

VOLUME I

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
William H. Seals, Jr., Circuit Court Judge

Circuit Court Case No. 2017-CP-26-02564
Appellate Case No.: 2020-001265

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Jan 28 2021

S.C. SUPREME COURT

Marcus Dwain Wright, 289646, ... Petitioner,
v.
State of South Carolina, ... Respondent.

APPENDIX

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INDEX

Amended Order of Dismissal	1
Order Granting in Part, Denying in Part Applicant's Motion to Alter or Amend.	52
Order of Dismissal	61
Opinion No. 5401 Filed April 27, 2016 (Direct Appeal)	110
Application for Post-Conviction Relief	125
Return	133
Indictments and sentencing sheets	145
Attorney General File Material (Warrants etc.)	158
Transcript of Record (PCR Hearing)	174
Index of PCR Hearing	175
Morgan Martin	
direct	179
cross	205
Edward M. Brown	
direct	226
cross	236
redirect	246
By the Court	251
Marcus Dwain Wright	
direct	254
cross	274
redirect	283
Donna Elder Barton	
direct	284
cross	289
By the Court	292
PCR EXHIBITS	
Applicant's	
A1 (Pinnix Statement)	295
A2 (Transcript Bond Hearing)	345
State's	
S1 (Chandler Statement)	355
S2 (Letter L. Powell)	381
S3 (Letter Solicitor)	382
Applicant's Motion to Alter or Amend Judgment (PCR)	384
Return to Applicant's Motion to Alter or Amend the Order of Dismissal (PCR)	396
Notice of Appeal (PCR)	413
DIRECT APPEAL	
Brief of Appellant	469
Brief of Respondent	501
Reply of Appellant	582
Record on Appeal	
Vol. I	596

Vol. II	953
Certificate	1324

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Marcus Dwain Wright,	)	Case No.: 2017-CP-26-02564
S.C.D.C. No. 289646,	)	
	)	
Applicant,	)	
	)	AMENDED¹ ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
HORRY COUNTY
2020 OCT 3 P 2:43
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Marcus Dwain Wright (“Applicant”), by and through attorney Beattie B. Ashmore, Esq., on April 24, 2017. Respondent made its return on or about August 7, 2017. The Court convened an evidentiary hearing into the matter on December 14, 2018, at the Georgetown County Judicial Center in Georgetown, South Carolina. Applicant was present at the hearing and represented by attorney Ashmore. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsels, L. Morgan Martin, Esq. (“Martin”) and Edward M. Brown, Esq. (“Brown”) (collectively “Counsels”), and the prosecuting solicitor, Donna E. Elder, Esq. (“Elder”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

¹ This Order constitutes an amendment to the “Order of Dismissal” filed August 14, 2020, consistent with the “Order Granting in Part, Denying in Part Applicant’s Motion to Alter” or Amend now concurrently filed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2012 term of the Horry County Grand Jury for murder (2012-GS-26-02551). Attorneys Martin and Brown represented Applicant, and solicitor Elder, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On June 17, 2013, Applicant proceeded to trial before the Honorable John C. Hayes, III and a jury. The jury found Applicant guilty as indicted on June 20, 2013. Judge Hayes sentenced Applicant to imprisonment for a term of life for murder. Consecutive to the life sentence, but concurrent to each other, Judge Hayes sentenced Applicant to 25 years for trafficking, 15 years for PWID cocaine base, and 5 years for the weapons charge.

Applicant filed a timely notice of appeal and a direct appeal was perfected by J. Falkner Wilkes, Esq., who raised the following thirteen issues (verbatim):

1. Did the court err in admitting evidence from the search of residence?
2. Did the defendant have a reasonable expectation in the residence searched?
3. Did the court apply the proper analysis?
4. Was the search warrant affidavit was sufficient?
5. Could the affidavit be supplemented by oral evidence where the affidavit contained false information?
6. Did the court err in admission of SCDMV records?
7. Did the court err in admission of evidence which was the result of illegal search of the defendant's hotel room?
8. Did the court err in excluding evidence of witness's prior inconsistent statement?
9. Did the court err in denying defendant's request to testify?
10. Does the court have to make specific findings as to prior convictions before it can sentence under LWOP?
11. Does the record support sentencing under LWOP?
12. If life is imposed and it is not clear whether or not it is under LWOP, should this Court remand for re-sentencing?
13. Did the trial court err in refusing to charge the jury on the law of self-defense and manslaughter?

The parties proceeded to oral arguments before the Court of Appeals on November 10, 2015.

Attorney Wilkes represented Applicant, and J. Anthony Mabry, Esq., of the South Carolina

Attorney General's Office, represented the State. By opinion decided April 27, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Wright, 416 S.C. 353, 785 S.E.2d 479 (Ct. App. 2016). The Remittitur was issued on May 13, 2016.

Present Application

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

1. "Ineffective assistance of counsel"
 - a. "Failure to timely produce letter(s) and/or statement(s) from Lanard Powell to the State;"
 - b. "losing and/or misplacing evidence;"
 - c. "failing to question Powell regarding letter(s) and/or statement(s);"
 - d. "failing to question Powell if he told McCray that he saw a gun and/or failing to give Powell an opportunity to admit or deny statement(s);"
 - e. "failing to enter letter(s) and/or statement(s) into evidence;"
 - f. "failing to proffer evidence and/or make an offer of proof, including an offer of proof of Powell's testimony;"
 - g. "indicating that counsel was satisfied with his cross-examination of Powell;"
 - h. "acquiescing to court's ruling(s), including the court's rulings regarding Powell and the letter(s) and/or statement(s);"
 - i. "failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings;"
 - j. "failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s);"
 - k. "failure to adequately investigate the case;"
 - l. "failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing;"
 - m. "failing to object to misstatements during motions;"
 - n. "failure to lay the proper foundation to introduce evidence;"
 - o. "failing to object to the Court's instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury;"
 - p. "failure to timely inform the trial court that the petitioner wanted to testify;"
 - q. "failing to discuss with the petitioner regarding his right to testify;"
 - r. "failing to consult with petitioner regarding his right to testify prior to resting;"
 - s. "failing to introduce prior inconsistent statement(s) of Veronica Chandler;"

- t. "failing to use prior inconsistent statement(s) of Chandler to support self-defense charge;"
 - u. "failure to make adequate argument for leniency at sentencing;"
 - v. "failure to prepare the petitioner for sentencing;"
 - w. "seating a former assistant solicitor on the jury;"
 - x. "failing to be prepared for and introduce evidence to establish the petitioner's reasonable expectation of privacy in the Kate's Bay residence;"
 - y. "failing to object to life without parole or require that certified copies of convictions be admitted into the record;"
 - z. "in failing to elicit, follow up on, and/or clarify testimony to establish jury charges for self-defense and/or voluntary manslaughter;"
 - aa. "failing to subpoena and/or call witness(es) to testify during motions, trial, and/or sentencing, including Kelly Phoenix;"
 - bb. "failure to cross examine witness(es) on prior conviction(s);"
 - cc. "failing to investigate, follow up on, or bring to the court's attention Brady violations;"
 - dd. "failure to object to Ms. Eichenmiller's qualifications as an expert and/or further question her qualifications;"
 - ee. "failure to object to Ms. Eichenmiller's methodology and/or lack of methodology;"
 - ff. "failure to object to State's failure to lay an adequate foundation for Ms. Eichenmiller's testimony;"
 - gg. "failure to object to Ms. Eichenmiller's testimony and opinions;"
 - hh. "failure to object due to the lack of testing and/or error rate in Ms. Eichenmiller's identification;"
 - ii. "failure to move to strike Ms. Eichenmiller's testimony and opinions;"
 - jj. "and other such issues that may be determined through the discovery process."
2. "Due Process violations"
- a. "State's failure to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;"
 - b. "prosecutorial misconduct in failing to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;"
 - c. "upon information and belief, prosecutorial misconduct in failing to correct false evidence;"
 - d. "the petitioner's attorneys' actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;"
 - e. "the State's actions and inactions, including the actions and inactions of the prosecutor, along with the actions and inactions of the petitioner's attorneys, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;"
 - f. "and other such issues that may be determined through the discovery process."

3. “Other such issues that may be determined through the discovery process”

Applicant requests relief as follows:

- “A new trial and resentencing”

Applicant’s great preponderance of claims in many instances overlap, in part or in whole. The Court finds the more general claims for relief restated above as 1.i. through 1.o. are wholly subsumed by the other claims for relief. Furthermore, in light of their closely related character and the evidence provided at the hearing, the Court addresses the following claims together:

1. Ineffective assistance of trial counsels, in that:
 - a. Counsels failed to question witness Lanard Powell or otherwise introduce evidence of his prior statements tending to exculpate Applicant (Claims 1.a. through 1.h., above);
 - b. Counsels failed to consult with Applicant regarding his right to testify prior to resting their case, and failed to timely inform the trial court of his desire to testify (Claims 1.p. through 1.r., above);
 - c. Counsels failed to introduce the prior inconsistent statements of witness Veronica Chandler and use the statements to support Applicant’s claim of self-defense (Claims 1.s. & 1.t, above);
 - d. Counsels failed to prepare or present an adequate case in mitigation (Claims 1.u. & 1.v., above);
 - e. Counsels failed to object to the testimony of witness Michelle Eichenmiller (Claims 1.dd. through 1.ii., above); and.
 - f. Counsels failed to cross-examine witnesses regarding their prior convictions, or otherwise investigate, follow up upon, or bring to the trial court’s attention alleged violations of Brady v. Maryland regarding prior convictions (Claims 1.bb and 1.cc., above).
2. Prosecutorial misconduct in failing to turn over materials pursuant to Brady v. Maryland (Claims 2.a. through 2.f., above).

All other allegations are addressed independently (Claims 1.w. through 1.cc, above).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

As an overarching finding, the Court broadly finds the testimony provided by Morgan, Brown, and Elder to be credible. As to Applicant, the Court finds his testimony to be wholly lacking in credibility. Although broadly negative credibility findings should be rendered with caution, the Court is satisfied that it should give no credence to Applicant's testimony, based upon (both individually and together) the Court's close observation of Applicant's testimony, the evidence in the record tending to show his efforts at witness tampering, and based upon his admitted efforts to frustrate the pursuit of justice in favor of his own self-interest. (PCR Tr. 106-09).

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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 the 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). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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 Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466

U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to Introduce, Confront Lanard Powell with Prior Statements

Applicant contends Counsels were ineffective in failing to confront and impeach witness Lanard Powell with a letter he purportedly wrote tending to exculpate Applicant, in failing to introduce the letter in question, and in failing to question him regarding statements he allegedly made to one Christopher McCray. "The touchstone of an ineffective-assistance claim is the fairness of the adversary proceeding, and in judging prejudice and the likelihood of a different outcome, a defendant has no entitlement to the luck of a lawless decisionmaker." *Lockhart v. Fretwell*, 506 U.S. 364, 370 (1993). "Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law." *Nix v. Whiteside*, 475 U.S. 157, 166 (1986). "[A]n attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct; it specifically ensures that the client may not use false evidence." *Id.* at 168; see also Preamble, RPC, Rule 407, SCACR ("A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."); Rule 3.3(a)(3), RPC, Rule 407, SCACR ("A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity,

the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”); but see Rule 3.3 cmt. 5, RPC, Rule 407, SCACR (“A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.”). “[T]he right to counsel includes no right to have a lawyer who will cooperate with planned perjury. A lawyer who would so cooperate would be at the risk of prosecution for suborning perjury, and disciplinary proceedings, including suspension or disbarment.” Nix at 173.

Trial

At trial, Lanard Powell, a/k/a “Capone,” testified at length to his drug-selling relationship with Applicant and the events occurring the night of Green’s shooting. On cross-examination, attorney Brown questioned Powell about letters he wrote to Applicant while both were in jail awaiting trial. (Tr. 286-87). Powell admitted to writing Applicant fifteen letters in the hope that Applicant would help him get out of jail. (Tr. 286-87; Tr. 294, ll. 12-16). Brown tied the letters back to Powell’s testimony at trial, and Powell admitted he was in court testifying against Applicant in order to help get himself out of jail. (Tr. 287, ll. 13-21).

After a series of questions unrelated to the letters, Brown returned to them and introduced an envelope dated May 21, but did not introduce the letter therein mailed. (Tr. 291-93). Brown elicited testimony from Powell that he had been trying to get Applicant to help him make bond, and Brown implied that Powell was angered by Applicant’s failure to help him get out and pay pond. (Tr. 293-95). Brown further questioned Powell regarding statements he made to a jail roommate Christopher McCray, challenging Powell that he had expressed to McCray that he was “disturbed” by Applicant’s failure to keep his promises. (Tr. 295-96).

After a detour into other statements, Brown again returned to the letters, and specifically asked Powell:

Q. Did you write a statement exonerating Mr. Wright at one point?

A. Well, actually, he forced me to write that?

Q. Oh, so now he forced you to write that?

A. He asked me to.

(Tr. 304-05). Powell thereafter admitted that Applicant could not put his hands on Powell while both were incarcerated, but that they communicated through a go-between, and that Applicant told Powell that if he wrote the statement, Applicant would get him out of jail. (Tr. 305-07). Powell testified he copied in his own handwriting a letter of what to say that was provided by Applicant. (Tr. 307-08). Brown began to drill into the contents of the letter and asked Applicant if he stated in the letter that a person named “Two Guns” shot Green, to which the State objected; the jury was thereafter excused. (Tr. 308, ll. 3-17). Despite the State’s demand and the trial court’s insistence, Brown was unable to produce the letter, stating he could not locate it. (Tr. 308-13). The Court instructed Brown to stay away from questions regarding the contents of the written statement that he could not produce, and thereafter instructed the jury to disregard the question regarding “Two Guns.” (Tr. 313-14).

Powell also testified on cross-examination that he never saw Applicant shoot Green. (Tr. 288, ll. 23-25; Tr. 289-90). Brown also questioned Powell regarding his statements to law enforcement that the other witnesses present at the scene had been up all night smoking crack cocaine, and that Powell had been carrying a gun for his own protection. (Tr. 299-301).

Later, Brown proffered the testimony of Christopher McCray, who shared a cell with Powell on two occasions. (Tr. 445, ll. 10-24). McCray testified that Powell discussed the case

with him, explaining that Powell had seen Applicant's car at a McDonald's parking lot after sneaking off with his girlfriend, and when Powell returned to the trailer, he saw a man known as both "Big Money" and "Two Guns" run out with a gun in hand and get into a black Dodge Charger and leave with the headlights turned off; Powell then found Green's corpse. (Tr. 445-48). McCray continued that Powell told him he found a pistol on the floor, which he picked up and took with him from the scene. (Tr. 448-50). McCray denied any relationship with Applicant, and that he only incidentally met Applicant in jail, where he reported what Powell had told him. (Tr. 451-53).

The State objected to McCray's testimony, arguing it was inadmissible extrinsic evidence of a prior inconsistent statement. (Tr. 458-59). Brown admitted he had not asked Powell about statements made to McCray, but rather had asked him questions about the substantive facts at issue in the statements. (Tr. 459-60). The trial court refused to permit McCray to testify, ruling his testimony was hearsay and did not fall within any exceptions to the rule prohibiting hearsay. (Tr. 460-61).

Appeal

On appeal, Applicant raised the issue of the trial court's refusal to admit evidence of the contents of Powell's "Two Guns" letter. The South Carolina Court of Appeals found the issue unpreserved for appellate review because Counsel (1) failed to proffer Powell's testimony regarding the letter and (2) failed to object to the subsequent curative instruction. Wright, 416 S.C. at 371, 785 S.E.2d at 488.

Evidentiary Hearing

At the evidentiary hearing, Martin acknowledged Brown's effort regarding the "Two Guns" letter from Powell. (PCR Tr. 28-29). Martin recalled that "Powell had supposedly

written a letter in which he said Marcus Wright did not do this, that somebody else had done it.” (PCR Tr. 29, ll. 9-16). Martin testified it was perhaps part of the theory of the case, but largely deferred to the record, testifying his memory on the subject was limited. (PCR Tr. 29-30). Martin could not recall ever actually seeing or possessing the letter in question. (PCR Tr. 42, ll. 10-14). As to McCray’s testimony, Martin testified he had no memory of the issue, explaining that Brown had handled the witness. (PCR Tr. 19-20).

Brown confirmed the events at trial and testified that even if he had not misplaced the letter, he would not have introduced it at trial. (PCR Tr. 60-61). Brown denied Applicant ever told him that he shot Green out of fear for his own life. (PCR Tr. 63, ll. 3-5). On cross-examination, Brown testified Applicant admitted to him that he shot Green. (PCR Tr. 63-64). Brown further testified Applicant never indicated that he saw a weapon. (PCR Tr. 64, ll. 6-8). Brown then explained his understanding that Applicant shot Green in relation to drugs, and “to establish that he was in charge of this and any challenges would be dealt with severely[.]” (PCR Tr. 64, ll. 9-21). Brown recalled possessing the letter purportedly drafted by Powell indicating that Green had been shot by “Two Guns,” but explained he knew the letter was not true because Applicant had already privately admitted to shooting Green. (PCR Tr. 64-65). Brown testified that “to introduce the letter, as an officer of the court, would have put me in the position of perjury and I was not gonna do that.” (PCR Tr. 65, ll. 10-12). Brown recalled the letter was delivered to him by Mrs. Wright, and that he subsequently misplaced the letter amid stacks of papers and files in his office, and did not find it until after Applicant’s trial. (PCR Tr. 65-67; State’s Exhibit #2). Brown, reviewing the handwriting of the letter, initially recalled that it appeared to be “almost identical to Mr. Wright’s handwriting.” (PCR Tr. 66, ll. 7-17). However, Brown later corrected his testimony, and testified he had been leery of the letter

because there was no similarity between the handwriting of the “Two Guns” letter and the other statements and letters Powell had written. (PCR Tr. 71, ll. 1-15). On cross-examination, Brown dismissed Applicant’s suggestion that the letter introduced as State’s Exhibit #2 was *not* the letter in question. (PCR Tr. 75-76).

Applicant testified that State’s Exhibit #2 was not the letter missing at the time of trial. (PCR Tr. 99-101). Applicant further denied that any of Powell’s letters exonerated him. (PCR Tr. 100, ll. 4-7). Applicant testified that “Two Guns was [Green’s] accomplice and I told law enforcement that when they were interviewing me. I told them two or more individuals entered the home. So, the Two Gun guy that they seen run from around the building wasn’t me.” (PCR Tr. 100, ll. 7-11). Applicant testified at some length to providing statements to law enforcement, and that he had been “beating around in circles trying to see exactly what they knew[.]” (PCR Tr. 106-09). Applicant explained that he “didn’t actually live a life that was, you know, like how you would, how you would cooperate with the law.” (PCR Tr. 108, ll. 1-3).

Findings

The Court finds no ineffectiveness on the part of Counsels. To the extent Morgan and Brown could remember the proceedings, the Court finds their testimony to be credible. The Court finds that State’s Exhibit #2 is, in fact, the letter that was missing at the time of trial. Applicant told Brown that he shot Green, such that Brown had good reason to believe Powell’s statements tending to exculpate his client at the expense of “Two Guns” were entirely false. As such, Brown could not ethically introduce the letter for the truth of the matter asserted. Brown *could* introduce evidence of Powell’s statements for the purpose of demonstrating their falsity and Powell’s falsity, but doing so would not have been entirely consistent with Brown and Martin’s trial strategy. Where Counsels sought to challenge the adequacy of the identification of

their client as the perpetrator, taking the detour of deconstructing a witness' prior statements implicating a third party would not have been clearly helpful, as a strategy focused on attacking the identification of their client as the perpetrator implicitly relies upon a theory that somebody else committed the shooting. In that context, discrediting evidence tending to inculcate a third party would be potentially self-defeating. Considering the evidence in the light of Applicant's now-preferred theory of defense that he shot Green in self-defense, evidence tending to inculcate third-parties would not be helpful there either. And in either case, introduction of the letter would have exposed Applicant, through Powell and potentially McCray, to further testimony regarding Powell's motivations for writing it—namely that he did so at Applicant's behest.

The Court also sits with discomfort at the prospect of any finding of ineffectiveness of counsel for an issue that was generated by the Applicant's own malfeasance. The trial record, in combination with the testimony provided at the evidentiary hearing, tends to show that Applicant repeatedly engaged in witness tampering, thus producing the false letter written by Powell and the purported extrinsic statements he made to McCray. Applicant now seeks to prevail upon an application for post-conviction relief based in part on allegations that his attorneys did not navigate to his satisfaction the ethical minefield *he* created. The interests of justice would not be served, and the judiciary would undermine the fundamental fairness of the justice system, by granting any relief to an applicant on grounds that his or her attorney did not fully utilize false statements made by a witness which were induced by the applicant.

Assuming for the sake of argument that the letter introduced as State's Exhibit #2 was not the letter in question, no other letter was introduced as representative of that which was missing at the time of trial. Thus, if State's Exhibit #2 were not the letter that was missing, Applicant

would have failed to present the evidence necessary (i.e. the letter) to meet his burden of proof, and his claim would fail as merely speculative.

Finally, even if Counsels were constitutionally deficient in failing to introduce the fraudulent letter, the letter could have only served the purpose of impeaching Powell. Brown had already impeached Powell for his (1) prior record, (2) pending charges, (3) role in peddling drugs, (4) role in the flight from the scene after the killing, (5) statements to law enforcement, and (6) unjustified fear of Applicant while both were in jail. Brown had made substantial efforts to impeach Powell such that introduction of the letter and/or the introduction of McCray as a witness would have been merely cumulative impeachment evidence.

For all of these reasons, the Court finds no deficiency on the part of Counsels, nor any prejudice from the deficiencies alleged. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Consult Applicant Regarding Right to Testify, Inform Court of Desire to Testify

Applicant contends Counsels were ineffective in failing to adequately and timely consult with him regarding his decision on whether or not to testify, and in failing to timely communicate his desire to testify to the trial court. "The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments." State v. Wright, 416 S.C. 353, 372, 785 S.E.2d 479, 489 (Ct. App. 2016) (citing Rock v. Arkansas, 483 U.S. 44, 51-52 (1987)).

"A motion to reopen the evidentiary record and to allow additional evidence is addressed to the sound discretion of the trial court, and the trial court's ruling will not be reversed absent an abuse of discretion." Wright, 416 S.C. at 371, 785 S.E.2d at 489 (quoting State v. Wren, 470 S.E.2d 111, 112 (Ct. App. 1996)). However, the right may be waived, and all that is necessary

for a defendant to waive the right is to know that a right to testify exists. United States v. McMeans, 927 F.2d 162, 163 (4th Cir. 1991).

Trial

After the State rested at trial, the trial court engaged Applicant in a colloquy regarding his right to testify. (Tr. 438-39). The trial court explained to Applicant he had the right to present a defense, but that he did not have to present any defense or any evidence whatsoever. (Tr. 439, ll. 23-25). The trial court reminded Applicant that the burden of proof was on the State to prove his guilt beyond a reasonable doubt, and that he was still presumed innocent. (Tr. 440, ll. 1-3). The trial court then advised Applicant that he had the right to testify, if he so desired, and that he had the right to remain silent. (Tr. 440, ll. 6-7). The State noted Applicant's prior convictions for receiving stolen goods and assault and battery of a high and aggravated nature. (Tr. 440, ll. 11-12). The trial court explained that though the State could ask Applicant about his prior offenses, it could only do so for the purposes of attacking Applicant's credibility, and that he would instruct the jury to that effect. (Tr. 440-41). The trial court also explained how if Applicant exercised his right to remain silent, he would instruct the jury that they could not hold that decision against him. (Tr. 441, ll. 3-15).

Applicant confirmed he understood. (Tr. 441, ll. 16-17). When asked if he had any questions, Applicant initially replied "not exactly," but then reaffirmed he understood everything when pressed upon by the trial court. (Tr. 441-42). Counsels confirmed they had also already explained the rights and choices available to Applicant. (Tr. 442, ll. 1-3). The trial court then asked Applicant whether he wished to testify or exercise his right to remain silent, qualified with the admonition that Applicant was "not bound at this point[.]" (Tr. 442, 4-12). Applicant replied: "Exercise my right to remain silent." (Tr. 442, line 13). After the defense proffered the

testimony of Christopher McCray, which was excluded by the trial court, the defense rested its case without presenting any witnesses to the jury. (Tr. 444-62; Rests at Tr. 462, ll. 10-11).

The parties then proceeded with a partial charge conference regarding Applicant's requests to charge the jury on voluntary manslaughter and self-defense. (Tr. 465, ll. 7-11). The trial court encouraged the parties to conduct further research overnight, but noted the only testimony he could recall to support the charges was "a self-serving . . . comment by the Defendant as he fled. My recollection is that the comment was something to the effect is the [epithet] tried to pull a jack." (Tr. 465, ll. 9-23). Martin noted testimony from Lanard Powell that Applicant reported the victim "tried a jack move," but the trial court noted the ambiguity of precisely what constituted "a jack move" and that it did not necessarily mean a gun was pulled. (Tr. 466, ll. 9-22). Martin also emphasized the numerous instances of testimony to show Green was generally hostile when he came in the house, and that he "reached for something" immediately prior to being shot. (Tr. 466-68). Upon a review of the testimony by the court reporter, the trial court cited to State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010), and explained:

. . . it talks about there having to be fear, and if he wasn't afraid, under Starnes it does not look like he would be entitled to voluntary manslaughter. And under the general self-defense, he's got to be in reasonable fear of imminent harm, imminent danger. He must be either actually – was actually in imminent danger of death or bodily injury or believed he was, and if he testified he was not, then that might end the inquiry[.]

(Tr. 469, ll. 1-23). Martin testified Applicant did not testify he was not in fear, and that Powell's testimony that Applicant never said he was afraid of Green was not dispositive. (Tr. 469-72). The trial court again noted that all involved could look at the issue overnight, and the court took recess for the evening. (Tr. 742, ll. 1-16)

When court reconvened on the morning of June 20, 2013, the trial court promptly returned to the jury charge argument and invited a resumption of the argument. (Tr. 472-73). Martin again argued that even under Starnes, given the totality of the circumstances, there was evidence to support the charges requested. (Tr. 473-74). The State replied that Starnes established there had to be not only fear for voluntary manslaughter, but that the fear had to be the “result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence.” (Tr. 474-75). Speaking practically, the State argued:

If we listen to and we go along with the fact that somebody merely has to lift up their shirt and somebody can put ten rounds in them because they lifted up their shirt, we’re in a very dangerous position, Your Honor. That is the only thing in the record is that he lifted his shirt. No one saw a gun. Absolutely no witness said there was a gun. No witness said that they heard J.J. make any kind of threat and Lanard Powell actually said that Marcus never said he threatened him.

(Tr. 475-76). The State asserted there was nothing to support either charge, and the Court agreed, ruling that there was “no evidence whatsoever of the crucial element required for both voluntary manslaughter and self-defense, of any fear of imminent danger on behalf of the Defendant at the time the shots were allegedly fired[.]” (Tr. 476-77).

Martin then reported to the Court that Applicant had changed his mind and now wished to testify. (Tr. 477, ll. 20-24). Martin reported that he had told Applicant the opportunity passed when he exercised his right to remain silent, and Applicant confirmed their conversation. (Tr. 477-78). The trial court curtly denied the request, and opined that Applicant only wished to testify in light of the ruling on the jury charges. (Tr. 478, ll. 7-15). Martin noted the trial court had previously told Applicant he was not bound by his prior decision, which the court acknowledged, but rejected on grounds that “any reasonable person would believe that that right to testify was extinguished after the Defense rests.” (Tr. 478-79). Martin explained Applicant never told him or Brown that he wished to testify prior to resting. (Tr. 479, ll. 6-11). The trial

court reaffirmed its refusal to permit Applicant to testify and ruled the record was closed. (Tr. 479, ll. 12-19).

Martin nonetheless continued by reporting Applicant's complaint that Counsels never had a specific conversation with him about testifying after McCray was not permitted to testify, but again acknowledged Applicant did not indicate prior to that morning that he wished to testify. (Tr. 480, ll. 5-19). The trial court asked Brown, who explained Applicant indicated his desire to testify when they met prior to proceedings resuming that morning. (Tr. 480-81). The trial court chastised Applicant and Counsels for not bringing the issue to his attention before he ruled on the requested jury charges, and reaffirmed its belief that Applicant waited until the court ruled to express his desire to testify. (Tr. 481-82). The trial court refused to permit Applicant to testify. (Tr. 482, ll. 3-5).

After the jury returned its verdict, and during mitigation, Applicant briefly addressed the Court:

The family want to know what happened to him. They heard what happened. Maybe the jury didn't because you dismissed the witness, but the family heard what happened to him. **It wasn't me.**

(Tr. 552, ll. 10-13) (emphasis added).

Appeal

The issue of the trial court's refusal was thereafter raised on direct appeal. Wright, 416 S.C. at 371-74, 785 S.E.2d at 489-90. In rejecting Applicant's argument, the South Carolina Court of Appeals noted the trial court's concern that Applicant was seeking to craft his testimony to fit the parameters of the trial court's rulings, and held that the concern was a legitimate ground to refuse to reopen the record. Id., 416 S.C. at 374, 785 S.E.2d at 490.

Evidentiary Hearing

At the evidentiary hearing, Martin testified he did not speak with Applicant in the holding area after the court took overnight recess on June 19, 2013. (PCR Tr. 9, ll. 17-19; PCR Tr. 31, ll. 10-22). Martin recalled that when Applicant was brought out from the holding cell that morning and seated at the defense table, there was a discussion that he *possibly* wanted to testify. (PCR Tr. 9, ll. 21-25). Martin recalled explaining to Applicant that their “position had been all along and with Marcus, and Marcus agreed, that it was better that he not testify for multiple reasons.” (PCR Tr. 10, ll. 2-5). Martin told Applicant that his advised position had not changed, and Martin believed Applicant “had reconciled himself with the fact that it was in his better interest not to testify.” (PCR Tr. 10, ll. 5-11). Nonetheless, after the trial court ruled on the jury charges, Martin testified Applicant raised his hand to get the trial court’s attention. (PCR Tr. 10-11).

Both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State’s case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15). Martin testified at some length about why, despite requesting the charge, structuring the theory of defense around self-defense was problematic: Applicant gave statements to law enforcement without ever mentioning he acted in self-defense, or that he was the shooter; Green was shot ten times; no gun was found at the scene; Applicant was not in his own home; and Applicant would have had to testify, which Martin believed would have been fatal to an already difficult case. (PCR Tr. 14-15). Nonetheless, Martin asked for the self-defense charge and argued for it “because we’re looking for whatever we could find.” (PCR Tr. 17-18). Martin testified he had multiple conversations with Applicant regarding the decision

to testify, though he could not say specifically how many. (PCR Tr. 31, ll. 5-9; PCR Tr. 33, ll. 10-14).

On cross-examination, Martin testified he had no recollection of Applicant ever telling him he wanted to testify, or that Applicant felt that he needed to testify, but that they had multiple conversations regarding whether Applicant would testify and that they all agreed to a trial strategy that would not involve him testifying. (PCR Tr. 33, ll. 15-23). Martin testified he could not recall Applicant ever indicating his desire to testify prior to the morning of June 20, 2013, but cautioned that he did not mean to say there was never an instance in their many conversations in which Applicant may have said “maybe I ought to testify and say this or that.” (PCR Tr. 33-34). As noted in the previous section, Martin also acknowledged the allegations of witness tampering against his client. (PCR Tr. 42, ll. 2-9)."

Brown testified he got to the courthouse before Martin on the last day of trial and spoke with Applicant early that morning, at which time Applicant indicated he had changed his mind and wanted to testify. (PCR Tr. 54, ll. 13-22). Brown testified he informed Martin immediately after “he came up.” (PCR Tr. 54-55). Brown could not independently recall precisely when it was that the trial court was informed of Applicant’s newfound desire to testify. (PCR Tr. 55-56).

Questioned regarding the viability of self-defense as a theory of defense, Brown opined that it was not viable based on what Applicant had told him. (PCR Tr. 54, ll. 8-13). Brown recalled meeting at his office with Applicant, where Brown questioned how he could advance a self-defense strategy when Applicant shot Green ten times, including a couple of times in the back. (PCR Tr. 57-58). Brown in particular recalled asking Applicant why he kept shooting Green, to which Applicant replied “well he kept moving.” (PCR Tr. 58, ll. 8-10). Brown further noted the victim was on the floor while Applicant continued shooting him. (PCR Tr. 58, ll. 11-

14). Brown denied Applicant ever told him he shot Green because he was in fear for his own life. (PCR Tr. 63, ll. 3-5).

On cross-examination, Brown confirmed that Applicant told him he was present in the house that evening, that he shot Green, and that he never indicated seeing Green with a weapon. (PCR Tr. 63-64). Brown explained that “there’s an ebb and flow in trials,” such that they did not have an ironclad position as to whether Applicant would testify, but ultimately Applicant told Judge Hayes that he would remain silent. (PCR Tr. 68, ll. 4-12). Brown and Applicant discussed the question of whether to testify “a number of times[,]” but not every single meeting. (PCR Tr. 70, ll. 16-24). As explored in greater detail in Section II.A.1., above, Brown also testified he received a letter from Mrs. Wright purportedly written by Lanard Powell, which he concluded was not written by Powell and constituted a false writing. (PCR Tr. 64-68; PCR Tr. 71, ll. 1-12).

