Therefore, Applicant has failed to show that the failure to preserve the suppression of the 1st Buccal swab at trial would have been a meritorious issue on appeal. This Court finds that Applicant has failed to show any resulting prejudice from counsel's failure to preserve the issue for appeal.

In order for Applicant to show prejudice resulting from the failure to preserve the objection to the issuance of the Schmerber order he would need to show the trial court lacked a substantial basis for concluding probable cause existed. State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009). Applicant would also need to overcome the great deference a reviewing appellate court would give the findings of the trial court. State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000).

When determining the propriety of the issuance of a warrant or court order to conduct a search, the duty of this Court is simply to determine whether the issuing court had a substantial basis for concluding probable cause existed. State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009). In making such a decision, this Court must consider the totality of the circumstances. Jones, 342 S.C. 121, 536 S.E.2d 675 (under this test, a reviewing court considers all circumstances, including status, basis of knowledge, and veracity of informant, in determining whether probable cause existed to issue a search warrant); State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003).

A search warrant or Schmerber Order may issue only upon a finding of probable cause. State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997). The affidavit or testimony at a Schmerber hearing must contain sufficient underlying facts and information upon which the judge may make a determination of probable cause. Dupree, 354 S.C. 676, 583 S.E.2d 437. "[T]he duty

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of a reviewing court is simply to ensure that the magistrate [or circuit court] had a 'substantial basis' for ... conclud[ing] that probable cause existed." Weston, 329 S.C. at 290-91, 494 S.E.2d at 802-03. However, all that is necessary for the issuance of a warrant or Schmerber Order is probable cause. State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009).

Probable cause does not mean absolute certainty. State v. Dean, 282 S.C. 136, 317 S.E.2d 744 (1984). South Carolina has adopted the "totality of the circumstances" test of Illinois v. Gates, in determining whether sufficient probable cause exists to issue a search warrant or Schmerber order. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The task of the issuing court is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit or testimony before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Gates, 462 U.S. at 238 (emphasis added); *accord* Herring, 387 S.C. at 212, 692 S.E.2d at 495-96; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)(adopting Gates test). Probable cause "does not demand any showing that such a belief be correct or more likely true than false." State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004), *quoting* Brown, 460 U.S. at 742. In determining whether a warrant or Schmerber order should issue, judges are concerned with probabilities not certainties. Bowie, 360 S.C. 210, 600 S.E.2d 112, *citing* Sullivan, 267 S.C. at 617, 230 S.E.2d at 624.

Information in support of a search warrant or Schmerber order may be based on hearsay information and need not reflect the direct personal observations of the affiant. Sullivan, 267 S.C. at 614-15, 230 S.E.2d at 623 (search warrant can be supported by information given to the affiant by other officers); *see* Jones v. United States, 362 U.S. 257 (1960); United States v. Ventresca, 380 U.S. 102, 108 (1965)(same); State v. York, 250 S.C. 30, 156 S.E.2d 326 (1967)(same); United

States v. Weiebir, 498 F.2d 346 (4th Cir. 1974).

The decision to issue a search warrant or Schmerber order must include consideration of the veracity of the person supplying the information and the basis of the affiant's knowledge. State v. Adolphe, 314 S.C. 89, 441 S.E.2d 832 (Ct. App. 1994). "The 'experience of a police officer is a factor to be considered in the determination of probable cause.'" Dupree, 319 S.C.at 459, 462 S.E.2d at 282, *citation omitted.* Eyewitnesses and non-confidential informants are often given a higher level of credibility when supplying information to support probable cause to search. *See* State v. Driggers, 322 S.C. 506, 473 S.E.2d 57 (Ct.App.1996).

To determine probable cause exists to obtain nontestimonial identification evidence the State must show there is "(1) probable cause to believe the suspect has committed the crime, (2) a clear indication that relevant material evidence will be found, and (3) the method used to secure it is safe and reliable." State v. Baccus, 367 S.C. 41, 53-54, 625 S.E.2d 216, 222-23 (2006), *quoting* In re Snyder, 308 S.C. 192, 195, 417 S.E.2d 572, 574 (1992); State v. Jenkins, 398 S.C. 215, 224, 727 S.E.2d 761, 766 (Ct. App. 2012). *See also* State v. Register, 308 S.C. 534, 538, 419 S.E.2d 771, 773 (1992). Additional factors to be weighed are the seriousness of the crime and the importance of the evidence to the investigation. Register, 308 S.C. at 538, 419 S.E.2d at 773; State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (2009). The circuit court is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures. Id. "Probable cause may be found somewhere between suspicion and sufficient evidence to convict. Geer, 391 S.C. at 197; State v. Blassingame, 338 S.C. 240, 250, 525 S.E.2d 535, 540 (Ct. App. 1999). "[T]o show that a suspect's DNA is relevant under the second element of Baccus, the State must show there is other DNA evidence in the case to which it can be compared, or in some other manner clearly

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indicate the relevance of the DNA sought." Jenkins, 398 S.C. at 224, 727 S.E.2d at 766.

Investigator Wilson testified to fact there was an *eyewitness* to the murder, *Enrekae Miles*, and the fact that Miles was forced at gunpoint by *two (2) men* to the victim's front porch. She testified to the fact there was a shootout between the victim and the shooter, including shell casings from *two (2) different guns* found at the scene in *two (2) different locations*. She testified to the fact the victim died from the gunshot wounds inflicted by the shooter who forced his way into the victim's house before the exchange of gunfire. The investigator testified to the substance of the 911 call received the night of the murder by Beaufort police in which the 911 caller, who lived near the victim, stated there were *two (2) black males* involved and *one (1)* of them stated before getting in a car and leaving the area that he had been shot in the leg. The investigator testified to the *identification of the car* involved in the crime as being a beige or crème colored *Cadillac Deville* by witnesses in the area of the crime. The investigator testified to the discovery of the *blood drops* at the crime scene, *on the road leading away from the victim's residence*, on the *.40* caliber *pistol* found in the grass where the blood trail ended, and in the *Cadillac Deville* recovered in Jasper County, and how police determined the shooter/perpetrator was wounded during the exchange of gunfire with the victim, from the blood drops, the blood trail, and the blood in the car. *She testified to the fact samples from the above described locations were taken and forwarded to SLED for D.N.A. analysis.* She testified to the fact it was determined through D.N.A. analysis that the *same individual* left the blood drops at the crime scene, on the road leading away from the victim's residence, on the *.40* caliber pistol, and in the back seat of the Cadillac Deville. The investigating officer testified how police identified Antonio Collins, as a suspect in this case, from interviewing a named federal informant, Gussie Goldwire, who was related to Collins, and knew him by Antonio Wilson, and witnessed Collins and Jeremy Murphy arrive at Goldwire's residence

in Jasper the night of the murder in *Murphy's Cadillac* and Collins had *recently been shot in the leg and was being helped from the car* and into the residence. Goldwire also informed police Collins was from Florida. The investigating officer testified how police also interviewed Jeremy Murphy, *the owner of the car* [the Cadillac Deville from which blood stains were found], who informed police Collins had his car the night of the murder. Murphy knew Collins as Antonio from Florida. The investigating officer testified to her further investigation and research and how she identified Collins as the person both the named informant [Goldwire] and Murphy identified and were referring to was in fact Applicant Antonio Eugene Collins by using the names of relatives of Collins whose names Goldwire had provided to the investigator and those same relatives names showed up in Collins' police intelligence reports. The investigator also testified to the fact Collins was determined to be a resident of Florida, as Murphy had informed police, and he was located in the Miami – Dade County jail and that Miami police approached Collins and obtained a buccal swab from him, that swab was sent to SLED, and it matched the DNA of the blood found on the victim's front porch, on the road leading away from the crime scene, on the gun found near the end of the blood trail, and in Murphy's Cadillac Deville. And, she testified to the scars she saw on Collins' legs in photos taken by Miami police which could be attributable to a gunshot wound. (R. pp. 620-41).

This Court finds that Applicant has failed to show that had this issue been properly preserved it would have been meritorious on appeal. As noted by the citations to the record above, the trial court had a substantial basis for finding that probable cause existed to warrant the issuance of the order. Therefore, this Court finds that Applicant has failed to meet his burden in showing that had this issue been preserved it would have been meritorious on appeal, thus failing to show any resulting prejudice. This Court dismisses this allegation with prejudice.

Applicant alleges that counsel was deficient for failing to properly preserve for appellate review whether the DNA samples were fruits of the poisonous tree and would not have been inevitably discovered. To succeed on this issue Applicant would first need to show that the DNA evidence was not properly obtained through the avenues previously examined, that the DNA evidence was in fact fruits of the poisonous tree, and that if properly preserved the issue would have been meritorious on appeal. First, this Court finds that the DNA was properly admitted through the avenues previously examined and thus would not have been a meritorious issue on appeal had it been properly preserved. Second, however, this Court will examine the allegation on its own merits to determine whether Applicant would have been prejudiced had this issue been properly preserved.

This Court previously determined, law enforcement had probable cause to obtain a Schmerber order to obtain Collins' D.N.A. even without the results of the 1st buccal swab based on the information developed by police during the investigation of this murder including the statements from two (2) named individuals, Gussie Goldwire and Jeremy Murphy, which had been corroborated by physical evidence, and their follow up investigation which determined the person Goldwire and Murphy were referring to was Applicant Antonio Eugene Collins. As a result, the 1st buccal swab would have been inevitably discovered. United States v. Whitehorn, 813 F.2d 646 (4th Cir. 1987); State v. Brown, 289 S.C. 58, 347 S.E.2d 882 (1986)(inevitable discovery is an exception to the exclusionary rule); Jenkins, *supra* (remanding to determine if inevitable discovery applied); State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011)(evidence may be admitted "if the government can prove the evidence would have been obtained inevitably.")

Furthermore, the 2nd buccal swab was a lawful search incident to arrest. Maryland v. King, 133 S.Ct. 1958 (2013). When Collins appeared before Judge Dennis for the Schmerber hearing,

he had already been arrested for murder, a dangerous and violent crime. In Maryland v. King, the United States Supreme Court recognized that when police take a buccal swab from a defendant arrested for a dangerous felony, the search is no different than police taking the fingerprints of an arrested subject or taking a booking photograph. It is a lawful search incident to arrest, and individualized suspicion is not necessary. As a result, the taking of the 2nd buccal swab did not violate the Fourth Amendment. Id. Even if the trial court had not issued the Schmerber order, the State would have inevitably gotten Applicant's DNA through buccal swab as a search incident to arrest. Thus, Collins' DNA would have been inevitably discovered. Id. The United States Supreme Court decided Maryland v. King, *supra* on June 3, 2013. Collin's trial did not begin until October 24, 2013. As a result, the State would have inevitable discovered Collins' DNA in any event. Id.; Nix v. Williams, 467 U.S. 431 (1984); United States v. Allen, 159 F.3d 832 (4th Cir. 1998). *See* S.C. Code Ann. Section 23-3-620 (effective January 1, 2009).

Applicant has failed to show any meritorious basis for objecting to the introduction of the DNA evidence as being fruit of the poisonous tree or that the issue would have been meritorious on appeal had it been properly preserved. Therefore, Applicant has failed to meet his burden in proving that he was prejudiced by counsel's failure to preserve the issue for appellate review. This Court dismisses this allegation with prejudice.

Allegation: Failure to Present Evidence Concerning Gunshot Wound

Applicant alleges counsel was deficient for failing to present evidence in support of the defense's position that Applicant did not in fact suffer a gunshot wound. Applicant introduced a number of exhibits relating to this allegation at the evidentiary hearing: State's motion to obtain x-rays of Applicant, subsequent court order for x-rays, defense motion and order to obtain gun wound expert, x-ray report, and the motion and order for the Beaufort County Public Defender's

Office to obtain a wound doctor.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). "[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.' What motions to file and 'whether to put on evidence so as to preserve the final word in closing argument' are also strategic and tactical decisions to be made by trial counsel." Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations omitted). Trial counsel's strategy is reviewed under "an objective standard of reasonableness." Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

At trial, counsel argued in closing that there was a gaping hole in the State's case and that

hole was that there was no evidence of a hole in Applicant's leg. Tr. P. 562, l. 5-8. Counsel continued to argue to the jury that if such evidence existed the State would have presented it during the trial and that the lack of such evidence amounted to reasonable suspicion. Counsel testified that she was unsure whether the State was going to introduce the x-rays of Applicant at trial and felt that they were harmful to the defense. Counsel further testified that she presented the argument to the jury in closing in an effort to introduce reasonable doubt, but that she did not have evidence to introduce during the trial to support the theory.

This Court finds that counsel enumerated a valid trial strategy for not introducing concerning the gunshot wound at trial and instead deciding to argue the issue in her closing argument. Counsel testified that she decided to make this strategic decision in an effort to introduce reasonable doubt to the jury and to avoid potentially detrimental evidence being introduced. Therefore, this Court finds that Applicant has failed to meet his burden in showing any deficiency on the part of counsel or any resulting deficiency. This Court dismisses this allegation with prejudice.

Allegation: Failure of Appellate Counsel to Properly Raise Issues on Appeal

Applicant alleges appellate counsel was deficient for failing to properly raise issues on appeal, resulting in the appeal being dismissed.

Appellate counsel testified at the evidentiary hearing that she did not have a particular reason for failing to cite to the record and that she did not cite to legal authority because she could not find any that supported her positions. Counsel furthered testified that she felt her representation concluded when she filed the brief and that she was not responsible for subsequent replies. Counsel went on to testify about the Appellate Practice Project where she was assigned the case. Following the testimony concerning the Appellate Practice Project, this Court left the record open for

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additional testimony to be elicited from Chief Public Appellate Defender Robert Dudek. Dudek testified generally about the Appellate Practice Project. Dudek testified that the CLE goes over appellate practices and that the attorneys were expected to turn in their appellate filings to be printed. Dudek testified that he was not a supervisor to the attorneys in the project, his office does not make substantial edits to the documents submitted to be printed, and that the attorney was responsible for handling the case. Dudek testified that the appeal was dismissed because the issues were abandoned for failing to cite to legal authority, the issues were not raised in the same manner on appeal as at trial, and that the issues were not properly preserved. Dudek testified that he agreed that the issues were not properly preserved at trial. Dudek testified that he did not recall counsel consulting him concerning potentially filing for rehearing. Dudek testified that since the issues were procedurally barred there would not have been merit in filing for rehearing. Dudek testified that he felt that counsel was deficient in her representation and felt a new trial was the appropriate remedy, however, failed to cite a meritorious issue counsel failed to raise.

First, this Court is highly concerned with the efficacy and practices of the Appellate Practice Project. This Court notes that complex appellate cases are being distributed to attorneys with potentially no experience in area of appellate practice. The lack of oversight in this area is of grave concern to this Court. However, Applicant has failed to show how appellate counsel's deficiency in failing to file an appropriate brief prejudiced Applicant. As indicated by the appellate court in its order dismissed the appeal, none of the issues raised were properly preserved for appellate review. Even if appellate counsel had properly cited to legal authority to support the positions argued the appeal would have been dismissed for lacking in issue preserved for review. Further, Applicant has failed to elicit testimony from appellate counsel or Robert Dudek as to what issues were properly preserved for appellate review that could have been meritorious if raised.

Applicant speculates that such issues existed and if raised would have been meritorious on direct appeal. This Court finds that Applicant has failed to meet his burden under *Strickland* and *Cronic*. This Court finds that Applicant has failed to show prejudice resulting from appellate counsel's deficiency or such occasion to find presumed prejudice under *Cronic*. This Court therefore dismisses this allegation with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 20th day of May, 2020.

JENNIFER MCCOY
Presiding Judge
Fourteenth Judicial Circuit

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2017-CP-07-1493
Antonio Collins, 357630, Applicant, v. State of South Carolina, Respondent,	)	MOTION PURSUANT TO RULE 59(a) & (e), SCRCP

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on July 17, 2017. Tricia A. Blanchette, Esquire, was substituted in as Applicant's counsel via written Order issued on August 31, 2017. The State filed a Return and Motion for a More Definite Statement and served it on prior appointed counsel in October 2017. On July 25, 2018, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief.

On August 26, 2019, an evidentiary hearing was convened at the Beaufort County Courthouse in front of the Honorable Jennifer B. McCoy. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Benjamin Limbaugh, Esquire. Applicant took the stand and called the following witnesses: Trasi Campbell, Esquire, Arie Bax, Esquire, and Rita Metts, Esquire.[1] Applicant introduced fourteen exhibits, and this Court marked one exhibit. Respondent did not call any witnesses or mark any exhibits. This Court also had before her a copy of the records stemming from Applicant's underlying trial and appeal. At the close of the hearing, the record was left open to obtain the testimony of Robert M. Dudek, Esquire.

[1] As was addressed at the outset of the evidentiary hearing, Attorney Metts was unavailable to appear in Beaufort due to a family medical situation, so the Court accepted her telephonic testimony.

On September 26, 2019, the matter was reconvened at the Charleston County Courthouse to obtain the testimony of Robert M. Dudek, Esquire.[2] Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Benjamin Limbaugh, Esquire. At the close of the evidentiary hearing, the Court allowed time to obtain the evidentiary hearing transcripts.

Upon receipt and review of the transcripts, the Court requested proposed orders from both parties, which were submitted on or about February 10, 2020. On May 20, 2020, the Honorable Jennifer McCoy issued an Order of Dismissal, which was filed on May 27, 2020. On June 2, 2020, Applicant's counsel received a copy of the signed and filed Order in the mail from the Beaufort County Clerk of Court, from which this Motion timely follows.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised and that the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal ("Order"). As noted in the Order, Applicant raised the following allegations by way of an Amendment filed on July 25, 2018:

> In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial and appeal. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

[2] The Court agreed to accept the telephonic testimony of Robert M. Dudek, Esquire.

1. Ineffective assistance of trial and appellate counsel for matters related to the DNA evidence, specifically, but not limited to the following:

    a. Pursuing but not completely developing or preserving a contamination argument.

    b. Failure to preserve all arguments related to the DNA for appellate review by failing to make a motion *in limine* for suppression, object to the admission of the DNA evidence, and properly renew prior motions and objections.

    c. **Failure to properly argue at pre-trial, trial or appeal the following:**

        i. Under the totality of the circumstances, to include but not limited to police deception and failure to contact Applicant's appointed counsel, suppression was required since voluntary consent was not obtained for Applicant's swab in Florida.

        ii. Probable cause did not exist to support the Schmerber Order issued by the Honorable R. Markley Dennis and later re-examined by the Honorable Stephanie McDonald.

        iii. Suppression of the evidence should have been granted by the Honorable Stephanie McDonald.

        iv. Applicant's DNA samples were obtained as fruit of the poisonous tree and were not a result of inevitable discovery.

2. Ineffective assistance of trial counsel for failure to present available evidence in support of the defense argument that Applicant did not suffer a gunshot wound. Transcript p. 562, lns. 5-20.