Applicant testified at the evidentiary hearing that when the trial court first asked him about testifying, Applicant replied that he was not sure, but that he did not exactly have any questions. (PCR Tr. 82, ll. 13-15). When pressed by the trial court for a yes or no answer, Applicant answered “no,” reasoning it was better for his other potential witnesses to testify to what happened. (PCR Tr. 82-83). The following morning, while discussing the possibility of changing his plea to guilty, Applicant told Brown that he wished to testify. (PCR Tr. 83, ll. 3-15). Applicant testified Brown left, then returned and told him “they said they’re not gonna allow you to testify.” (PCR Tr. 83, ll. 16-18). Applicant claimed that when he went out and listened to the trial court’s language and mannerisms, he could tell that nobody had informed the judge, so Applicant raised his hand and informed the trial court of his desire to testify. (PCR Tr.

83, ll. 18-22). The exchange with the trial court thereafter proceeded as reflected in the trial transcript. Applicant recalled that his testimony was never proffered. (PCR Tr. 84, ll. 11-16).

Applicant proffered at the evidentiary hearing the testimony he would have given at trial. Applicant testified he shot Green in self-defense. (PCR Tr. 84, ll. 19-20). Applicant testified Roy Sinclair “came flying around in his wheelchair to the front door[,]” but Applicant stopped him from opening the door and the two “went back and forth a little bit[,]” as Applicant did not want to let people in while “Capone” was away. (PCR Tr. 84-85). Sinclair managed to open the door, declaring it was his cousin, and let Green into the house. (PCR Tr. 85, ll. 9-17). Applicant testified Green focused on Sinclair as he came in and said “you’ve got these little [ephitet] running this spot,” and “I’m about to put the squeeze on me a [ephitet].” (PCR Tr. 85-86). Applicant understood Green to mean he was going to shoot somebody. (PCR Tr. 86, ll. 4-5). Applicant testified Green then pulled out and brandished a weapon; Applicant recalled he screamed that Green had a gun, and when Green turned towards him, Applicant opened fire. (PCR Tr. 86, ll. 5-10). Applicant testified the first shots hit Green in the leg and the arm, such that the victim “spun around.” (PCR Tr. 86, ll. 10-11). Applicant kept firing, but denied continuing to shoot Green after he hit the floor, and offered that any bullets in the floor must have come from Green discharging his gun into the floor. (PCR Tr. 86-87). Applicant testified he shot Green because he was scared, and in order to defend himself. (PCR Tr. 87, ll. 2-4).

Applicant asserted he told his story to his attorneys, and that the whole trial was about self-defense. (PCR Tr. 87, ll. 4-13). Applicant further asserted that Martin had previously asserted during a bond hearing that the case was one of self-defense, and offered a transcript of the bond hearing. (PCR Tr. 87-88; Applicant’s Exhibit #2). Applicant expressed his bafflement that Counsels denied the case was one of self-defense, and again reaffirmed he shot Green in

self-defense and feared for his life. (PCR Tr. 97-98). Applicant denied coercing Powell into writing any letters, and denied Powell ever wrote a letter saying Applicant did not shoot Green. (PCR Tr. 99-100).

On cross-examination, the State elicited further testimony from Applicant regarding the events occurring after the shooting. Applicant testified Green looked like he was going to get up, so Applicant took cover behind a countertop. (PCR Tr. 101, ll. 9-15). Kelly Pinnix was unresponsive, while Mildred Small calmly told Applicant “baby, he ain’t moving no more.” (PCR Tr. 101, ll. 15-18). All present then fled. (PCR Tr. 101, ll. 18-20). Applicant recalled his panicked flight, and testified he got lost because he did not know the area. (PCR Tr. 101-02). Applicant met Qwanda Caldwell-Brown at the home of Daisy Marthena Menendez; there he recovered a bag of unknown contents from Brown, placed it in the BMW, got in her car, and rode away. (PCR Tr. 102-03). Brown drove Applicant around, retracing steps, until they found Lanard Powell, who explained he had taken Green’s truck at the behest of Kelly Pinnix. (PCR Tr. 103, ll. 1-16). Applicant testified Powell inquired about the bag, and when Applicant replied that he had placed it in his BMW, Powell gave him a funny look that gave Applicant concern. (PCR Tr. 103, ll. 16-19). Applicant asserted he “come to find out, what he had done was taken the deceased’s gun and that was in the bag.” (PCR Tr. 103, ll. 19-21). Applicant testified Powell told him he took the gun. (PCR Tr. 103-04). Applicant testified that after they sheltered in a hotel room, he directed Jacinda Wright to retrieve the bag; she did so, and Applicant found a chrome handgun. (PCR Tr. 104, ll. 6-13). Applicant testified he then obtained the rental car, and further directed Wright to call “Attorney Whetstone in Columbia” to let him know what was happening. (PCR Tr. 104, ll. 14-19). Applicant claimed that he was gathering “anything dealing with any firearms” to turn over to the police, but was apprehended at the hotel and was unable to

“get the guns.” (PCR Tr. 104, ll. 19-24). Applicant then testified he told Martin that Powell buried the guns, and that he worried that with every night that passed, any DNA evidence on the guns was more likely to be lost. (PCR Tr. 104-05). Applicant recalled he “kept trying to get Lanard out” in order to locate the gun and deliver “them” to it. (PCR Tr. 105, ll. 6-18). Applicant denied ever attempting to burn Green’s truck, and opined that it would have been easy to successfully burn a truck, but that it would not provide to cover up the crime. (PCR Tr. 105-06).

As to his statement to law enforcement, Applicant testified he was deliberately “beating around in circles trying to see exactly what they knew, because I already knew the situation was pretty bad.” (PCR Tr. 106-07). Applicant admitted he told law enforcement he had heard “a jack move went wrong,” but explained he was trying to elicit information from law enforcement, and that he had a bad prior history of law enforcement. (PCR Tr. 107-08). Applicant explained he did not tell law enforcement that he acted in self-defense, despite explicit invitation from investigators to do so, because “in the life that I live, you don’t talk to the police, you talk to an attorney.” (PCR Tr. 108-09). Applicant asserted that a “cop is just trying to make an arrest[,]” and again recalled that his prior interaction with the police involved law enforcement beating him and his mother. (PCR Tr. 109, ll. 13-19).

Findings

The Court finds Applicant has failed to meet his burden of showing deficiency on the part of Counsels, nor that the deficiencies alleged prejudiced him under Strickland. As previously noted, the Court finds Counsels’ testimony addressing this allegation to be credible and Applicant’s testimony to be extremely self-serving and not credible.

As to deficiency, first, Applicant was afforded an opportunity to testify and declined to do so. The Court finds Applicant was fully aware of his right to testify, the advantages and disadvantages of doing so, and reasonably concluded that he should not do so at the time the trial court asked him. The trial record reflects that the trial court fully appraised him of the right, and Counsels testified to spending substantial time discussing the subject with Applicant.

Second, the Court finds Counsels reasonably and accurately informed Applicant the following morning after he asserted his desire to testify that it was too late to go back and try to reopen the record that had been closed the previous day. By the time Applicant told them that he wanted to testify, the record was closed, and the trial court had already initiated the conference on whether to charge self-defense and voluntary manslaughter, where it opined on what testimony would have been necessary to support the charges.

Third, the Court finds Counsels reasonably concluded Applicant did not wish to testify at the time they rested their case, based Applicant's statement to the trial court, the time spent in preparation and consultation, and based upon the nature of the agreed upon strategy to attack the credibility of the drug-addled witnesses, only one of whom could specifically identify Applicant as the shooter. The Court finds that self-defense was *not* the strategy Counsels employed at trial, even if they had considered it earlier in the course of the representation. The facts and evidence before Counsels more than justified making the strategic decision to not make self-defense their core strategy: no witness could credibly testify that Green was ever armed with anything, Green's broken finger substantially diminished the likelihood a jury would believe he was even capable of wielding a pistol, and any realistic self-defense strategy would all but require them to concede that Applicant was in fact the shooter when the identity of the perpetrator was the weakest element of the State's case. In light of those facts and Counsels strategic decisions, they

would have had no reason to doubt Applicant's declination to testify during trial or at the time they rested their case.

As to prejudice, first, the Court finds that even if Counsels had immediately confronted the trial court with Applicant's newfound desire to testify, there is not a reasonable probability the outcome would have been different. As noted above, the trial court had already explained at the end of the previous day what testimony would have been necessary to support instructions on voluntary manslaughter and/or self-defense, such that there is little to no possibility the trial court would have ruled differently had it been more promptly informed of Applicant's desire to testify on the following morning. Second, as noted above, the Court finds that Applicant's testimony would have been devastatingly harmful to his own case. The testimony Applicant offered at the evidentiary hearing (1) admitted Applicant was the shooter, (2) admitted to much of the sequence of events which followed after Applicant shot Green, (3) admitted his duplicitous and dishonest interactions with law enforcement, (4) was crucially based in part on hearsay from Powell that was inconsistent with Powell's trial testimony (that he took the gun), (5) lacked evidentiary support outside of his own testimony, and (6) broadly did not make any sense. This Court enjoyed the opportunity to closely observe and listen to Applicant during his testimony, and cannot conceive of how a reasonable jury could have credibly believed Applicant and thereupon conclude that he acted in self-defense in shooting Green, or that he shot Green without malice aforethought. Applicant's testimony would have only served to scuttle Counsels very reasonable trial strategy and more surely secure his own conviction.

For all of these reasons, the Court finds that Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or that there is any reasonable probability that

but for the deficiencies alleged, the outcome at trial would have been different. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

3. Failure to Introduce, Confront Veronica Chandler with Prior Statements

Applicant alleges Counsels were ineffective for failing to introduce into evidence statements made by witness Veronica Chandler to law enforcement that she saw the victim had a gun. Rule 613(b) of the South Carolina Rules of Evidence provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence that the prior statement was made is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible.

"A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-99, 673 S.E.2d 434, 438 (2009) (citing State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)).

"When the issue is whether the witness admitted making the prior inconsistent statement, the admission must be unequivocal." State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229 (Ct. App. 2010) (citing State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003)). "Generally, where the witness has responded with anything less than an unequivocal admission, trial [courts] have been granted wide latitude to allow extrinsic evidence proving the statement." Id., 388 S.C. at 201, 694 S.E.2d at 229-230.

"As a preliminary matter, however, the court must be persuaded that the statements are indeed inconsistent." United States v. Hale, 422 U.S. 171, 176 (1975). If the party seeking to impeach a witness with a prior statement fails to establish a threshold inconsistency between the trial testimony and the prior statement, proof of the prior statement lacks any significant probative value and must therefore be excluded. Id. However, there is no requirement that the

two statements be diametrically opposite. Firemen's Fund Ins. Co. v. Thien, 8 F.3d 1307, 1312 (8th Cir. 1993); see e.g. United States v. Tory, 52 F.3d 207, 210 (9th Cir. 1995) (where a witness told an investigator that the perpetrator was wearing sweatpants, trial testimony by the same witness "that she did not remember describing them in that particular way but did remember describing them 'as a white type of pant' was inconsistent).

Trial

Chandler testified at trial that she was at Roy James Sinclair's house on April 30, 2012, to buy crack from "Capone" (Powell). (Tr. 200-01). Chandler arrived at the house and learned from Sinclair that Powell had just left. (Tr. 201, ll. 11-16). Sinclair invited Chandler into the house, and so she entered and took a seat in the den "in the little La-Z-Boy right beside the T.V." (Tr. 201-02). Green arrived afterward, entered the house, and "made a statement because somebody opened the door and he was like that's how you got your house run. You got people opening your doors and what-not." (Tr. 202, ll. 12-23). Green spoke to everybody in the house in turn, reaching Chandler last because she was a known family friend. (Tr. 202-03). While Chandler spoke to Green, "[t]he guy in the kitchen said something, and [Green] say, yeah, yeah, yeah, and the next thing I know, all I heard was boom, boom, boom boom. It was no arguments, no fussing, or anything." (Tr. 203, ll. 5-9). Chandler was so close to Green when he was shot, that blood splattered on her clothes, which were later taken by law enforcement as evidence. (Tr. 206-07). Chandler never heard Green threaten the man in the kitchen in any way; Green had been talking to her when the man in the standing at the bar in the kitchen opened fire. (Tr. 203-05). Chandler saw the man in the kitchen, and the gun in his hand. (Tr. 205, ll. 2-5). Chandler testified she did not see any gun in Green's hand. (Tr. 205, ll. 6-7). Chandler fled the house, and saw Powell return as she left. (Tr. 205-06; Tr. 207-08).

On cross-examination, Martin asked Chandler about statements she made to law enforcement:

Q. And you gave a statement to the police after this occurred?

A. Yes sir, I did.

Q. And you told them at that time that J.J. reached to pull for what you thought was a gun?

A. I didn't see a gun.

Q. And that's what I want to ask you about.

A. Okay.

Q. Because when you gave a statement to the police – do you remember giving a statement to the police?

A. Yes sir, I do.

Q. Okay. And do you – and I've got the statement here and I can give it to you if that's necessary.

A. I know the whole complete statement. I gave it.

Q. All right. But you told the police at that time, you said I don't know if he had a gun or everything happened so fast, but he lift up his shirt?

A. Yes sir.

Q. Do you remember saying that?

A. Yes, I did say that.

Q. And that's true?

A. Yes sir, but he – I did not see a gun present.

...

Q. And then they keep talking to you about that and you say I'm quite convinced I saw a gun.

A. I don't remember saying that.

...

Q. Again, you gave a statement, correct?

A. Okay, and like I said, I don't recall saying that.

Q. All right, but you don't recall saying that. You do recall saying that you thought he had a gun, as we talked about earlier, but you're not sure?

A. I mean, like I say, I don't recall saying that, so I'm not going to answer to that. If they got it in the paper, then I evidently say it, but I don't recall saying it.

...

Q. I just asked you about one statement that you made and you said that you did say that?

A. I saw when he did lift his shirt a little bit, but I did not see a gun present.

(Tr. 209-11) (emphasis added). Martin again attempted to confront Chandler with the statement "I'm convinced I saw a gun, but I don't know[.]" which elicited a sustained objection from the State. (Tr. 211, ll. 8-12). Martin again asked Chandler if she told the police she thought she saw a gun, to which she again replied she did not recall saying so. (Tr. 211, ll. 13-20). On redirect examination, Chandler asserted that she did not give a written statement, but a recorded oral statement, which she had reviewed and did not include the statement insisted upon by Martin. (Tr. 211-12).

Evidentiary Hearing

At the evidentiary hearing, Martin could not recall cross-examining her, and did not believe he had done so, but explained that he reviewed her statements to law enforcement prior to the hearing. (PCR Tr. 16-17). Martin explained that whether or not the victim had a gun was not the primary factor in their defense because the theory of the case was not self-defense. (PCR Tr. 17-18). Indeed, as previously noted, both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State's case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr.

17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15).

On cross-examination, Respondent moved a transcription of Chandler's statement into evidence and reviewed it with Martin. (PCR Tr. 42-46; State's Exhibit #1). In her statement, Chandler told law enforcement that there was an exchange between "the Dude in the kitchen" and Green, and then Green lifted his shirt. (PCR Tr. 43-44; State's Exhibit #1). Chandler told law enforcement she was "quite convinced I saw a gun, but I don't know" and persisted in her self-doubt and could not describe any gun. (PCR Tr. 44-45; State's Exhibit #1). Martin agreed with the State's assertion that Chandler's statement "provides something less than she firmly saw a gun." (PCR Tr. 45, ll. 3-8). Chandler's statement continues by explaining that "when [Green] did that I remember [Green] turning around and that's when I heard POW, POW, POW . . ." (State's Exhibit #1).

Findings

The Court finds Applicant has failed to meet his burden of showing Martin was ineffective. First, to the extent Applicant argues that Martin's failure was such that he failed to elicit testimony from Chandler to show that it appeared Green was reaching for a gun, Applicant is simply incorrect. While Martin was unable to elicit testimony from Chandler that she saw a gun or previously believed (however tenuously) that she saw a gun, he did elicit testimony that Green had lifted his shirt and did not know if he had a gun. In that light, it was reasonable for Martin to simply accept what he was given by Chandler and move on without introducing the statement.

In any event, because the theory of defense was to deny Applicant committed the shooting, and because self-defense was affirmatively not the theory (and not a practical option

absent Applicant's testimony), litigating the motivations of the shooter were secondary. Because the defense theory of the case was not self-defense, the actual strategic value of introducing Chandler's prior statements was limited, as Martin noted. To that end, Chandler never clearly indicates that she saw a gun, but rather describes her self-reflection and doubt that she had convinced herself of as much despite being unable to recall actually seeing one. Reading State's Exhibit #1 in its totality, Chandler's statements are not so clearly inconsistent as to lead this Court to conclude their introduction would have substantially impeached Chandler.

Furthermore, the statement as a whole does not present facts favorable to Applicant. Notwithstanding Chandler's refusal to admit to previously thinking she saw a gun on Green's person, the overwhelming majority of the statement corroborates her trial testimony and the testimony of the other witnesses. The State would have been within its right to require Applicant to introduce very substantial corroborative portions of the statement to clarify the inconsistent statement. See Rule 106, SCRE (rule of completeness); State v. Taylor, 333 S.C. 159, 171, 508 S.E.2d 870, 876 (1998) ("Only that portion of the remainder of a statement which explains or clarifies the previously admitted portion should be introduced."). It does not appear to this Court that the impeachment value of whether she saw a gun would outweigh the damaging corroborative value of the other admissible portions of the statement, especially in a case where Counsels' trial strategy depended upon the jury agreeing that the State's witnesses were all heavily inebriated and not to be believed. The Court cannot conclude that the introduction of Chandler's statement would have changed the outcome of trial.

For all of these reasons, the Court finds Applicant has failed to meet his burden of establishing deficient performance of counsel, or that he was prejudiced by the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

4. Failure to Prepare, Present Case in Mitigation

Applicant alleges Counsels were ineffective in failing to prepare and present an adequate case in mitigation for him after he was convicted.

At trial, Martin said very little in mitigation, but only offered that a sentence of thirty to thirty-five years “would be sufficient to protect the community and to punish him for his wrongs.” (Tr. 551, ll. 5-14). Brown offered without specificity that “perhaps there is some socially redeeming qualities that Mr. Wright possess.” (Tr. 551-52). Applicant, as previously noted, addressed the Court:

The family want to know what happened to him. They heard what happened. Maybe the jury didn't because you dismissed the witness, but the family heard what happened to him. It wasn't me.

(Tr. 552, ll. 10-13). The trial court sentenced Applicant to more than life in prison. (Tr. 552, ll. 14-21).

At the evidentiary hearing, Martin testified he did not have any mitigation prepared. (PCR Tr. 47, line 17). Martin explained that he “knew that if [Applicant] were convicted, what the sentence was going to be. I'm not sure what I could've had in mitigation in this particular case.” (PCR Tr. 47-48). Morgan continued that he was not aware of anything that could have mitigated the sentence, and that he had previously advised Applicant to take an offer to plead to a lesser-included offense for a sentence of 25 years because of his firm belief that any sentence imposed upon conviction would be long. (PCR Tr. 48, ll. 7-16).

The Court finds Applicant has failed to meet his burden. No evidence or additional arguments were offered at the evidentiary hearing in mitigation of Applicant's crime, only that he killed Green in self-defense, after denying that he had anything to do with the killing in mitigation at the original trial. Applicant cannot prevail by way of this allegation, and his request for relief is **DENIED**.

5. Failure to Object to Testimony, Qualification of Michelle Eichenmiller

Applicant alleges Counsels were ineffective in failing to object to the qualification and testimony of Michelle Eichenmiller as an expert in forensic testing of firearms and ammunition. “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE. “All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or otherwise.” Graves v. CAS Medical Systems, Inc., 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (citing State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)). “In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether ‘the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.’” Id. (citing Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010)). “Second, the expert must have ‘acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter,’ although he ‘need not be a specialist in the particular branch of the field.’” Id. “Finally, the substance of the testimony must be reliable.” Id.

“There is no exact requirement concerning how knowledge or skill must be acquired.” State v. Rose, 423 S.C. 382, 392-93, 814 S.E.2d 529, 534 (Ct. App. 2018) (quoting State v. Henry, 329 S.C. 266, 274, 495 S.E.2d 463, 467 (Ct. App. 1997)). There is no abuse of discretion in qualifying a witness as an expert “as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury.” Id.

Eichenmiller testified she worked for the South Carolina State Law Enforcement Division as a forensic firearms examiner. (Tr. 410, ll. 9-16). Eichenmiller explained she possessed a bachelor's degree as well as a master's degree, though she did not indicate for what fields of study, and substantial training for SLED, including "a three to five year internship, apprenticeship program, where I learned under trained firearms examiners." (Tr. 410, ll. 17-21). Eichenmiller further explained she performed practice cases as part of the apprenticeship, then worked alongside other experienced examiners who reviewed her performance. (Tr. 411, ll. 1-5). Eichenmiller had seven years of experience working in her position with SLED and indicated she had testified as an expert in state courts on approximately fifteen prior occasions. (Tr. 411, ll. 6-22). The trial court qualified Eichenmiller as an expert in forensic testing of firearms and ammunition without objection from Martin. (Tr. 411-12).

Eichenmiller testified that she compared six "items"—bullets and a casing—recovered from the scene and concluded they were consistent with a type of weapon "rifled with six grooves or right twists," and then produced a list of possible manufacturers who make guns with such rifling. (Tr. 415-16). Eichenmiller concluded that:

... the fired bullets could have been forty S&W caliber or a ten millimeter automatic caliber. Firearms that are made in forty S&W caliber with that rifling is Glock, Heckler & Koch, IMI, Kahr Arms, and Vector, and then Glock also makes a ten millimeter auto with that rifling.

(Tr. 416, ll. 3-7). She had no weapon to which to compare the projectiles. (Tr. 416, ll. 14-19). Analyzing other spent casings recovered from the top of the stove in the kitchen, from the living room, and from a couch, Eichenmiller concluded they were all "forty S&W caliber cartridge cases" which could have been the same caliber as the bullets. (Tr. 417, ll. 2-23). Eichenmiller compared two spent casings for a "caliber forty Model G23, Serial Number MAF699" recovered

from the Kate's Bay residence to five items recovered from the crime scene and concluded that all were fired from the same weapon. (Tr. 396, ll. 16-22; Tr. 417-19).

Applicant asked no questions and offered no evidence or arguments with respect to Eichenmiller at the evidentiary hearing. On cross-examination, Martin was unable to recall Eichenmiller's testimony. (PCR Tr. 50-51). Martin asserted that he must not have had any basis to object to her expert qualification, and that if he had known of any such basis, he would have so objected. (PCR Tr. 51, ll. 5-18).

The Court finds Applicant has failed to meet his burden of showing ineffectiveness. The trial record reflects Eichenmiller was qualified to testify to the field in which she was qualified, and was qualified in a commonly accepted and reliable field of forensic science. Eichenmiller possessed years of experience and had testified as an expert numerous times before. See, e.g. State v. Brockmeyer, 406 S.C. 324, 349, 751 S.E.2d 645, 658 (2013); State v. King, 424 S.C. 188, 197, 818 S.E.2d 204, 209 (2018). Applicant offers no evidence or argument against Eichenmiller's qualifications or conclusions. The Court finds no ineffectiveness from Martin's treatment of Eichenmiller's testimony, and Applicant's request for relief by way of this allegation is **DENIED**.

6. Failure to Strike Former Prosecutor from Jury

Applicant alleges Counsels were ineffective in failing to object to the seating of juror Barbara Blain-Olds. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997)). "The selection of a jury is inevitably a call upon experience and intuition. The *trial lawyer* must call upon his own insights and empathetic abilities." Id. (quoting Romero v. Lynaugh, 884 F.2d 871,

878 (5th Cir. 1989)) (emphasis original). “In PCR proceedings, a defendant must provide credible evidence that the trial attorney’s refusal to strike a juror prejudiced the defense.” *Id.*

Trial

During voir dire at trial, the trial court asked if any members of the jury panel had been involved with the solicitor’s office, to which “Juror Number 27,” Barbara Blain-Olds, responded that she “was once employed by the Solicitor’s Office as an Assistant Solicitor.” (Tr. 30-31). Blain-Olds indicated she had last worked for the office “[c]lose to ten years” prior, and affirmed that her prior employment did not affect her ability to be fair and impartial, and base her verdict on the law and evidence of the trial. (Tr. 31, ll. 4-16). The trial court thanked Blain-Olds for her responses and asked her to remain. (Tr. 31, ll. 17-18).

Later during the voir dire, the trial court announced the long list of possible witnesses, in response to which Blain-Olds again stood and indicated that “Martha Menendez” was her “former sister-in-law.” (Tr. 36-37). The trial court asked Blain-Olds and five other responsive potential jurors to raise their hands if “the fact that they are witnesses in this trial affect your ability to be fair and impartial in the trial of this case[;]” nobody raised their hand and all of the potential jurors sat back down. (Tr. 38, ll. 2-6).

The State immediately advised the trial court that there were two additional potential witnesses: Russell Dean and Jacinda Wright. (Tr. 38, ll. 8-10). The trial court pronounced the names and Blain-Olds again stood. (Tr. 38, ll. 11-19). Blain-Olds informed the trial court that Wright was her “niece by marriage, my former marriage.” (Tr. 38, ll. 19-20). Blain-Olds denied that the relationship would affect her ability to be fair and impartial. (Tr. 38, ll. 21-23).

When Blain-Olds appeared during jury selection and Applicant was prompted as to whether to exercise a peremptory strike, Counsel Brown asked for “a minute,” which the Court granted. (Tr. 40-41). Brown then asked to seat Blain-Olds on the jury. (Tr. 41, line 4).

Evidentiary Hearing

On direct examination at the evidentiary hearing, Martin did not initially recall that a former solicitor was seated as a juror during Applicant’s trial. (PCR Tr. 24, ll. 3-13). Applicant did not refresh Martin’s recollection but rather moved on to a different series of questions. On cross-examination, Martin was directed to the trial transcript and testified he did recall Blain-Olds and that she told the court she was previously employed with the solicitor’s office. (PCR Tr. 48, ll. 17-24). Martin confirmed Blain-Olds was, at the time of the evidentiary hearing, the Mayor of Conway, South Carolina. (PCR Tr. 48-49). Martin testified that Jacinda Wright, Blain Olds’ niece by marriage, was Applicant’s significant other at the time, and that he would have put her on his list of potential witnesses. (PCR Tr. 49-50). Martin asserted that he would not have agreed to seat her as a juror unless Applicant wanted to do so. (PCR Tr. 50, ll. 11-13, ll. 19-21). Additionally, Martin explained that he had known Blain-Olds for years, that her time with the solicitor’s office had been short, and that he believed she would have been a good juror. (PCR Tr. 50, ll. 13-19).

Findings

The Court finds Applicant has failed to meet his burden of proof as to either prong of Strickland. Applicant has failed to present any evidence to show Blain-Olds’ presence on the jury, or service as foreperson of the jury, prejudiced his defense in any way. Additionally, Applicant has failed to present any evidence to show Counsels were deficient in seating Blain-Olds. To the contrary, Martin’s testimony reflects the capable exercise of his judgment based on

his experience in and knowledge of the community in determining whether Blain-Olds would be a favorable juror. The Court finds no ineffectiveness from Counsels' decision to not exercise a peremptory strike on Blain-Olds, and Applicant's request for relief by way of this allegation is **DENIED**.

7. Failure to Establish Expectation of Privacy in Kate's Bay Residence

Applicant alleges Counsels were ineffective in failing to establish that he had a reasonable expectation of privacy in the residence at 3635 Kates Bay Highway. The Court will not long belabor this issue, because the validity of search of the Kate's Bay Highway was raised to and ruled upon by the South Carolina Court of Appeals without regard as to whether Applicant possessed a reasonable expectation of privacy, and concluded:

. . . the magistrate had a substantial basis for determining that, under the totality of the circumstances, there was probable cause to search 3635 Kate's Bay Highway. The information in Detective Weaver's affidavit and supplemental oral testimony, which was relayed to him by the lead investigator, created a fair probability that evidence of the shooting would be found at 3635 Kate's Bay Highway.

State v. Wright, 416 S.C. 353, 366, 785 S.E.2d 479, 486 (Ct. App. 2016). As such, Applicant cannot show any prejudice from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

8. Failure to Object, Require Certified Copies of Convictions for S.C. Code Ann. § 17-25-45

Applicant alleges Counsels were ineffective in failing to require the prosecution to introduce certified copies of his prior convictions relied upon for the purposes of sentencing him to life without parole pursuant to S.C. Code Ann. § 17-27-45. As with the prior allegation, the Court will not long belabor this issue, because it was raised to and disposed of by the South Carolina Court of Appeals in a footnote:

Wright asserts on appeal that the trial court erred in sentencing him to LWOP under South Carolina's recidivist statute. [. . .] We note the trial court did not state it was sentencing Wright to LWOP. Rather, on the sentencing sheet, the trial

court wrote “life imprisonment”; noted Wright was convicted of murder in violation of sections 16-3-10 and 16-3-20 of the South Carolina Code [. . .]; and did not mark the box labeled “§ 17-25-45,” which would have indicated it was sentencing Wright to LWOP under the recidivist statute. The trial court had authority to sentencing Wright to life imprisonment under the murder statute.

Wright, 416 S.C. at 364 n. 1, 785 S.E.2d at 485 n.1. As such, Applicant cannot show any prejudice from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

9. Failure to Obtain Jury Instructions on Self-Defense and/or Voluntary Manslaughter

Applicant alleges Counsels were ineffective in failing to elicit or otherwise introduce evidence necessary to obtain jury instructions on self-defense and voluntary manslaughter. This allegation is resolved by much of the same summary and analysis as set forth in Section II.A.2., above, as the only additional evidence properly before this Court to further support Applicant’s claims to voluntary manslaughter and self-defense instructions is his own testimony. As such, this Court here incorporates without restating the entirety of Section II.A.2.

The Court finds Applicant has failed to establish Counsels were deficient in failing to introduce enough evidence to support jury instructions on self-defense or voluntary manslaughter, or that he was prejudiced by their effort. Counsels’ trial strategy was to deny Applicant’s involvement at all, not argue for self-defense or that he shot the victim in the heat of passion. Applicant refused to testify until it was too late to do so. Applicant’s testimony he offered in support of his self-defense and voluntary manslaughter theories was more harmful than helpful and would have foreclosed the strongest trial strategy available to him. For all of these reasons, and those more thoroughly set forth in the prior section, the Court finds Applicant has failed to show Counsels were ineffective, and his request for relief by way of this allegation is **DENIED**.

10. Failure to Subpoena, Call Witness Kelly Pinnix

Applicant alleges Counsels were ineffective in failing to subpoena and call as a witness in his defense one Kelly Pinnix.² In order to establish prejudice from an attorney's failure to call a witness, the applicant must call that witness at the post-conviction relief evidentiary hearing or otherwise offer the witness' testimony within the rules of evidence. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Pinnix, was indicated by other witnesses at trial as a white female³ who was present, albeit drunk and/or high on crack cocaine, at the time Applicant shot and killed Green. (Tr. 177, ll. 5-14; Tr. 216-18; Tr. 224-27; Tr. 230, ll. 11-20; Tr. 232, ll. 5-8; Tr. 245-46; Tr. 247, ll. 2-9; Tr. 270-71; Tr. 299-300). Powell testified that Pinnix collected "a whole bunch of shells" after the shooting and attempted to give them to him. (Tr. 270-71). Pinnix did not testify at trial. In closing arguments, Martin focused on the credibility of the State's witnesses, and the fact that only one witness—Roy Sinclair—actually identified Marcus Wright as the shooter. (Tr. 489-95).

Nor did Pinnix testify at the evidentiary hearing. As previously noted, both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State's case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15). Martin testified that Pinnix identified Applicant as the shooter and otherwise gave statements "that made her testimony inconsistent with any thoughts of self-defense in addition to

² Presented in the pleadings as "Phoenix," and pronounced as such throughout the evidentiary hearing.

³ Multiple witnesses only identify her as "the white girl."

the fact that she identified him as the killer.” (PCR Tr. 21-23; Applicant’s Exhibit #1). On cross-examination, Martin read a portion of Pinnix’ statement which provided that an indeterminate “they” said that the Victim “pulled a gun out and he never did.” (PCR Tr. 38-39; Applicant’s Exhibit #1). After reviewing various excerpts from Pinnix’ statement, Martin agreed her statement was “highly damaging,” and that he was not about to call her as a witness. (PCR Tr. 38-41; Applicant’s Exhibit #1).

Applicant testified that although Pinnix told law enforcement that she did not see a gun, she also told law enforcement that the shooter screamed gun, so as to establish the shooter’s state of mind, and that they were locked in the home. (PCR Tr. 99, ll. 9-20; Applicant’s Exhibit #1).

The Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or that the deficiency alleged prejudiced him. Applicant narrowly insists upon two portions of Pinnix’ statement: Applicant’s own declaration that the Victim was armed, and that she saw Powell run into the house without a gun, then run out with a gun. However, Counsels both testified that self-defense was not the trial strategy they settled upon, and the record reflects a defense theory which denied that Applicant was present at all. Introducing a witness who would have established Applicant as the shooter would have run entirely to the contrary of Counsels’ theory of the case. The statement as a whole is highly damaging and inculpatory—Pinnix affirmatively rejects the claims that Green ever had a gun, and further asserts he had a broken finger. Pinnix identifies Applicant as “Big Money,” and compellingly tells law enforcement about Applicant’s eerie calm as he unloaded his gun into Green. Martin’s determination that he could not call Pinnix is (1) entitled to deference and (2) amply supported by the record. Moreover, calling Pinnix would have been so damaging to Applicant’s case, doing so could have itself constituted a colorable claim of ineffective assistance of counsel.

Finally, the Court is limited to consider only Pinnix' statement as it was provided to law enforcement, as Pinnix did not testify at the evidentiary hearing. Though the Court can rely upon that statement in weighing whether Applicant has met his burden of showing prejudice, Pinnix' absence from the hearing denies this Court an opportunity to pass upon which parts of her testimony would have been credible, which parts would not be credible, and whether she would be able to remember anything at all given her evidently heavy drug use at the time of the shooting. This Court is left with something more than mere speculation, but the inability to observe the witness must invariably weigh against Applicant's burden. For all of these reasons, the Court finds Applicant has failed to establish any deficiency on the part of Counsels by way of this allegation, nor any prejudice from the deficiency alleged, and his associated request for relief is **DENIED**.

11. Failure to Impeach Witnesses on Prior Convictions; Investigate, Raise Brady Violations

Applicant alleges Counsels were ineffective in failing to impeach witness Daisy Marthena Menendez, also known as Marthena Jackson (hereafter "Menendez"), with a prior conviction. Applicant additionally and in the alternative alleges Counsels were ineffective in failing to investigate and thereafter raise to the trial court alleged Brady⁴ violations insofar as the State did not disclose Menendez's alleged prior convictions.

"Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324

⁴ Brady v. Maryland, 373 U.S. 83 (1963).

(1999). The mandate of Brady extends to evidence “that is not in the actual possession of the prosecution but known by others acting on the government’s behalf in the particular case, including the police.” State v. Kennerly, 331 S.C. 442, 452-53, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Kyles v. Whitley, 514 U.S. 419 (1995)). “Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)); see also State v. McCray, 413 S.C. 76, 95-97, 773 S.E.2d 914, 924-25 (Ct. App. 2015) (finding the prior convictions related to dishonesty of two witnesses were favorable to the defendant, in the State’s possession, and were withheld by the State, but were immaterial where the witness’ testimony was corroborated by numerous other witnesses).

For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609(a), SCRE. Convictions for which a person is pardoned or which have been expunged may not be used for impeachment purposes. Rule 609(c), SCRE.

At trial, Menendez testified that her niece Jacinda Wright called her in the early morning hours of May 1, 2012, and reported that Applicant wanted to park a car in her garage at 3651 Kate’s Bay Highway; Applicant thereafter parked a black BMW in her garage. (Tr. 256-58). Applicant returned to the vehicle the next day and retrieved something, but Menendez did not know what, if anything, he actually took. (Tr. 258, ll. 14-24). Applicant left the car, and the

BMW remained in Menendez' garage until law enforcement later retrieved it. (Tr. 258-59).

Menendez noted that Jacinda lived just "two houses over." (Tr. 259, ll. 8-15).

On cross-examination, Menendez established that Applicant lived with Jacinda in her 3635 Kate's Bay Highway home for more than three years, and that she saw him there on a regular basis. (Tr. 260-61). Menendez knew nothing about Applicant shooting anybody until law enforcement told her as much, and perceived nothing sinister or criminal in Applicant's request to park his car in her garage. (Tr. 260-61).

At the evidentiary hearing, Applicant asserted that Menendez had a criminal background, and that the solicitor had prosecuted Menendez previously for perjury, misconduct in office, and forgery. (PCR Tr. 93-94). The prosecutor, Elder, testified she could not recall if she disclosed any prior convictions for Menendez, but noted that the documents provided by PCR counsel to refresh her recollection reflected charges which were dismissed *nolle prosequi*. (PCR Tr. 117-18). Elder recalled that the charges were expunged from Menendez' record, and testified that to the best of her recollection, Menendez did not have any convictions at the time of her trial testimony. (PCR Tr. 118, ll. 16-21). Elder explained:

If, if – what I would've done at trial is when I prepare for trial, I get a – run a certified criminal record for witnesses and I present that to the Court. So, if I did not present it to the Court, then it would've not – it was not appearing on her criminal convictions.

(PCR Tr. 119, ll. 4-8). Elder could not recall prosecuting Menendez, nor could she recall whether she handled a Family Court proceeding to which only she obliquely referred. (PCR Tr. 119, ll. 9-18).

The Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or any prejudice from the deficiencies alleged. First, for reasons that have already been set forth in prior sections, this Court finds Applicant's testimony to be wholly

lacking in credibility, and puts no weight in it. Applicant did not introduce any exhibits to establish Menendez had prior convictions, let alone any with which she could be impeached. Thus, this Court is left only with Elder's testimony, which despite some haziness due to the passage of time, did clearly provide (1) that Elder did not possess any records of convictions for Menendez at the time of trial, and (2) that Menendez had no convictions at the time of trial. This Court does give weight to Elder's testimony and, accordingly, this Court finds Menendez was not subject to any convictions at the time of her testimony at Applicant's trial. The absence of an impeachable prior conviction is dispositive of Applicant's claim.

Furthermore, and notwithstanding this Court's affirmative finding that there was no prior conviction and assuming for the sake of argument that *some* conviction exists, Applicant has not presented enough evidence or argument to meet his burden of showing he could have impeached Menendez under Rule 609, SCRE. This Court is without sufficient information to deem any prior theoretical convictions as within the time limits of Rule 609(b), SCRE, or for a crime of dishonesty under Rule 609(a)(2), SCRE, or for a felony under Rule 609(a)(1), SCRE, subject to Rule 403, SCRE.

As to both materiality under Brady and prejudice under Strickland, this Court is not convinced any such theoretical impeachment of Menendez would have been all that helpful to Applicant. While Menendez did establish Applicant stashed the BMW and may have obtained something from the vehicle, multiple other witnesses testified that Applicant left the scene in the black BMW, and the car's keyless entry device was recovered from the Camaro rented by Jacinda Wright. (Tr. 221, ll. 7-13; 233, ll. 1-6; Tr. 236, ll. 21-25; Tr. 268, ll. 16-18; Tr. 271-72; Tr. 338, ll. 14-17). Additionally, she provided testimony on cross-examination vital to Applicant to support a reasonable expectation of privacy in the residence at 3635 Kate's Bay Highway.

Where the witness testified to a secondary detail and otherwise provided testimony beneficial to Applicant, it cannot be said that her generalized impeachment would have changed the outcome at trial.

As to Strickland deficiency, and again notwithstanding this Court's affirmative finding that there was no prior conviction and assuming for the sake of argument that *some* conviction exists, Applicant has not presented any evidence to show that Counsels could or should have discovered Menendez' theoretical prior by the exercise of reasonable diligence. Applicant has presented no evidence to rebut the presumption of effective assistance of counsel—Applicant never questioned Counsels on the subject.

Applicant has failed to meet his burden under either prong of Strickland, has failed to establish a claim for relief under Brady that they could have or should have found and raised, and for all these reasons above, his request for relief by way of this allegation is **DENIED**.

B. Prosecutorial Misconduct under Brady v. Maryland

As addressed in the context of ineffective assistance of trial counsel in Section II.A.11, above, Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). The summation and reasoning of Section II.A.11 is here incorporated in full without restatement. As explained above, Applicant has failed to present evidence sufficient to show that impeachment of Menendez would have been favorable to him, that the State knew of the prior conviction alleged, that the State withheld information about the prior conviction alleged, that the prior conviction exists, or that the impeachment based upon the prior conviction was material to his own conviction. Applicant has failed to meet any of the requirements of Brady, and as such his request for relief by way of this due process claim is **DENIED**.

III. CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of October, 2020.



WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

Mami, South Carolina



ALAN WILSON
ATTORNEY GENERAL

October 9, 2020

FILED
HORRY COUNTY
2020 OCT 13 P 2:43
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, South Carolina 29528-0677

Re: Marcus D. Wright, #289646 v. State of South Carolina
2017-CP-26-02564

Dear Ms. Elvis:

Enclosed please find the original **Order Granting in Part, Denying in Part Applicant's Motion to Alter or Amend**, and the **Amended Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Should you have any questions, please do not hesitate to contact me at (803) 734-3737.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General

JEJ/ec

Enclosure

APPENDIX PAGE 51

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
)
MARCUS DWAIN WRIGHT, #289646)
 Plaintiff,)
)
 vs.)
)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-26-02564

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: Beattie B. Ashmore, Esquire Beattie B. Ashmore, PA 650 E. Washington Street Greenville, SC 29601-2931 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Johnny E. James, Jr., Esquire. Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant	
Date submitted: September 29, 2020	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT (check reason):	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	
JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

FILED
 HORRY COUNTY
 2020 OCT 13 P 2:43
 CLERK OF COURT
 HORRY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Marcus Dwain Wright,	)	Case No.: 2017-CP-26-02564
S.C.D.C. No. 289646,	)	
	)	
Applicant,	)	
	)	ORDER GRANTING IN PART, DENYING IN
v.	)	PART APPLICANT'S MOTION TO ALTER
	)	OR AMEND
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

FILED
HORRY COUNTY
2020 OCT 13 P 2:43
RENEE N. ELIAS
CLERK OF COURT
HORRY COUNTY, S.C.

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment. Based upon careful reconsideration of all the evidence in the record, and full consideration of both Applicant's motion and Respondent's return, the Court reaches the following conclusions:

I.

Respondent, in its return to the motion, asserts Applicant failed to timely file the motion within the ten days proscribed in Rule 59(e), SCRCP. Applicant's PCR counsel e-mailed the Court and Applicant in reply on Friday, September 18, 2020, and communicated the following:

The Applicant's Motion to Alter or Amend is timely. Pursuant to Rule 59(e), SCRCP, "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." I first received written notice of the entry of the Order on August 26, 2020, via email from the SCAG's office. I did not receive a NEF notification, and it appears that the Order was not filed through the NEF system (as there is no NEF file stamp on the Order). Thus, service of the motion to amend or alter the judgment on September 3, 2020 was timely.

Nevertheless, even assuming I was in receipt of written notice of the entry of the Order on August 21, 2020 through the NEF system (as asserted by the State), the motion was still timely. Pursuant to E-filing Rule 4(e)(4), "five days shall be added to the prescribed period to respond from the date set forth in the Official File Stamp on the NEF." Five days from August 21st is August 26th, and the motion was served not later than 10 days thereafter.

Upon the alert extended by Respondent and out of an abundance of caution, the Court understands that Applicant has already filed a notice of appeal in this matter.

The Court finds Applicant's motion pursuant to Rule 59(e), SCRCF is timely filed for the reasons set forth by Applicant.

II.

Applicant indicates that the Order of Dismissal errs in its summation of testimony on page 12 of the Order of Dismissal; to wit:

"On cross-examination, Brown testified Applicant admitted to shooting Green to him, and that he never saw a weapon."

Respondent concedes the summation does not accurately reflect the testimony provided at the hearing and offers a proposed revision:

On cross-examination, Brown testified Applicant admitted to him that he shot Green, but never indicated that he saw a weapon. (PCR Tr. 63-64). Brown explained his understanding that Applicant shot Green in relation to drugs, and "to establish that he was in charge of this and any challenges would be dealt with severely[.]" (PCR Tr. 64, ll. 9-21).

The Court finds the original summation does not clearly reflect the testimony provided, and finds that Respondent's proposed revision more accurately and completely reflects the testimony provided at the evidentiary hearing. The Court in part **GRANTS** the motion and accordingly amends the Order of Dismissal as follows:

On cross-examination, Brown testified Applicant admitted to him that he shot Green. (PCR Tr. 63-64). Brown further testified Applicant never indicated that he saw a weapon. (PCR Tr. 64, ll. 6-8). Brown then explained his understanding that Applicant shot Green in relation to drugs, and "to establish that he was in charge of this and any challenges would be dealt with severely[.]" (PCR Tr. 64, ll. 9-21).

To the extent Applicant seeks the Court reconsider its findings in Section II.A.1 of the Order of Dismissal, the Court finds its conclusions are undisturbed by the error or the correction and the motion is **DENIED**.

III.

Applicant indicates that the Order of Dismissal on pages 27-28 incorrectly states Rule 613(b), SCRE, and incorrectly cites to Rule 612(b), SCRE, which does not exist. Respondent concedes the error but otherwise asserts it does not impact the Court's analysis of the issue or change the outcome.

The Court in part **GRANTS** the motion and amends the Order of Dismissal to correct the statement and citation to Rule 613(b), SCRE. To the extent Applicant seeks the Court reconsider its findings in Section II.A.3 of the Order of Dismissal, the Court finds its conclusions are undisturbed by the error or the correction and the motion is **DENIED**.

IV.

Applicant argues the Court failed to satisfy its responsibility to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented insofar as the Court did not make findings "on the applicant's due process claim that his attorneys' actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process." (Motion at 12).

Attorney performance as considered in the context of the Due Process Clauses is indistinguishable from attorney performance as considered in the context of the Sixth Amendment's guarantees. The United States Supreme Court in Strickland v. Washington explained how the different clauses work together in its effort to construct the singular claim of "ineffective assistance of counsel":

In a long line of cases . . . this Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause[.] . . . Thus, a fair trial is one in which evidence subject to adversarial

testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding.

466 U.S. 668, 684-85 (1984). The South Carolina Supreme Court has consequently and repeatedly recognized that “in most instances, a PCR claim is properly presented as a Sixth Amendment claim for ineffective assistance of counsel.” Fortune v. State, 428 S.C. 545, 558, 837 S.E.2d 37, 44 (2019). Thus, Applicant’s claims that Counsels’ conduct “as more specifically described above” deprived him of due process is nothing more than a restatement of all the *specific* claims of ineffective assistance of counsel, each of which were considered and ruled upon in the Order of Dismissal. Accordingly, the Court finds the motion to alter or amend the Order of Dismissal on this ground is without merit and the motion is **DENIED**.

V.

Applicant argues the Court failed to satisfy its responsibility to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented insofar as the Court held that claims 1.i through 1.o., as restated in the Order of Dismissal, were “wholly subsumed by the other claims for relief.” (Motion at 12). The claims at issue are as follows:

1. “Ineffective assistance of counsel”
 - i. “failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings;”
 - j. “failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s);”
 - k. “failure to adequately investigate the case;”
 - l. “failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing;”
 - m. “Failing to object to misstatements during motions;”
 - n. “failure to lay the proper foundation to introduce evidence;”
 - o. “failing to object to the Court’s instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury;”

The Court finds the claims identified are general and nonspecific, and the Court rightly construes that they were intended to go in hand with the more specific claims alleged. See Rule

8(a), SCRCP (Pleadings which set forth a cause of action must contain a short and plain statement of the facts showing that the pleader is entitled to relief); Rule 8(e), SCRCP (“Each averment of a pleading shall be simple, concise, and direct.”); Rule 8(f), SCRCP (“All pleadings shall be so construed as to do substantial justice to all parties.”). The Court cannot make specific findings of fact and law on unspecific claims of ineffectiveness. Applicant enjoyed ample time prior to the evidentiary hearing to amend his application—amendments this Court would have been all but compelled to permit¹—to provide more specific guidance as to which objections or non-objections Counsels missed, or which leads they failed to investigate, or which courtroom processes they failed to properly execute. Applicant never so amended. This Court is not required to ferret through the entirety of the record searching for which issues Applicant *may* have intended to raise, nor is this Court compelled to take measure of every objection, every conceivable non-objection, and every conceivable line of investigation by virtue of Applicant’s general pleadings—the burden of proof *and pleading* is on Applicant.

Still now Applicant does not clarify by specific reference to the record what claims 1.i through 1.o, as restated in the Order of Dismissal, were intended to allege. To whatever extent they can be sustained as claims, the Order of Dismissal considers them in the context of the application as a whole and the evidence presented. The motion to alter or amend on this ground is **DENIED**.

VI.

Applicant argues the Court failed to satisfy its responsibility to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented insofar as the

¹ See Mangal v. State, 421 S.C. 85, 99-100, 805 S.E.2d 568, 576 (2017) (“We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our rules—to reach the merits of substantial issues.”).

Court did not make findings on whether “the cumulative effect of trial counsels’ errors constituted ineffective assistance and formed a cumulative prejudicial effect.” (Motion at 12).

“Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.” Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 324-25 (2002). The present matter is not the appropriate circumstance to resolve this question, as (1) Applicant has not heretofore asked this Court to conduct such an analysis, and (2) Applicant has shown no deficient performance. A multiplicity of zero deficiency still produces only zero prejudice.

In any event, to the extent cumulative error can be properly considered under a Strickland analysis, this Court has already done so. Though the Order of Dismissal endeavors to identify the portions of the record most immediately relevant to the resolution of each individual claim for relief, each individual claim is, and must be, analyzed in the context of the record *in its entirety* and thereupon dispensed as simply and expeditiously as a complete understanding of the record permits. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (“In determining whether the applicant has proven prejudice, the PCR court should consider the impact counsel’s error had on the outcome of trial. . . . In addition, the PCR court should consider the strength of the State’s case in light of all the evidence presented to the jury.”); Strickland, 466 U.S. at 695 (“In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury.”). Thus, each individual error is already analyzed in the “cumulative” context of the record as a whole.

To the extent Applicant advances “cumulative error” as a means of analyzing Strickland prejudice by totaling some ephemeral quanta of prejudice across the numerous allegations, Applicant’s demand runs contrary to the anti-mechanical tilt of Strickland. The Strickland court

explicitly advises against such calculus when it tells lower courts to approach the problem in whatever order is quickest:

Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one. In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *The object of an ineffectiveness claim is not to grade counsel's performance.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

Strickland, 466 U.S. at 697 (emphasis added). The cumulative summation of prejudice would require this Court, and indeed every court, to analyze both prongs in every case in mechanical, burdensome fashion. The cumulative summation of prejudice would also perversely incentivize applicants to raise not only their best grounds for relief (as is consistent with best practices for appellate advocacy), but raise as many allegations as possible in every case in the hopes of landing enough glancing blows to knock out their conviction. A plethora of post-conviction relief and appellate allegations cannot accumulate to an applicant's benefit; to the contrary, the multiplicity betrays the inadequacy of any single allegation. See, e.g. Fifth Third Mortgage Co. v. Chicago Title Ins. Co., 692 F.3d 507, 509 (6th Cir. 2010) ("When a party comes to us with nine grounds for reversing the district court, that usually means there are none."); Pierce v. Visteon Corp., 791 F.3d 782, 788 (7th Cir. 2015) (raising 13 issues on appeal violates principle that counsel must concentrate attention on best issues).

To whatever extent an attorney's performance may be so broadly deficient as to entitle Applicant to specialized relief unburdened by the prejudice prong of Strickland, Applicant's only avenue is by way of the extremely high showing required of United States v. Cronin, 466 U.S.

648, 659-60 (1984). See also Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006) (Explaining the three circumstances under which prejudice may be presumed *per se*, which includes “a constructive denial of counsel from an attorney’s complete failure to subject the prosecution’s case to meaningful adversarial testing.”). Applicant has neither alleged nor argued he is entitled to relief under Cronic, it is too late do so now, and he is not entitled to such relief in light of the skilled, thoughtful, and constitutionally effective representation he received from Counsels.

For these reasons, the Order remains an accurate and complete treatment of the issues raised as required by S.C. Code Ann. § 17-27-80, and the motion to alter or amend on this ground is **DENIED**.

VII.

Applicant raises a number of other arguments to this Court and requests it reconsider its conclusions as set forth in the Order of Dismissal, and thereafter grant post-conviction relief. The Court finds that Applicant’s remaining arguments have already been raised to and ruled upon by the Court, and concludes that Applicant has failed to present any evidence or argument that would warrant further alteration of this Court’s prior order. Notwithstanding the alterations granted in Sections II and III, above, Applicant’s motion to alter or amend is **DENIED**.

IT IS THEREFORE ORDERED:

1. The motion to alter or amend was timely served;
2. The Order of Dismissal filed August 14, 2020, be amended consistent with the findings set forth in Sections II and III of this Order;²
3. The motion to alter or amend pursuant to Rule 59(e), SCRPC, is otherwise denied; and
4. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of October, 2020.



WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

² An Amended Order of Dismissal is to be signed and filed concurrent with this Order.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Marcus Dwain Wright,	)	Case No.: 2017-CP-26-02564
S.C.D.C. No. 289646,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2020 AUG 14 PM 1:27

FILED

This matter comes before the Court by way of an application for post-conviction relief filed by Marcus Dwain Wright (“Applicant”), by and through attorney Beattie B. Ashmore, Esq., on April 24, 2017. Respondent made its return on or about August 7, 2017. The Court convened an evidentiary hearing into the matter on December 14, 2018, at the Georgetown County Judicial Center in Georgetown, South Carolina. Applicant was present at the hearing and represented by attorney Ashmore. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsels, L. Morgan Martin, Esq. (“Martin”) and Edward M. Brown, Esq. (“Brown”) (collectively “Counsels”), and the prosecuting solicitor, Donna E. Elder, Esq. (“Elder”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2012 term of the Horry County Grand Jury for murder (2012-GS-26-02551). Attorneys Martin and Brown represented Applicant, and solicitor Elder, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On June 17, 2013, Applicant proceeded to trial before the Honorable John C. Hayes, III and a jury. The jury found Applicant guilty as indicted on June 20, 2013. Judge Hayes sentenced Applicant to imprisonment for a term of life for murder. Consecutive to the life sentence, but concurrent to each other, Judge Hayes sentenced Applicant to 25 years for trafficking, 15 years for PWID cocaine base, and 5 years for the weapons charge.

Applicant filed a timely notice of appeal and a direct appeal was perfected by J. Falkner Wilkes, Esq., who raised the following thirteen issues (verbatim):

1. Did the court err in admitting evidence from the search of residence?
2. Did the defendant have a reasonable expectation in the residence searched?
3. Did the court apply the proper analysis?
4. Was the search warrant affidavit was sufficient?
5. Could the affidavit be supplemented by oral evidence where the affidavit contained false information?
6. Did the court err in admission of SCDMV records?
7. Did the court err in admission of evidence which was the result of illegal search of the defendant's hotel room?
8. Did the court err in excluding evidence of witness's prior inconsistent statement?
9. Did the court err in denying defendant's request to testify?
10. Does the court have to make specific findings as to prior convictions before it can sentence under LWOP?
11. Does the record support sentencing under LWOP?
12. If life is imposed and it is not clear whether or not it is under LWOP, should this Court remand for re-sentencing?
13. Did the trial court err in refusing to charge the jury on the law of self-defense and manslaughter?

The parties proceeded to oral arguments before the Court of Appeals on November 10, 2015.

Attorney Wilkes represented Applicant, and J. Anthony Mabry, Esq., of the South Carolina

Attorney General's Office, represented the State. By opinion decided April 27, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Wright, 416 S.C. 353, 785 S.E.2d 479 (Ct. App. 2016). The Remittitur was issued on May 13, 2016.

Present Application

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

1. "Ineffective assistance of counsel"
 - a. "Failure to timely produce letter(s) and/or statement(s) from Lanard Powell to the State;"
 - b. "losing and/or misplacing evidence;"
 - c. "failing to question Powell regarding letter(s) and/or statement(s);"
 - d. "failing to question Powell if he told McCray that he saw a gun and/or failing to give Powell an opportunity to admit or deny statement(s);"
 - e. "failing to enter letter(s) and/or statement(s) into evidence;"
 - f. "failing to proffer evidence and/or make an offer of proof, including an offer of proof of Powell's testimony;"
 - g. "indicating that counsel was satisfied with his cross-examination of Powell;"
 - h. "acquiescing to court's ruling(s), including the court's rulings regarding Powell and the letter(s) and/or statement(s);"
 - i. "failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings;"
 - j. "failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s);"
 - k. "failure to adequately investigate the case;"
 - l. "failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing;"
 - m. "failing to object to misstatements during motions;"
 - n. "failure to lay the proper foundation to introduce evidence;"
 - o. "failing to object to the Court's instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury;"
 - p. "failure to timely inform the trial court that the petitioner wanted to testify;"
 - q. "failing to discuss with the petitioner regarding his right to testify;"
 - r. "failing to consult with petitioner regarding his right to testify prior to resting;"
 - s. "failing to introduce prior inconsistent statement(s) of Veronica Chandler;"

- t. "failing to use prior inconsistent statement(s) of Chandler to support self-defense charge;"
 - u. "failure to make adequate argument for leniency at sentencing;"
 - v. "failure to prepare the petitioner for sentencing;"
 - w. "seating a former assistant solicitor on the jury;"
 - x. "failing to be prepared for and introduce evidence to establish the petitioner's reasonable expectation of privacy in the Kate's Bay residence;"
 - y. "failing to object to life without parole or require that certified copies of convictions be admitted into the record;"
 - z. "in failing to elicit, follow up on, and/or clarify testimony to establish jury charges for self-defense and/or voluntary manslaughter;"
 - aa. "failing to subpoena and/or call witness(es) to testify during motions, trial, and/or sentencing, including Kelly Phoenix;"
 - bb. "failure to cross examine witness(es) on prior conviction(s);"
 - cc. "failing to investigate, follow up on, or bring to the court's attention Brady violations;"
 - dd. "failure to object to Ms. Eichenmiller's qualifications as an expert and/or further question her qualifications;"
 - ee. "failure to object to Ms. Eichenmiller's methodology and/or lack of methodology;"
 - ff. "failure to object to State's failure to lay an adequate foundation for Ms. Eichenmiller's testimony;"
 - gg. "failure to object to Ms. Eichenmiller's testimony and opinions;"
 - hh. "failure to object due to the lack of testing and/or error rate in Ms. Eichenmiller's identification;"
 - ii. "failure to move to strike Ms. Eichenmiller's testimony and opinions;"
 - jj. "and other such issues that may be determined through the discovery process."
2. "Due Process violations"
- a. "State's failure to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;"
 - b. "prosecutorial misconduct in failing to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;"
 - c. "upon information and belief, prosecutorial misconduct in failing to correct false evidence;"
 - d. "the petitioner's attorneys' actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;"
 - e. "the State's actions and inactions, including the actions and inactions of the prosecutor, along with the actions and inactions of the petitioner's attorneys, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;"
 - f. "and other such issues that may be determined through the discovery process."

3. “Other such issues that may be determined through the discovery process”

Applicant requests relief as follows:

- “A new trial and resentencing”

Applicant’s great preponderance of claims in many instances overlap, in part or in whole. The Court finds the more general claims for relief restated above as 1.i. through 1.o. are wholly subsumed by the other claims for relief. Furthermore, in light of their closely related character and the evidence provided at the hearing, the Court addresses the following claims together:

1. Ineffective assistance of trial counsels, in that:
 - a. Counsels failed to question witness Lanard Powell or otherwise introduce evidence of his prior statements tending to exculpate Applicant (Claims 1.a. through 1.h., above);
 - b. Counsels failed to consult with Applicant regarding his right to testify prior to resting their case, and failed to timely inform the trial court of his desire to testify (Claims 1.p. through 1.r., above);
 - c. Counsels failed to introduce the prior inconsistent statements of witness Veronica Chandler and use the statements to support Applicant’s claim of self-defense (Claims 1.s. & 1.t, above);
 - d. Counsels failed to prepare or present an adequate case in mitigation (Claims 1.u. & 1.v., above);
 - e. Counsels failed to object to the testimony of witness Michelle Eichenmiller (Claims 1.dd. through 1.ii., above); and.
 - f. Counsels failed to cross-examine witnesses regarding their prior convictions, or otherwise investigate, follow up upon, or bring to the trial court’s attention alleged violations of Brady v. Maryland regarding prior convictions (Claims 1.bb and 1.cc., above).
2. Prosecutorial misconduct in failing to turn over materials pursuant to Brady v. Maryland (Claims 2.a. through 2.f., above).

All other allegations are addressed independently (Claims 1.w. through 1.cc, above).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

As an overarching finding, the Court broadly finds the testimony provided by Morgan, Brown, and Elder to be credible. As to Applicant, the Court finds his testimony to be wholly lacking in credibility. Although broadly negative credibility findings should be rendered with caution, the Court is satisfied that it should give no credence to Applicant's testimony, based upon (both individually and together) the Court's close observation of Applicant's testimony, the evidence in the record tending to show his efforts at witness tampering, and based upon his admitted efforts to frustrate the pursuit of justice in favor of his own self-interest. (PCR Tr. 106-09).

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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 the 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). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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 Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466

U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to Introduce, Confront Lanard Powell with Prior Statements

Applicant contends Counsels were ineffective in failing to confront and impeach witness Lanard Powell with a letter he purportedly wrote tending to exculpate Applicant, in failing to introduce the letter in question, and in failing to question him regarding statements he allegedly made to one Christopher McCray. "The touchstone of an ineffective-assistance claim is the fairness of the adversary proceeding, and in judging prejudice and the likelihood of a different outcome, a defendant has no entitlement to the luck of a lawless decisionmaker." *Lockhart v. Fretwell*, 506 U.S. 364, 370 (1993). "Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law." *Nix v. Whiteside*, 475 U.S. 157, 166 (1986). "[A]n attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct; it specifically ensures that the client may not use false evidence." *Id.* at 168; *see also* Preamble, RPC, Rule 407, SCACR ("A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."); Rule 3.3(a)(3), RPC, Rule 407, SCACR ("A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity,

the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”); but see Rule 3.3 cmt. 5, RPC, Rule 407, SCACR (“A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.”). “[T]he right to counsel includes no right to have a lawyer who will cooperate with planned perjury. A lawyer who would so cooperate would be at the risk of prosecution for suborning perjury, and disciplinary proceedings, including suspension or disbarment.” Nix at 173.

Trial

At trial, Lanard Powell, a/k/a “Capone,” testified at length to his drug-selling relationship with Applicant and the events occurring the night of Green’s shooting. On cross-examination, attorney Brown questioned Powell about letters he wrote to Applicant while both were in jail awaiting trial. (Tr. 286-87). Powell admitted to writing Applicant fifteen letters in the hope that Applicant would help him get out of jail. (Tr. 286-87; Tr. 294, ll. 12-16). Brown tied the letters back to Powell’s testimony at trial, and Powell admitted he was in court testifying against Applicant in order to help get himself out of jail. (Tr. 287, ll. 13-21).

After a series of questions unrelated to the letters, Brown returned to them and introduced an envelope dated May 21, but did not introduce the letter therein mailed. (Tr. 291-93). Brown elicited testimony from Powell that he had been trying to get Applicant to help him make bond, and Brown implied that Powell was angered by Applicant’s failure to help him get out and pay bond. (Tr. 293-95). Brown further questioned Powell regarding statements he made to a jail roommate Christopher McCray, challenging Powell that he had expressed to McCray that he was “disturbed” by Applicant’s failure to keep his promises. (Tr. 295-96).

After a detour into other statements, Brown again returned to the letters, and specifically asked Powell:

Q. Did you write a statement exonerating Mr. Wright at one point?

A. Well, actually, he forced me to write that?

Q. Oh, so now he forced you to write that?

A. He asked me to.

(Tr. 304-05). Powell thereafter admitted that Applicant could not put his hands on Powell while both were incarcerated, but that they communicated through a go-between, and that Applicant told Powell that if he wrote the statement, Applicant would get him out of jail. (Tr. 305-07). Powell testified he copied in his own handwriting a letter of what to say that was provided by Applicant. (Tr. 307-08). Brown began to drill into the contents of the letter and asked Applicant if he stated in the letter that a person named "Two Guns" shot Green, to which the State objected; the jury was thereafter excused. (Tr. 308, ll. 3-17). Despite the State's demand and the trial court's insistence, Brown was unable to produce the letter, stating he could not locate it. (Tr. 308-13). The Court instructed Brown to stay away from questions regarding the contents of the written statement that he could not produce, and thereafter instructed the jury to disregard the question regarding "Two Guns." (Tr. 313-14).

Powell also testified on cross-examination that he never saw Applicant shoot Green. (Tr. 288, ll. 23-25; Tr. 289-90). Brown also questioned Powell regarding his statements to law enforcement that the other witnesses present at the scene had been up all night smoking crack cocaine, and that Powell had been carrying a gun for his own protection. (Tr. 299-301).

Later, Brown proffered the testimony of Christopher McCray, who shared a cell with Powell on two occasions. (Tr. 445, ll. 10-24). McCray testified that Powell discussed the case

with him, explaining that Powell had seen Applicant's car at a McDonald's parking lot after sneaking off with his girlfriend, and when Powell returned to the trailer, he saw a man known as both "Big Money" and "Two Guns" run out with a gun in hand and get into a black Dodge Charger and leave with the headlights turned off; Powell then found Green's corpse. (Tr. 445-48). McCray continued that Powell told him he found a pistol on the floor, which he picked up and took with him from the scene. (Tr. 448-50). McCray denied any relationship with Applicant, and that he only incidentally met Applicant in jail, where he reported what Powell had told him. (Tr. 451-53).

The State objected to McCray's testimony, arguing it was inadmissible extrinsic evidence of a prior inconsistent statement. (Tr. 458-59). Brown admitted he had not asked Powell about statements made to McCray, but rather had asked him questions about the substantive facts at issue in the statements. (Tr. 459-60). The trial court refused to permit McCray to testify, ruling his testimony was hearsay and did not fall within any exceptions to the rule prohibiting hearsay. (Tr. 460-61).

Appeal

On appeal, Applicant raised the issue of the trial court's refusal to admit evidence of the contents of Powell's "Two Guns" letter. The South Carolina Court of Appeals found the issue unpreserved for appellate review because Counsel (1) failed to proffer Powell's testimony regarding the letter and (2) failed to object to the subsequent curative instruction. Wright, 416 S.C. at 371, 785 S.E.2d at 488.

Evidentiary Hearing

At the evidentiary hearing, Martin acknowledged Brown's effort regarding the "Two Guns" letter from Powell. (PCR Tr. 28-29). Martin recalled that "Powell had supposedly

written a letter in which he said Marcus Wright did not do this, that somebody else had done it.” (PCR Tr. 29, ll. 9-16). Martin testified it was perhaps part of the theory of the case, but largely deferred to the record, testifying his memory on the subject was limited. (PCR Tr. 29-30). Martin could not recall ever actually seeing or possessing the letter in question. (PCR Tr. 42, ll. 10-14). As to McCray’s testimony, Martin testified he had no memory of the issue, explaining that Brown had handled the witness. (PCR Tr. 19-20).