3. Ineffective assistance of appellate counsel for failure to properly raise issues with citation to legal authority and reply to erroneous information in the State's Brief.

4. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

As is referenced in the Order, Applicant, through counsel, moved to amend at the evidentiary hearing to include analysis of Applicant's claims under the Strickland v. Washington, 466 U.S. 668 (1984) standard and under United States v. Cronic, 466 U.S. 648 (1984).

Applicant submits that the Order fails to address the entirety of the allegations set forth in the Amendment, raised at the evidentiary hearing, and addressed in Applicant's proposed Order Granting Post Conviction Relief.[3] Specifically, the majority of the Order addresses the merits of the improperly preserved issues to determine if Applicant suffered prejudice on appeal, but the Order fails to address the allegations made regarding the representation offered by trial counsel in addressing the matters related to the DNA evidence (Issues 1(c)i-iv). Also, on the issue of the representation offered on the contamination argument and DNA matters as a whole, the Order fails to address the highly prejudicial utilization of Dr. Meehan, as a defense expert, which is address in Applicant's proposed Order and incorporated herein.

Applicant submits that the Order omits necessary discussion and ruling on the issues raised, testimony elicited and evidence offered to show that trial counsel not only deficiently preserved arguments and issues related to the DNA evidence, but counsel also deficiently argued and addressed the matters related to the DNA evidence pre-trial and at trial.[4] As is addressed in Applicant's Amendment and proposed Order, this would include such matters as failing to properly address the totality of the circumstances surrounding the consent obtained for the buccal swab and the probable cause for the subsequent Order. In sum, Applicant submits that the court has dissected each appellate ground that was not properly preserved at trial or presented on

[3] Applicant hereby attaches and incorporates Applicant's proposed Order for purposes of reference and argument. Applicant does not concede any issues that are conceded in Applicant's proposed Order as such concessions were made in appropriately drafting the proposed Order for the Court's review.

[4] Applicant is highly concerned and is utilizing this Motion to preserve for appellate review the issues raised in their entirety under Issue 1 in the Amendment and as addressed at the hearing and in the Order Granting Post Conviction Relief. Since the Order of Dismissal only appears to address trial counsel's failure to preserve the matters related to the DNA evidence and the merits of the unpreserved arguments on appeal, and it does not address counsel's overall performance in handling the matters related to the DNA evidence, Applicant will be required to raise issues on appeal that are not properly ruled upon in the Order of Dismissal.

appeal and has denied relief due to the lack of merit of such issues on appeal. In doing so, the Court has ignored the admissions by counsel of the actions that were not taken to further argue such issues and properly present such issues at the pre-trial and trial levels. Additionally, the Court has chosen to not address the highly prejudicial testimony of Dr. Meehan that resulted in counsel's candid admission as to why he was not even mentioned in closing argument.

Furthermore, Applicant asks the Court to reexamine the standard Strickland analysis utilized to deny relief in a case that the State even conceded was highly unusual. Here, Applicant has established a systematic failure that needs to be properly analyzed under Cronic whereby prejudice would be presumed. Under the current record, Applicant is constrained by both the admitted errors of trial counsel and ruled upon errors of appellant counsel to recreate a record on which appellate relief would be granted; therefore, a Cronic analysis was agreed upon by the Court and is warranted. As the Chief of Appellate Defense concluded, a new trial should be granted, and it appears the Court has chosen to not address the deficiencies in their entirety and excuse those addressed by finding Applicant failed to develop meritorious issues for appeal. Applicant would beseech the Court to reconsider the arguments set forth under Cronic in the proposed Order Granting Post Conviction Relief and find that the both trial and appellate counsel failed to ensure a meaningful adversarial process. As a result, Applicant would urge the Court to find that relief should be granted under Cronic and also as a matter of fundamental fairness. Additionally, Applicant would ask the Court to reconsider the findings in the standing Order of Dismissal and/or revise the Order to ensure that all issues are properly ruled upon to ensure that Applicant is afforded proper appellate review.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, including the evidentiary hearing transcripts, reconsider the standing Order of Dismissal, reconsider Applicant's proposed Order Granting Post Conviction Relief, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCP.

I so move,

Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

June 10, 2020

STATE OF SOUTH CAROLINA) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Antonio Collins, 357630,) Applicant,) v.)	2017-CP-07-1493
State of South Carolina,) Respondent.)	ORDER GRANTING POST CONVICITON RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on July 17, 2017. Tricia A. Blanchette, Esquire, was substituted in as Applicant's counsel via written Order issued on August 31, 2017. The State filed a Return and Motion for a More Definite Statement and served it on prior appointed counsel in October 2017. On July 25, 2018, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief, which stated the following:

> In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial and appeal. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:
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> a. Pursuing but not completely developing or preserving a contamination argument.
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> b. Failure to preserve all arguments related to the DNA for appellate review by failing to make a motion *in limine* for suppression, object to the admission of the DNA evidence, and properly renew prior motions and objections.
>
> c. Failure to properly argue at pre-trial, trial or appeal the following:
>
> i. Under the totality of the circumstances, to include but not limited to police deception and failure to contact Applicant's appointed counsel, suppression was required since voluntary consent was not obtained for Applicant's swab in Florida.

ii. Probable cause did not exist to support the Schmerber Order issued by the Honorable R. Markley Dennis and later re-examined by the Honorable Stephanie McDonald.

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4. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On August 26, 2019, an evidentiary hearing was convened at the Beaufort County Courthouse in front of the Honorable Jennifer B. McCoy. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Benjamin Limbaugh, Esquire. Applicant took the stand and called the following witnesses: Trasi Campbell, Esquire, Arie Bax, Esquire, and Rita Metts, Esquire.[1] Applicant introduced fourteen exhibits, and this Court marked one exhibit. Respondent did not call any witnesses or mark any exhibits. This Court also had before her a copy of the records stemming from Applicant's underlying trial and appeal. At the close of the hearing, the record was left open to obtain the testimony of Robert M. Dudek, Esquire.

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GENERAL SESSIONS PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Beaufort County Clerk of Court. During the December 2011 term of the Beaufort County Grand Jury, Applicant was indicted for murder (2011-GS-07-02279), possession of a weapon during the commission of a violent crime (2011-GS-07-02403), burglary, first degree (2011-GS-07-02378), and kidnapping (2011-GS-07-2379).

On October 21, 2013, Applicant proceeded to trial in front of the Honorable J. Ernest Kinard, Jr. and a jury. Applicant was represented by Trasi Campbell, Esquire, and Arie Bax, Esquire. The State was represented by Hunter Swanson, Assistant Solicitor. On October 24, 2013, the jury returned a guilty verdict for murder, burglary first, and possession of a weapon during the commission of a violent crime, and a not guilty verdict on the charge of kidnapping. The Honorable J. Ernest Kinard, Jr. sentenced Applicant to concurrent terms of thirty-three years for murder and burglary, first degree and a concurrent term of five years for the weapon charge.

A timely notice of appeal was filed on Applicant's behalf and was perfected Rita Metts, Esquire, in conjunction with Robert M. Dudek, Chief Appellate Defender. On April 5, 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v.

[2] This Court agreed to accept the telephonic testimony of Robert M. Dudek, Esquire.

Collins, 2017-UP-151 (S.C. Ct. App. filed April 5, 2017). The Remittitur was issued on April 21, 2017.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). Where an application for post conviction relief 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." Id. 466 U.S. at 686; see Butler v. State, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. Bell v. State, 321 S.C. 238 (1996); see also Cherry v. State, 300 S.C. 238 (1989); Rule 71.1(e), SCRCP.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18.

In analyzing a claim of ineffective assistance of appellate counsel, the South Carolina Supreme Court has held that the lower court must apply the two prong Strickland test just as it

would be to a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In Bennett v. State, 383 S.C. 303,309, 680 S.E.2d 273, 277 (2009), the South Carolina Supreme Court explained that the lower court should "ask 1) whether appellate counsel's performance was deficient, and 2) whether Petitioner was prejudiced by appellate counsel's deficient performance."

A structural defect or systemic failure of the adversarial system is one that infects "the framework within which the trial proceeds" rather than an error in the process of the trial itself; a structural defect contaminates the proceedings from beginning to end. Arizona v. Fulminante, 499 U.S. 279, 309-310, 111 S.Ct. 1246, 1264-1265 (1991). In United States v. Cronic, the Supreme Court recognizes that systemic failure of the adversarial system occurs when policies and procedures effectively deprive an accused of counsel altogether. 466 U.S. 648, 104 S.Ct. 2039 (1984). A systemic failure occurs where (1) "the accused is denied counsel at a critical stage of the trial", (2) "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing", or (3) "the surrounding circumstances made it so unlikely that any lawyer could provide effective assistance...." Id. at 659-61.

When a systemic failure occurs in any of the three ways mentioned in Cronic, prejudice is presumed. First, when a defendant is "denied counsel at a critical stage," prejudice is presumed. United States v. Cronic, 466 U.S. 648, 659 (1984). Second, prejudice is presumed when "the defendant was in effect denied any meaningful assistance at all." Nielson v. Hopkins, 58 F.3d 1331, 1335 (8th Cir. 1995). Third, where the denial of resources is such that "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice without inquiry into the actual conduct" attaches. Cronic at 659-660, 104 S.Ct. 2047.

I. Allegations

As a threshold matter, this Court finds credible the testimony of the witnesses presented at the evidentiary hearing, which will be addressed as the testimony relates to each issue discussed below.