Brown confirmed the events at trial and testified that even if he had not misplaced the letter, he would not have introduced it at trial. (PCR Tr. 60-61). Brown denied Applicant ever told him that he shot Green out of fear for his own life. (PCR Tr. 63, ll. 3-5). On cross-examination, Brown testified Applicant admitted shooting Green to him, and that he never saw a weapon. (PCR Tr. 63-64). Brown recalled possessing the letter purportedly drafted by Powell indicating that Green had been shot by “Two Guns,” but explained he knew the letter was not true because Applicant had already privately admitted to shooting Green. (PCR Tr. 64-65). Brown testified that “to introduce the letter, as an officer of the court, would have put me in the position of perjury and I was not gonna do that.” (PCR Tr. 65, ll. 10-12). Brown recalled the letter was delivered to him by Mrs. Wright, and that he subsequently misplaced the letter amid stacks of papers and files in his office, and did not find it until after Applicant’s trial. (PCR Tr. 65-67; State’s Exhibit #2). Brown, reviewing the handwriting of the letter, initially recalled that it appeared to be “almost identical to Mr. Wright’s handwriting.” (PCR Tr. 66, ll. 7-17). However, Brown later corrected his testimony, and testified he had been leery of the letter because there was no similarity between the handwriting of the “Two Guns” letter and the other statements and letters Powell had written. (PCR Tr. 71, ll. 1-15). On cross-examination, Brown

dismissed Applicant's suggestion that the letter introduced as State's Exhibit #2 was *not* the letter in question. (PCR Tr. 75-76).

Applicant testified that State's Exhibit #2 was not the letter missing at the time of trial. (PCR Tr. 99-101). Applicant further denied that any of Powell's letters exonerated him. (PCR Tr. 100, ll. 4-7). Applicant testified that "Two Guns was [Green's] accomplice and I told law enforcement that when they were interviewing me. I told them two or more individuals entered the home. So, the Two Gun guy that they seen run from around the building wasn't me." (PCR Tr. 100, ll. 7-11). Applicant testified at some length to providing statements to law enforcement, and that he had been "beating around in circles trying to see exactly what they knew[.]" (PCR Tr. 106-09). Applicant explained that he "didn't actually live a life that was, you know, like how you would, how you would cooperate with the law." (PCR Tr. 108, ll. 1-3).

Findings

The Court finds no ineffectiveness on the part of Counsels. To the extent Morgan and Brown could remember the proceedings, the Court finds their testimony to be credible. The Court finds that State's Exhibit #2 is, in fact, the letter that was missing at the time of trial. Applicant told Brown that he shot Green, such that Brown had good reason to believe Powell's statements tending to exculpate his client at the expense of "Two Guns" were entirely false. As such, Brown could not ethically introduce the letter for the truth of the matter asserted. Brown *could* introduce evidence of Powell's statements for the purpose of demonstrating their falsity and Powell's falsity, but doing so would not have been entirely consistent with Brown and Martin's trial strategy. Where Counsels sought to challenge the adequacy of the identification of their client as the perpetrator, taking the detour of deconstructing a witness' prior statements implicating a third party would not have been clearly helpful, as a strategy focused on attacking

the identification of their client as the perpetrator implicitly relies upon a theory that somebody else committed the shooting. In that context, discrediting evidence tending to inculcate a third party would be potentially self-defeating. Considering the evidence in the light of Applicant's now-preferred theory of defense that he shot Green in self-defense, evidence tending to inculcate third-parties would not be helpful there either. And in either case, introduction of the letter would have exposed Applicant, through Powell and potentially McCray, to further testimony regarding Powell's motivations for writing it—namely that he did so at Applicant's behest.

The Court also sits with discomfort at the prospect of any finding of ineffectiveness of counsel for an issue that was generated by the Applicant's own malfeasance. The trial record, in combination with the testimony provided at the evidentiary hearing, tends to show that Applicant repeatedly engaged in witness tampering, thus producing the false letter written by Powell and the purported extrinsic statements he made to McCray. Applicant now seeks to prevail upon an application for post-conviction relief based in part on allegations that his attorneys did not navigate to his satisfaction the ethical minefield *he* created. The interests of justice would not be served, and the judiciary would undermine the fundamental fairness of the justice system, by granting any relief to an applicant on grounds that his or her attorney did not fully utilize false statements made by a witness which were induced by the applicant.

Assuming for the sake of argument that the letter introduced as State's Exhibit #2 was not the letter in question, no other letter was introduced as representative of that which was missing at the time of trial. Thus, if State's Exhibit #2 were not the letter that was missing, Applicant would have failed to present the evidence necessary (i.e. the letter) to meet his burden of proof, and his claim would fail as merely speculative.

Finally, even if Counsels were constitutionally deficient in failing to introduce the fraudulent letter, the letter could have only served the purpose of impeaching Powell. Brown had already impeached Powell for his (1) prior record, (2) pending charges, (3) role in peddling drugs, (4) role in the flight from the scene after the killing, (5) statements to law enforcement, and (6) unjustified fear of Applicant while both were in jail. Brown had made substantial efforts to impeach Powell such that introduction of the letter and/or the introduction of McCray as a witness would have been merely cumulative impeachment evidence.

For all of these reasons, the Court finds no deficiency on the part of Counsels, nor any prejudice from the deficiencies alleged. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Consult Applicant Regarding Right to Testify, Inform Court of Desire to Testify

Applicant contends Counsels were ineffective in failing to adequately and timely consult with him regarding his decision on whether or not to testify, and in failing to timely communicate his desire to testify to the trial court. "The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments." State v. Wright, 416 S.C. 353, 372, 785 S.E.2d 479, 489 (Ct. App. 2016) (citing Rock v. Arkansas, 483 U.S. 44, 51-52 (1987)).

"A motion to reopen the evidentiary record and to allow additional evidence is addressed to the sound discretion of the trial court, and the trial court's ruling will not be reversed absent an abuse of discretion." Wright, 416 S.C. at 371, 785 S.E.2d at 489 (quoting State v. Wren, 470 S.E.2d 111, 112 (Ct. App. 1996)). However, the right may be waived, and all that is necessary for a defendant to waive the right is to know that a right to testify exists. United States v. McMeans, 927 F.2d 162, 163 (4th Cir. 1991).

Trial

After the State rested at trial, the trial court engaged Applicant in a colloquy regarding his right to testify. (Tr. 438-39). The trial court explained to Applicant he had the right to present a defense, but that he did not have to present any defense or any evidence whatsoever. (Tr. 439, ll. 23-25). The trial court reminded Applicant that the burden of proof was on the State to prove his guilt beyond a reasonable doubt, and that he was still presumed innocent. (Tr. 440, ll. 1-3). The trial court then advised Applicant that he had the right to testify, if he so desired, and that he had the right to remain silent. (Tr. 440, ll. 6-7). The State noted Applicant's prior convictions for receiving stolen goods and assault and battery of a high and aggravated nature. (Tr. 440, ll. 11-12). The trial court explained that though the State could ask Applicant about his prior offenses, it could only do so for the purposes of attacking Applicant's credibility, and that he would instruct the jury to that effect. (Tr. 440-41). The trial court also explained how if Applicant exercised his right to remain silent, he would instruct the jury that they could not hold that decision against him. (Tr. 441, ll. 3-15).

Applicant confirmed he understood. (Tr. 441, ll. 16-17). When asked if he had any questions, Applicant initially replied "not exactly," but then reaffirmed he understood everything when pressed upon by the trial court. (Tr. 441-42). Counsels confirmed they had also already explained the rights and choices available to Applicant. (Tr. 442, ll. 1-3). The trial court then asked Applicant whether he wished to testify or exercise his right to remain silent, qualified with the admonition that Applicant was "not bound at this point[.]" (Tr. 442, 4-12). Applicant replied: "Exercise my right to remain silent." (Tr. 442, line 13). After the defense proffered the testimony of Christopher McCray, which was excluded by the trial court, the defense rested its case without presenting any witnesses to the jury. (Tr. 444-62; Rests at Tr. 462, ll. 10-11).

The parties then proceeded with a partial charge conference regarding Applicant's requests to charge the jury on voluntary manslaughter and self-defense. (Tr. 465, ll. 7-11). The trial court encouraged the parties to conduct further research overnight, but noted the only testimony he could recall to support the charges was "a self-serving . . . comment by the Defendant as he fled. My recollection is that the comment was something to the effect is the [epithet] tried to pull a jack." (Tr. 465, ll. 9-23). Martin noted testimony from Lanard Powell that Applicant reported the victim "tried a jack move," but the trial court noted the ambiguity of precisely what constituted "a jack move" and that it did not necessarily mean a gun was pulled. (Tr. 466, ll. 9-22). Martin also emphasized the numerous instances of testimony to show Green was generally hostile when he came in the house, and that he "reached for something" immediately prior to being shot. (Tr. 466-68). Upon a review of the testimony by the court reporter, the trial court cited to State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010), and explained:

. . . it talks about there having to be fear, and if he wasn't afraid, under Starnes it does not look like he would be entitled to voluntary manslaughter. And under the general self-defense, he's got to be in reasonable fear of imminent harm, imminent danger. He must be either actually – was actually in imminent danger of death or bodily injury or believed he was, and if he testified he was not, then that might end the inquiry[.]

(Tr. 469, ll. 1-23). Martin testified Applicant did not testify he was not in fear, and that Powell's testimony that Applicant never said he was afraid of Green was not dispositive. (Tr. 469-72). The trial court again noted that all involved could look at the issue overnight, and the court took recess for the evening. (Tr. 742, ll. 1-16)

When court reconvened on the morning of June 20, 2013, the trial court promptly returned to the jury charge argument and invited a resumption of the argument. (Tr. 472-73). Martin again argued that even under Starnes, given the totality of the circumstances, there was

evidence to support the charges requested. (Tr. 473-74). The State replied that Starnes established there had to be not only fear for voluntary manslaughter, but that the fear had to be the “result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence.” (Tr. 474-75). Speaking practically, the State argued:

If we listen to and we go along with the fact that somebody merely has to lift up their shirt and somebody can put ten rounds in them because they lifted up their shirt, we’re in a very dangerous position, Your Honor. That is the only thing in the record is that he lifted his shirt. No one saw a gun. Absolutely no witness said there was a gun. No witness said that they heard J.J. make any kind of threat and Lanard Powell actually said that Marcus never said he threatened him.

(Tr. 475-76). The State asserted there was nothing to support either charge, and the Court agreed, ruling that there was “no evidence whatsoever of the crucial element required for both voluntary manslaughter and self-defense, of any fear of imminent danger on behalf of the Defendant at the time the shots were allegedly fired[.]” (Tr. 476-77).

Martin then reported to the Court that Applicant had changed his mind and now wished to testify. (Tr. 477, ll. 20-24). Martin reported that he had told Applicant the opportunity passed when he exercised his right to remain silent, and Applicant confirmed their conversation. (Tr. 477-78). The trial court curtly denied the request, and opined that Applicant only wished to testify in light of the ruling on the jury charges. (Tr. 478, ll. 7-15). Martin noted the trial court had previously told Applicant he was not bound by his prior decision, which the court acknowledged, but rejected on grounds that “any reasonable person would believe that that right to testify was extinguished after the Defense rests.” (Tr. 478-79). Martin explained Applicant never told him or Brown that he wished to testify prior to resting. (Tr. 479, ll. 6-11). The trial court reaffirmed its refusal to permit Applicant to testify and ruled the record was closed. (Tr. 479, ll. 12-19).

Martin nonetheless continued by reporting Applicant's complaint that Counsels never had a specific conversation with him about testifying after McCray was not permitted to testify, but again acknowledged Applicant did not indicate prior to that morning that he wished to testify. (Tr. 480, ll. 5-19). The trial court asked Brown, who explained Applicant indicated his desire to testify when they met prior to proceedings resuming that morning. (Tr. 480-81). The trial court chastised Applicant and Counsels for not bringing the issue to his attention before he ruled on the requested jury charges, and reaffirmed its belief that Applicant waited until the court ruled to express his desire to testify. (Tr. 481-82). The trial court refused to permit Applicant to testify. (Tr. 482, ll. 3-5).

After the jury returned its verdict, and during mitigation, Applicant briefly addressed the Court:

The family want to know what happened to him. They heard what happened. Maybe the jury didn't because you dismissed the witness, but the family heard what happened to him. **It wasn't me.**

(Tr. 552, ll. 10-13) (emphasis added).

Appeal

The issue of the trial court's refusal was thereafter raised on direct appeal. Wright, 416 S.C. at 371-74, 785 S.E.2d at 489-90. In rejecting Applicant's argument, the South Carolina Court of Appeals noted the trial court's concern that Applicant was seeking to craft his testimony to fit the parameters of the trial court's rulings, and held that the concern was a legitimate ground to refuse to reopen the record. Id., 416 S.C. at 374, 785 S.E.2d at 490.

Evidentiary Hearing

At the evidentiary hearing, Martin testified he did not speak with Applicant in the holding area after the court took overnight recess on June 19, 2013. (PCR Tr. 9, ll. 17-19; PCR Tr. 31, ll. 10-22). Martin recalled that when Applicant was brought out from the holding cell that morning

and seated at the defense table, there was a discussion that he *possibly* wanted to testify. (PCR Tr. 9, ll. 21-25). Martin recalled explaining to Applicant that their “position had been all along and with Marcus, and Marcus agreed, that it was better that he not testify for multiple reasons.” (PCR Tr. 10, ll. 2-5). Martin told Applicant that his advised position had not changed, and Martin believed Applicant “had reconciled himself with the fact that it was in his better interest not to testify.” (PCR Tr. 10, ll. 5-11). Nonetheless, after the trial court ruled on the jury charges, Martin testified Applicant raised his hand to get the trial court’s attention. (PCR Tr. 10-11).

Both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State’s case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15). Martin testified at some length about why, despite requesting the charge, structuring the theory of defense around self-defense was problematic: Applicant gave statements to law enforcement without ever mentioning he acted in self-defense, or that he was the shooter; Green was shot ten times; no gun was found at the scene; Applicant was not in his own home; and Applicant would have had to testify, which Martin believed would have been fatal to an already difficult case. (PCR Tr. 14-15). Nonetheless, Martin asked for the self-defense charge and argued for it “because we’re looking for whatever we could find.” (PCR Tr. 17-18). Martin testified he had multiple conversations with Applicant regarding the decision to testify, though he could not say specifically how many. (PCR Tr. 31, ll. 5-9; PCR Tr. 33, ll. 10-14).

On cross-examination, Martin testified he had no recollection of Applicant ever telling him he wanted to testify, or that Applicant felt that he needed to testify, but that they had

multiple conversations regarding whether Applicant would testify and that they all agreed to a trial strategy that would not involve him testifying. (PCR Tr. 33, ll. 15-23). Martin testified he could not recall Applicant ever indicating his desire to testify prior to the morning of June 20, 2013, but cautioned that he did not mean to say there was never an instance in their many conversations in which Applicant may have said “maybe I ought to testify and say this or that.” (PCR Tr. 33-34). As noted in the previous section, Martin also acknowledged the allegations of witness tampering against his client. (PCR Tr. 42, ll. 2-9)."

Brown testified he got to the courthouse before Martin on the last day of trial and spoke with Applicant early that morning, at which time Applicant indicated he had changed his mind and wanted to testify. (PCR Tr. 54, ll. 13-22). Brown testified he informed Martin immediately after “he came up.” (PCR Tr. 54-55). Brown could not independently recall precisely when it was that the trial court was informed of Applicant’s newfound desire to testify. (PCR Tr. 55-56).

Questioned regarding the viability of self-defense as a theory of defense, Brown opined that it was not viable based on what Applicant had told him. (PCR Tr. 54, ll. 8-13). Brown recalled meeting at his office with Applicant, where Brown questioned how he could advance a self-defense strategy when Applicant shot Green ten times, including a couple of times in the back. (PCR Tr. 57-58). Brown in particular recalled asking Applicant why he kept shooting Green, to which Applicant replied “well he kept moving.” (PCR Tr. 58, ll. 8-10). Brown further noted the victim was on the floor while Applicant continued shooting him. (PCR Tr. 58, ll. 11-14). Brown denied Applicant ever told him he shot Green because he was in fear for his own life. (PCR Tr. 63, ll. 3-5).

On cross-examination, Brown confirmed that Applicant told him he was present in the house that evening, that he shot Green, and that he never indicated seeing Green with a weapon.

(PCR Tr. 63-64). Brown explained that “there’s an ebb and flow in trials,” such that they did not have an ironclad position as to whether Applicant would testify, but ultimately Applicant told Judge Hayes that he would remain silent. (PCR Tr. 68, ll. 4-12). Brown and Applicant discussed the question of whether to testify “a number of times[,]” but not every single meeting. (PCR Tr. 70, ll. 16-24). As explored in greater detail in Section II.A.1., above, Brown also testified he received a letter from Mrs. Wright purportedly written by Lanard Powell, which he concluded was not written by Powell and constituted a false writing. (PCR Tr. 64-68; PCR Tr. 71, ll. 1-12).

Applicant testified at the evidentiary hearing that when the trial court first asked him about testifying, Applicant replied that he was not sure, but that he did not exactly have any questions. (PCR Tr. 82, ll. 13-15). When pressed by the trial court for a yes or no answer, Applicant answered “no,” reasoning it was better for his other potential witnesses to testify to what happened. (PCR Tr. 82-83). The following morning, while discussing the possibility of changing his plea to guilty, Applicant told Brown that he wished to testify. (PCR Tr. 83, ll. 3-15). Applicant testified Brown left, then returned and told him “they said they’re not gonna allow you to testify.” (PCR Tr. 83, ll. 16-18). Applicant claimed that when he went out and listened to the trial court’s language and mannerisms, he could tell that nobody had informed the judge, so Applicant raised his hand and informed the trial court of his desire to testify. (PCR Tr. 83, ll. 18-22). The exchange with the trial court thereafter proceeded as reflected in the trial transcript. Applicant recalled that his testimony was never proffered. (PCR Tr. 84, ll. 11-16).

Applicant proffered at the evidentiary hearing the testimony he would have given at trial. Applicant testified he shot Green in self-defense. (PCR Tr. 84, ll. 19-20). Applicant testified Roy Sinclair “came flying around in his wheelchair to the front door[,]” but Applicant stopped

him from opening the door and the two “went back and forth a little bit[,]” as Applicant did not want to let people in while “Capone” was away. (PCR Tr. 84-85). Sinclair managed to open the door, declaring it was his cousin, and let Green into the house. (PCR Tr. 85, ll. 9-17). Applicant testified Green focused on Sinclair as he came in and said “you’ve got these little [ephitet] running this spot,” and “I’m about to put the squeeze on me a [ephitet].” (PCR Tr. 85-86). Applicant understood Green to mean he was going to shoot somebody. (PCR Tr. 86, ll. 4-5). Applicant testified Green then pulled out and brandished a weapon; Applicant recalled he screamed that Green had a gun, and when Green turned towards him, Applicant opened fire. (PCR Tr. 86, ll. 5-10). Applicant testified the first shots hit Green in the leg and the arm, such that the victim “spun around.” (PCR Tr. 86, ll. 10-11). Applicant kept firing, but denied continuing to shoot Green after he hit the floor, and offered that any bullets in the floor must have come from Green discharging his gun into the floor. (PCR Tr. 86-87). Applicant testified he shot Green because he was scared, and in order to defend himself. (PCR Tr. 87, ll. 2-4).

Applicant asserted he told his story to his attorneys, and that the whole trial was about self-defense. (PCR Tr. 87, ll. 4-13). Applicant further asserted that Martin had previously asserted during a bond hearing that the case was one of self-defense, and offered a transcript of the bond hearing. (PCR Tr. 87-88; Applicant’s Exhibit #2). Applicant expressed his bafflement that Counsels denied the case was one of self-defense, and again reaffirmed he shot Green in self-defense and feared for his life. (PCR Tr. 97-98). Applicant denied coercing Powell into writing any letters, and denied Powell ever wrote a letter saying Applicant did not shoot Green. (PCR Tr. 99-100).

On cross-examination, the State elicited further testimony from Applicant regarding the events occurring after the shooting. Applicant testified Green looked like he was going to get up,

so Applicant took cover behind a countertop. (PCR Tr. 101, ll. 9-15). Kelly Pinnix was unresponsive, while Mildred Small calmly told Applicant “baby, he ain’t moving no more.” (PCR Tr. 101, ll. 15-18). All present then fled. (PCR Tr. 101, ll. 18-20). Applicant recalled his panicked flight, and testified he got lost because he did not know the area. (PCR Tr. 101-02). Applicant met Qwanda Caldwell-Brown at the home of Daisy Marthena Menendez; there he recovered a bag of unknown contents from Brown, placed it in the BMW, got in her car, and rode away. (PCR Tr. 102-03). Brown drove Applicant around, retracing steps, until they found Lanard Powell, who explained he had taken Green’s truck at the behest of Kelly Pinnix. (PCR Tr. 103, ll. 1-16). Applicant testified Powell inquired about the bag, and when Applicant replied that he had placed it in his BMW, Powell gave him a funny look that gave Applicant concern. (PCR Tr. 103, ll. 16-19). Applicant asserted he “come to find out, what he had done was taken the deceased’s gun and that was in the bag.” (PCR Tr. 103, ll. 19-21). Applicant testified Powell told him he took the gun. (PCR Tr. 103-04). Applicant testified that after they sheltered in a hotel room, he directed Jacinda Wright to retrieve the bag; she did so, and Applicant found a chrome handgun. (PCR Tr. 104, ll. 6-13). Applicant testified he then obtained the rental car, and further directed Wright to call “Attorney Whetstone in Columbia” to let him know what was happening. (PCR Tr. 104, ll. 14-19). Applicant claimed that he was gathering “anything dealing with any firearms” to turn over to the police, but was apprehended at the hotel and was unable to “get the guns.” (PCR Tr. 104, ll. 19-24). Applicant then testified he told Martin that Powell buried the guns, and that he worried that with every night that passed, any DNA evidence on the guns was more likely to be lost. (PCR Tr. 104-05). Applicant recalled he “kept trying to get Lanard out” in order to locate the gun and deliver “them” to it. (PCR Tr. 105, ll. 6-18). Applicant denied ever attempting to burn Green’s truck, and opined that it would have been easy

to successfully burn a truck, but that it would not provide to cover up the crime. (PCR Tr. 105-06).

As to his statement to law enforcement, Applicant testified he was deliberately “beating around in circles trying to see exactly what they knew, because I already knew the situation was pretty bad.” (PCR Tr. 106-07). Applicant admitted he told law enforcement he had heard “a jack move went wrong,” but explained he was trying to elicit information from law enforcement, and that he had a bad prior history of law enforcement. (PCR Tr. 107-08). Applicant explained he did not tell law enforcement that he acted in self-defense, despite explicit invitation from investigators to do so, because “in the life that I live, you don’t talk to the police, you talk to an attorney.” (PCR Tr. 108-09). Applicant asserted that a “cop is just trying to make an arrest[,]” and again recalled that his prior interaction with the police involved law enforcement beating him and his mother. (PCR Tr. 109, ll. 13-19).

Findings

The Court finds Applicant has failed to meet his burden of showing deficiency on the part of Counsels, nor that the deficiencies alleged prejudiced him under Strickland. As previously noted, the Court finds Counsels’ testimony addressing this allegation to be credible and Applicant’s testimony to be extremely self-serving and not credible.

As to deficiency, first, Applicant was afforded an opportunity to testify and declined to do so. The Court finds Applicant was fully aware of his right to testify, the advantages and disadvantages of doing so, and reasonably concluded that he should not do so at the time the trial court asked him. The trial record reflects that the trial court fully appraised him of the right, and Counsels testified to spending substantial time discussing the subject with Applicant.

Second, the Court finds Counsels reasonably and accurately informed Applicant the following morning after he asserted his desire to testify that it was too late to go back and try to reopen the record that had been closed the previous day. By the time Applicant told them that he wanted to testify, the record was closed, and the trial court had already initiated the conference on whether to charge self-defense and voluntary manslaughter, where it opined on what testimony would have been necessary to support the charges.

Third, the Court finds Counsels reasonably concluded Applicant did not wish to testify at the time they rested their case, based Applicant's statement to the trial court, the time spent in preparation and consultation, and based upon the nature of the agreed upon strategy to attack the credibility of the drug-addled witnesses, only one of whom could specifically identify Applicant as the shooter. The Court finds that self-defense was *not* the strategy Counsels employed at trial, even if they had considered it earlier in the course of the representation. The facts and evidence before Counsels more than justified making the strategic decision to not make self-defense their core strategy: no witness could credibly testify that Green was ever armed with anything, Green's broken finger substantially diminished the likelihood a jury would believe he was even capable of wielding a pistol, and any realistic self-defense strategy would all but require them to concede that Applicant was in fact the shooter when the identity of the perpetrator was the weakest element of the State's case. In light of those facts and Counsels strategic decisions, they would have had no reason to doubt Applicant's declination to testify during trial or at the time they rested their case.

As to prejudice, first, the Court finds that even if Counsels had immediately confronted the trial court with Applicant's newfound desire to testify, there is not a reasonable probability the outcome would have been different. As noted above, the trial court had already explained at

the end of the previous day what testimony would have been necessary to support instructions on voluntary manslaughter and/or self-defense, such that there is little to no possibility the trial court would have ruled differently had it been more promptly informed of Applicant's desire to testify on the following morning. Second, as noted above, the Court finds that Applicant's testimony would have been devastatingly harmful to his own case. The testimony Applicant offered at the evidentiary hearing (1) admitted Applicant was the shooter, (2) admitted to much of the sequence of events which followed after Applicant shot Green, (3) admitted his duplicitous and dishonest interactions with law enforcement, (4) was crucially based in part on hearsay from Powell that was inconsistent with Powell's trial testimony (that he took the gun), (5) lacked evidentiary support outside of his own testimony, and (6) broadly did not make any sense. This Court enjoyed the opportunity to closely observe and listen to Applicant during his testimony, and cannot conceive of how a reasonable jury could have credibly believed Applicant and thereupon conclude that he acted in self-defense in shooting Green, or that he shot Green without malice aforethought. Applicant's testimony would have only served to scuttle Counsels very reasonable trial strategy and more surely secure his own conviction.

For all of these reasons, the Court finds that Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or that there is any reasonable probability that but for the deficiencies alleged, the outcome at trial would have been different. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

3. Failure to Introduce, Confront Veronica Chandler with Prior Statements

Applicant alleges Counsels were ineffective for failing to introduce into evidence statements made by witness Veronica Chandler to law enforcement that she saw the victim had a gun. Rule 612(b) of the South Carolina Rules of Evidence provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence that the prior statement was made is inadmissible.

“A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination.” State v. Stokes, 381 S.C. 390, 398-99, 673 S.E.2d 434, 438 (2009) (citing State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)).

“When the issue is whether the witness admitted making the prior inconsistent statement, the admission must be unequivocal.” State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229 (Ct. App. 2010) (citing State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003)).

“Generally, where the witness has responded with anything less than an unequivocal admission, trial [courts] have been granted wide latitude to allow extrinsic evidence proving the statement.” Id., 388 S.C. at 201, 694 S.E.2d at 229-230.

“As a preliminary matter, however, the court must be persuaded that the statements are indeed inconsistent.” United States v. Hale, 422 U.S. 171, 176 (1975). If the party seeking to impeach a witness with a prior statement fails to establish a threshold inconsistency between the trial testimony and the prior statement, proof of the prior statement lacks any significant probative value and must therefore be excluded. Id. However, there is no requirement that the two statements be diametrically opposite. Firemen’s Fund Ins. Co. v. Thien, 8 F.3d 1307, 1312 (8th Cir. 1993); see e.g. United States v. Tory, 52 F.3d 207, 210 (9th Cir. 1995) (where a witness told an investigator that the perpetrator was wearing sweatpants, trial testimony by the same witness “that she did not remember describing them in that particular way but did remember describing them ‘as a white type of pant’ was inconsistent).

Trial

Chandler testified at trial that she was at Roy James Sinclair's house on April 30, 2012, to buy crack from "Capone" (Powell). (Tr. 200-01). Chandler arrived at the house and learned from Sinclair that Powell had just left. (Tr. 201, ll. 11-16). Sinclair invited Chandler into the house, and so she entered and took a seat in the den "in the little La-Z-Boy right beside the T.V." (Tr. 201-02). Green arrived afterward, entered the house, and "made a statement because somebody opened the door and he was like that's how you got your house run. You got people opening your doors and what-not." (Tr. 202, ll. 12-23). Green spoke to everybody in the house in turn, reaching Chandler last because she was a known family friend. (Tr. 202-03). While Chandler spoke to Green, "[t]he guy in the kitchen said something, and [Green] say, yeah, yeah, yeah, and the next thing I know, all I heard was boom, boom, boom boom. It was no arguments, no fussing, or anything." (Tr. 203, ll. 5-9). Chandler was so close to Green when he was shot, that blood splattered on her clothes, which were later taken by law enforcement as evidence. (Tr. 206-07). Chandler never heard Green threaten the man in the kitchen in any way; Green had been talking to her when the man in the standing at the bar in the kitchen opened fire. (Tr. 203-05). Chandler saw the man in the kitchen, and the gun in his hand. (Tr. 205, ll. 2-5). Chandler testified she did not see any gun in Green's hand. (Tr. 205, ll. 6-7). Chandler fled the house, and saw Powell return as she left. (Tr. 205-06; Tr. 207-08).

On cross-examination, Martin asked Chandler about statements she made to law enforcement:

Q. And you gave a statement to the police after this occurred?

A. Yes sir, I did.

Q. And you told them at that time that J.J. reached to pull for what you thought was a gun?

A. I didn't see a gun.

Q. And that's what I want to ask you about.

A. Okay.

Q. Because when you gave a statement to the police -- do you remember giving a statement to the police?

A. Yes sir, I do.

Q. Okay. And do you -- and I've got the statement here and I can give it to you if that's necessary.

A. I know the whole complete statement. I gave it.

Q. All right. But you told the police at that time, you said I don't know if he had a gun or everything happened so fast, but he lift up his shirt?

A. Yes sir.

Q. Do you remember saying that?

A. Yes, I did say that.

Q. And that's true?

A. Yes sir, but he -- I did not see a gun present.

...

Q. And then they keep talking to you about that **and you say I'm quite convinced I saw a gun.**

A. I don't remember saying that.

...

Q. Again, you gave a statement, correct?

A. Okay, and like I said, I don't recall saying that.

Q. All right, but you don't recall saying that. You do recall saying that you thought he had a gun, as we talked about earlier, but you're not sure?

A. I mean, like I say, I don't recall saying that, so I'm not going to answer to that. If they got it in the paper, then I evidently say it, but I don't recall saying it.

...

Q. I just asked you about one statement that you made and you said that you did say that?

A. I saw when he did lift his shirt a little bit, but I did not see a gun present.

(Tr. 209-11) (emphasis added). Martin again attempted to confront Chandler with the statement “I’m convinced I saw a gun, but I don’t know[,]” which elicited a sustained objection from the State. (Tr. 211, ll. 8-12). Martin again asked Chandler if she told the police she thought she saw a gun, to which she again replied she did not recall saying so. (Tr. 211, ll. 13-20). On redirect examination, Chandler asserted that she did not give a written statement, but a recorded oral statement, which she had reviewed and did not include the statement insisted upon by Martin. (Tr. 211-12).

Evidentiary Hearing

At the evidentiary hearing, Martin could not recall cross-examining her, and did not believe he had done so, but explained that he reviewed her statements to law enforcement prior to the hearing. (PCR Tr. 16-17). Martin explained that whether or not the victim had a gun was not the primary factor in their defense because the theory of the case was not self-defense. (PCR Tr. 17-18). Indeed, as previously noted, both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State’s case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15).

On cross-examination, Respondent moved a transcription of Chandler’s statement into evidence and reviewed it with Martin. (PCR Tr. 42-46; State’s Exhibit #1). In her statement, Chandler told law enforcement that there was an exchange between “the Dude in the kitchen” and Green, and then Green lifted his shirt. (PCR Tr. 43-44; State’s Exhibit #1). Chandler told

law enforcement she was “quite convinced I saw a gun, but I don’t know” and persisted in her self-doubt and could not describe any gun. (PCR Tr. 44-45; State’s Exhibit #1). Martin agreed with the State’s assertion that Chandler’s statement “provides something less than she firmly saw a gun.” (PCR Tr. 45, ll. 3-8). Chandler’s statement continues by explaining that “when [Green] did that I remember [Green] turning around and that’s when I heard POW, POW, POW . . .” (State’s Exhibit #1).

Findings

The Court finds Applicant has failed to meet his burden of showing Martin was ineffective. First, to the extent Applicant argues that Martin’s failure was such that he failed to elicit testimony from Chandler to show that it appeared Green was reaching for a gun, Applicant is simply incorrect. While Martin was unable to elicit testimony from Chandler that she saw a gun or previously believed (however tenuously) that she saw a gun, he did elicit testimony that Green had lifted his shirt and did not know if he had a gun. In that light, it was reasonable for Martin to simply accept what he was given by Chandler and move on without introducing the statement.

In any event, because the theory of defense was to deny Applicant committed the shooting, and because self-defense was affirmatively not the theory (and not a practical option absent Applicant’s testimony), litigating the motivations of the shooter were secondary. Because the defense theory of the case was not self-defense, the actual strategic value of introducing Chandler’s prior statements was limited, as Martin noted. To that end, Chandler never clearly indicates that she saw a gun, but rather describes her self-reflection and doubt that she had convinced herself of as much despite being unable to recall actually seeing one. Reading State’s

Exhibit #1 in its totality, Chandler's statements are not so clearly inconsistent as to lead this Court to conclude their introduction would have substantially impeached Chandler.