Regarding the issues raised, this Court finds the allegations listed above from the Amendment and raised at the evidentiary hearings are best addressed categorically as issues related to the handling of matters involving the DNA findings and evidence, the handling of matters involving gunshot wound evidence, and issues related to the representation afforded by appellate counsel. In addressing the issues categorically, the assistance rendered by appellate counsel will also be addressed.

A. DNA & Appellate Counsel Issue

1. Information Contained in the Record

Around 9:00 p.m. on June 22, 2009, Ronald Coleman's home at Seabrook Road was forcibly entered, and Ronald Coleman ("Coleman") was shot and killed. About eight hours later, Enrique Miles ("Miles") came forward. As he subsequently testified to at trial, he told law enforcement that he was en route from his home on Seabrook Road to Miles' home around 7:30 p.m. when he was approached by two black males and one put a gun to his head and forced him onto Coleman's porch. Trial pp. 185-6. The gunman kicked in the front door that was nailed shut, shots were fired and Miles ran. Trial pp. 187. He told law enforcement he thought he had the shooter's blood on his shirt, but it turned out to be his own blood. Trial pp. 210-211. He admitted his cousin (Coleman) sold marijuana and did not have a job, and he told law enforcement he thought Coleman's murder was a hit resulting from a murder in Atlanta. Trial pp. 177, 209.

When law enforcement responded to the scene, Officer Christine Wilson, lead investigator, took swabs from dried blood stains on the porch. Trial pp. 76-77. About twenty fours later, Officer Hiers responded to a call from Miles regarding blood in the roadway. Trial pp. 60, 199, 268. He met with Miles and followed a blood trail that led to the recovery of a gun. Trial pp. 62-63. He took swabs from the blood in the roadway and the gun. Trial p. 68, 275-76. Officer Lauver testified about bringing out a cadaver dog to follow the blood trail on an unknown later date. Trial pp. 92-95.

Miles told officers he recalled seeing a Cadillac Sedan Deville "pacing up and down on Seabrook Road." Trial p. 191, lns. 5-9. He said it was a 1993-1995 model, and it could have been dark in color. Trial p. 191. Officer Wilson testified that the case had turned cold, when she got information from Hampton County Sheriff's Office that resulted in her locating a 1995 Cadillac Sedan Deville, tan in color, registered to Jeremy Murphy in Jasper County. Trial p. 330. The vehicle was seized and a search warrant obtained for it. Trial p. 331-2. Officer Donahue testified that he took swabs from stains in the Cadillac. Trial pp. 101-102. At that time, there was not a suspect to run the DNA against. Trial p. 329.

On April 27, 2010, an interview was conducted with Gussie Goldwire during which he provided the name of his cousin Tonio Wilson in Florida. Trial pp. 338-339. As a result, Officer Wilson developed Antonio Eugene Wilson as a suspect and located him in Miami, Florida. Trial pp. 339-40. At trial, she stated that authorities in Florida assisted in obtaining a DNA sample from him, Applicant was arrested and brought to South Carolina and a DNA sample was taken in South Carolina. Trial p. 340.

On March 16, 2011, a report was generated by Detective J. Segovia of Miami Dade Police Department. The one page report details Detective Segovia's being contacted by Jeff

Purdy of the Beaufort County Sheriff's Department on March 14, 2011 and a meeting with Applicant, along with Detective Jonathan Sabel, at the Miami Dade County Department of Corrections Training and Treatment Center on March 15, 2011. The report states that the meeting began at 4:24 p.m., and Applicant signed a Miami Dade Police Department Consent to Provide DNA Specimen for Laboratory Analysis Form at 4:30 p.m.

On March 25, 2011, a DNA Analysis report was issued by Jennifer L. Clayton ("Clayton"), Forensic Scientist with the State Law Enforcement Division. In sum, Clayton reported that the DNA profile from Applicant's buccal swab (item 13) matched the DNA profile developed from the swabs taken from Seabrook Road, the front porch, and underneath the backseat and rear console vent of the Cadillac (Item 1, 6, 8, 10). She also reported the partial DNA profile developed from the swab (Item 2) taken from the gun matched the DNA profile of Antonio Collins.

On March 31, 2011, Officer Wilson travelled to Miami and met with Applicant. Applicant. At the outset, Applicant was provided a Miranda Form, which Office Wilson completed as "refused to sign." The recording reflects statements being made and questions presented to Applicant for approximately eight minutes before the form is completed. Thereafter, Officer Wilson informs Applicant of the evidence she has against him and offers him the opportunity to tell her the death was an accident and not intentional (Time 10:47). Therafter, Applicant informs Officer Wilson he is done (Time 15:48). At the 22 minute mark, Officer Wilson asks Applicant if he is a monster. From there, she continues on and shares DNA results from the swab obtained by Segovia at the 27 minute mark.

On November 29, 2011, the State filed a Notice of Motion and Order requesting Applicant submit to the taking of buccal swabs for DNA purposes. The Motion contained forty-three listed items, an Affidavit of Christine Wilson and proposed orders. Beginning at item thirty-five, the motion detailed that Applicant was arrested in Miami Dade County on unrelated charges when a consent sample was obtained. Beginning at item thirty-seven, in pertinent part, the motion stated:

> 37. That the Defendant's DNA sample matched the blood samples taken from Murphy's car.
>
> 38. That the Defendant's DNA sample matched the blood samples taken from the crime scene in Seabrook.
>
> 40. That another DNA sample is needed to confirm the Defendant is the person whose DNA was on the swab from Miami-Dade County.
>
> 41. That such confirmation will aid in further substantiating or eliminating the Defendant as the perpetrator of this crime.

On January 25, 2012, a Schmerber hearing was conducted in front of the Honorable R. Markley Dennis at the Beaufort County Courthouse. Applicant was represented by Trasi Campbell, Public Defender. The State was represented by Meredith Bannon, Assistant Solicitor.

At the beginning of the hearing, Ms. Bannon explained that the State was "asking for a second sample so we can assure that the person who gave the sample in Florida, that matched, is Mr. Collins who is actually here and that it does in fact match the DNA left at the crime scene." Motion p. 4, lns. 5-10. She further explained: "Additionally, the State is seeking this Schmerber Motion in anticipation of a Motion in limine at the murder trial so that we can argue discovery by an alternate source, to bring the DNA results out." Motion p. 5, lns. 12-16. The State argued that the voluntariness or suppression of the consent sample is an "issue for later in time," since they were just there to address probable cause for the Schmerber Motion. Motion pp. 4-5.

Ms. Campbell argued that the State had not disclosed the manner in which Applicant was tricked to give a sample in Florida and categorized it as "flagrant police misconduct" in violation of the Fourth Amendment. In response, the court asked the State if Florida was put aside if there was "other probable cause other than the DNA?" Motion p. 7, lns. 19-21.

Since the defense objected to an affidavit, the State called Officer Wilson. Motion p. 9. She testified about the interview with Goldwire where he provided Applicant's name, but she admitted it was not recorded. She also testified that Applicant's DNA sample was obtained in Florida, and the lab report found that Applicant was a match. Motion pp. 16-17.

After hearing argument from both parties, the court found:

> Clearly probable cause has been established, clearly the blood that they follow – the potential that he was the person, because of Gussie's testimony, who was the one being removed from the car with the gunshot wound. I think we can eliminate that situation quickly. Very quickly.

Motion p. 33, ln. 20 – p. 34, ln. 1. Thereafter, the court granted the State's motion. Motion p. 34.

Following the court's ruling, Ms. Campbell questioned whether the Order needed to include that "there is no limitation based on that ruling on the full argument that we would need to make at trial?" Motion p. 34, lns. 17-22. In response, the court stated he was not dealing with "that" and he did not have to deal with "that." He went on to reference the "fruit of a poisonous tree" and it being challengeable but not from a probable cause standpoint. Motion pp. 34-35.

On January 25, 2012, a written Order was issued by the Honorable R. Markley Dennis, which was filed on February 9, 2012.

On May 21, 2012, Jennifer Clayton (SLED) issued a supplemental DNA analysis report. The Supplemental Report had an additional item listed as buccal swabs from Antonio Collins (Item 14). The report found:

> The DNA profile developed from items 1, 6, 8, and 10 matches the DNA profile of Antonio Collins. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 4.9 quadrillion.
>
> The partial DNA profile developed from item 2 also matches the DNA profile of Antonio Collins.

On September 19, 2012, a suppression hearing was conducted in front of the Honorable Stephanie McDonald at the Beaufort County Courthouse. Applicant was present and represented by Trasi Campbell, Public Defender. The State was represented by Meredith Bannon, Assistant Solicitor. On September 19, 2012, the State filed a written Response, with exhibits.

At the beginning of the hearing, Ms. Campbell explained that Applicant was moving to suppress the DNA evidence obtained in Miami and moving to suppress the subsequent collection of his DNA pursuant to the order of Judge Dennis. In response, the court stated:

> Well, I don't know what was argued before Judge Dennis exactly. It's my understanding, from what you all shared with me before the hearing, is that he did not address the issue of the Miami DNA; that, you know, that was for another time. And so, if the issue of Miami DNA taints the probable cause that he found as Prong I under the Schmerber analysis, I believe we would get into that.
>
> I don't think that standing alone, the defense is challenging the Schmerber finding, but to the extent that they are challenging, though, Judge Dennis' finding, based on what may come out today that didn't come out, I'm going to find that they've preserved everything that they need to preserve, and we will go into that to the extent that we need to.

Suppression p. 6, ln. 18 – p. 7, ln. 8.

When called to the stand, Sergeant Purdy testified about processing the scene and finding the car and Applicant due to information obtained from Goldwire. Suppression pp. 8-9. He further testified about receiving the swab from Miami via Fed Ex. Suppression p. 10. After turning it into evidence, he explained: "A request was put in to have it processed to compare it with the DNA from the scene, from the vehicle, and the from the gun that was used. And the DNA came back as a match." Suppression p. 11, lns. 3-7.

Thereafter, Detective Segovia took the stand and explained that he was a homicide investigator with Miami Dade Police Department. Suppression p. 19. He recalled being contacted by Detective Purdy on March 14, 2011 and meeting with Applicant on March 15, 2011 with his partner at the correctional facility. Suppression p. 21. When asked what Applicant was being held on, he stated: "It was a burglary with a battery; a robbery, I believe; and something domestic related." Suppression p. 21, lns. 6-9. After being asked to describe his meeting with Applicant, the following testimony was elicited:

> Answer: They brought us out. They set us in a room at the correctional facility. I introduced myself to him. I advised Mr. Collins that there was an investigation going on, that that we need permission to obtain his DNA.
>
> Question: And what did Mr. Collins say?
>
> Answer: He asked me who I work for. Again, I told him I worked for Miami-Dade Police. He tried to look at my I.D. at that time. I don't know if he was able to see it, said homicide or not. He kind of hesitated for second; thought about it; and then I presented him with a consent form to obtain his DNA.

Suppression p. 21, ln. 16 – p. 22, ln. 1.

After admitting that Applicant asked him why he wanted his DNA swab, he explained what he told Applicant, as follows:

> I told him we were investigating a series of crimes. And I was never specific. And then he told me that he had been incarcerated for however long he was in Dade County Jail. And I told him, Well, I guess you have nothing to worry about, then.
>
> And that's when he read the whole form, and he provided his DNA.

Suppression p. 24, lns. 1-7.

After requesting a copy of Segovia's report, Applicant's counsel asked whether Applicant was given his Miranda rights, and Detective Segovia admitted he was not. Suppression pp. 27-28. He testified that there was not any audio or video that was recorded. App. p. 31. He also

testified that he never mentioned anything "about a rape or clearing anybody's name." Suppression p. 33, lns. 7-14. After admitting that Applicant was inquisitive, he explained: "He asked me what I was investigating, who I worked for, and what I was investigating. And I told him I was investigating a series of crimes." Suppression p. 36, lns. 1-4.

Thereafter, Officer Wilson took the stand and detailed how she came up with Applicant's name in July 2010. Suppression pp. 39-41. In March of 2011, she went to Miami to interview Applicant.[3] Suppression p. 41. After being asked if she Mirandized Applicant, she responded: "I did, I Mirandized Mr. Collins. We typically use a form. He wouldn't sign it, but he did not refuse to answer questions. So he was read his Miranda warning." Suppression p. 42, lns. 2-4. She

Then, she explained that she returned to South Carolina and began working on a murder warrant for Applicant. Suppression p. 42. Regarding the DNA evidence, Officer Wilson testified that Applicant's swab matched the items and was the same results as the Miami swab, but she did not know if the swabs were compared. Suppression p. 43-44. She explained that she would have moved onto another suspect if Applicant's DNA had not matched. Suppression p. 51, lns. 14-18.

Prior to Applicant taking the stand, the court addressed counsel's arguments under the Fifth and Sixth Amendment. The court stated:

> DNA evidence and the taking of a buccal swab, even the taking of blood under Schmerber itself is non-testimonial. The Fifth Amendment had no applicability. There's no adversarial proceeding that had attached for purposes of the Sixth Amendment. The Sixth Amendment is offense specific. So the fact that he was in

[3] Applicant, through counsel, received a single interrogation video from trial counsel. At the evidentiary hearing, Applicant asserted that there was more interaction on that date in Miami that should have been recorded. Subject to the Discovery Order issued by the Honorable R. Ferrell Cothran, Jr., on August 28, 2018, Applicant's counsel issued a subpoena to the Beaufort County Solicitor's Office on October 1, 2018 for Applicant's discoverable file, to include copies of all audio and video recordings. Upon receiving a response that the file did not contain any audio or video recordings, Applicant's counsel contacted and issued a subpoena to the Beaufort County Sheriff's Department for the same items on November 13, 2018. In response, counsel received a cd, which contained one interview of Applicant by Officer Wilson, which was introduced at the evidentiary hearing and reviewed by this Court.

> the Miami Dade Detention Center on something else doesn't protect him on this Beaufort County homicide.
>
> So, I say that in light of the – that may help you table your questions to limit him as much as possible.
>
> To me, this is a Fourth Amendment issue and a voluntariness issue. You're certainly welcome to put anything you want to on regarding the Sixth Amendment, but I think that law is really clear under Pennsylvania v. Muniz, State v. Klutt, and just a whole litany of cases.
>
> So, before you put him up there and start asking him questions, just keep that in mind. Okay?

Suppression p. 53, ln. 9 – p. 54, ln. 1.

When Applicant took the stand, he recalled the meeting with Segovia, and Segovia telling him he needed his DNA to exclude him from some rapes in North Dade County. Suppression pp. 55-56. He recalled telling Segovia that he would agree to give it because he had been sitting in jail during the time the rapes supposedly occurred, and he also received assurance from Segovia in that regard. Suppression pp. 56-57. He detailed how Segovia told him he would get a court order if he did not sign and how he felt threatened. Suppression pp. 56-57.

Following Applicant's testimony, defense counsel offered brief argument on the Fourth Amendment. Suppression pp. 62-63. In response, the State made an argument and submitted a written Response. Suppression pp. 63-64. Thereafter, the court made her ruling and concluded: "So I do find that the Miami Dade swab and the consent given was voluntary. However, even if it were not voluntary, it would have, inevitably, been discovered through the independent source of an order being issued under Schmerber for the defendant's DNA." Suppression p. 66, lns. 17-21. The court then addressed her reasons for agreeing with the Schmerber ruling. Suppression pp. 66-68. On October 9, 2012, the Honorable Stephanie P. McDonald issued an Order Denying Defense Motion to Suppress Buccal Swabs.

On October 21, 2013, Applicant was called to trial in front of the Honorable J. Ernest Kinard, Jr., and a jury. Applicant was present and represented by Trasi Campbell, Public Defender, and Arie Bax, Assistant Public Defender. The State was represented by Hunter Swanson, Assistant Solicitor.

Prior to the start of the trial, Applicant moved to suppress the DNA evidence due to contamination. Trial p. 50. After hearing testimony, the court found that "they did a good job as most law enforcement does." Trial p. 104, lns. 10-11. He also concluded that the defense could argue to the jury, but the evidence was coming in. Trial p. 104, lns. 19-21. Thereafter, there was no mention of renewing the grounds raised pre-trial for suppression of the DNA evidence.

During opening argument, the State informed the jury that Applicant left his mark, his DNA, all over the crime scene. Trial p. 130. During the defense opening argument, counsel argued that the crime occurred at a trap house, and it was a personal crime about drugs. Trial p. 133. Counsel also argued that the DNA findings are not reliable since the evidence was mishandled and contaminated. Trial p. 133. Counsel further argued that no DNA was taken from Gussie Goldwire and that the sketch looked like Goldwire. Trial p. 136.

Mid-trial, defense counsel requested additional funding for a DNA expert to cover travel and testimony. Trial p. 311. Counsel informed the court that she was addressing the matter "late" because she was just getting information from SLED in compliance with her subpoena. Trial p. 311, lns. 9-16.

During the trial testimony of Jennifer Clayton, Forensic Scientist SLED, she explained what she tested and verified that she found no indication of contamination. Trial p. 451, 464. While she was explaining her findings, defense counsel entered an objection to the mathematical equations being used and the jury was sent out. Trial p. 453. After hearing counsel's argument,

the court denied the objection. Trial pp. 456-7. Clayton resumed her testimony, and the swabs from Applicant were entered without objection. Trial p. 463.

Following Clayton's testimony and the state resting, the defense called Dr. Brian Meehan, who was qualified as an expert in DNA and human identification.[4] Trial pp. 506-7. Dr. Meehan testified about evidence degradation and contamination possibilities. Trial pp. 509-11. In closing, the State pointed out that the defense did not even mention Dr. Meehan in their closing argument. Trial p. 573, lns. 12-22.

After the jury returned a verdict of not guilty on the kidnapping charge involving Miles and guilty on all other charges, Applicant was sentenced to a term of thirty-three years, with five years concurrent. Trial pp. 603, 609-10.

A direct appeal was timely filed. M. Rita Metts, Esquire, with the assistance of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, submitted a Brief and Record on Appeal. By way of the twelve page Brief, the following issues were presented:

1. The trial judge allowed the admission of improperly obtained DNA and/or blood evidence and erred in denying the Appellant's motion to exclude the improperly obtained DNA and/or blood evidence.

2. The trial court committed reversible error when it admitted DNA and/or blood evidence, despite conflicting testimony which demonstrated improper sample collection and a tainted crime scene, which demonstrated probable tampering or altering of the samples.

3. There was no probable cause for the arrest of appellant.

As argued in Brief of Respondent, Applicant's Brief failed to cite to any legal authority in the argument on the first two issues.

In the forty-five page Brief of Respondent, the following issues were argued:

[4] The State conducted a vigorous voir dire and cross-examination of Dr. Meehan regarding his involvement in the "Duke lacrosse" case.