Furthermore, the statement as a whole does not present facts favorable to Applicant. Notwithstanding Chandler's refusal to admit to previously thinking she saw a gun on Green's person, the overwhelming majority of the statement corroborates her trial testimony and the testimony of the other witnesses. The State would have been within its right to require Applicant to introduce very substantial corroborative portions of the statement to clarify the inconsistent statement. See Rule 106, SCRE (rule of completeness); State v. Taylor, 333 S.C. 159, 171, 508 S.E.2d 870, 876 (1998) ("Only that portion of the remainder of a statement which explains or clarifies the previously admitted portion should be introduced."). It does not appear to this Court that the impeachment value of whether she saw a gun would outweigh the damaging corroborative value of the other admissible portions of the statement, especially in a case where Counsels' trial strategy depended upon the jury agreeing that the State's witnesses were all heavily inebriated and not to be believed. The Court cannot conclude that the introduction of Chandler's statement would have changed the outcome of trial.

For all of these reasons, the Court finds Applicant has failed to meet his burden of establishing deficient performance of counsel, or that he was prejudiced by the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

4. Failure to Prepare, Present Case in Mitigation

Applicant alleges Counsels were ineffective in failing to prepare and present an adequate case in mitigation for him after he was convicted.

At trial, Martin said very little in mitigation, but only offered that a sentence of thirty to thirty-five years "would be sufficient to protect the community and to punish him for his

wrongs.” (Tr. 551, ll. 5-14). Brown offered without specificity that “perhaps there is some socially redeeming qualities that Mr. Wright possess.” (Tr. 551-52). Applicant, as previously noted, addressed the Court:

The family want to know what happened to him. They heard what happened. Maybe the jury didn’t because you dismissed the witness, but the family heard what happened to him. It wasn’t me.

(Tr. 552, ll. 10-13). The trial court sentenced Applicant to more than life in prison. (Tr. 552, ll. 14-21).

At the evidentiary hearing, Martin testified he did not have any mitigation prepared. (PCR Tr. 47, line 17). Martin explained that he “knew that if [Applicant] were convicted, what the sentence was going to be. I’m not sure what I could’ve had in mitigation in this particular case.” (PCR Tr. 47-48). Morgan continued that he was not aware of anything that could have mitigated the sentence, and that he had previously advised Applicant to take an offer to plead to a lesser-included offense for a sentence of 25 years because of his firm belief that any sentence imposed upon conviction would be long. (PCR Tr. 48, ll. 7-16).

The Court finds Applicant has failed to meet his burden. No evidence or additional arguments were offered at the evidentiary hearing in mitigation of Applicant’s crime, only that he killed Green in self-defense, after denying that he had anything to do with the killing in mitigation at the original trial. Applicant cannot prevail by way of this allegation, and his request for relief is **DENIED**.

5. Failure to Object to Testimony, Qualification of Michelle Eichenmiller

Applicant alleges Counsels were ineffective in failing to object to the qualification and testimony of Michelle Eichenmiller as an expert in forensic testing of firearms and ammunition. “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,

experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

Rule 702, SCRE. “All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or otherwise.” Graves v. CAS Medical Systems, Inc., 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (citing State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)). “In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether ‘the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.’” Id. (citing Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010)). “Second, the expert must have ‘acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter,’ although he ‘need not be a specialist in the particular branch of the field.’” Id. “Finally, the substance of the testimony must be reliable.” Id.

“There is no exact requirement concerning how knowledge or skill must be acquired.” State v. Rose, 423 S.C. 382, 392-93, 814 S.E.2d 529, 534 (Ct. App. 2018) (quoting State v. Henry, 329 S.C. 266, 274, 495 S.E.2d 463, 467 (Ct. App. 1997)). There is no abuse of discretion in qualifying a witness as an expert “as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury.” Id.

Eichenmiller testified she worked for the South Carolina State Law Enforcement Division as a forensic firearms examiner. (Tr. 410, ll. 9-16). Eichenmiller explained she possessed a bachelor’s degree as well as a master’s degree, though she did not indicate for what fields of study, and substantial training for SLED, including “a three to five year internship, apprenticeship program, where I learned under trained firearms examiners.” (Tr. 410, ll. 17-21). Eichenmiller further explained she performed practice cases as part of the apprenticeship, then

worked alongside other experienced examiners who reviewed her performance. (Tr. 411, ll. 1-5). Eichenmiller had seven years of experience working in her position with SLED and indicated she had testified as an expert in state courts on approximately fifteen prior occasions. (Tr. 411, ll. 6-22). The trial court qualified Eichenmiller as an expert in forensic testing of firearms and ammunition without objection from Martin. (Tr. 411-12).

Eichenmiller testified that she compared six “items”—bullets and a casing—recovered from the scene and concluded they were consistent with a type of weapon “rifled with six grooves or right twists,” and then produced a list of possible manufacturers who make guns with such rifling. (Tr. 415-16). Eichenmiller concluded that:

... the fired bullets could have been forty S&W caliber or a ten millimeter automatic caliber. Firearms that are made in forty S&W caliber with that rifling is Glock, Heckler & Koch, IMI, Kahr Arms, and Vector, and then Glock also makes a ten millimeter auto with that rifling.

(Tr. 416, ll. 3-7). She had no weapon to which to compare the projectiles. (Tr. 416, ll. 14-19). Analyzing other spent casings recovered from the top of the stove in the kitchen, from the living room, and from a couch, Eichenmiller concluded they were all “forty S&W caliber cartridge cases” which could have been the same caliber as the bullets. (Tr. 417, ll. 2-23). Eichenmiller compared two spent casings for a “caliber forty Model G23, Serial Number MAF699” recovered from the Kate’s Bay residence to five items recovered from the crime scene and concluded that all were fired from the same weapon. (Tr. 396, ll. 16-22; Tr. 417-19).

Applicant asked no questions and offered no evidence or arguments with respect to Eichenmiller at the evidentiary hearing. On cross-examination, Martin was unable to recall Eichenmiller’s testimony. (PCR Tr. 50-51). Martin asserted that he must not have had any basis to object to her expert qualification, and that if he had known of any such basis, he would have so objected. (PCR Tr. 51, ll. 5-18).

The Court finds Applicant has failed to meet his burden of showing ineffectiveness. The trial record reflects Eichenmiller was qualified to testify to the field in which she was qualified, and was qualified in a commonly accepted and reliable field of forensic science. Eichenmiller possessed years of experience and had testified as an expert numerous times before. See, e.g. State v. Brockmeyer, 406 S.C. 324, 349, 751 S.E.2d 645, 658 (2013); State v. King, 424 S.C. 188, 197, 818 S.E.2d 204, 209 (2018). Applicant offers no evidence or argument against Eichenmiller's qualifications or conclusions. The Court finds no ineffectiveness from Martin's treatment of Eichenmiller's testimony, and Applicant's request for relief by way of this allegation is **DENIED**.

6. Failure to Strike Former Prosecutor from Jury

Applicant alleges Counsels were ineffective in failing to object to the seating of juror Barbara Blain-Olds. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997)). "The selection of a jury is inevitably a call upon experience and intuition. The *trial lawyer* must call upon his own insights and empathetic abilities." Id. (quoting Romero v. Lynaugh, 884 F.2d 871, 878 (5th Cir. 1989)) (emphasis original). "In PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." Id.

Trial

During voir dire at trial, the trial court asked if any members of the jury panel had been involved with the solicitor's office, to which "Juror Number 27," Barbara Blain-Olds, responded that she "was once employed by the Solicitor's Office as an Assistant Solicitor." (Tr. 30-31). Blain-Olds indicated she had last worked for the office "[c]lose to ten years" prior, and affirmed

that her prior employment did not affect her ability to be fair and impartial, and base her verdict on the law and evidence of the trial. (Tr. 31, ll. 4-16). The trial court thanked Blain-Olds for her responses and asked her to remain. (Tr. 31, ll. 17-18).

Later during the voir dire, the trial court announced the long list of possible witnesses, in response to which Blain-Olds again stood and indicated that “Martha Menendez” was her “former sister-in-law.” (Tr. 36-37). The trial court asked Blain-Olds and five other responsive potential jurors to raise their hands if “the fact that they are witnesses in this trial affect your ability to be fair and impartial in the trial of this case[;]” nobody raised their hand and all of the potential jurors sat back down. (Tr. 38, ll. 2-6).

The State immediately advised the trial court that there were two additional potential witnesses: Russell Dean and Jacinda Wright. (Tr. 38, ll. 8-10). The trial court pronounced the names and Blain-Olds again stood. (Tr. 38, ll. 11-19). Blain-Olds informed the trial court that Wright was her “niece by marriage, my former marriage.” (Tr. 38, ll. 19-20). Blain-Olds denied that the relationship would affect her ability to be fair and impartial. (Tr. 38, ll. 21-23).

When Blain-Olds appeared during jury selection and Applicant was prompted as to whether to exercise a peremptory strike, Counsel Brown asked for “a minute,” which the Court granted. (Tr. 40-41). Brown then asked to seat Blain-Olds on the jury. (Tr. 41, line 4).

Evidentiary Hearing

On direct examination at the evidentiary hearing, Martin did not initially recall that a former solicitor was seated as a juror during Applicant’s trial. (PCR Tr. 24, ll. 3-13). Applicant did not refresh Martin’s recollection but rather moved on to a different series of questions. On cross-examination, Martin was directed to the trial transcript and testified he did recall Blain-Olds and that she told the court she was previously employed with the solicitor’s office. (PCR

Tr. 48, ll. 17-24). Martin confirmed Blain-Olds was, at the time of the evidentiary hearing, the Mayor of Conway, South Carolina. (PCR Tr. 48-49). Martin testified that Jacinda Wright, Blain Olds' niece by marriage, was Applicant's significant other at the time, and that he would have put her on his list of potential witnesses. (PCR Tr. 49-50). Martin asserted that he would not have agreed to seat her as a juror unless Applicant wanted to do so. (PCR Tr. 50, ll. 11-13, ll. 19-21). Additionally, Martin explained that he had known Blain-Olds for years, that her time with the solicitor's office had been short, and that he believed she would have been a good juror. (PCR Tr. 50, ll. 13-19).

Findings

The Court finds Applicant has failed to meet his burden of proof as to either prong of Strickland. Applicant has failed to present any evidence to show Blain-Olds' presence on the jury, or service as foreperson of the jury, prejudiced his defense in any way. Additionally, Applicant has failed to present any evidence to show Counsels were deficient in seating Blain-Olds. To the contrary, Martin's testimony reflects the capable exercise of his judgment based on his experience in and knowledge of the community in determining whether Blain-Olds would be a favorable juror. The Court finds no ineffectiveness from Counsels' decision to not exercise a peremptory strike on Blain-Olds, and Applicant's request for relief by way of this allegation is **DENIED**.

7. Failure to Establish Expectation of Privacy in Kate's Bay Residence

Applicant alleges Counsels were ineffective in failing to establish that he had a reasonable expectation of privacy in the residence at 3635 Kates Bay Highway. The Court will not long belabor this issue, because the validity of search of the Kate's Bay Highway was raised

to and ruled upon by the South Carolina Court of Appeals without regard as to whether

Applicant possessed a reasonable expectation of privacy, and concluded:

. . . the magistrate had a substantial basis for determining that, under the totality of the circumstances, there was probable cause to search 3635 Kate's Bay Highway. The information in Detective Weaver's affidavit and supplemental oral testimony, which was relayed to him by the lead investigator, created a fair probability that evidence of the shooting would be found at 3635 Kate's Bay Highway.

State v. Wright, 416 S.C. 353, 366, 785 S.E.2d 479, 486 (Ct. App. 2016). As such, Applicant cannot show any prejudice from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

8. Failure to Object, Require Certified Copies of Convictions for S.C. Code Ann. § 17-25-45

Applicant alleges Counsels were ineffective in failing to require the prosecution to introduce certified copies of his prior convictions relied upon for the purposes of sentencing him to life without parole pursuant to S.C. Code Ann. § 17-27-45. As with the prior allegation, the Court will not long belabor this issue, because it was raised to and disposed of by the South Carolina Court of Appeals in a footnote:

Wright asserts on appeal that the trial court erred in sentencing him to LWOP under South Carolina's recidivist statute. [. . .] We note the trial court did not state it was sentencing Wright to LWOP. Rather, on the sentencing sheet, the trial court wrote "life imprisonment"; noted Wright was convicted of murder in violation of sections 16-3-10 and 16-3-20 of the South Carolina Code [. . .]; and did not mark the box labeled "§ 17-25-45," which would have indicated it was sentencing Wright to LWOP under the recidivist statute. The trial court had authority to sentencing Wright to life imprisonment under the murder statute.

Wright, 416 S.C. at 364 n. 1, 785 S.E.2d at 485 n.1. As such, Applicant cannot show any prejudice from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

9. Failure to Obtain Jury Instructions on Self-Defense and/or Voluntary Manslaughter

Applicant alleges Counsels were ineffective in failing to elicit or otherwise introduce evidence necessary to obtain jury instructions on self-defense and voluntary manslaughter. This allegation is resolved by much of the same summary and analysis as set forth in Section II.A.2., above, as the only additional evidence properly before this Court to further support Applicant's claims to voluntary manslaughter and self-defense instructions is his own testimony. As such, this Court here incorporates without restating the entirety of Section II.A.2.

The Court finds Applicant has failed to establish Counsels were deficient in failing to introduce enough evidence to support jury instructions on self-defense or voluntary manslaughter, or that he was prejudiced by their effort. Counsels' trial strategy was to deny Applicant's involvement at all, not argue for self-defense or that he shot the victim in the heat of passion. Applicant refused to testify until it was too late to do so. Applicant's testimony he offered in support of his self-defense and voluntary manslaughter theories was more harmful than helpful and would have foreclosed the strongest trial strategy available to him. For all of these reasons, and those more thoroughly set forth in the prior section, the Court finds Applicant has failed to show Counsels were ineffective, and his request for relief by way of this allegation is **DENIED**.

10. Failure to Subpoena, Call Witness Kelly Pinnix

Applicant alleges Counsels were ineffective in failing to subpoena and call as a witness in his defense one Kelly Pinnix.¹ In order to establish prejudice from an attorney's failure to call a witness, the applicant must call that witness at the post-conviction relief evidentiary hearing or otherwise offer the witness' testimony within the rules of evidence. Dempsey v. State, 363 S.C.

¹ Presented in the pleadings as "Phoenix," and pronounced as such throughout the evidentiary hearing.

365, 369, 610 S.E.2d 812, 814 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Pinnix, was indicated by other witnesses at trial as a white female² who was present, albeit drunk and/or high on crack cocaine, at the time Applicant shot and killed Green. (Tr. 177, ll. 5-14; Tr. 216-18; Tr. 224-27; Tr. 230, ll. 11-20; Tr. 232, ll. 5-8; Tr. 245-46; Tr. 247, ll. 2-9; Tr. 270-71; Tr. 299-300). Powell testified that Pinnix collected “a whole bunch of shells” after the shooting and attempted to give them to him. (Tr. 270-71). Pinnix did not testify at trial. In closing arguments, Martin focused on the credibility of the State’s witnesses, and the fact that only one witness—Roy Sinclair—actually identified Marcus Wright as the shooter. (Tr. 489-95).

Nor did Pinnix testify at the evidentiary hearing. As previously noted, both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State’s case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15). Martin testified that Pinnix identified Applicant as the shooter and otherwise gave statements “that made her testimony inconsistent with any thoughts of self-defense in addition to the fact that she identified him as the killer.” (PCR Tr. 21-23; Applicant’s Exhibit #1). On cross-examination, Martin read a portion of Pinnix’ statement which provided that an indeterminate “they” said that the Victim “pulled a gun out and he never did.” (PCR Tr. 38-39; Applicant’s Exhibit #1). After reviewing various excerpts from Pinnix’ statement, Martin agreed her statement was “highly damaging,” and that he was not about to call her as a witness. (PCR Tr. 38-41; Applicant’s Exhibit #1).

² Multiple witnesses only identify her as “the white girl.”

Applicant testified that although Pinnix told law enforcement that she did not see a gun, she also told law enforcement that the shooter screamed gun, so as to establish the shooter's state of mind, and that they were locked in the home. (PCR Tr. 99, ll. 9-20; Applicant's Exhibit #1).

The Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or that the deficiency alleged prejudiced him. Applicant narrowly insists upon two portions of Pinnix' statement: Applicant's own declaration that the Victim was armed, and that she saw Powell run into the house without a gun, then run out with a gun. However, Counsels both testified that self-defense was not the trial strategy they settled upon, and the record reflects a defense theory which denied that Applicant was present at all. Introducing a witness who would have established Applicant as the shooter would have run entirely to the contrary of Counsels' theory of the case. The statement as a whole is highly damaging and inculpatory—Pinnix affirmatively rejects the claims that Green ever had a gun, and further asserts he had a broken finger. Pinnix identifies Applicant as "Big Money," and compellingly tells law enforcement about Applicant's eerie calm as he unloaded his gun into Green. Martin's determination that he could not call Pinnix is (1) entitled to deference and (2) amply supported by the record. Moreover, calling Pinnix would have been so damaging to Applicant's case, doing so could have itself constituted a colorable claim of ineffective assistance of counsel.

Finally, the Court is limited to consider only Pinnix' statement as it was provided to law enforcement, as Pinnix did not testify at the evidentiary hearing. Though the Court can rely upon that statement in weighing whether Applicant has met his burden of showing prejudice, Pinnix' absence from the hearing denies this Court an opportunity to pass upon which parts of her testimony would have been credible, which parts would not be credible, and whether she would be able to remember anything at all given her evidently heavy drug use at the time of the

shooting. This Court is left with something more than mere speculation, but the inability to observe the witness must invariably weigh against Applicant's burden. For all of these reasons, the Court finds Applicant has failed to establish any deficiency on the part of Counsels by way of this allegation, nor any prejudice from the deficiency alleged, and his associated request for relief is **DENIED**.

11. Failure to Impeach Witnesses on Prior Convictions; Investigate, Raise Brady Violations

Applicant alleges Counsels were ineffective in failing to impeach witness Daisy Marthena Menendez, also known as Marthena Jackson (hereafter "Menendez"), with a prior conviction. Applicant additionally and in the alternative alleges Counsels were ineffective in failing to investigate and thereafter raise to the trial court alleged Brady³ violations insofar as the State did not disclose Menendez's alleged prior convictions.

"Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). The mandate of Brady extends to evidence "that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police." State v. Kennerly, 331 S.C. 442, 452-53, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Kyles v. Whitley, 514 U.S. 419 (1995)). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark, 315 S.C. at 388, 434

³ Brady v. Maryland, 373 U.S. 83 (1963).

S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)); see also State v. McCray, 413 S.C. 76, 95-97, 773 S.E.2d 914, 924-25 (Ct. App. 2015) (finding the prior convictions related to dishonesty of two witnesses were favorable to the defendant, in the State's possession, and were withheld by the State, but were immaterial where the witness' testimony was corroborated by numerous other witnesses).

For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Rule 609(a), SCRE. Convictions for which a person is pardoned or which have been expunged may not be used for impeachment purposes. Rule 609(c), SCRE.

At trial, Menendez testified that her niece Jacinda Wright called her in the early morning hours of May 1, 2012, and reported that Applicant wanted to park a car in her garage at 3651 Kate's Bay Highway; Applicant thereafter parked a black BMW in her garage. (Tr. 256-58). Applicant returned to the vehicle the next day and retrieved something, but Menendez did not know what, if anything, he actually took. (Tr. 258, ll. 14-24). Applicant left the car, and the BMW remained in Menendez' garage until law enforcement later retrieved it. (Tr. 258-59). Menendez noted that Jacinda lived just "two houses over." (Tr. 259, ll. 8-15).

On cross-examination, Menendez established that Applicant lived with Jacinda in her 3635 Kate's Bay Highway home for more than three years, and that she saw him there on a regular basis. (Tr. 260-61). Menendez knew nothing about Applicant shooting anybody until

law enforcement told her as much, and perceived nothing sinister or criminal in Applicant's request to park his car in her garage. (Tr. 260-61).

At the evidentiary hearing, Applicant asserted that Menendez had a criminal background, and that the solicitor had prosecuted Menendez previously for perjury, misconduct in office, and forgery. (PCR Tr. 93-94). The prosecutor, Elder, testified she could not recall if she disclosed any prior convictions for Menendez, but noted that the documents provided by PCR counsel to refresh her recollection reflected charges which were dismissed *nolle prosequi*. (PCR Tr. 117-18). Elder recalled that the charges were expunged from Menendez' record, and testified that to the best of her recollection, Menendez did not have any convictions at the time of her trial testimony. (PCR Tr. 118, ll. 16-21). Elder explained:

If, if – what I would've done at trial is when I prepare for trial, I get a – run a certified criminal record for witnesses and I present that to the Court. So, if I did not present it to the Court, then it would've not – it was not appearing on her criminal convictions.

(PCR Tr. 119, ll. 4-8). Elder could not recall prosecuting Menendez, nor could she recall whether she handled a Family Court proceeding to which only she obliquely referred. (PCR Tr. 119, ll. 9-18).

The Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsels, or any prejudice from the deficiencies alleged. First, for reasons that have already been set forth in prior sections, this Court finds Applicant's testimony to be wholly lacking in credibility, and puts no weight in it. Applicant did not introduce any exhibits to establish Menendez had prior convictions, let alone any with which she could be impeached. Thus, this Court is left only with Elder's testimony, which despite some haziness due to the passage of time, did clearly provide (1) that Elder did not possess any records of convictions for Menendez at the time of trial, and (2) that Menendez had no convictions at the time of trial. This

Court does give weight to Elder's testimony and, accordingly, this Court finds Menendez was not subject to any convictions at the time of her testimony at Applicant's trial. The absence of an impeachable prior conviction is dispositive of Applicant's claim.

Furthermore, and notwithstanding this Court's affirmative finding that there was no prior conviction and assuming for the sake of argument that *some* conviction exists, Applicant has not presented enough evidence or argument to meet his burden of showing he could have impeached Menendez under Rule 609, SCRE. This Court is without sufficient information to deem any prior theoretical convictions as within the time limits of Rule 609(b), SCRE, or for a crime of dishonesty under Rule 609(a)(2), SCRE, or for a felony under Rule 609(a)(1), SCRE, subject to Rule 403, SCRE.

As to both materiality under Brady and prejudice under Strickland, this Court is not convinced any such theoretical impeachment of Menendez would have been all that helpful to Applicant. While Menendez did establish Applicant stashed the BMW and may have obtained something from the vehicle, multiple other witnesses testified that Applicant left the scene in the black BMW, and the car's keyless entry device was recovered from the Camaro rented by Jacinda Wright. (Tr. 221, ll. 7-13; 233, ll. 1-6; Tr. 236, ll. 21-25; Tr. 268, ll. 16-18; Tr. 271-72; Tr. 338, ll. 14-17). Additionally, she provided testimony on cross-examination vital to Applicant to support a reasonable expectation of privacy in the residence at 3635 Kate's Bay Highway. Where the witness testified to a secondary detail and otherwise provided testimony beneficial to Applicant, it cannot be said that her generalized impeachment would have changed the outcome at trial.

As to Strickland deficiency, and again notwithstanding this Court's affirmative finding that there was no prior conviction and assuming for the sake of argument that *some* conviction

exists, Applicant has not presented any evidence to show that Counsels could or should have discovered Menendez' theoretical prior by the exercise of reasonable diligence. Applicant has presented no evidence to rebut the presumption of effective assistance of counsel—Applicant never questioned Counsels on the subject.

Applicant has failed to meet his burden under either prong of Strickland, has failed to establish a claim for relief under Brady that they could have or should have found and raised, and for all these reasons above, his request for relief by way of this allegation is **DENIED**.

B. Prosecutorial Misconduct under Brady v. Maryland

As addressed in the context of ineffective assistance of trial counsel in Section II.A.11, above, Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). The summation and reasoning of Section II.A.11 is here incorporated in full without restatement. As explained above, Applicant has failed to present evidence sufficient to show that impeachment of Menendez would have been favorable to him, that the State knew of the prior conviction alleged, that the State withheld information about the prior conviction alleged, that the prior conviction exists, or that the impeachment based upon the prior conviction was material to his own conviction. Applicant has failed to meet any of the requirements of Brady, and as such his request for relief by way of this due process claim is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 day of August, 20~~12~~²⁰.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

Conway, South Carolina

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

The State, Respondent,

v.

Marcus Dwain Wright, Appellant.

Appellate Case No. 2013-001406

Appeal From Horry County
John C. Hayes, III, Circuit Court Judge

Opinion No. 5401
Heard November 10, 2015 – Filed April 27, 2016

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General J. Anthony Mabry, of
Columbia; and Solicitor Jimmy A. Richardson, II, of
Conway, for Respondent.

LOCKEMY, J.: A jury convicted Marcus Dwain Wright of murdering Jerome Green, Jr. (the Victim), trafficking in cocaine, possession with intent to distribute cocaine base, and possession of a weapon during the commission of a violent crime. On appeal, Wright argues the trial court erred (1) in admitting evidence from the search of his residence, (2) in admitting South Carolina Department of Motor Vehicles (DMV) records without a proper foundation, (3) in admitting

evidence that was the fruit of an illegal search of his motel room, (4) in excluding evidence of his co-defendant's prior inconsistent statement, (5) in denying his request to testify at trial, (6) in sentencing him to a statutory sentence of life imprisonment without parole (LWOP) without making express factual findings and where the record did not clearly support a sentence of statutory LWOP, and (7) in refusing to give his requested jury charges on voluntary manslaughter and self-defense. We affirm.

FACTS

Wright was charged with fatally shooting the Victim on the evening of April 30, 2012, at the residence of Roy Sinclair, where Wright was selling drugs. At trial, Wright sought to show that (1) he shot the Victim in self-defense because he believed the Victim was reaching for a gun or (2) he shot the Victim in a sudden heat of passion because of comments the Victim made upon entering Sinclair's residence.

Before trial, Wright moved to suppress shell casings and an ammunition receipt seized during the search of the residence at 3635 Kate's Bay Highway where he and his wife, Jacinda, lived. Wright challenged the validity of the search warrant that law enforcement obtained on May 2, 2012, to search 3635 Kate's Bay Highway. Detective David Weaver's search warrant affidavit stated one of Wright's co-defendants, Lanard Powell, informed law enforcement that Wright was the shooter, fled the crime scene in a black BMW, switched getaway vehicles to a dark Escalade, drove to 3635 Kate's Bay Highway, and left the vehicle at that address. According to the affidavit, Powell also informed law enforcement that Wright obtained the murder weapon from Jacinda at 3635 Kate's Bay Highway, that he believed Wright transported the murder weapon back to 3635 Kate's Bay Highway, and that the weapon might still be in the residence or in one of the vehicles at the residence. Detective Weaver testified he did not speak with Powell but rather prepared the search warrant affidavit based on information Detective Todd Cox provided to him. Detective Weaver also testified he told the magistrate that law enforcement tracked Wright's cell phone signal and the signal "pinged" in the "general area" of 3635 Kate's Bay Highway.

Detective Cox testified Powell did not mention the exact numerical address Wright drove to but rather described the general area; thus, the statement in the affidavit that Powell told law enforcement that Wright drove to 3635 Kate's Bay Highway was not accurate. In addition, according to Detective Cox, Powell stated the murder weapon belonged to Jacinda but did not say where Wright obtained the murder weapon. Thus, according to Detective Cox, the affidavit incorrectly stated

Powell said that Wright got the weapon from 3635 Kate's Bay Highway. Nevertheless, the trial court found the search warrant for 3635 Kate's Bay Highway valid. The trial court noted that, although the affidavit appeared to be a little "salted" and contained some information the record did not support, the affidavit had "at least enough verifiable information to support the warrant" and was supported by Detective Weaver's oral testimony that Wright's cell phone "pinged" in the area of 3635 Kate's Bay Highway.

Wright also moved to suppress drugs and money found during the May 2, 2012, search of a motel room occupied by Wright and Powell, both of whom were suspects in the Victim's murder. Detective James Chatfield testified law enforcement tracked Wright and Powell to a Sleep Inn in Conway. The motel clerk telephoned their motel room, and one of the men stepped outside of the room. Detective Chatfield identified the man as one of the two suspects, the officers identified themselves as police officers, the man tried to close the door on them, and the officers held the door open and "forced" their way into the motel room. The officers saw drugs and money in plain view in the motel room and obtained a search warrant at that time. The trial court denied Wright's motion to suppress.

The jury convicted Wright, and the trial court sentenced him to "life imprisonment" for murder and concurrent sentences of five years' imprisonment for possession of a weapon, twenty-five years' imprisonment for trafficking in cocaine, and fifteen years' imprisonment for possession with intent to distribute, all to be served consecutively with the murder sentence.¹

¹ Wright asserts on appeal that the trial court erred in sentencing him to LWOP under South Carolina's recidivist statute. *See* S.C. Code Ann. §17-25-45(A) (2014) (providing that upon conviction for a "most serious offense," a person must be sentenced to LWOP if that person has a prior conviction for a "most serious offense"). We note the trial court did not state it was sentencing Wright to LWOP. Rather, on the sentencing sheet, the trial court wrote "life imprisonment"; noted Wright was convicted of murder in violation of sections 16-3-10 and 16-3-20 of the South Carolina Code (2003 & Supp. 2015); and did not mark the box labeled "§ 17-25-45," which would have indicated it was sentencing Wright to LWOP under the recidivist statute. The trial court had authority to sentence Wright to life imprisonment under the murder statute. *See* § 16-3-10 (defining murder); §16-3-20(A) (providing "[a] person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life").

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012).

LAW/ANALYSIS

I. Search of 3635 Kate's Bay Highway

Wright argues the trial court erred in finding the search warrant valid and admitting the evidence seized during the search of 3635 Kate's Bay Highway. We disagree.

"The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." *Id.* at 88, 736 S.E.2d at 266; *see* U.S. Const. amend. IV.

"An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed." *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). "This review, like the determination by the magistrate, is governed by the 'totality of the circumstances' test." *Id.* "The appellate court should give great deference to a magistrate's determination of probable cause." *Id.* "In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate's attention." *State v. Martin*, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (Ct. App. 2001).

"A sworn oral statement may be sufficient to satisfy the 'oath or affirmation' requirement of both federal and state constitutions." *State v. Dunbar*, 361 S.C. 240, 247, 603 S.E.2d 615, 619 (Ct. App. 2004). However, "[t]he General Assembly has imposed stricter requirements than federal law for issuing a search warrant." *State v. Jones*, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (2000). Section 17-13-140 of the South Carolina Code (2014) mandates, "A warrant . . . shall be issued only upon affidavit sworn to before the magistrate . . . establishing the grounds for the warrant. If the magistrate . . . is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant"

"A 'totality-of-the-circumstances' test is utilized in probable cause determinations." *State v. Herring*, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009). Under that test,

[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit 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.

Id. at 212, 692 S.E.2d at 496. "[M]agistrates can issue search warrants based upon hearsay information that is not a result of direct personal observations of the affiant" but rather was "given to the affiant by other officers." *Dunbar*, 361 S.C. at 249, 603 S.E.2d at 620.

"If the affidavit standing alone is insufficient to establish probable cause[,] it may be supplemented by sworn oral testimony before the magistrate." *State v. Adolphe*, 314 S.C. 89, 92, 441 S.E.2d 832, 833 (Ct. App. 1994). "[O]ral information may only be used by an affiant to supplement or to amend incorrect information in an affidavit which was not knowingly, intentionally, or recklessly supplied by the affiant." *Jones*, 342 S.C. at 129, 536 S.E.2d at 679. "However, sworn oral testimony, standing alone, does not satisfy [section 17-13-140]." *State v. McKnight*, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987)). Further, a "false affidavit [i]s the equivalent of not having an affidavit at all" and thus violates section 17-13-140 "because if an affidavit is not truthful, then the magistrate must depend totally on information provided orally by the affiant in order to determine if probable cause exists." *Jones*, 342 S.C. at 128, 536 S.E.2d at 679.

We find the magistrate had a substantial basis for determining that, under the totality of the circumstances, there was probable cause to search 3635 Kate's Bay Highway. The information in Detective Weaver's affidavit and supplemental oral testimony, which was relayed to him by the lead investigator, created a fair probability that evidence of the shooting would be found at 3635 Kate's Bay Highway.

We acknowledge that some of the information in Detective Weaver's affidavit was inaccurate. Specifically, Detective Cox admitted that although Powell said the gun belonged to Jacinda, Powell did not say that Wright got the weapon from 3635 Kate's Bay Highway, as stated in the affidavit. In addition, Detective Cox admitted the statement in the affidavit that Powell told law enforcement that Wright drove to 3635 Kate's Bay Highway was not accurate because Powell merely described the general area Wright drove to and did not provide a specific numerical address. However, even without this inaccurate information, the affidavit was sufficient to

establish probable cause. Specifically, the affidavit stated Powell informed law enforcement that Wright was the shooter, that Wright fled the scene in a black BMW, and that Wright switched getaway vehicles to a dark Escalade. The affidavit also stated Wright obtained the murder weapon from Jacinda, law enforcement believed Wright transported the murder weapon back to 3635 Kate's Bay Highway, and law enforcement believed the weapon might still be in the residence or in one of the vehicles at the residence.