1. The lower court did not err in admitting the DNA evidence from Collins' buccal samples because Collins voluntarily consented to the giving of the DNA sample in Florida, and the second buccal sample was obtained pursuant to a lawful Schmerber order.

2. The trial judge did not err in admitting the DNA evidence because the allegation of possible cross-contamination went to the weight of the evidence not its admissibility.

3. Collins was properly indicted, tried and convicted for these crimes based on evidence presented to the jury in his trial; it is therefore irrelevant whether there was probable cause to arrest him for this charge, because his person is not fruit of the poisonous tree; regardless, there was probable cause to arrest Collins.

At the outset of the State's argument, it was noted that Applicant did not properly preserve the issue of the admission of the DNA evidence since no objection was made at trial nor was the issue properly presented on appeal due to the absence of citation to legal authority. State's Brief p. 15. Nevertheless, the State addressed the voluntary consent, Schmerber order, pre-trial suppression hearing and the admission of the evidence at trial. Of note, the State addressed the circumstance that Applicant had appointed counsel on his pending Florida charges when the consent sample was obtained and the circumstance of Applicant being misled by Segovia. Brief pp. 17-18.

In affirming Applicant's conviction and sentence, the South Carolina Court of Appeals affirmed under Rule 220(b) citing to legal authority on the following: an issue is deemed abandoned and will not be considered on appeal if the brief does not cite to authority; an issue must be raised and ruled upon by the lower court to be preserved for appeal; an *in limine* ruling is not final and does not preserve the issue for appeal; and a contemporaneous objection must be made at the time evidence is presented to properly preserve the issue for appeal. State v. Antonio Collins, Unpub. Op. No. 2017-UP-151 (S.C. Ct. App. filed April 5, 2017).

2. Findings

This Court finds that Applicant has established that both trial and appellate counsel provided assistance that require a new trial under Strickland v. Washington, 466 U.S. 668 (1984) and under United States v. Cronic, 466 U.S. 1984 (1984).

By way of the Amendment, Applicant alleged:

> Ineffective assistance of trial and appellate counsel for matters related to the DNA evidence, specifically, but not limited to the following:
>
> a. Pursuing but not completely developing or preserving a contamination argument.
>
> b. Failure to preserve all arguments related to the DNA for appellate review by failing to make a motion *in limine* for suppression, object to the admission of the DNA evidence, and properly renew prior motions and objections.
>
> c. Failure to properly argue at pre-trial, trial or appeal the following:
>
> i. Under the totality of the circumstances, to include but not limited to police deception and failure to contact Applicant's appointed counsel, suppression was required since voluntary consent was not obtained for Applicant's swab in Florida.
>
> ii. Probable cause did not exist to support the Schmerber Order issued by the Honorable R. Markley Dennis and later re-examined by the Honorable Stephanie McDonald.
>
> iii. Suppression of the evidence should have been granted by the Honorable Stephanie McDonald.
>
> iv. Applicant's DNA samples were obtained as fruit of the poisonous tree and were not a result of inevitable discovery.

As a result of the record and testimony offered at the evidentiary hearing, this Court finds that trial counsel was ineffective for failing to properly preserve the arguments made to exclude and/or suppress the DNA evidence when counsel did not obtain necessary rulings from the trial

judge, failed to understand that an *in limine* ruling was not a final ruling, and failed to make a proper contemporaneous objection when the evidence was offered at trial. Applicant has also raised concerns and elicited testimony regarding the quality and quantity of arguments made pre-trial and for suppression. This Court finds persuasive that there were additional matters that counsel could have addressed in attempting to suppress the DNA evidence, but this Court is primarily concerned that Applicant has clearly shown that trial counsel was deficient for failing to ensure that the arguments related to the suppression and/or exclusion of the DNA evidence were properly preserved for appellate review.

As discussed above, the State filed a Notice of Motion and Order requesting Applicant submit to taking buccal swabs for DNA purposes on November 29, 2011. A hearing was conducted on the State's Motion on January 25, 2012 in front of the Honorable R. Markley Dennis. The contents of that hearing are summarized above and the transcript has been reviewed and relied upon by this Court. Notably, at the conclusion of that hearing, Ms. Campbell questioned whether the Order needed to include that "there is no limitation based on that ruling on the full argument that we would need to make at trial?" Motion p. 34, lns. 17-22. In response, the court stated he was not dealing with "that" and he did not have to deal with "that." He went on to reference the "fruit of a poisonous tree" and it being challengeable but not from a probable cause standpoint. Motion pp. 34-35. As a result of the court's ruling at that hearing, a Schmerber Order was issued by the Honorable R. Markley Dennis, Jr. on February 9, 2012, which did not address counsel's request.[5]

[5] This Court finds that the Order did not need to include such a findings as Judge Dennis noted he was simply ruling on probable cause for the taking of a swab not the full gamete of arguments that could be made at trial. Unfortunately, for Applicant counsel chose to forego making such arguments and/or preserving arguments made prior to trial at trial despite raising a concern about it to Judge Dennis.

Then, on September 9, 2012, a suppression hearing was conducted in front of the Honorable Stephanie McDonald. At the evidentiary hearing Attorney Campbell testified that she could not recall if she filed a pre-trial motion for suppression of evidence prior to the hearing in front of Judge McDonald. 1st PCR p. 47. As is detailed above and reflected in the transcript of the hearing, witnesses were called, including Applicant, and arguments were made and ruled upon regarding the Fourth, Fifth, and Sixth Amendments for suppression, as well as the exceptions under inevitable discovery and independent source.[6] On October 9, 2012, the Honorable Stephanie P. McDonald issued an Order Denying Defense Motion to Suppress Buccal Swabs.

As the transcript reflects and as was discussed at the evidentiary hearing, counsel made a motion for suppression of the DNA evidence on the basis of contamination at the beginning of trial. Trial p. 50. After hearing testimony, the court found that "they did a good job as most law enforcement does." Trial p. 104, lns. 10-11. He also concluded that the defense could argue to the jury, but the evidence was coming in. Trial p. 104, lns. 19-21. Thereafter, there was no mention of renewing the grounds raised pre-trial for suppression of the DNA evidence.

During the trial testimony of Jennifer Clayton, Forensic Scientist SLED, she explained what she tested and verified that she found no indication of contamination. Trial p. 451, 464. While she was explaining her findings, defense counsel entered an objection to the mathematical equations being used and the jury was sent out. Trial p. 453. After hearing counsel's argument,

[6] This Court finds that Applicant has demonstrated that counsel did not adequately prepare with him prior to taking the stand and that they were additional questions and arguments that could have been made regarding suppression (i.e. addressing the video with Officer Wilson, whether a court order could have been obtained in Florida, Applicant having appointed counsel in Florida, and the issue of taint related to inevitable discovery), but this Court finds that counsel's failure to do more is not the only deficiency, in light of the failure to properly preserve the arguments that were made. Additionally, this Court is also concerned with counsel's deficiency in the utilization of the expert witness in the area of DNA, as will be discussed herein.

the court denied the objection. Trial pp. 456-7. Clayton resumed her testimony, and the swabs from Applicant were entered without objection. Trial p. 463.

When asked about her failure to renew and preserve her arguments made to Judge Dennis and Judge McDonald at the start of trial, Attorney Campbell indicated that she understood the prior rulings were not *in limine* but were final. 1st PCR p. 57. After reviewing the appellate court opinion, Attorney Campbell explained that in her mind the issues were preserved for appellate review. 1st PCR p. 58. It was her understanding that all pre-trial matters were ruled on, and she was not to address such at trial. 1st PCR p. 58-59. She said she was "absolutely" making the arguments pre-trial to preserve such for appeal and she thought she had. 1st PCR p. 59, lns. 2-11. She further responded: "If it wasn't preserved for appeal, that's someone else's decision to make, whether or not that was an error." 1st PCR p. 59, lns. 6-8.

While Arie Bax, Esquire, was on the stand, he explained his limited involvement as second chair to Attorney Campbell. 1st PCR pp. 87-88. He acknowledged that he was brought in to handle the expert DNA witness, Dr. Meehan. 1st PCR pp. 87-88. He explained that he had email and phone communication with him prior to trial, but Dr. Meehan did not make him aware of his involvement in the Duke lacrosse case until the day of trial.[7] Attorney Bax admitted that he should have researched Dr. Meehan, as the prosecution had prior to trial, and that the primary defense was credibility of the witnesses. 1st PCR Hearing pp. 89, 97. He recalled his memory of the cross-examination as "vivid" and that the Solicitor "had a good time that day." 1st PCR Hearing p. 96.

[7] As addressed by both defense attorneys and as reflected in the trial transcript, Dr. Meehan's involvement in the Duke lacrosse case became the primary focus of cross-examination and resulted in counsel not even mentioning him in the defense's closing argument, which was noted in the State's closing argument. Trial p. 573, lns. 12-22. This Court finds defense counsel's admitted failure to not know as much about Dr. Meehan as the State did prior to trial amounts to ineffective assistance, and the prejudice of counsel's failure was clearly demonstrated in the cross-examination of Dr. Meehan that resulted in the decision to not mention him in closing, which the State capitalized on in their closing.

When asked, Attorney Bax explained that he was aware that pre-trial motions were made, but he was unaware of the details. 1st PCR p. 89. Specifically, he testified, as follows:

Question: Okay. And as far as arguments to be made, arguments under the Fourth Amendment regarding the totality of the circumstances, arguments regarding the exclusionary rule, inevitable discovery, did you ever discuss any of those matters with Ms. Campbell?

Answer: I did not. You know, my understanding on procedure is if I wasn't the one to make those arguments, then I couldn't be the one to make those objections.

Question: Okay. Now, you did handle, you said the cross-examination of Jennifer Clayton. So was she considered your witness, the State's forensic scientist?

Answer: That's correct.

Question: Okay. And during her testimony the State entered the swabs at question, the DNA swabs, on page 463, without objection. Were you not aware that you needed to object to those swabs by Ms. Campbell?

Answer: You know, coming in as second chair for limited purpose late in the game I think, you know, may have limited us. I mean, potentially, maybe we should have discussed the issue of – issue preservation. I don't recall having that discussion. I think that assumed that any issue preservation from that I didn't handle was going to be handled by Ms. Campbell. But you know, we didn't discuss it.

1st PCR Hearing p. 90, lns. 1-24.

This Court finds that trial counsels' handling of the DNA arguments and evidence is deficient and falls below an objective standard of reasonable assistance. Despite counsel's failure to make all available arguments, counsel did argue against the Schmerber Order, for suppression at the pre-trial hearing and at trial on the basis of contamination. Nevertheless, both trial counsels failed to make and preserve the arguments at trial or object to the admission of the evidence on such basis; thus, not allowing the trial court to make a ruling and not properly preserving the

issues for appellate review. Additionally, counsel admittedly failed to properly research the defense expert, who suffered a rigorous examination of his credibility, when credibility of witnesses was identified as the primary trial defense. This Court finds that the admission of the testimony and evidence, the testimony of the defense expert, and the Court of Appeals Opinion, clearly demonstrate the prejudiced suffered due to counsels' ineffective assistance.

Yet, the deficiency and prejudice in this case goes beyond trial counsel not making all available argument for suppression pre-trial, only making an argument for suppression based upon contamination at trial, failing to contemporaneously object to the admission of the DNA testimony and evidence outside of the mathematical argument offered by Attorney Bax, and admittedly not even wanting to mention the defense DNA expert in closing. As Robert M. Dudek, Chief Appellate Defender, testified when asked about Anderson v .State, 354 S.C. 431, 581 S.E.2d 834 (2003),[8] and the Assistant Attorney General agreed, this case is "most highly unusual." 2nd PCR Hearing p. 33, lns. 11-16. He explained: "We're addressed with a situation where all the issues for one reason or another were considered procedurally defaulted." 2nd PCR Hearing p. 33, lns. 8-10. Here, counsel not only failed to perfect a proper record for appeal, but appellate counsel also failed to provide any form of adequate assistance.

By way of the twelve page Brief of Appellant, the following issues were presented:

1. The trial judge allowed the admission of improperly obtained DNA and/or blood evidence and erred in denying the Appellant's motion to exclude the improperly obtained DNA and/or blood evidence.

[8] This Court finds Anderson is distinguishable from the facts of the instant case and the issues presented to this Court are not as narrow as the issue addressed in Anderson. In Anderson, the question presented on appeal was as follows: "Did the PCR court err in concluding appellate counsel provided ineffective assistance by not petitioning for a writ of certiorari to this Court to determine if Anderson's threat to and assault of Glover were properly admitted?" 354 S.C. at 434. In analyzing this question on the record established in Anderson, the South Carolina Supreme Court held that Anderson was unable to prove the inadmissibility of the evidence and was unable to prove he would have prevailed on appeal; therefore, the granting of relief was reversed. 354 S.C. at 436. Here, the record was not properly developed, preserved or presented throughout trial and appeal, so this Court finds it is not possible to merely apply the analysis set forth by the Court in Anderson in the instant case.

2. The trial court committed reversible error when it admitted DNA and/or blood evidence, despite conflicting testimony which demonstrated improper sample collection and a tainted crime scene, which demonstrated probable tampering or altering of the samples.

3. There was no probable cause for the arrest of appellant.

At the evidentiary hearing, Rita Metts, Esquire, testified about her involvement in the Appellate Practice Project, which resulted in her representation of Applicant on his direct appeal. This Court found the testimony of Attorney Metts established that further testimony was needed; therefore, a second hearing was convened to obtain the testimony of Robert M. Dudek, Chief Appellate Defender.

Attorney Metts recalled her representation of Applicant, but she explained: "I didn't do it alone. I was part of a project – a continuous case project with the office of appellate defense." 1st PCR Hearing p. 102, lns. 4-6. After talking about the class she attended, she testified that she wrote and prepared the brief, and she took it to the Office of Appellate Defense for filing. 1st PCR Hearing p. 103. When asked about the steps she took to prepare the brief, she responded: "I read his transcript several times, and I met with Mr. Collins." 1st PCR Hearing p. 103, lns. 13-14. She went onto explain her meeting with Mr. Collins, and an issue he raised about the DNA sample that she found to be "appealable." 1st PCR Hearing pp. 103-105.

Thereafter, Applicant's counsel asked Attorney Metts about her brief and the issues raised. Of importance to this Court, Ms. Metts admitted: 1) She did not have a reason for failing to cite to the record, and 2) She did not cite to legal precedent or case law because she could not find anything. 1st PCR Hearing pp. 105-6, 110. Also, Attorney Metts kept circling back to her discussion with Applicant and how it factored into her issue development, yet she conceded that issue he was raising to her was not preserved.[9] 1st PCR Hearing pp. 119.

[9] At the evidentiary hearing, Applicant testified that he did not understand the testimony of Attorney Metts regarding raising the issues he wanted, and he affirmed that he was relying upon his attorneys for proper representation since

When asked about reviewing the Brief of Respondent and her reasoning for not filing a Reply Brief, Attorney Metts recalled receiving the brief from Appellate Defense. 1st PCR p. 117, lns. 1-17. She explained: "Once I turned over my brief, I wasn't responsible to do a response." 1st PCR Hearing p. 117, lns. 6-7. She did recall receiving a letter from Applicant, responding and referring him to Appellate Defense. 1st PCR Hearing p. 118.

Following the testimony of Attorney Metts, this Court agreed to allow the record to remain open to obtain the testimony of Robert M. Dudek, Chief Appellate Defender.[10] After being properly sworn in, Attorney Dudek explained his experience during his thirty years at the Office of Appellate Defense, which included serving as the Chief Appellate Defender for the last ten years. 2nd PCR Hearing pp. 7-8. Then, he testified about the overall structure of the Office of Appellate Defense and his involvement in the Appellate Practice Project. 2nd PCR Hearing pp. 9-12.

Regarding the Appellate Practice Project, he identified the most recent year as the fourth year, and he explained how the class structure had changed in the last year with attorneys being rated on their understanding of an assigned "older" case by a practicing appellate attorney before being assigned a pending case to handle. 2nd PCR p. 11. Referencing the most recent year, he further explained: "And the purpose of the CLE was to explain and go into detail about error preservation, how to write an initial brief, how to cite to the record. We explained to them how to do a record on appeal, a final brief; those were some of the tools of the trade." 2nd PCR Hearing p. 11, lns. 20-24. He explained that the assigned attorneys were expected to turn in the

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he did not have any legal training. 1st PCR Hearing p. 136. He also could not recall Attorney Metts discussing "issue preservation" with him. 1st PCR Hearing p. 143.

[10] Since the matter was reconvened in Charleston, this Court agreed to accept telephonic testimony of Attorney Dudek to limit the time he had to be away from his work at the Office of Appellate Defense.

documents "print ready," meaning Appellate Defense would not make corrections without getting counsel's approval "because they were the lead counsel and responsible for the case." 2nd PCR Hearing p. 12, lns. 2-15.

Based upon the date of the filing of the brief in the instant case, he agreed that Attorney Metts was likely part of one of the first classes in 2016 and would have been assigned Applicant's case prior to attending the class. 2nd PCR Hearing pp. 12-13. He noted that Susan Hackett, Assistant Appellate Defender, was originally assigned Applicant's case.

Attorney Dudek acknowledged that calls from attorneys assigned cases from the class would go to him, and he recalled being aware of problems with Applicant's direct appeal. 2nd PCR Hearing p. 14. For example, he recalled receiving a deficiency letter regarding the Record of Appeal and going outside the typical rules and getting the record "into shape sufficient for filing." 2nd PCR Hearing pp. 14-15, p. 15, lns. 11-14. He also recalled Attorney Metts coming into meet with him before filing the final brief. 2nd PCR Hearing p. 15. During his fifteen minute or so meeting with her, he had to explain to her that she could not "beef up your final brief besides correcting typographical errors, grammatical errors and adding more citations to the record." 2nd PCR Hearing pp. 15-16, p. 16, lns. 5-8. He recalled her indicating that she understood and parting ways. 2nd PCR Hearing p. 16. He explained his role was to provide advice if asked, but he is not a supervisor or involved in brief writing or oral arguments. 2nd PCR Hearing pp. 17-18.

Attorney Dudek was asked if he recalled meeting with Attorney Metts prior to her submission of the initial brief, and he responded:

> No, I really do not. And – I do not. I don't have a memory of it. In looking back now I would think that if such a meeting took place I mean that I would have talked to hear about the – as you know from the final opinion all of the issues were deemed either procedurally barred, abandoned, or nor supported by any

authority in the brief and therefore were deemed abandoned. So I don't have any memory of meeting with her at all before the initial brief and think I would have said something if I had.

2nd PCR Hearing p. 16, ln. 19 – p. 17, ln. 3. He further testified that if had read the brief prior to filing, he would have contacted Attorney Metts and informed her that it does not have citation to authority and "the Court is going to deem it abandoned if there is no citation of authority." 2nd PCR Hearing p. 19, lns. 12-20. Thereafter, the following testimony was elicited:

Question: You said that if the Court is going to find the issue abandoned they're not going to review it. If the Court is not going to review it, would you agree that Mr. Collins didn't even have a proper chance at a direct appeal in this case?