Further, Detective Weaver's use of oral testimony to supplement the inaccurate information in his affidavit was not inappropriate because there was no evidence that he intentionally, knowingly, or recklessly supplied the inaccurate information. Detective Weaver's oral testimony before the magistrate that Wright's cell phone "pinged" to the general area of 3635 Kate's Bay Highway, where law enforcement discovered Wright's vehicle, provided additional probable cause justifying the search warrant. Accordingly, we hold the issuance of the search warrant did not violate the South Carolina and federal constitutions or section 17-13-140.

II. The DMV Records

Wright argues the trial court erred in admitting his driving record and title history—both of which listed his address as 3643 Kate's Bay Highway—to show he did not reside at 3635 Kate's Bay Highway and thus lacked standing to challenge the search of the residence. Wright asserts the State failed to lay a proper foundation for the documents and they were inadmissible hearsay not falling within the business record exception. Because we find the search warrant satisfied section 17-13-140 and, thus, the search of 3635 Kate's Bay Highway was constitutional, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address remaining issues where one issue is dispositive).

III. Search of Wright's Motel Room

Wright argues the trial court erred in admitting the drugs and money seized from his motel room because the items were the fruits of a warrantless search and no exception to the search warrant requirement applied. We disagree.

"When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial [court]'s ruling if there is any evidence to support the ruling." *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). "The appellate court will reverse only when there is clear error." *Id.*

"Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures." *Id.*

"However, a warrantless search will withstand constitutional scrutiny where the search falls within one of several well-recognized exceptions to the warrant requirement." *Id.* "The State bears the burden to demonstrate that it was entitled to conduct the search or seizure under an exception to the Fourth Amendment's warrant requirement." *State v. Robinson*, 410 S.C. 519, 530, 765 S.E.2d 569, 570 (2014).

"Recognized exceptions to the warrant requirement include plain view and exigent circumstances." *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011).

"Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." *State v. Beckham*, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999). The two elements needed to satisfy the plain view exception are (1) the initial intrusion that afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities. *Wright*, 391 S.C. at 443, 706 S.E.2d at 327.

"A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement." *Herring*, 387 S.C. at 210, 692 S.E.2d at 494. "A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling." *Id.* at 210, 692 S.E.2d at 495; *see id.* at 210, 692 S.E.2d at 494 ("The likelihood a suspect will imminently flee is . . . an exigency warranting . . . an intrusion."); *Wright*, 391 S.C. at 445, 706 S.E.2d at 328 (finding "[e]xigent circumstances developed when the suspects started fleeing"); *Minnesota v. Olson*, 495 U.S. 91, 100-01 (1990) (finding exigent circumstances did not justify a warrantless entry into an upstairs duplex for the purpose of arresting an overnight guest believed to be involved in a murder where the police knew that the suspect was in the upstairs duplex with no suggestion of danger to the other occupants of the duplex, the police had already recovered the murder weapon, the police thought the suspect was the driver of the getaway car and knew he was not the murderer, the police had surrounded the duplex, it was evident that the suspect was going nowhere, and the suspect would have been promptly apprehended had he exited the duplex). "In such circumstances, a protective sweep of the premises may be permitted." *Herring*, 387 S.C. at 210, 692 S.E.2d at 495.

"[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Wright*, 391 S.C. at 444, 706 S.E.2d at 328 (quoting *Whren v. U.S.*, 517 U.S. 806, 814 (1996)). "In the Fourth Amendment context, a court is concerned with determining whether a reasonable officer would be moved to take action." *Id.*

We find evidence supports the trial court's ruling that the officers did not violate Wright's Fourth Amendment rights by seizing the drugs and money found in plain view in his motel room because the officers' entry into the motel room was justified by the exigent circumstances exception to the warrant requirement. We find this case is distinguishable from *Olson*. First, in *Olson*, law enforcement suspected the individual inside the duplex was only the driver of the getaway car and knew he was not the murderer. However, here, at the time the officers entered the motel room, law enforcement had identified both Powell and Wright as suspects in the Victim's murder. Law enforcement had issued an arrest warrant for Powell the day before the search and had been tracking Wright's cell phone for two days. Detective Chatfield testified that when one of the two murder suspects opened the motel room door, stepped outside, and saw the officers—who identified themselves as police officers—he tried to close the door on the officers. At that point, the officers entered the motel room. In addition, in *Olson*, the murder weapon had been recovered at the time the officers entered the duplex; however, here, the murder weapon had not been recovered at the time the officers entered the motel room. Therefore, there was an ongoing danger here that was not present in *Olson*. We find this evidence showed that a potentially armed and dangerous murder suspect was attempting to flee, creating exigent circumstances justifying the officers' warrantless entry into the motel room.

Moreover, even though Detective Chatfield testified he went inside the motel room because he was looking for Wright, we find a reasonable officer would have entered the room to prevent the suspects from fleeing and to conduct a protective sweep for officer safety because both Wright and Powell were murder suspects. *See Wright*, 391 S.C. at 444, 706 S.E.2d at 328 ("[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent. In the Fourth Amendment context, a court is concerned with determining whether a reasonable officer would be moved to take action." (emphasis in original) (quoting *Whren*, 517 U.S. at 814)). Accordingly, because evidence showed exigent circumstances justified the warrantless entry into Wright's motel room, the trial court did not err in refusing to suppress the drugs and money found in plain view in the room.

IV. Powell's Prior Inconsistent Statement

Wright argues the trial court erred in excluding evidence of Powell's prior inconsistent statement—a letter he wrote that allegedly exonerated Wright and implicated another individual as the Victim's killer—where Wright failed to disclose the letter to the State. Wright contends neither Rule 5(b)(2), SCRCrimP, nor Rule 613, SCRE, required him to present the letter to the State before or during trial in order to cross-examine Powell about the statement. We find this issue unpreserved.

During trial, Wright's counsel asked Powell about a letter he allegedly wrote that exonerated Wright. Powell testified that, while he was incarcerated, Wright promised to get him out of prison if he wrote a statement exonerating Wright. Powell stated Wright gave him a letter to copy, he copied Wright's letter in his handwriting, and he returned both letters to Wright. Wright's counsel asked Powell whether he wrote in the letter that a man nicknamed "Two Guns" shot the Victim. The State objected to Wright's question on the basis that it had previously requested that the letter be disclosed to it, Wright failed to disclose the letter, and it wanted to see the letter before Wright cross-examined Powell concerning the letter's contents. Because Wright's counsel was unable to produce the letter at trial, the trial court prohibited Wright's counsel from questioning Powell about the letter. The trial court instructed the jury that there was no acceptable evidence to support the questions about the letter and not to consider any of Wright's questions or Powell's answers concerning the letter.

Because Wright failed to proffer Powell's testimony concerning whether he wrote a letter saying a man nicknamed "Two Guns" shot the Victim or the letter itself in response to the State's objection, Wright's objection to the exclusion of that evidence is not preserved. *See State v. Davis*, 309 S.C. 56, 62, 419 S.E.2d 820, 824 (Ct. App. 1992) ("[A] reviewing court may not rule on alleged error in the exclusion of evidence unless the record on appeal shows fairly what the rejected evidence would have been."). In addition, Wright's argument that the trial court erred in instructing the jury to disregard Powell's testimony concerning the letter is also unpreserved because Wright acquiesced in the trial court's ruling and failed to object to the curative instruction the trial court gave to the jury. *See State v. Rios*, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) ("[A] party cannot acquiesce to an issue at trial and then complain on appeal."); *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A contemporaneous objection is required to preserve issues for direct appellate review."). Accordingly, we find this issue is not preserved.

V. Right to Testify

Wright argues the trial court erred in denying his request to testify, which he made after the defense had rested and the trial court had ruled it would not charge the jury on voluntary manslaughter or self-defense. We disagree.

"A motion to reopen the evidentiary record and to allow additional evidence is addressed to the sound discretion of the trial [court,]" and the trial court's "ruling will not be reversed absent an abuse of discretion." *State v. Wren*, 470 S.E.2d 111, 112 (Ct. App. 1996).

The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments. *Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987). "It is one of the rights that 'are essential to due process of law in a fair adversary process.'" *Id.* at 51 (quoting *Faretta v. California*, 422 U.S. 806, 819, n.15 (1975)). "However, the right to present testimony is not without limitation." *State v. Rivera*, 402 S.C. 225, 242, 741 S.E.2d 694, 703 (2013). "The right may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process. But restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve." *Id.* (internal quotation marks and citations omitted) (quoting *Rock*, 483 U.S. at 55-56). "In applying its evidentiary rules[,], a [s]tate must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify." *Id.* (quoting *Rock*, 483 U.S. at 56). Evidence rules that "'infringe upon a weighty interest of the accused' but fail to serve any legitimate interest are arbitrary." *Id.* (internal quotation marks omitted) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324-26 (2006)).

After the State rested its case, the trial court advised Wright of his right to testify in his defense. The trial court stated, "And I ask you now—you're not bound at this point, but have you determined whether you wish to testify or exercise your right to remain silent?" Wright exercised his right to remain silent. Wright's counsel announced that the defense had no other witnesses, the defense rested on the record, and the trial court adjourned for the day.

The next morning, the trial court held a charge conference and ruled it would not give the voluntary manslaughter and self-defense charges Wright requested. Wright's counsel then explained Wright told him that morning—before the trial court ruled on the jury charge issue—that he had changed his mind and wanted to testify. Wright noted that after the State rested, the trial court told him that he did not have to say at that time whether he wanted to testify. Consequently, Wright believed the trial court's statement entitled him to decide at a later time whether to testify. The trial court admitted it did not emphasize that Wright had to decide

during the trial whether to testify; however, the trial court thought any reasonable person would believe the right to testify was extinguished after the defense rested. The trial court stated Wright's counsel should have informed it of Wright's desire to testify before the trial court ruled it would not charge the jury on voluntary manslaughter and self-defense. The trial court stated that after hearing its ruling on the charges, Wright knew which supporting evidence was missing, had it "all mapped out," and would be able to fit his testimony into the required parameters and tell the jury he "was afraid to death." The trial court refused to reopen the record to allow Wright to testify.

Initially, we note that this issue is appropriate for direct review. *See id.* at 241, 741 S.E.2d at 702 (holding the defendant's claim that he was denied the right to testify was appropriate for direct review when the record was adequately developed to permit full consideration of the defendant's claim; the pertinent facts were undisputed; a PCR hearing was not necessary to resolve a factual dispute and would not aid in the application of the law; and the defendant's claim was presented not as an ineffective assistance of counsel claim, but rather as an error committed by the trial court in excluding the defendant's testimony, which was not an appropriate basis for an ineffective assistance of counsel claim). Although Wright asserts on appeal that his counsel erred in failing to timely inform the trial court that he wished to testify—which would be an ineffective assistance of counsel claim—he also asserts the trial court erred in denying his request to testify after the defense rested—which would be a claim of constitutional error. *See id.* (citing *Rossignol v. State*, 152 Idaho 700, 703-04, 706, 274 P.3d 1, 4-5, 7 (Ct. App. 2012), for the proposition that in determining whether the denial of a defendant's right to testify is a claim of ineffective assistance of counsel or a claim of deprivation of a constitutional right, the appropriate inquiry depends on how the claim is pled and argued). Wright is ultimately asserting the trial court deprived him of his right to testify by refusing to reopen the record and allow him to testify after the defense rested.² *See id.* at 240-41, 741 S.E.2d at 702 (quoting *Passos-Paternina v. United States*, 12 F.Supp.2d 231, 240 (D.P.R. 1998), for the proposition that the right to testify exists independently of the right to counsel and that "[r]egardless of whether the denial of the right to testify can be ascribed to defense counsel's conduct, the deprivation complained of is not effective assistance but the right to testify, and the right to testify itself is constitutionally protected").

² However, nothing in this opinion prevents Wright from seeking PCR for ineffective assistance of counsel.

We hold the trial court did not abuse its discretion in refusing to reopen the record to allow Wright to testify after the defense had rested and the trial court had ruled it would not charge the jury on voluntary manslaughter and self-defense. The trial court was concerned that if it permitted Wright to testify after hearing its ruling on the voluntary manslaughter and self-defense jury charges and learning which supporting evidence the trial court said was missing, Wright would be able to fit his testimony into the required parameters for those charges by testifying that he shot the Victim because he feared for his life. This was a legitimate ground for refusing to reopen the record, and the trial court's restriction of Wright's right to testify was not arbitrary.

VI. Jury Charge

Wright argues the trial court erred in refusing to instruct the jury on voluntary manslaughter and self-defense given that there was sufficient evidence to create an inference that Wright feared imminent danger before the shooting. We disagree.

"To warrant reversal, a trial [court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). "An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion." *Id.* at 479, 697 S.E.2d at 584. "The law to be charged must be determined from the evidence presented at trial." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

"In determining whether the evidence required a charge of voluntary manslaughter, we view the facts in a light most favorable to the defendant." *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). "Voluntary manslaughter is the intentional and unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Smith*, 391 S.C. 408, 412-13, 706 S.E.2d 12, 14 (2011). "The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *Id.* at 413, 706 S.E.2d at 15. "An overt, threatening act or a physical encounter may constitute sufficient legal provocation." *State v. Hernandez*, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010). "Sufficient legal provocation must include more than 'mere words' or a display of a willingness to fight without an overt, threatening act." *Id.*

To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Light, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial [court's] refusal to do so is reversible error." *Id.* at 650, 664 S.E.2d at 469.

Powell, who did not witness the shooting, testified Wright said that shortly before the shooting the Victim knocked on Sinclair's door and Wright opened the door while holding a gun in his hand. There was testimony that the Victim said, "[Y]ou got these dudes running your house like that?" or "[Y]ou got these young boys in your house now," when he entered Sinclair's house. According to Powell, Wright stated the Victim then reached by his abdomen—indicating he had a gun—and Wright shot him because he feared the Victim was reaching for a gun. Powell admitted that if the Victim looked like he was reaching for a gun, he would not yet have had a gun in his hand. The pathologist who performed the Victim's autopsy testified the Victim sustained ten gunshot wounds, three of which were in his back.

We hold the trial court did not abuse its discretion in refusing to charge the jury on voluntary manslaughter because, viewing the facts in the light most favorable to Wright, the evidence did not show he killed the Victim in a sudden heat of passion upon sufficient legal provocation. Hearing someone say, "[Y]ou got these young boys in your house now," or, "[Y]ou got these dudes running your house like that,"

would not shut out knowledge or volition or render the mind of an ordinary person incapable of cool reflection.

We also hold the trial court did not abuse its discretion in refusing to charge the jury on self-defense. First, a reasonably prudent person would not have believed he was in actual imminent danger and needed to strike the fatal blow to protect himself from serious bodily harm or death under these facts. There was no evidence that the Victim verbally threatened Wright or that Wright actually saw a gun on the Victim's person before Wright shot him.

Second, evidence was lacking that Wright had no other probable means of avoiding the danger than shooting the Victim ten times, including three times in the back. According to Powell, Wright stated he was already holding a gun when the Victim appeared to be reaching at his side. Even giving some credence to this statement, Wright could have held the gun on the Victim or could have left the scene. Accordingly, because a jury could not reasonably infer that Wright acted in self-defense, we find the trial court did not err in refusing to instruct the jury on self-defense.

CONCLUSION

For the foregoing reasons, the decision of the trial court is

AFFIRMED.

SHORT, J. concurs.

GEATHERS, J., concurring in a separate opinion: I depart with the majority's conclusion that a reasonable police officer would have entered Wright's motel room to prevent Wright and Powell from fleeing and to conduct a protective sweep for officer safety. *See State v. Herring*, 387 S.C. 201, 210, 692 S.E.2d 490, 495 (2009) ("A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling."). Detective Paul Johnson testified that he and other detectives "set up an outside perimeter covering all exits." Therefore, a reasonable officer would rely on this perimeter to prevent Wright or Powell from leaving the premises. *Cf. Minnesota v. Olson*, 495 U.S. 91, 100-101 (1990) (observing no need to prevent a suspect's escape when three or four police squads surrounded the home in which the suspect was a guest).

Further, there was no evidence that police conducted a protective sweep in this case. Rather, Detective Chatfield testified that he "backed out of the room" as

Wright and Powell were taken out of the room and the location was secured until a search warrant could be obtained and executed. Likewise, Detective Johnson testified, "Everyone left the room." Therefore, the evidence does not support the application of the exigent circumstances doctrine discussed in *Herring*.

Nonetheless, the intrusion into the motel room was justified by the objective of law enforcement to detain, if not arrest, Wright and Powell for their involvement in the Victim's murder. See *United States v. Hensley*, 469 U.S. 221, 229 (1985) ("[I]f police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion." (referencing *Terry v. Ohio*, 392 U.S. 1, 26 (1968))); *United States v. Santana*, 427 U.S. 38, 42-43 (1976) (holding the petitioner's act of retreating into her house could not thwart a warrantless arrest when it was set in motion in a public place upon probable cause). Therefore, I concur in upholding the trial court's denial of the motion to suppress and affirming Wright's conviction.

FORM 5

17

2564

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Marcus Dwain Wright, SCDC ID No.)

00289646)

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions, Horry County, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-26-02551 (Murder)
 - (b) 2012-GS-26-02339 (Possession of weapon during violent crime)
 - (c) 2012-GS-26-02552 (Trafficking in cocaine, 28 g or more, but less than 100 g)
 - (d) 2012-GS-26-02553 (Possession with intent to distribute cocaine base)
5. The date upon which sentence was imposed and the terms of the sentence:

(a) On June 20, 2013, the petitioner was sentenced to life imprisonment for murder, and concurrent sentences of five years' imprisonment for possession of a weapon, twenty-five years' imprisonment for trafficking in cocaine, and fifteen years' imprisonment for possession with intent to distribute, all to be served consecutively with the murder sentence.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. The decision of the trial court was affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. April 27, 2016

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion No. 5401

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
 - (b) Due Process violations
 - (c) Other such issues that may be determined through the discovery process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to timely produce letter(s) and/or statement(s) from Lanard Powell to the State; losing and/or misplacing evidence; failing to question Powell regarding letter(s) and/or statement(s); failing to question Powell if he told McCray that he saw a gun and/or failing to give Powell an opportunity to admit or deny statement(s); failing to enter letter(s) and/or statement(s) into evidence; failing to proffer evidence and/or make an offer of proof, including an offer of proof of Powell's testimony; indicating that counsel was satisfied with his cross-examination of Powell; acquiescing to court's ruling(s), including the court's rulings regarding Powell and the letter(s) and/or statement(s); failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings; failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s); failure to adequately investigate the case; failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing; failing to object to misstatements during motions; failure to lay the proper foundation to introduce evidence; failing to object to the Court's instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury; failure to timely inform the trial court that the petitioner wanted to testify; failing to discuss with the petitioner regarding his right to testify; failing to consult with petitioner regarding his right to testify prior to resting; failing to introduce prior inconsistent statement(s) of Veronica Chandler; failing to use prior inconsistent statement(s) of Chandler to support self-defense charge; failure to make adequate argument for leniency at sentencing; failure to prepare the petitioner for sentencing; seating a former assistant solicitor on the jury; failing to be prepared for and introduce evidence to establish the petitioner's reasonable expectation of privacy in the Kate's Bay residence; failing to object to life without parole or require that certified copies of convictions be admitted into the

record; in failing to elicit, follow up on, and/or clarify testimony to establish jury charges for self-defense and/or voluntary manslaughter; failing to subpoena and/or call witness(es) to testify during motions, trial, and/or sentencing, including Kelly Phoenix; failure to cross examine witness(es) on prior conviction(s); failing to investigate, follow up on, or bring to the court's attention Brady violations; failure to object to Ms. Eichenmiller's qualifications as an expert and/or further question her qualifications; failure to object to Ms. Eichenmiller's methodology and/or lack of methodology; failure to object to State's failure to lay an adequate foundation for Ms. Eichenmiller's testimony; failure to object to Ms. Eichenmiller's testimony and opinions; failure to object due to the lack of testing and/or error rate in Ms. Eichenmiller's identification; failure to move to strike Ms. Eichenmiller's testimony and opinions; and other such issues that may be determined through the discovery process

(b) State's failure to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law; prosecutorial misconduct in failing to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law; upon information and belief, prosecutorial misconduct in failing to correct false evidence; the petitioner's attorneys' actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process; the State's actions and inactions, including the actions and inactions of the prosecutor, along with the actions and inactions of the petitioners' attorneys, as more specifically described above, so infected the case with unfairness resulting in a denial of due process; and other such issues that may be determined through the discovery process

(c) Other such issues that may be determined through the discovery process

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

- iii. _____
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) The grounds set forth in (10) could not be properly raised on direct appeal
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? N/A
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes, for this Application
- 18. If you answered "yes" to one or more parts of (17), list:
 - (a) the name and address of each attorney who represented you:
 - i. Attorney L. Morgan Martin, 1121 3rd Ave., Conway, SC 29526
 - ii. Attorney Edward M. Brown, 146 Spring St., Charleston, SC 29403
 - iii. Attorney J. Falkner Wilkes, 114 Whitsett St., Greenville, SC 29601
 - iv. Attorney Beattie B. Ashmore, 650 E. Washington St., Greenville, SC 29601
 - (b) the proceedings at which each such attorney represented you:
 - i. Attorneys Martin and Brown: Pre-trial, trial, and sentencing
 - ii. Attorney Wilkes: Direct appeal
 - iii. Attorney Ashmore: This PCR application
- 19. State clearly the relief you seek in filing this application:

A new trial and resentencing

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

No

2564

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

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

Marcus Dwain Wright

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

Shonda M. Bell (L.S.)
Notary Public

My Commission Expires: May 19, 2024

This 20th day of April, 2017
Greenville, SC

Beattie F. Ashmore
Beattie Ashmore, SC Bar # 10419
650 East Washington Street
Greenville, SC 29601
(864) 467-1001 Office
(864) 672-1406 Fax
Beattie@BeattieAshmore.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Marcus Dwain Wright,	)	Case No.: 2017-CP-26-02564
S.C.D.C. No. 289646,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
2017 AUG -8 PM 2:10
CLERK OF COURT
HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Marcus Dwain Wright (Applicant), by and through counsel Beattie B. Ashmore, Esq., on April 24, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2012 term of the Horry County Grand Jury for murder (2012-GS-26-02551); trafficking cocaine, between 28-100 grams (2012-GS-26-02552); and possession with intent to distribute cocaine base (2012-GS-26-02553). Applicant was subsequently indicted at the May 2013 term for possession of a weapon during the commission of a violent crime (2013-GS-26-02339). L. Morgan Martin, Esq., and Edward M. Brown, Esq. represented Applicant. Donna E. Elder, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

The facts of the case may be summarized as follows:

In April of 2012, [Applicant] was a drug trafficker in cocaine who was using his subordinate Lanard Powell ("Powell") to distribute drugs out of a home . . . in Socastee. The home's owner, Roy Sinclair ("Sinclair"), who is paralyzed and wheel chair bound, allowed [Applicant] and Powell to use his home in

exchange for Sinclair receiving free drugs. This arrangement was on-going for 3 to 4 weeks at the time of this murder. On April 30, 2012, Powell had been selling drugs out of the home and left that evening with his girlfriend, Qwanda Caldwell-Brown ("Qwanda") to make a drug sale or delivery for [Applicant] and to go to the store. Powell took with him a 9 mm pistol [Applicant] had provided Powell for protection during his drug distribution activities.

[Applicant] remained at the home sitting at the kitchen table cutting up drugs, with his loaded .40 caliber pistol beside him. Also there were Sinclair and several women there to buy, use drugs, or with someone who was there for that purpose. Around 11:30 p.m., Jerome J. Green, Jr. [("Victim")], known as "J.J.," knocked on the front door. Sinclair told [Applicant] it was okay to open the door because it was his cousin, "J.J." [Applicant], with his gun in his hand, opened the door and let the victim in. The victim looked around, saw what was going on, and state to Sinclair: "you going to let these young boys come in here and run your house like this?" [Applicant] took offense at the comment and asked the victim to repeat what he just said. The victim refused, ignored [Applicant], and continued to talk to a woman sitting in the living room. [Applicant], who had returned to the kitchen area, raised his loaded .40 caliber pistol and shot the victim 10 times including in the back, the chest, and the arms. The victim collapse dead.

Several individuals who witnessed the shooting fled outside. Sinclair fled down a handicap ramp to his home and down the street in his wheelchair. One woman fled through the front door and one out the back door. [Applicant] left the home. Outside, [Applicant] told [one] witness, she better not say anything about what had just occurred. [Applicant] got into his black BMW and started driving away when he saw his subordinate, Powell, returning with Qwanda in Powell's car. [Applicant] spoke from his vehicle to Powell in Powell's vehicle. Sinclair, who was moving up the road in his wheel chair, heard [Applicant] say to Powell: "go in the house, get your shit, I just murdered this nigger." Qwanda heard [Applicant] say: "Pick up the shell casings Brah." [Applicant] fled the scene, drove to another location, abandoned his BMW there, and changed vehicles getting into a Cadillac Escalade. [Applicant] also picked up a gas can and took it with him.

Meanwhile, Powell and Qwanda pulled into Sinclair's residence. Veronica Chandler, an eyewitness, approached Powell and stated: "...that boy shot him. That boy shot him." Powell did as wright instructed him. Powell got out of his car with his 9mm, went in the home, determined the victim was dead, and removed drugs and money from the residence. While inside, a woman tried to give or gave Powell some fired shell casings. Powell got the victim's keys,

threw the money and drugs in the vehicle Qwanda was in, and Powell got in the victim's vehicle and drove it away from the scene with Qwanda following in Powell's car.

[Applicant] and Powell contacted each other by cell phone, and agreed to meet up at another location. Once there, Powell and Qwanda followed [Applicant] to another location where the dark Cadillac Escalade was abandoned, and [Applicant] got in the victim's vehicle with Powell. [Applicant], Powell, and Qwanda proceeded to a gas station. Qwanda was instructed to purchase gasoline, after which [Applicant] and Powell filled up the gas can with fuel. The three [proceeded] to Johnsonville, where the victim's vehicle was disposed of on a dirt road in some woods. [Applicant] and Powell used the gasoline to attempt to attempt to burn the victim's vehicle.

The [three] then went to a motel where they rented a room in Qwanda's name and stayed for [one] night. [Applicant] realized they needed another vehicle; so, they proceeded to the airport where a red Chevrolet Camaro was rented by [Applicant's] wife, Jacinda. Qwanda picked up the car, but [Applicant] and Powell got in the Camaro at another location and began using it. Qwanda returned to her home. The [two] men drove to another motel, the Sleep Inn in Conway, where Powell rented a room under an alias using a fake I.D. [Applicant] provided. By the morning of May 2nd, both [Applicant] and Powell were suspects in the murder. Police located the [two] at the Sleep Inn by tracing [Applicant's] cell-phone signal and determined both suspects were in Room 105 through the motel clerk. There, [Applicant] and Powell were taken into custody after [one] of the men tried to flee back into the motel room after stepping outside the room and being identified by police. In plain view on a refrigerator of the room were over 28 grams of cocaine, several grams of crack, and \$3,000. A search warrant was obtained and the drugs and money were recovered along with car keys and hotel receipts from the first motel. Police found the rental car in the Sleep In parking lot. It was searched pursuant to a separate search warrant, and Powell's 9mm pistol and a set of digital scales was found within, along with a .40 caliber Glock box, which had paperwork in it showing the gun was registered to [Applicant's] wife, and the receipt indicated it was for a .40 caliber pistol, and the gun had been purchased by [Applicant's] wife on June 7, 2008. Police also found [two] ammunition clips in the box, containing [nine] unfired rounds and 13 unfired rounds, all of which were .40 caliber.

Police executed a search warrant on [Applicant's] wife's home finding [two] fired .40 caliber shell casings fired from a .40 caliber pistol by the manufacturer of the gun before it was sold. The serial number for the .40

[caliber] pistol from the receipt found in the Camero matched the serial number on the envelope containing the [two] fired .40 caliber casings. Police also found on a nightstand a receipt from [seven] days before the murder for [two] boxes of ammo.

Forensic examination revealed the [two] shell casings found in [Applicant's] wife's residence were fired from the same gun that fired the [three] .40 caliber shell casings recovered from the murder scene. The projectiles removed from the victim at autopsy were consistent with having been fired from a .40 caliber weapon, but not a 9mm. Police also executed a search warrant on the black BMW, which [Applicant] fled the crime scene in, finding [one] unfired .40 caliber bullet. Although police searched, the murder weapon was never found. The autopsy determined the victim died as a result of multiple gunshot wounds. Six projectiles were removed from the victim's torso.

State v. Wright, Final Brief of Respondent at 1-5 (citations and footnotes omitted).

Applicant proceeded to trial before the Honorable John C. Hayes, III and a jury on June 17, 2013. Sinclair, Powell, and Qwanda, among others present at the time of the shooting, testified against Applicant at trial. Tr. 176-200, 231-255, 265-317. The jury found Applicant guilty as indicted on June 20, 2013. Judge Hayes sentenced Applicant to imprisonment for a term of life for murder. Consecutive to the life sentence, but concurrent to each other, Judge Hayes further sentenced Applicant to 25 years for trafficking, 15 years for PWID cocaine base, and 5 years for the weapons charge.

Applicant filed a timely notice of appeal and a direct appeal was perfected by J. Falkner Wilkes, Esq. J. Anthony Mabry, of the South Carolina Attorney General's Office, represented the State. Applicant raised *thirteen* issues on appeal:

1. Did the court err in admitting evidence from the search of residence?
2. Did the defendant have a reasonable expectation in the residence searched?
3. Did the court apply the proper analysis?
4. Was the search warrant affidavit was [sic] sufficient?
5. Could the affidavit be supplemented by oral evidence where the affidavit contained false information?
6. Did the court err in admission of the SCDMV records?

7. Did the court err in the admission of evidence which was the result of illegal search of the defendant's hotel room?
8. Did the court err in excluding evidence of witness's prior inconsistent statement?
9. Did the court err in denying defendant's request to testify?
10. Does the court have to make specific findings as to prior convictions before it can sentence under LWOP?
11. Does the record support sentencing under LWOP?
12. If life is imposed and it is not clear whether or not it is under LWOP, should this Court remand for re-sentencing?
13. Did the trial court err in refusing to charge the jury on the law of self-defense and manslaughter?

State v. Wright, Final Brief of Appellant at iv. The parties proceeded to oral arguments before the Court of Appeals on November 10, 2015. By opinion decided April 27, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Wright, 416 S.C. 353, 785 S.E.2d 479 (Ct.App. 2016). The Remittitur was issued on May 13, 2016.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following 40 reasons:

1. "Ineffective assistance of counsel"
 - a. "Failure to timely produce letter(s) and/or statement(s) from Lanard Powell to the State;"
 - b. "losing and/or misplacing evidence;"
 - c. "failing to question Powell regarding letter(s) and/or statement(s);"
 - d. "failing to question Powell if he told McCray that he saw a gun and/or failing to give Powell an opportunity to admit or deny statement(s);"
 - e. "failing to enter letter(s) and/or statement(s) into evidence;"
 - f. "failing to proffer evidence and/or make an offer of proof, including an offer of proof of Powell's testimony;"
 - g. "indicating that counsel was satisfied with his cross-examination of Powell;"
 - h. "acquiescing to court's ruling(s), including the court's rulings regarding Powell and the letter(s) and/or statement(s);"
 - i. "failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings;"

- j. “failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s);”
- k. “failure to adequately investigate the case;”
- l. “failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing;”
- m. “failing to object to misstatements during motions;”
- n. “failure to lay the proper foundation to introduce evidence;”
- o. “failing to object to the Court’s instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury;”
- p. “failure to timely inform the trial court that the petitioner wanted to testify;”
- q. “failing to discuss with the petitioner regarding his right to testify;”
- r. “failing to consult with petitioner regarding his right to testify prior to resting;”
- s. “failing to introduce prior inconsistent statement(s) of Veronica Chandler;”
- t. “failing to use prior inconsistent statement(s) of Chandler to support self-defense charge;”
- u. “failure to make adequate argument for leniency at sentencing;”
- v. “failure to prepare the petitioner for sentencing;”
- w. “seating a former assistant solicitor on the jury;”
- x. “failing to be prepared for and introduce evidence to establish the petitioner’s reasonable expectation of privacy in the Kate’s Bay residence;”
- y. “failing to object to life without parole or require that certified copies of convictions be admitted into the record;”
- z. “in failing to elicit, follow up on, and/or clarify testimony to establish jury charges for self-defense and/or voluntary manslaughter;”
- aa. “failing to subpoena and/or call witness(es) to testify during motions, trial, and/or sentencing, including Kelly Phoenix;”
- bb. “failure to cross examine witness(es) on prior conviction(s);”
- cc. “failing to investigate, follows up on, or bring to the court’s attention Brady violations;”
- dd. “failure to object to Ms. Eichenmiller’s qualifications as an expert and/or further question her qualifications;”
- ee. “failure to object to Ms. Eichenmiller’s methodology and/or lack of methodology;”
- ff. “failure to object to State’s failure to lay an adequate foundation for Ms. Eichenmiller’s testimony;”

- gg. “failure to object to Ms. Eichenmiller’s testimony and opinions;”
 - hh. “failure to object due to the lack of testing and/or error rate in Ms. Eichenmiller’s identification;”
 - ii. “failure to move to strike Ms. Eichenmiller’s testimony and opinions;”
 - jj. “and other such issues that may be determined through the discovery process.”
2. “Due Process violations”
- a. “State’s failure to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;”
 - b. “prosecutorial misconduct in failing to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;”
 - c. “upon information and belief, prosecutorial misconduct in failing to correct false evidence;”
 - d. “the petitioner’s attorneys’ actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;”
 - e. “the State’s actions and inactions, including the actions and inactions of the prosecutor, along with the actions and inactions of the petitioner’s attorneys, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;”
 - f. “and other such issues that may be determined through the discovery process.”
3. “Other such issues that may be determined through the discovery process”

Applicant requests relief as follows:

- “A new trial and resentencing”

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records,¹ and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

¹ Respondent does not include the trial transcript independent of the appellate records as the entirety of the transcript was designated and included in the Record on Appeal.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, 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 the 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). 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 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.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963). “Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment.” Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). “A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). “Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Applicant’s allegation of a Brady violation is without merit. However, the allegation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by*

the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. filed July 19, 2017) (Shearouse Adv.Sh. No. 27 at 47). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and due process violations.