Answer: Well if the Court does not rule on something as they did several times here because it was procedurally -- I mean because the issue was abandoned I man you know that is the fault of the appellate attorney.

2nd PCR Hearing p. 19, ln. 25 – p. 20, ln. 8.

Regarding the findings of the Court of Appeals regarding issue preservation, Attorney Dudek explained that the Court found that the issues were not raised in the same manner on appeal as at trial and the issues were not properly preserved at trial. 2nd PCR Hearing p. 21. He explained that he agreed that a motion *in limine* does not properly preserve an issue for appeal and that a contemporaneous renewal of an objection is required when the evidence at issue is moved into evidence. 2nd PCR Hearing p. 22.

Turning to what occurred after the decision was handed down, Attorney Dudek recalled Applicant's case being "unusual" in that his office received correspondence from Applicant and provided him the filings, decision and a letter with advice regarding the timely filing of a PCR Application. PCR pp. 23-25. He was not aware if Attorney Metts had provided the same to Applicant, but he confirmed that she would have received the decision and could have consulted

with him regarding filing for rehearing. 2nd PCR Hearing p. 23. Regarding filing for rehearing, he did not recall her consulting with him, but he explained "on this particular case everything was procedurally barred so there would be no serious thought of going certiorari or rehearing." 2nd PCR Hearing p. 23, lns. 19-23.

At the conclusion of Attorney Dudek's direct testimony, this Court allowed testimony to be elicited that based upon his overall appellate experience and knowledge of the instant case, he he found the performance of counsel to be ineffective and deemed a new trial to be the appropriate relief. 2nd PCR Hearing p. 25, ln. 25, p. 27 ln. 8 - p. 28. He qualified his answer by saying, "I just think it's such a fundamental breakdown in the adversarial process if you will that would be the only remedy I would be aware of as being possible." 2nd PCR Hearing p. 28, lns. 7-10.

On cross-examination, Respondent elicited lengthy testimony from Attorney Dudek regarding deficiency and prejudice. 2nd PCR Hearing pp. 31-33. Attorney Dudek reasoned that the deficiency and prejudice due to procedural default in Applicant's case was not merely a matter of one issue not being properly preserved at trial or perfected on appeal, so he opined that he did not see how Applicant could be required to point out a winning issue on appeal when "none of his issues were addressed for procedural reasons." 2nd PCR Hearing p. 32, lns. 15-18. He concluded his responses to Respondent's line of questioning by saying, "It is a most highly unusual situation we are dealing with here." 2nd PCR Hearing p. 33, lns. 13-14. In response, the Assistant Attorney General stated: "I would agree with you on that." 2nd PCR Hearing p. 33, ln. 15.

This Court is utterly appalled by the appellate representation afforded to Applicant. This Court appreciated the candid testimony of Attorney Dudek regarding the deficiencies in both the

appellate brief and record, but this Court is highly concerned that the apparent deficiencies in the brief were not addressed prior to or after submission to the Court of Appeals. Due to the deficient representation by trial counsel in the arguments offered and preservation of arguments made and the deficient representation of appellate counsel, the appellate court was not provided the opportunity to address any appellate arguments on the merits. This Court finds this complete breakdown in the adversarial process takes Applicant's case outside the precedent set forth in Anderson. Here, this Court finds a new trial is the only appropriate remedy as the proceedings from pre-trial to appeal have been infected by ineffective assistance of counsel that cannot be cured.

As a result, this Court finds that Applicant has not only met the two prongs of Strickland, but this Court finds that a new trial is warranted on the grounds of a systematic failure of the adversarial system as addressed in Cronic. At both the trial and appellate level, Applicant relied upon assistance provided to indigents in this State, and this Court finds Applicant was denied meaningful assistance.[11] Unfortunately, Applicant's appointed attorneys failed to ensure a meaningful adversarial process in the areas of issue preservation at trial, utilization of an expert witness at trial and issue presentation on appeal. As a result, this Court finds Applicant was essentially deprived of counsel altogether in these specific areas; therefore, this Court finds that a new trial must also be granted under Cronic.

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[11] In Vermont v. Brillon, the Supreme Court of the United States recognized that dismissal may be appropriate where a structural "breakdown in the public defender system" creates a constitutional trial violation. __ U.S.__ (2009), 129 S. Ct. 1283, 1287, 1292 (speedy trial violation at issue). While recognizing that a breakdown of the public defender system is attributable to the State, the Court in Vermont v. Brillon found that much of the delay there – less than three years between arrest and trial – was attributable to the defendant, who fired his first attorney and threatened to kill another of his attorneys, who was allowed to withdraw. Brillon, 129 S.Ct. at 1291-93. Here,this Court finds the deficient performance of Applicant's appointed attorneys is not attributable in anyway to Applicant.

B. Gun Shot Wound Issue

This Court finds that Applicant has failed to establish that trial counsel was ineffective for failing to present available evidence in support of the defense argument that Applicant did not suffer a gunshot wound. At the evidentiary hearing, Applicant introduced the State's Motion and Order to obtain x-rays of Applicant, an Order for x-rays, Defendant's Motion and Order for a Firearm and Gun Wound Expert, Report of Southeast x-ray, and Motion and Order for Beaufort County Public Defender's Office to obtain a wound care / trauma doctor. Applicant's Exhibit 10-14. Applicant also introduced a letter from counsel dated September 27, 2013 addressing the results of the x-rays. Applicant's Exhibit 9.

At trial, Enrique Miles was asked on redirect if he had any reason to believe that the gunman was a hit by a bullet, and responded "yes." Transcript p. 220, ln. 4-6. As is addressed above, the State also elicited testimony from law enforcement about the amount of blood at the scene and subsequent use of a cadaver dog.

At the beginning of her closing argument, Attorney Campbell argued: "There is a gaping hole in the State of South Carolina's case against Antonio Collins. And that gaping hole in the State's case is this. There is no gaping hole in the body of Antonio Collins." Trial p. 562, lns. 5-8. She argued that if the State had evidence that Applicant had been shot; then, the State would have used it against him during trial. Trial p. 562, ln. 9-13. She argued that the absence of such evidence amounted to reasonable doubt and should cause the jury to return a not guilty verdict. Trial p. 562, lns. 14-20.

At the evidentiary hearing, Applicant testified about his confusion as to why trial counsel did not utilize the evidence deemed favorable in her letter and only referenced the absence of a gunshot wound in her closing argument. 1st PCR p. 141. When asked, trial counsel explained that

she was not sure if the State would use the x-rays or photos of Applicant, but she found the photos to be harmful to the defense. 1st PCR Hearing p. 76-77, 84. She further explained that she made the "gaping hole argument" in closing to raise a question of reasonable doubt, but she did not have evidence to submit to the jury to substantiate the argument. 1st PCR Hearing p. 77.

Based upon the record, testimony and exhibits, this Court finds that Applicant has failed to show that counsel provided ineffective assistance of counsel when she chose to not utilize the medical reports and/or pictures to support her argument in closing that the State did not have evidence of a gunshot wound on Applicant. At the evidentiary hearing, Attorney Campbell provided a reasonable basis for her strategic decision to not introduce evidence or further develop the issue at trial. Additionally, this Court finds that Attorney Campbell's testimony established that she made the strategic reason to avoid prejudice to Applicant; therefore, it is implausible to find that Applicant was prejudice by her failure to utilize such evidence. Therefore, this claim fails under both prongs of the Strickland analysis.

CONCLUSION

As detailed above, this Court find that Applicant has met his burden of proof as to the above addressed allegations of ineffective assistance of trial and appellate counsel, but Applicant has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel. This Court also finds that no further issues were raised that have not been ruled upon above.

Therefore, this Court finds that the Application for Post Conviction Relief is hereby granted, as detailed above, that Applicant's convictions be vacated, and that Applicant be granted a new trial. Applicant shall be transferred from the custody of South Carolina Department of

Corrections to the custody of Beaufort County pending the disposition of his criminal case, with normal bond proceedings.

IT IS THERFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel and appellate counsel, as detailed above;

2. Applicant has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel, as detailed above;

3. That the Application for Post Conviction Relief be granted, Applicant's convictions be vacated, and Applicant be granted a new trial;

4. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Beaufort County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDRED this ___ day of _____, 20___

_____
Honorable Jennifer B. McCoy
Presiding Judge, Fourteenth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Antonio Collins, 357630, Applicant, v.	)	2017-CP-07-1493
State of South Carolina, Respondent.	)	CERTFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States mail this 10th day of June 2020 Motion Pursuant to Rule 59(a) & (e), SCRCP, to Benjamin Limbaugh of the Attorney General's Office, at:

Office of the Attorney General
Att: Benjamin Limbaugh, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549

Tricia A. Blanchette
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June 10, 2020

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JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA) COUNTY OF BEAUFORT)) Antonio Collins, 357630,) Applicant,) v.)) State of South Carolina,) Respondent.)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT 2020 JUL -6 PM 1:05 2017-CP-07-1493 JERRI ANN ROSENEAU BEAUFORT COUNTY, S.C. CLERK OF COURT ORDER DENYING MOTION TO RECONSIDER

Applicant filed a Motion to Reconsider with this court on June 12, 2020. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This court DENIES Applicant's Motion to Reconsider without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

AND IT IS SO ORDERED this 1 day of July, 2020

Honorable Jennifer B. McCoy

Charleston, South Carolina