Respectfully submitted,

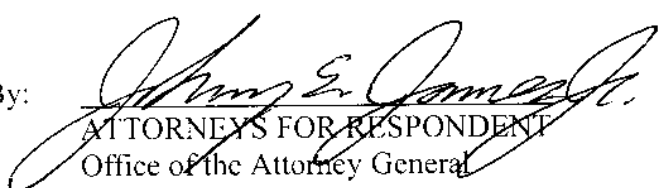
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


~~ATTORNEYS FOR RESPONDENT~~
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

7 Aug., 2017

WITNESSES

Todd Gbx Horry County Police Department

ARREST WARRANT NUMBER

2013GS2602339
CDR: 0549 16-23-0490
DOA: 5/2/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]*

MAY 30 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-26-02339

The State of South Carolina
County of Horry

Donna E. Elder

12H02018

COURT OF GENERAL SESSIONS

MAY, 2013 TERM

THE STATE

vs.

Marcus Dwain Wright
B/ M
[REDACTED]
Conway, SC 29527
[REDACTED]
[REDACTED]

ATTORNEY: Martin, L. Morgan

Indictment for
POSSESSION OF WEAPON DURING VIOLENT
CRIME

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

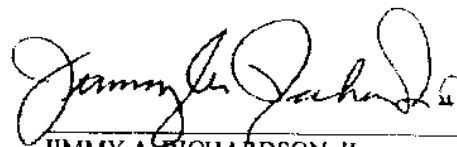
At a Court of General Sessions, convened on May 30, 2013, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Marcus Dwain Wright did in Horry County, on or about April 30, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
 STATE VS.
Marcus Dwain Wright

AKA: _____
 Race: _____ Sex: M Age: 31
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Conway, SC 29527
 DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

IN **APPENDIX PAGE 146**INDICTMENT/CASE#: 2012GS2602551A/W#: M972464Date of Offense: 4-30-2012S.C. Code §: 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life Imprisonment days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins Hand
Dixie Edbank

John H. Huggins
 2047/13
 6/24/13

WITNESSES

Todd Cox Horry County Police Department

ARREST WARRANT NUMBER

M972464

CDR: 0116 16-03-0010, 0020

DOA: 5/2/2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 21 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-26-02551

The State of South Carolina

County of Horry

Donna E. Elder

12H02018

COURT OF GENERAL SESSIONS

June, 2012 TERM

THE STATE

vs.

Marcus Dwain Wright

/ M

Conway, SC 29527

ATTORNEY: Martin, L. Morgan

Indictment for

Murder

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on June 21, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Marcus Dwain Wright did in Horry County, on or about April 30, 2012, willfully, feloniously, and intentionally kill the victim, Jerome Green, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about April 30, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

ARREST WARRANT

M-972473

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

against

Marcus Dwain Wright

Address:

Conway, SC 29527-6321

Phone:

Sex: M Race: Height: 6 3 Weight: 230

DL State: SC DL #:

DOB: Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: William Paul Johnson - 5655

Offense: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Offense Code: 0278

Code/Ordinance Sec: 44-53-0370(e)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant Marcus D. Wright on 5-3-2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant William Paul Johnson

being duly sworn deposes and says that defendant Marcus Dwain Wright

did within this county and state on or about 05/02/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

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

That on May 2, 2012, in the Conway section of Horry County one Marcus Dwain Wright did knowingly sell, manufacture, deliver, bring into this state and/or possess between 43.2 grams of cocaine, a schedule II controlled substance, without authority to do so. case# 12041053

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/2/2012

defendant Marcus Dwain Wright

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

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

Sworn to and subscribed before me

on 05/02/2012

(L.S.)

Signature of Issuing Judge

Aaron C. Butler

Judge Code: 5022

Judge's Address J. Reuben Long Detention Center

Conway, SC 29526-1071

Judge's Telephone (843)915-5145

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

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

APPENDIX PAGE 149

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Marcus Dwain Wright

AKA:

Race:

Sex: M

Age:

31

DOB:

SS#:

Address:

City, State, Zip: Conway, SC 29527-6321

DL#: 007993502

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 28--100 g, 1st offense

IN APPENDIX PAGE 150

INDICTMENT/CASE#: 2012GS2602552

A/W#: M972473

Date of Offense: 5/2/2012

S.C. Code §: 44-53-0370(e)(2)(a)1

CDR Code #: ~~0278~~

2359

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or 1ewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 6/20/13
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning LIFE

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2047

Sentence Date: 6/20/13

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

WITNESSES

William Paul Johnson Horry County Police
Department

DOCKET NO. 2012-GS-26-02552

The State of South Carolina

County of Horry

Donna E. Elder

12H02018

COURT OF GENERAL SESSIONS

June, 2012 TERM

ARREST WARRANT NUMBER

M972473

CDR: 0388 44-53-0370(e)(2)(b)2

DOA: 5/3/2012

THE STATE

VS.

Marcus Dwain Wright
/ M

Conway, SC 29527-6321

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUL 26 2012

VERDICT

ATTORNEY: Martin, L. Morgan

Indictment for

Trafficking Cocaine

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on June 21, 2012, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE (28 - 100 GRAMS)

(CDR: 0388 44-53-0370(e)(2)(b)(2))

That Marcus Dwain Wright did in Horry County on or about May 2, 2012, knowingly sell, deliver, purchase or bring in this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than twenty-eight (28) grams, but less than one-hundred (100) grams, same being a controlled substance all within the meaning of Section 44-53-370, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of section 44-53-370(e)(2)(b), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

ARREST WARRANT

M-972474

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

against

Marcus Dwain Wright

Address:

Conway, SC 29527-6321

Phone: _____ SSN: _____
Sex: M Race: _____ Height: 6 3 Weight: 230DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0260400Prosecuting Agency: Horry County Police DepartmentProsecuting Officer: William Paul Johnson - 5655Offense: Drugs / Manufacture, distribution, etc. of
methamphetamine, 1stOffense Code: 3198Code/Ordinance Sec: 44-53-0375(B)This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant MARCUS D. WRIGHT
on 5-5-2012Sgt. Mark
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant William Paul Johnsonbeing duly sworn deposes and says that defendant Marcus Dwain Wrightdid within this county and state on or about 05/02/2012State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry)

in the following particulars

DESCRIPTION OF OFFENSE Drugs / Manufacture, distribution, etc. of methamphetamine, 1stI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On May 2, 2012 in the Conway section of Horry County, one, Marcus Wright did possess 3.4 grams of crack cocaine.
Case#12041053

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main StreetConway, SC 29526-Affiant's Telephone (843)915-5350

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/2/2012 defendant Marcus Dwain Wright

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below:DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of methamphetamine, 1stHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 05/02/2012Aaron C. Butler
Signature of Issuing Judge (L.S.)Judge Code: 5022Judge's Address J. Reuben Long Detention CenterConway, SC 29526-1071Judge's Telephone (843)915-5145Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

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

APPENDIX PAGE 153

COUNTY OF Horry
 STATE VS.
Marcus Dwain Wright
 AKA: _____
 Race: _____ Sex: M Age: 31
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Conway, SC 29527-6321
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2012GS2602553
 A/W#: M972474
 Date of Offense: 5/2/2012
 S.C. Code §: 44-53-0375(B)
 CDR Code #: 3198

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was
 IO: Drugs / Manufacture, distribution, etc. of methamphetamine, 1st

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375(B) of the S.C. Code of Laws, bearing CDR Code # 3198
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 6/20/13

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

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03-2011)

Presiding Judge

Judge Code: 204

Sentence Date: 6/20/13

WITNESSES

William Paul Johnson Horry County Police
Department

DOCKET NO. 2012-GS-26-02553

The State of South Carolina

County of Horry

Donna E. Elder

12H02018

COURT OF GENERAL SESSIONS

June, 2012 TERM

ARREST WARRANT NUMBER

M972474

CDR: 3015 44-53-0375 (B) (2)

DOA: 5/3/2012

THE STATE

VS.

Marcus Dwain Wright
/ M

Conway, SC 29527-6321

D

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUL 26 2012

VERDICT

ATTORNEY: Martin, L. Morgan

Indictment for

**Possession With Intent to Distribute Cocaine
Base**

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on June 21, 2012, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE

CDR: 3015 44-53-0375(B)(2)

That Marcus Dwain Wright did in Horry County on or about May 2, 2012, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B)(2), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

ARREST WARRANT

M-972464

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

12041053

Marcus Dwain Wright

Address:

Conway, SC 29527-

Phone:

SSN:

Sex: M Race: Height: Weight:

DL State: DL #:

DOB: Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Todd Cox - 0096

Offense: Murder / Murder

Offense Code: 0116

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

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant

Todd Cox

being duly sworn deposes and says that

did within this county and state on or about

State of South Carolina (or ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

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

On April 30, 2012 one Jerome Green sustained multiple gunshot wounds while at [REDACTED] located in the Socastee section of Horry County; he subsequently died as a result of those injuries. Detectives with the Horry County Police Department initiated an investigation, which revealed that the manner of death was Homicide. Evidence produced by the investigation into this matter including witness statements, circumstantial evidence, and physical evidence seized pursuant to lawful searches indicated that the defendant, one Marcus Dwain Wright, did shoot the victim multiple times. Based on the above, the Affiant is informed and believes that probable cause exists to establish that the defendant did commit the offense of Murder.

Case#12041053

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/30/2012

defendant Marcus Dwain Wright

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry

) as set forth below.

DESCRIPTION OF OFFENSE: Murder / Murder

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

Sworn to and subscribed before me

on 05/02/2012

Signature of Issuing Judge

Aaron C. Butler

Judge Code: 5022

Judge's Address J. Reuben Long Detention Center

Conway, SC 29526-1071

Judge's Telephone (843)915-5145

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

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

AFFIDAVIT

FILED

Horry

04/30/2012

PM 3:23

CLERK OF COURT

APPENDIX PAGE 157

Horry County Police Crime Report

Case No. 12041053
Report No. 12041053.1
Report Date: 5/1/2012

Horry County Police
2580 N Main St
Conway, SC 29526
843 915-8013

1

Page 1 of 3

Subject: Death Investigation/ [REDACTED] / Myrtle Beach

Case Report Status A - Approved
Status Indicator A - Administrative Filler (Filler for when "U" or "C" is not used)
Status Change Date
Occurred On 4/30/2012 11:00:00 PM
(and Between)
End Date 4/30/2012 11:35:00 PM
End Time

Date Entered 5/1/2012 1:28:55 AM
Entered By 7663 - Canterbury, Kenneth
Date Verified 5/1/2012 4:58:07 AM
Verified By WS72 - Wyatt, Justin
Date Approved 5/1/2012 3:19:52 PM
Approved By J036 - Johnson, Doris

Reporting Officer
7663 - Canterbury, Kenneth

Location [REDACTED]
Jurisdiction JJ - JURISDICTION

Connecting Cases
Disposition Active
Clearance Reason

Assisted By

M238 - Mueller, Anthony
T420 - Tucker, Christopher

Grid
Sector 4 - Sector 4
Map
Track/Geo-Indicator
Call Source Phone

Date of Clearance
Reporting Agency Horry County Police
Division South Precinct
Notified

Means
Other Means
Motive
Other Motives

Vehicle Activity
Vehicle Trailing
Cross Street

Report Narrative

FILED
Horry County
2012 MAY 11 PM 3:23

On the above date at approximately 2335 hours, I responded to the above location, in reference to a shooting. Upon my arrival, Sgt. Mueller was standing at the back door of the residence, and victim 2 was sitting in his wheelchair in the street. I followed Sgt. Mueller into the house to conduct a protective sweep of the residence. As we walked from the rear hallway into the living room area, I observed a black male (victim 1) with what appeared to be multiple gunshot wounds to his body lying spread eagle on the living room floor. Sgt. Mueller and I finished clearing the residence and did not find any other persons in the residence. Sgt. Mueller and I then exited the residence and began to secure a crime scene.

I spoke to victim 2, who stated that he, a black male that goes by the name "Capone," and another unknown black male were all in the living room area of the residence. Victim 2 stated that the unknown black male was in the kitchen, when victim 1 knocked on the door. According to victim 2, the two black males questioned who it was at the door, to which he replied it was victim 1. Victim 2 stated that victim 1 came into the residence and stated to him, something to the nature of "you letting these guys run your house?" Victim 2 stated that the unknown black male standing in the kitchen, started talking trash and just started shooting at victim 1. Victim 2 stated that he yelled at the male to stop shooting, cause it was his cousin, but stated that the unknown black male, pointed the gun at him, stating "you want some of this too?" Victim 2 stated that the male did attempt to shot at him several times, but he was evading and weaving while trying to get away in his wheelchair. Victim 2 stated both black males left the area in a black in color Escalade with big chrome rims. Detective Cox and other Detectives arrived on scene and took over the investigation.

Offense Detail: HC13 - Death Investigation

Offense Description HC13 - Death Investigation
IBR Code 90Z - All Other Offenses
IBR Group B
Crime Against SO
Using N - Not Applicable
Victim Use N - Not Applicable

Offense Date 4/30/2012
Location 20 - Residence/Home
2nd Location Type
Special Circumstance
Offense Completed? Yes
Hate/Bias 88 - None (No Bias)

No. Prem. Entered
Entry Method

Criminal Activity
Weapons/Force

Domestic Violence No

Type Security
Tools Used
Cargo Theft

Offense Detail: 3410 - Murder / Attempted Murder

Offense Description 3410 - Murder / Attempted Murder
IBR Code 13A - Aggravated Assault
IBR Group A
Crime Against PE
Using N - Not Applicable
Victim Use N - Not Applicable

Offense Date 4/30/2012
Location 20 - Residence/Home
2nd Location Type
Special Circumstance
Offense Completed? Yes
Hate/Bias 88 - None (No Bias)

No. Prem. Entered
Entry Method

Horry County Police Crime Report

APPENDIX PAGE 159

Case No. 12041053
Report No. 12041053.1
Report Date: 5/1/2012

Horry County Police
2580 N Main St
Conway, SC 29528
843 915-8013

2

Page 2 of 3

Criminal Activity N - None/Unknown
Weapons/Force 11 - Firearm (Type Not Stated)

Domestic Violence No

Type Security
Tools Used
Cargo Theft

Suspect S1: UNKNOWN SUSPECT

Suspect Number S1	Name UNKNOWN SUSPECT	DOB 00	Place of Birth SSN
AKA	Age 00	Sex M - Male	DUN
Alert(s)	Race B - Black	Ethnicity N - Not of Hispanic Origin	DUN State
Address	Ht.	Wt.	DUN Country
CSZ	Eye Color	Hair Color	Occupation/Grade
Home Phone	Hair Style	Hair Length	Employer/School
Work Phone	Facial Hair	Complexion	Employer Address
Email Address	Build	Teeth	Employer CSZ
Scars/Marks/Tattoos			Res. Country
Suspect MO			Res. Country
Other MO			Resident Status
Attire			U - Unknown
Habitual Offender Status			
Suspect Notes			

Suspect S2: UNKNOWN SUSPECT

Suspect Number S2	Name UNKNOWN SUSPECT	DOB 00	Place of Birth SSN
AKA Capone	Age 00	Sex M - Male	DUN
Alert(s)	Race B - Black	Ethnicity N - Not of Hispanic Origin	DUN State
Address	Ht.	Wt.	DUN Country
CSZ	Eye Color	Hair Color	Occupation/Grade
Home Phone	Hair Style	Hair Length	Employer/School
Work Phone	Facial Hair	Complexion	Employer Address
Email Address	Build	Teeth	Employer CSZ
Scars/Marks/Tattoos			Res. Country
Suspect MO			Res. Country
Other MO			Resident Status
Attire			U - Unknown
Habitual Offender Status			
Suspect Notes			

Victim V1: Green, Jerome Jr.

Victim Code V1	Victim Type I - Individual	Victim Of HC13 - Death Investigation
Name Green, Jerome Jr.	DOB 10/2/1974	Place of Birth SSN
AKA	Age 37	DUN
Alert(s)	Sex M - Male	DUN State
	Race B - Black	

Horry County Police Crime Report

Case No. 12041053
 Report No. 12041053.1
 Report Date: 5/1/2012

Horry County Police
 2560 N Main St
 Conway, SC 29526
 843 915-8013

3

Page 3 of 3

Address CSZ	Ethnicity N - Not of Hispanic Origin	DLN Country
Home Phone	Ht.	Occupation/Grade
Work Phone	Wt.	Employer/School
Email Address	Eye Color BRO - Brown	Employer Address
	Hair Color BLK - Black	Employer CSZ
Attire	Facial Hair	Res. Country
Injury	Complexion	Res. Country
Circumstances		Resident Status U - Unknown
		Testify

Law Enforcement Officer Killed or Assaulted Information	Type
	Assignment
	Activity
	Other ORI

Justifiable Homicide Circumstances

Victim Offender Relationship

Offender Relationship

Victim Notes

Victim V2: Sinclair, Roy

Victim Code

Victim Type

Name

AKA

Alert(s)

Address

CSZ

Home Phone

Work Phone

Email Address

Attire

Injury

Circumstances

N - None

10 - Unknown Circumstances

Victim Of 3410 - Murder / Attempted Murder

DOB

Age

Sex

Race

Ethnicity

Ht.

Wt.

Eye Color

Hair Color

Facial Hair

Complexion

Place of Birth

SSN

DLN

DLN State

DLN Country

Occupation/Grade

Employer/School

Employer Address

Employer CSZ

Res. Country

Res. Country

Resident Status

Testify

Horry
 USA - United States of
 America
 J - This Jurisdiction

Law Enforcement Officer Killed or Assaulted Information	Type
	Assignment
	Activity
	Other ORI

Justifiable Homicide Circumstances

Victim Offender Relationship

Offender

Relationship

S1 AQ - Victim Was Acquaintance

S2 AQ - Victim Was Acquaintance

Victim Notes

Horry County Police Follow-Up Report

APPENDIX PAGE 161

Case No. 12041053
Report No. 12041053.2
Report Date: 5/1/2012

Horry County Police
2560 N Main St
Conway, SC 29526
843 915-8013

1

Page 1 of 3

Subject: Death Investigation/ 5456 Figure Eight Rd/ Myrtle Beach

Case Report Status: S - Submitted
Status Indicator: A - Administrative Filler (Filler for when "U" or "C" is not used)
Status Change Date:
Occurred On: 4/30/2012 11:00:00 PM
(and Between): 4/30/2012 11:35:00 PM
End Date:
End Time:

Date Entered: 5/1/2012 1:16:42 PM
Entered By: C112 - Chatfield, James
Date Verified:
Verified By:
Date Approved:
Approved By:

Reporting Officer:
7663 - Canterbury, Kenneth

Location:
Jurisdiction: JJ - JURISDICTION

Connecting Cases:
Disposition: Active
Clearance Reason:

Assisted By:

M238 - Mueller, Anthony
T420 - Tucker, Christopher

Grid:
Sector: 4 - Sector 4
Map:

Date of Clearance:
Reporting Agency: Horry County Police
Division: South Precinct
Notified:

Tract/Geo-Indicator:
Call Source: Phone

Means:
Other Means:
Motive:
Other Motives:

Vehicle Activity:
Vehicle Travelling:
Cross Street:

Report Narrative:

On May 1, 2012 at approximately 03:30 hours Detective Chatfield was advised by entity #1 that her 2002 Dodge Durango which displays Oklahoma registration [REDACTED] was being driven by her boyfriend (victim #1) and now is missing. Entity #1 advised Detective Chatfield that the vehicle had a GPS tracking system. Detective Chatfield telephoned Georgia Trading [REDACTED] a corporate company and was advised that the Durango was at Diamond Branch Road-Lat 33.82118 Long -78456107 which is in Johnsonville South Carolina. Vehicle will be entered into the NCIC system and contact made with the appropriate authority.

Offense Detail: HC13 - Death Investigation

Offense Description: HC13 - Death Investigation
IBR Code: 90Z - All Other Offenses
IBR Group: B
Crime Against: SO
Using: N - Not Applicable
Victim Use: N - Not Applicable

Offense Date: 4/30/2012
Location: 20 - Residence/Home
2nd Location Type:
Special Circumstance:
Offense Completed?: Yes
Hate/Bias: 83 - None (No Bias)

No. Prem. Entered:
Entry Method:

Criminal Activity:
Weapons/Force:

Domestic Violence: No

Type Security:
Tools Used:
Cargo Theft:

Offense Detail: 3410 - Murder / Attempted Murder

Offense Description: 3410 - Murder / Attempted Murder
IBR Code: 13A - Aggravated Assault
IBR Group: A
Crime Against: PE
Using: N - Not Applicable
Victim Use: N - Not Applicable

Offense Date: 4/30/2012
Location: 20 - Residence/Home
2nd Location Type:
Special Circumstance:
Offense Completed?: Yes
Hate/Bias: 88 - None (No Bias)

No. Prem. Entered:
Entry Method:

Criminal Activity: N - None/Unknown
Weapons/Force: 11 - Firearm (Type Not Stated)

Domestic Violence: No

Type Security:
Tools Used:
Cargo Theft:

Suspect S1: UNKNOWN SUSPECT

Suspect Number: S1
Name: UNKNOWN SUSPECT
AKA:
Age(s):

DOB:
Age: 00
Sex: M - Male
Race: B - Black

Place of Birth:
SSN:
DLN:
DLN State:

16:25:15 Tuesday, June 06, 2017

APPENDIX PAGE 162

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 06/06/17
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 289646 LOC: LIEBER
WRIGHT, MARCUS DWAIN SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
PREA PERP...: NONE
PREA VICTIM...: NONE
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 05/02/2012
PROJECTED COMPLETION DATES
MAXOUT DATE ...: 99/99/9999 CURRENT EWC .:
YOA SIX YEAR DATE: CURRENT EEC .:
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000
TOTAL GT DAYS EARNED ...: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ...: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS .: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 000000 ISS...:
PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, June 6, 2017

Classification Summary Reports

Inmate Number 289646

Submit

Classification Summary Report for WRIGHT, MARCUS DWAIN :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 06/06/2017

SCDC# 00289646

WRIGHT, MARCUS DWAIN

FBI# 620688KB5

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: LIEBER

SECURITY/CUST: 3 MEDIUM

CURR INCARC 999 YRS 0 MOS
SENT: 0 DAYS

VICTIM
WITNESS: SEPREQ:Y

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

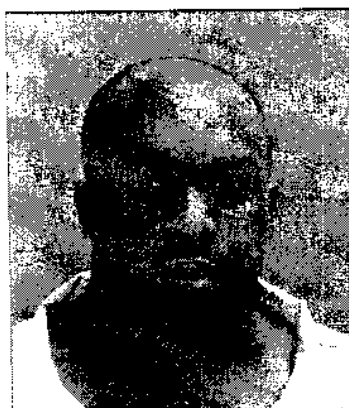
MENTAL NMH (NO MENTAL
CLASS: HEALTH TRE

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 35



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: EA 0012 A

PROJ MAXOUT
DATE:

PROJ PAROLE
DATE:

EWC
JOB: WARDKEEPER ASSISTANT

ASSIGNMENT: BUILDING #1

EWC
LEVEL: 5F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE		
			DYS	COUNTY		V/NV	CAT	INDICT
TRAFFICKING IN COCAINE	25	0	0	HORRY	05/02/2012	V	4	12GS2602552
FIREARMS PROVISION	5	0	0	HORRY	05/02/2012	N	3	13GS2602339
CRACK DISTRIBUTION	15	0	0	HORRY	05/02/2012	N	2	12GS2602553
MURDER	999	99	999	HORRY	05/02/2012	V	5	12GS2602551

SENTENCE

SENTENCE

Classing Summary Reports - Report View

COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV	CAT	INDICT
COCAINE POSS INT/DISTR	5	0	0	RICHLAND	10/24/2002	N	2	00GS4040553
CARJACKING	10	0	0	RICHLAND	10/01/2002	V	4	02GS409824
CARRY PROHIBITED WEAPON	1	0	0	RICHLAND	10/01/2002	N	3	02GS404803
RECEIVE STOLEN PROPERTY	5	0	0	RICHLAND	10/01/2002	N	2	02GS407534
ASSLT&BATTERY-HIGH&AGG NAT	10	0	0	RICHLAND	10/01/2002	N	3	02GS4008218
MALIC INJURY/PERS PROPERT	5	0	0	RICHLAND	10/01/2002	N	2	02GS407537

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

DATE	DESCRIPTION	DISPOSITION	HEARING	STAFF	ASSAULT	NOTES
07/02/2016	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	DISMISSED	MAJOR DISC. HEARING	STAFF	ASSAULT	N
01/12/2016	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	CONVICTED	MAJOR DISC. HEARING	STAFF	ASSAULT	N
10/18/2010	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	CONVICTED	MAJOR DISC. HEARING	STAFF	ASSAULT	N
12/18/2005	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	CONVICTED	MAJOR DISC. HEARING	STAFF	ASSAULT	N
04/05/2005	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	DISMISSED	MAJOR DISC. HEARING	STAFF	ASSAULT	N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

DATE	DESCRIPTION	DISPOSITION	HEARING	STAFF	ASSAULT	NOTES
03/28/2017	DAMAGE,DESTROY,PROP.VALUE AT \$100./MORE	DISMISSED	MAJOR DISC. HEARING			
08/04/2016	THREATENING TO INFLECT HARM ON EMPLOYEE	DISMISSED	OVERTURNED/GRIEV/ALC			
07/02/2016	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	DISMISSED	MAJOR DISC. HEARING			
01/12/2016	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING			
06/01/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING			
05/20/2015	ANY ACT DEFINED AS A FELONY BY LAWS SC	DISMISSED	CHARGES DROPPED/INSUFF. E			
05/15/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING			
05/15/2015	SMUGGLING/CONSPIRACY SMUGGLE CONTRABAND	DISMISSED	MAJOR DISC. HEARING			
05/15/2015	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	DISMISSED	MAJOR DISC. HEARING			
05/15/2015	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING			
12/02/2014	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING			
10/18/2010	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING			
10/18/2010	INCITING/CREATING A DISTURBANCE	CONVICTED	MAJOR DISC. HEARING			
04/27/2007	REFUSING TO WORK	DISMISSED	MAJOR DISC. HEARING			
04/26/2007	REFUSING OR FAILING OBEY ORDERS	DISMISSED	MAJOR DISC. HEARING			
01/28/2006	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION			
12/18/2005	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING			

10/18/2005 POSSESSION OF CONTRABAND
 10/18/2005 USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT
 05/12/2005 EVADING A SECURITY DEVICE
 05/12/2005 POSSESSION OF CONTRABAND
 02/02/2005 REFUSING OR FAILING OBEY ORDERS
 10/06/2004 DAMAGE,DESTROY,PROP.VALUE AT \$100./MORE
 08/29/2004 REFUSING OR FAILING OBEY ORDERS
 12/15/2003 USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT
 12/13/2003 GAMBLING AND LOAN SHARKING
 04/09/2003 REFUSING OR FAILING OBEY ORDERS
 12/29/2002 SAFETY REGULATIONS

CONVICTED MAJOR DISC. HEARING
 CONVICTED MAJOR DISC. HEARING
 DISMISSED MAJOR DISC. HEARING
 CLOSED OTHER ACTION TAKEN/INFORM
 CLOSED OTHER ACTION TAKEN/INFORM
 CONVICTED MAJOR DISC. HEARING
 CLOSED OTHER ACTION TAKEN/INFORM
 CONVICTED MAJOR DISC. HEARING
 DISMISSED MINOR DISC. HEARING
 DISMISSED MINOR DISC. HEARING
 DISMISSED MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

02/21/2017	LIEBER	INCARCERATED	RETURN FROM COURT
02/21/2017	HORRY CO	AUTH ABSENCE (AWL)	TO COURT
12/29/2016	LIEBER	INCARCERATED	ADMINISTRATIVE
11/07/2016	LEE	INCARCERATED	RETURN FROM COURT
11/07/2016	HORRY CO	AUTH ABSENCE (AWL)	TO COURT
08/29/2016	LEE	INCARCERATED	ADMINISTRATIVE
04/14/2016	BROAD RIVER	INCARCERATED	RETURN FROM COURT
04/14/2016	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
03/28/2016	BROAD RIVER	INCARCERATED	RETURN FROM COURT
03/28/2016	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
05/14/2015	BROAD RIVER	INCARCERATED	RETURN FROM COURT
05/14/2015	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
07/02/2014	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/04/2013	MCCORMICK	INCARCERATED	RETURN FROM COURT
11/04/2013	HORRY CO	AUTH ABSENCE (AWL)	TO COURT
08/12/2013	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/21/2013	KIRKLAND	INCARCERATED	NEW ADMISSION
02/28/2013	UNK	RELEASE	EXPIRATION OF SENTENCE
03/01/2011	RICHLAND CO	COMMUNITY SUPERVISION	RELEASED TO PROBATION
12/07/2010	EVANS	INCARCERATED	ADMINISTRATIVE
08/31/2009	MANNING	INCARCERATED	ADMINISTRATIVE
08/31/2009	NEWBERRY CO	AUTH ABSENCE (AWL)	MEDICAL
07/30/2009	MANNING	INCARCERATED	ADMINISTRATIVE
07/30/2009	KIRKLAND	INCARCERATED	MEDICAL
03/17/2009	MANNING	INCARCERATED	ADMINISTRATIVE
03/04/2009	STEVENSON	INCARCERATED	ADMINISTRATIVE
11/13/2008	TYGER RIVER	INCARCERATED	MEDICAL
11/13/2008	KIRKLAND	INCARCERATED	MEDICAL
06/17/2008	TYGER RIVER	INCARCERATED	MEDICAL
06/17/2008	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
07/24/2007	TYGER RIVER	INCARCERATED	MEDICAL
07/24/2007	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
06/28/2007	TYGER RIVER	INCARCERATED	MEDICAL
06/28/2007	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/21/2007	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
03/21/2007	KIRKLAND	INCARCERATED	MEDICAL
01/17/2007	TYGER RIVER	INCARCERATED	ADMINISTRATIVE

Classing Summary Reports - Report View

12/04/2006	RIDGELAND	INCARCERATED	ADMINISTRATIVE
12/04/2006	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/19/2006	RIDGELAND	INCARCERATED	RETURN FROM COURT
10/19/2006	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
07/17/2006	RIDGELAND	INCARCERATED	ADMINISTRATIVE
05/16/2006	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
05/04/2006	KERSHAW	INCARCERATED	ADMINISTRATIVE
04/12/2006	EVANS	INCARCERATED	MEDICAL
04/12/2006	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/23/2006	EVANS	INCARCERATED	RETURN FROM COURT
03/23/2006	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
03/22/2006	EVANS	INCARCERATED	RETURN FROM COURT
03/22/2006	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
12/06/2005	EVANS	INCARCERATED	RETURN FROM COURT
12/06/2005	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
11/18/2005	EVANS	INCARCERATED	RETURN FROM COURT
11/18/2005	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
03/09/2005	EVANS	INCARCERATED	RETURN FROM COURT
03/09/2005	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
11/30/2004	EVANS	INCARCERATED	ADMINISTRATIVE
10/04/2004	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
10/04/2004	KIRKLAND	INCARCERATED	MEDICAL
08/25/2004	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
08/24/2004	KIRKLAND	INCARCERATED	MEDICAL
07/19/2004	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
07/16/2004	KIRKLAND	INCARCERATED	MEDICAL
07/09/2004	KIRKLAND INFRM	INCARCERATED	MEDICAL
07/09/2004	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
06/07/2004	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
06/07/2004	KIRKLAND	INCARCERATED	MEDICAL
05/05/2004	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
05/04/2004	KIRKLAND	INCARCERATED	MEDICAL
04/21/2004	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
04/21/2004	KIRKLAND	INCARCERATED	MEDICAL
10/20/2003	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
10/20/2003	KIRKLAND	INCARCERATED	MEDICAL
10/02/2003	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
10/02/2003	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/23/2003	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
09/23/2003	KIRKLAND	INCARCERATED	MEDICAL
09/16/2003	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
07/24/2003	KERSHAW	INCARCERATED	ADMINISTRATIVE
07/23/2003	KIRKLAND	INCARCERATED	MEDICAL
07/11/2003	KERSHAW	INCARCERATED	ADMINISTRATIVE
07/11/2003	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/05/2003	KERSHAW	INCARCERATED	MEDICAL
03/05/2003	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
01/21/2003	KERSHAW	INCARCERATED	ADMINISTRATIVE
12/19/2002	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	01/26/2017	-		SF5

GENERAL WORKER	08/30/2016	12/29/2016	INSTIT TRANSFER	5F5
FOOD SERVICE AIDE	07/03/2014	05/15/2015	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	08/15/2013	07/02/2014	INSTIT TRANSFER	3F5
WARDKEEPER	07/31/2009	10/18/2010	PLACED IN ST/SP CUSTODY	2F5
WARDKEEPER	04/09/2009	07/30/2009	INMATE REQUEST	2F5
MACHINE OPERATOR	03/19/2009	04/08/2009	MEDICAL	2F5
FOOD SERVICE AIDE	03/05/2009	03/17/2009	INSTIT TRANSFER	2F5
FOOD SERVICE AIDE	03/05/2009	03/05/2009	CUSTODY REVIEW	3F5
GENERAL WORKER	12/18/2008	03/04/2009	INSTIT TRANSFER	2F5
GENERAL WORKER	12/16/2008	12/17/2008	CUSTODY REVIEW	3F5
GENERAL WORKER	12/14/2007	12/15/2008	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	12/12/2007	12/13/2007	ASLT/DRUG/MAJOR DISC	2F5
GENERAL WORKER	01/19/2007	12/11/2007	CUSTODY REVIEW	3F5
WARDKEEPER	10/10/2006	01/17/2007	INSTIT TRANSFER	3F5
WARDKEEPER	07/20/2006	09/22/2006	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	06/15/2006	06/23/2006	PLACED IN ST/SP CUSTODY	3F5
CUSTODIAL WORKER	12/08/2004	12/18/2005	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	10/19/2004	11/29/2004	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	07/20/2004	10/06/2004	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	12/19/2003	07/12/2004	MEDICAL	3F5
WARDKEEPER ASSISTANT	09/18/2003	12/18/2003	ASLT/DRUG/MAJOR DISC	2F5
WARDKEEPER	06/06/2003	08/15/2003	PLACED IN ST/SP CUSTODY	2F5
WARDKEEPER	06/05/2003	06/05/2003	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 4-7 HRS/WK	07/22/2004	10/06/2004	PLACED IN ST/SP CUSTODY
LVL 2 - FULL TIME(NO EWC)	05/05/2003	06/04/2003	INMATE REQUEST
LVL 2 - FULL TIME(NO EWC)	04/04/2003	04/14/2003	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	01/30/2003	04/03/2003	MI ELIGIBLE FOR LEVEL 2

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

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 04:26:21 PM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
 STATE VS.
Marcus Dwain Wright

INDICTMENT/CASE#: 2012GS2602552A/W#: M972473Date of Offense: 5/2/2012S.C. Code §: 44-53-0370(e)(2)(a)1CDR Code #: 2359

SENTENCE SHEET

AKA:

Race: [REDACTED] Sex: M Age: 31DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Conway, SC 29527-6321DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking in cocaine, 28--100 g, 1st offense

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.

§ 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court: Deputy Clerk

Court Reporter

Presiding Judge

Judge Code:

20471

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Marcus Dwain Wright

AKA:

Race: BLACK

Sex: M

Age: 31

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Conway, SC 29527

DL#:

SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections,☐ County Detention Center,for a determinate term of 5 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

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

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

 2647
 6/20/13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Marcus Dwain Wright

AKA:

Race: Sex: M Age: 31

DOB: SS#

Address:

City, State, Zip: Conway, SC 29527-6321

DL#: SID#

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

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manufacture, distribution, etc. of methamphetamine, 1st

INDICTMENT/CASE#: 2012GS2602553

A/W#: M972474

Date of Offense: 5/2/2012

S.C. Code § : 44-53-0375(B)

CDR Code #: 3198

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375(B) of the S.C. Code of Laws, bearing CDR Code # 3198

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 6/20/13☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

John C. Hays
2041
6/20/13

STATE OF SOUTH CAROLINA

COUNTY OF
STATEHorry
VS.

Marcus Dwain Wright

AKA:

Race:

Sex: M

Age: 31

DOB:

SS#:

Address:

City, State, Zip: Conway, SC 29527

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2602551

A/W#: M972464

Date of Offense: 4/30/2012

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020

of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life Imprisonment days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$0
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning Life

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk
Court Reporter:Presiding Judge
Judge Code:
Sentence Date:

Melanie Huggins Hard
Dixie Edbank

John H. Huggins
2012/11/16



ALAN WILSON
ATTORNEY GENERAL

May 19, 2017

Janice Kenealy
Office of Inmate Records
SC Department of Corrections
Post Office Box 21787
Columbia, SC 29221

RE: Marcus Dwain Wright, #289646 (Horry)
Robert J. Rippy, #300571 (Horry)
Leonard D. Heyward, #316155 (Georgetown)
Reginald Rivers, #367978 (Horry)

Dear Ms. Kenealy:

Please forward us a copy of the Department of Corrections records for the above individuals.
Thank you for your assistance.

Sincerely,

Mallory Morris
Legal Assistant

2017 MAY 23 PM 1:23



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

May 13, 2016

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

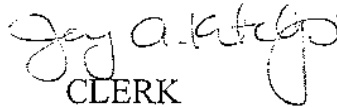
REMITTITUR

Re: The State v. Marcus Dwain Wright
Lower Court Case No. 2012GS2602551, 2012GS2602552,
2012GS2602553, 2013GS2602339
Appellate Case No. 2013-001406

Dear Clerk of Court:

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

Very truly yours,


CLERK

cc: Marcus Dwain Wright
Alan McCrory Wilson, Esquire
J. Falkner Wilkes, Esquire
Donald J. Zelenka, Esquire
J. Anthony Mabry, Esquire
John W. McIntosh, Esquire
Jimmy A. Richardson, II, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2017-CP-26-02564
MARCUS DWAIN WRIGHT,	)	
	)	
Applicant,	)	Transcript of Record
	)	(PCR Hearing)
vs.	)	
	)	December 14, 2018
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

B E F O R E:

Honorable William H. Seals, Jr.
Georgetown County Courthouse
Georgetown, South Carolina

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

Beattie Ashmore, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

1		
	<u>I N D E X</u>	
2	<u>DECEMBER 14, 2018</u>	<u>Pg.</u>
3	By the Court	4
4	Morgan Martin	
5	Direct by Ashmore	6
6	Cross by James	32
7	Edward M. Brown	
8	Direct by Ashmore	53
9	Cross by James	63
10	Redirect by Ashmore	73
11	By the Court	78
12	Marcus Dwain Wright	
13	Direct by Ashmore	81
14	Cross by James	101
15	Redirect by Ashmore	110
16	Donna Elder Barton	
17	Direct by James	111
18	Cross by Ashmore	116
19	By the Court	119
20	Certificate of Court Reporter	122
21		
22		
23		
24		
25		

E X H I B I T S

<u>No.</u>		<u>ID</u>	<u>EV</u>
A1	Transcript of Statement of Kelley Pinnix		24
A2	Transcript of Bond Hearing 6/6/12		88
S1	Transcript of Statement of Veronica Chandler		43
S2	Handwritten Letter - L. Powell		67
S3	Letter to Martin/Brown 5/29/13		115

1 **DECEMBER 14, 2018 - 11:17 A.M.**

2 BY THE COURT:

3 THE COURT: Thank you. Good morning. Everybody be
4 seated. Is everybody ready to begin?

5 MR. JAMES: We have our applicant, Mr. Wright.

6 THE COURT: Okay, good.

7 MR. JAMES: We're ready to proceed Your Honor.

8 THE COURT: All right. Anything the State wants to put
9 on the record before we begin?

10 MR. JAMES: I believe we're ready to go, Your Honor.

11 THE COURT: Okay.

12 MR. JAMES: If it may please the Court?

13 THE COURT: Yes, sir.

14 MR. JAMES: This is the matter of Marcus Dwain Wright
15 versus State of South Carolina, docket number 2017-CP-26-
16 02564. Mr. Wright is present here in the courtroom today and
17 is represented by Mr. Beattie Ashmore. Mr. Wright was
18 indicted at the June 2012 term of the Horry County Grand Jury
19 for murder, trafficking cocaine between 28 and 100 grams,
20 possession with intent to distribute cocaine base. He was
21 again indicted at the May 2013 term for possession of a weapon
22 during the commission of a violent crime. He was represented
23 on these charges by Mr. Morgan Martin, Esquire and Ed Brown,
24 Esquire. He was prosecuted by Donna Elder of the 15th Circuit
25 Solicitor's Office. He proceeded to trial before the

1 Honorable John C. Hayes and a jury on June 17th, 2013. That
2 jury found him guilty as indicted on June 20th, 2013. Judge
3 Hayes thereafter sentenced him to imprisonment for a term of
4 life for murder and, additionally, consecutive to that
5 sentence or consecutive with each other, he was sentenced to
6 25 years for trafficking, 15 years for PWID cocaine base and
7 five years for the weapons charge. So, he got life plus 25.
8 He filed a timely notice of appeal and that appeal was
9 effected by J. Falkner Wilkes, Esquire. They proceeded to
10 oral arguments on November 10, 2015 before the South Carolina
11 Court of Appeals, and by opinion decided April 27th, 2016,
12 South Carolina Court of Appeals affirmed his convictions in a
13 published opinion that being *State v. Wright*, 416 S.C. 353,
14 785 S.E.2d 479. The remittitur was issued on May 13th, 2016.
15 He subsequently filed this application for relief on April
16 24th, 2017 by and through Counsel Ashmore.

17 With that procedural history set forth, unless there are
18 further questions from the Court, I will cede the floor to Mr.
19 Ashmore.

20 THE COURT: All right. Mr. Ashmore?

21 MR. ASHMORE: Thank you, Your Honor, may it please the
22 Court, Your Honor. We'd call Morgan Martin to the stand?

23 THE COURT: Over here, Mr. Martin.

24 MR. MARTIN: Over here?

25 THE COURT: Yes, sir. I'm sure you're used to being on

1 that side of the courtroom.

2 MORGAN MARTIN, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please spell and state your full name for the
5 Court.

6 MR. MARTIN: Spell what?

7 CLERK: Say your full name and spell it for the Court.

8 MR. MARTIN: Morgan Martin, M-O-R-G-A-N, M-A-R-T-I-N.

9 CLERK: You may be seated.

10 DIRECT EXAMINATION OF MORGAN MARTIN BY MR. ASHMORE:

11 Q: Good morning, Mr. Martin?

12 A: Good morning.

13 Q: You represented Marcus Wright in the trial of this case?

14 A: I did, along with another attorney.

15 Q: And that was Ed Brown. How did that -- what was the
16 sequence there; who was the first retained?

17 A: Well, I -- I was retained first and Mr. Brown second.

18 Q: How, generally speaking, from the date of arrest to the
19 date of the trial, how much time went by, Mr. Martin?

20 A: From the date of the arrest to the date of the trial?

21 Q: Yes, sir.

22 A: I don't know exactly without looking at that record. I'm
23 assuming it was probably in the 18-month range.

24 Q: And it was a murder trial and, as it turned out, a drug
25 trial as well. Did you have enough time to prepare for the

1 trial of the case?

2 A: Correct, I did.

3 Q: And the same I would assume holds true of Mr. Brown?

4 A: Well, I'm hesitant to answer for him, but I would ---

5 Q: Fair enough.

6 A: --- I don't remember that we were forced into trial
7 earlier than we were prepared to.

8 Q: And how many -- what did you do to prepare for trial in
9 general terms?

10 A: Well, obviously, I can't tell you sitting here today my
11 recollection of, of when the trial was. I know this occurred
12 back in 2012, I believe.

13 Q: Yes, sir.

14 A: When was the trial, '14?

15 Q: I believe it was, Mr. Martin.

16 MR. JAMES: To clarify for the record, the transcript
17 here indicates it was June 17th to 21, 2013.

18 A: 2013, okay. Well, I would've done, I think, what I
19 normally do in this case and that is to go through the file,
20 to listen to the statements, to review all of the evidence, to
21 look at the evidence prior to trial, to discuss it with my
22 client, to discuss it with Mr. Brown, do some legal research,
23 try to get ready to try the case.

24 BY MR. ASHMORE:

25 Q: Let's get to the trial of the case, Mr. Martin, and I

1 have prepared a memorandum that I provided to the assistant
2 attorney general. I believe he forwarded that to you, which
3 is a good thing, so that we can -- we can prepared and
4 expedite today's hearing. But let me talk to you first and
5 foremost, Mr. Martin, about my client's inability to testify
6 on his own behalf at trial. Your, your -- and correct me if
7 I'm wrong, but during the course of the trial, you must've
8 finished up on an afternoon and Judge John Hayes had the talk
9 that the Judge always has with the defendant about whether or
10 not he wants to remain silent or testify on his own behalf; do
11 you remember that?

12 A: Between my memory and reviewing the records, yes.

13 Q: Okay. And that's what we do on all the trials
14 essentially, correct?

15 A: Yes.

16 Q: And that afternoon, I believe, Mr. Wright indicated that
17 he did not care to testify; is that your understanding?

18 A: Say that -- let me get my notepad before I go on. I got
19 a notebook that I -- yellow pad that I left there that may
20 have some notes on it. Okay. I think, if I understood you
21 correctly, you were asking me if the Judge talked to Mr.
22 Wright on the record about whether or not he wanted to
23 testify.

24 Q: Yes, sir.

25 A: And he did, I believe.

1 Q: Well, let me try to refresh your recollection. I believe
2 Judge Hayes asked, now this is your decision to testify or
3 not. I ask you now, you're not bound at this point, but have
4 you determined whether you wish to testify or exercise your
5 right to remain silent to which Mr. Marcus Wright replied,
6 exercise my right to remain silent.

7 A: I think that's what the record reflects and that's what I
8 recall.

9 Q: And that was on an afternoon as you were wrapping up
10 court; fair?

11 A: Probably. I don't have a specific recollection of that,
12 but I think that's probably correct.

13 Q: And, and so, we get to the next morning and during the
14 course of the night, Mr. Marcus Wright had changed his mind
15 and he wanted to testify; isn't that correct?

16 A: Well, he apparently had second thoughts about whether he
17 wanted to testify. I did not talk to Mr. Wright. My
18 recollection is, I didn't talk with Mr. Wright that day before
19 court in the holding area. In reading through some of the
20 records in the Appellant Court opinion, I think maybe Mr.
21 Brown did. But, I do think that when we came -- when Marcus
22 came out that morning and we're sitting at the table, there
23 was a discussion about that maybe he did want to testify. He
24 didn't know if it was right or not to testify; maybe he did
25 want to testify. We discussed it and, you know, I -- I don't

1 have a specific recollection of the word-for-word discussion
2 we had there. I think probably the discussion was that our --
3 our position had been all along and with Marcus, and Marcus
4 agreed, that it was better that he not testify for multiple
5 reasons. And I did -- my position on advising him had not
6 changed to that degree and it's my thought that when we had
7 that conversation, that even though Marcus had thought about
8 testifying or had expressed a desire to Mr. Brown to testify,
9 that he had reconciled himself with the fact that it was in
10 his better interest not to testify. But at any rate, there
11 was some discussion about that, yes.

12 Q: And what the record will reflect is that you had a
13 typical charging conference. You and Mr. Brown asked for
14 self-defense, involuntary manslaughter charges and your
15 requests were denied?

16 A: Correct.

17 Q: There wasn't any evidence in the record to support those
18 charges; isn't that correct?

19 A: Well, that's what the Judge said. That's what the Judge
20 said. I differed with him at the time, but that was what he
21 said.

22 Q: Of course. But, but after this charging conference and
23 Mr. Brown will be here and he'll testify today, but again, the
24 record reflects, after the charging conference, it became
25 known to Judge John Hayes that Marcus Wright wanted to

1 testify; is that your recollection?

2 A: I think it did. As a matter of fact, I think that the --
3 the transcripts and the audio would probably reflect that
4 Marcus attempted to talk to the Judge.

5 Q: He raised his hand?

6 A: Maybe that's it, yes.

7 Q: And so, Marcus let it be known that he wanted to testify.
8 However, Judge Hayes denied that request?

9 A: That is correct.

10 Q: And the reason he did so, is because you'd already had a
11 charging conference and according to Judge Hayes, Marcus could
12 tailor his testimony in accordance with Judge Hayes' ruling?

13 A: Well, I'm not sure why Judge Hayes ruled as he did. We
14 had -- I think the record reflects that the day before, before
15 we adjourned for Court, the Judge had even then talked about
16 what he was looking for in terms of self-defense and
17 manslaughter and so that was already on the record of things
18 that he would be looking for specifically. He did, I think he
19 did say that he -- he was -- that the fact that he had ruled
20 and that the defendant would've known what he was looking for
21 in terms of testimony, was one of the considerations that he
22 used not to allow him to testify. Of course, what you're
23 looking for in terms of self-defense, involuntary manslaughter
24 are no big secret. We discussed all that thoroughly with
25 Marcus and what was in the record and what wasn't in the

1 record and that sort of thing. But, I think the Judge, in his
2 discretion, using all the facts that he had, he obviously
3 ruled that he couldn't -- wouldn't let him testify. I don't
4 think he had to rule that way; I think that was, as the Court
5 of Appeals says was in his discretion and he utilized that
6 discretion and for reasons satisfactory to himself, refused to
7 let him testify.

8 Q: And, Judge Hayes faulted the defense -- and I think it's
9 fair to characterize mostly as to Mr. Brown -- faulted,
10 faulted the defense mightily for not bringing that to his
11 attention earlier as in first thing that morning?

12 A: Well, I don't recall that, but I don't recall him blaming
13 the defense mightily for that. I remember him saying that
14 this is brought up after I had ruled on that and I don't think
15 it's -- I don't think I'm gonna let him testify now. If
16 there's a transcript, you can tell me what he said.

17 Q: Sure. And I think the transcript will reflect just that,
18 that had it been brought to the attention of Judge Hayes prior
19 to the charging conference, he would've let Marcus Wright
20 testify on his own behalf?

21 A: Well, I don't know that that's what he says, but if it
22 is, if it is, the record's there, but I don't recall him
23 saying if, then I would have. But ---

24 Q: Well, to be fair, he -- that is not a quote from the
25 Judge, it's something that I think you can infer from the

1 record that that's part of the ---

2 A: Well, then I will stand by my statement; that's not what
3 he said.

4 Q: And so, at the end of the day, it's clear that Marcus
5 Wright was not able to testify on his own behalf?

6 A: That -- that's clear, yes.

7 Q: And what -- what was -- what was the theory of your case
8 as you began the trial?

9 A: Well, first of all, this was a difficult case from a
10 defense standpoint and you, being a defense lawyer, I think
11 understand some of that. But, it wasn't -- it wasn't -- it
12 wasn't self-defense. We didn't start it out as self-defense.
13 We had to try to define the defense and -- and again, let me
14 say in the record at this time, this trial was some four years
15 ago and preparation prior to that, and obviously, my memory,
16 though I think I have a good one, I can't remember all the
17 nuances of this trial and this case. But every case and trial
18 has a life of its own and a lot of times you make decisions
19 based on what's happening, on inference, on possibilities, on
20 what the Judge is telling you at sidebars, a lot of different
21 things that impact exactly how you move and go forward. But
22 in this case, I know a few of the driving things was I didn't
23 think Marcus would make a good witness to testify, and we
24 talked with him about that. Clearly, he had -- I don't know
25 all the reasons, but he had a prior criminal history that

1 wasn't good. I didn't think Marcus would make a good witness
2 in the context of what we're there. If your defense was he
3 didn't do it and they can't prove he did it, you don't really
4 need him to testify. And in this case, it just seemed -- I
5 think our theory of the case was that the state's case was
6 made of with drugged, drunk witnesses by their own admission
7 and the statements they had made to the police that this
8 occurred. The majority of them were unclear on who had shot
9 who or exactly what had happened. I think there was a Roy
10 Sinclair, who maybe named Marcus. But the idea was, the
11 defendant doesn't have to prove anything and the state's got
12 to prove the case beyond a reasonable doubt. In this case,
13 the word of one or two of these drugged drunks, without any
14 corroboration or physical evidence that Marcus Wright was in
15 the house, no DNA, no fingerprints, nothing to put him there
16 -- whereas, he was supposedly in the house touching cans,
17 doing this, doing that -- that the theory of the case was that
18 they can't prove the case. And therefore, even if he's
19 guilty, a jury should not condone and convict when the state's
20 prosecution is based on, inherently, suspect testimony. The
21 theory of was it self-defense, it just never struck me as a
22 self-defense case.

23 First of all, if my memory serves correct, when Marcus
24 made a statement to the police -- well, first of all, whoever
25 shot the guy took off. They did not stay there and say, oh,

1 my goodness, I had to do this, I'll call 911; they took off.
2 And when Marcus was arrested, he never put forth any defense
3 of self-defense. And in totality, as I recall the statement
4 was, I don't know what you're talking about, I weren't there,
5 and you're taking the word of a bunch of crackheads yourself.
6 The guy was shot 10 times. Several times, according to the
7 pathologist and to the evidence and you could look at, while
8 he laid on the floor, three times in the back. No gun found
9 at the scene. The defendant wasn't at home where he had a
10 right to be, which I think is always a very helpful thing in a
11 self-defense case. There were just numerous reasons and I'm
12 probably forgetting some and I may be misquoting some of it,
13 but never did feel like that was a good defense. And in
14 addition to that, in order to establish it, it may be that
15 Marcus had to take the witness stand and testify, which I
16 think would have been fatal to what was already a different
17 case -- I mean a difficult case. So, I hope that answers your
18 question as to the theory of the case.

19 Q: Well, much was made of the fact that there was no gun
20 recovered at the scene during the trial of the case, correct?

21 A: Well, I don't remember that exactly, but there probably
22 was, yeah.

23 Q: Well, the decedent, Mr. Green, there was apparently an
24 effort by the defense team to, to establish that he was known
25 for carrying a gun and that he was armed that day; is that not

1 correct?

2 A: Could be, yes.

3 Q: And, and so let's get into some of the particular
4 witnesses and understanding that this was, in fact, four years
5 ago. So, Veronica Chandler was one of the witnesses for the
6 state and she testified at trial that she did not see a gun;
7 would you -- would you trust me in that representation?

8 A: That she testified that she did not see a gun?

9 Q: That's correct.

10 A: I think that's correct, yeah.

11 Q: But however, and she wasn't ever cross-examined on this,
12 that she actually gave a prior inconsistent statement. It was
13 recording that I'm quite convinced I saw a gun.

14 A: Did I cross examine her or some -- I 'm trying ---

15 Q: I read the transcript again last night and, frankly, I
16 can't remember which one of y'all crossed her. But
17 regardless, there is in fact a recording that she had given to
18 law enforcement that was inconsistent with her trial testimony
19 and she was never asked about that. Can you explain that?

20 A: Well, I don't, again, I don't think I cross-examined her,
21 but even if you didn't -- I think, in reviewing her statement
22 last night, what she said is in her statement in essence was
23 he reached under his shirt, he reached to his shirt, under his
24 shirt, I thought I saw a gun, never did say I saw the gun.
25 And my recollection is that in court, that, you know, she did

1 go so far as to admit that she didn't recall whether she made
2 these statements about seeing a gun. I think, I think -- now,
3 I think Mr. Brown might've cross-examined her. And there was
4 testimony about her previous statement and what she saw and
5 didn't see. I do -- I think that's correct but I'm not sure
6 past that.

7 Q: She, at trial, denied that she made the statement that
8 I'm convinced in my head that I saw a gun. He had a gun,
9 because he lifted up his shirt like he was reaching for it.
10 She denied that she said that and that was left alone, she was
11 never confronted with the very recorded statement she had
12 already given to law enforcement. Is there a reason for that?

13 A: Well, I don't know that -- I don't know at this point in
14 time -- my testimony would be that there was a reason that it
15 wasn't used or confronted, if there was a reason for that, I
16 can't tell you at this moment what it was.

17 Q: And then a similar situation with Mildred Small and she
18 testified that, at the trial, that she did not see a gun, yet
19 her prior statement, her inconsistent statement was that I --
20 I knew him and he always carried a gun on him. He didn't go
21 nowhere without that little gun. And again, she was not
22 challenged in her testimony with her prior inconsistent
23 statement; was there a reason for that?

24 A: Well, first of all, again, I don't think the theory of
25 the case was self-defense. So, whether or not this guy had a

1 gun was not probably the primary moving factor, and that's not
2 saying we didn't ask the Judge to charge it because we're
3 looking for whatever we could find. But the other thing I
4 would say, in this case, like every -- like a lot of cases,
5 and particularly in this case, I talked to -- I do know I
6 talked to Ms. Mildred Small about her testimony. I can't
7 remember the details of it, but I did work the case. I talked
8 to the witnesses, I did what I thought I could to prepare
9 because I wanted to do the best I could for Marcus and -- but
10 all of these were dangerous witnesses, Mr. Ashmore, from the
11 standpoint that you don't know what they're going to say. All
12 of them claimed they had been threatened and they were scared
13 of Marcus and this, that, and the other. But I do recall on
14 Mildred Small, one thing she says is -- is that, and I made a
15 note of this, is that she said -- that she said she didn't
16 know what happened. You don't know who did the shooting? No.
17 You don't know who it was that said I'll kill you or anything
18 of that nature? No. And so, it is my guess going back that
19 whoever, whichever one of us questioned her, is when she would
20 not identify Marcus as the person who shot, in light of the
21 fact that even if this fellow had a gun and he's shot in the
22 back, he's shot 10 times, he's shot while he was on the
23 ground, and that self-defense was not the -- the prime defense
24 we had, all of that could've played into the decision at the
25 time as to exactly how to question her, what statement to

1 admit. If you're talking about admitting people's statements
2 as prior inconsistent statements, you also have to factor in
3 what else is said in that statement for, if you put it in, the
4 whole thing comes in. If there's something in there that's
5 damaging to you, then a lot of times you make a decision, I
6 don't believe -- I believe I've got enough in the record and
7 I'm better off without putting something else into the record.
8 I just think all of those are considerations that a trial
9 lawyer has to deal with.

10 Q: Let me test your memory. Lanard Powell was a co-
11 defendant with Mr. Marcus Wright; do you recall that?

12 A: I think so, yes.

13 Q: And now, he had a cellmate, Lanard Powell had a cellmate,
14 Christopher McCray, and y'all had an in camera hearing
15 concerning Mr. McCray, where he testified; do you recollect
16 that?

17 A: I'll be honest with you, I just have no memory of that
18 sitting here today.

19 Q: Understood. You've tried a lot of cases. Let me try and
20 help you along with that. So, during the trial of the car --
21 the trial of the case, there was nothing to establish, again,
22 that there was a gun possessed by, by Mr. Green, the decedent.
23 So, Mr. -- Mr. McCray was a cellmate of Mr. Powell and at a in
24 camera hearing, it was established that Powell told him, he
25 went into the house and saw Mr. Green and he noticed a pistol

1 on the floor and that he removed the pistol from the house.
2 Now, that's -- that's what McCray says that Powell told him.
3 And in an in camera hearing, you, I think, more specifically,
4 Mr. Brown, tried to elicit that testimony and get that into
5 the record. Judge Hayes listened to that in camera and
6 determined that it wasn't a prior inconsistent statement,
7 because Mr. Powell was never asked about it during the trial
8 of the case; do you recall that?

9 A: I don't. I just, I don't recall that.

10 Q: If the record reflects that, that Judge Hayes said, you
11 didn't ask Mr. Powell if he told McCray that; that question
12 was never asked. Therefore, it's improper to try and elicit
13 the testimony from Mr. McCray, the prior inconsistent
14 statement, and it was not allowed into evidence; do you
15 remember that?

16 A: Well, and again, and I'm not being -- that part I don't
17 remember and it may be because Mr. Brown handled more of that,
18 but I don't remember that, but I don't dispute whatever
19 obviously is said in the record.

20 Q: Did you have a private investigator, Russell Dean, does
21 that ring a bell?

22 A: Yes, I'm not sure whether -- he's not my private
23 investigator. There was a Russell Dean involved. I can't
24 remember exactly how he got involved.

25 Q: You remember that a Mr. Sinclair testified it was his

1 home where the shooting occurred?

2 A: I do recall Roy Sinclair, I believe, was the home --
3 owner of the home where it occurred.

4 Q: And was there any -- you didn't elicit any testimony that
5 -- let me strike that, Your Honor, and move forward. Kelly
6 Pinnix, P-I-N-N-I-X, she, again, was a witness that would've
7 established that Mr. Green had a gun. She was not called to
8 testify during that trial, your answer I assume is gonna be
9 similar to the previous responses. For some reason you did
10 not pursue that?

11 A: Well, my recollection is that in Kelly Pinnix' statement
12 to the police, she identified Marcus Wright as the shooter
13 and, and, and gave -- made statements that made her testimony
14 inconsistent with any thoughts of self-defense in addition to
15 the fact that she identified him as the killer. So, I didn't
16 want to call Kelly Pinnix, if my memory serves me correctly.

17 Q: Well, she established that -- her testimony would have
18 been that Mr. Green had a gun?

19 A: Well, but again, I don't think our primary defense was
20 self-defense.

21 MR. JAMES: Objection. This is assuming facts not
22 necessarily in evidence. I understand that the statement was
23 attached to the memorandum that was provided to the Court, but
24 that statement has not yet been introduced to the Court in
25 course of this evidentiary hearing. If Mr. Ashmore wishes to

1 introduce it, the state doesn't necessarily have an objection,
2 but I just need to make sure that it's in the record, but I
3 can go back through it on cross-examination.

4 MR. ASHMORE: That's a fair point, Your Honor. I'll --
5 and as we requested earlier, if we can go through today's
6 hearing, I can get the transcript and submit proposed Orders.
7 I should be able to produce that statement before then or
8 hopefully during the course of this hearing.

9 THE COURT: I think the state is looking for it now, if
10 you have it.

11 MR. ASHMORE: It sounds like it, Judge, and I just -- I
12 sent some exhibits yesterday, and so I think I have provided
13 it to Mr. James.

14 MR. JAMES: I would ask that he actually move to
15 introduce the statement into evidence and confirm with Mr.
16 Martin that we're talking about the same statement, that it
17 was pulled from his file, that he's familiar with it, and that
18 he relied on it in the course of his representation.

19 THE COURT: And you can take your time to find it if you
20 have it.

21 MR. ASHMORE: May I, please?

22 THE COURT: Sure.

23 BY MR. ASHMORE:

24 Q: Does this look like you would recognize as the statement
25 of Kelly Pinnix, Mr. Martin?

1 A: It certainly looks like it, yeah.

2 Q: And was that -- would that be something you received in
3 discovery during the course of this case?

4 A: Yes.

5 Q: You don't know have any doubt as to its authenticity?

6 A: Well, I had -- I don't -- I don't know where you got this
7 from. I'm pretty sure I had my staff type up the statements
8 that we got, and I've got one here that I pulled out of the
9 file which is Kelly Pinnix' statement, and it looks to me like
10 the first few pages at least are the same thing that you've
11 got here. So, I'm assuming this is the statement of Kelly
12 Pinnix.

13 Q: And may I see your statement, I may want to introduce
14 that one instead. They appear to be the same. So, again,
15 I'll ask you the statement I just handed you, are you
16 satisfied that that's a true and accurate copy of the
17 statement?

18 A: I'm as satisfied as I can be without reading it word for
19 word.

20 Q: Understood. Your Honor, I'd offer this as defense 1.

21 THE COURT: No objections, I assume?

22 MR. JAMES: Without objection.

23 THE COURT: Number 1 is in evidence.

24 COURT REPORTER: It will be Applicant's Number 1.

25 APPLICANT'S EXHIBIT NUMBER 1

ADMITTED INTO EVIDENCE

BY MR. ASHMORE:

Q: There was a juror seated, Mr. Martin, that apparently was a former assistant solicitor; do you recall that?

A: Say that again now?

Q: A juror was seated and she was a former assistant solicitor, I think in the 15th Circuit; do you recall -- do you have any recollection of that?

A: No, not off the top of my head I don't. One of the jurors that was seated was a former assistant solicitor in Horry County?

Q: Yes, sir.

A: I have no recollection of that. Who was the juror?

Q: You filed a couple of suppression motions prior to trial; do you recall that?

A: I probably did. I don't recall specifically, but that sounds like something I would do.

Q: Let me -- let me try and refresh your recollection.

There was much ado about 3635 Cates Bay, a search warrant and the question was whether that was or was not Marcus Wright's residence; do you recall that?

A: I think so.

Q: So it's a -- a search was conducted there and a gun was recovered from there and you moved to suppress that evidence and, ultimately, the Judge denied your motion to suppress; you

1 remember that?

2 A: Vaguely, yeah.

3 Q: So, during that exercise, you did a very fine job
4 establishing that a number of the statements and the affidavit
5 to establish probable cause had issues, we shall say, you
6 attacked the statements to establish probable cause, and you
7 were -- you were gaining ground with Judge Hayes; do you
8 remember that?

9 A: Yes, again, and I'm certainly not trying to be deceptive
10 about this, but I did not review every bit of the file or the
11 transcript, but I do remember we had the motion to suppress.
12 I do remember that there -- I thought there was some good
13 reasons to suppress that and ultimately the Judge did rule
14 against us, but you're gonna have to help me from that point.

15 Q: Sure. He, he actually says -- the Judge says, these
16 definite statements aren't holding water, meaning, you were
17 being very effective in challenging the search warrant; do you
18 recall that?

19 A: That's -- yes.

20 Q: And then Ms. Elder raised the issue of standing, did
21 Marcus Wright have standing to contest this particular
22 warrant; do you recall that?

23 A: I think that I do, yeah.

24 Q: And so, her argument to the Judge was that Marcus Wright
25 didn't live there. He did not live at 3635 Cates Bay; do you

1 recall that?

2 A: Yes.

3 Q: She actually introduced his driver's license, which
4 listed 3643 Cates Bay as his address; is that -- that was a
5 long time ago, does that ring a bell?

6 A: Well, I, I don't remember the specifics of what was
7 introduced, but I do -- do agree that standing became an
8 issue, that we -- that they were attempting to establish that
9 he didn't have standing, and I know that myself and Mr. Brown
10 were probably doing what we could to establish that he did
11 have standing.

12 Q: And you -- and you tried to admit into evidence two
13 documents, essentially, letters addressed to Marcus Wright at
14 3635 Cates Bay, but you were unable to lay a foundation, so
15 those were not admitted into evidence; do you remember that?

16 A: It sounds to me like the Judge made another mistake.

17 Q: And then you actually got to the point where Marcus
18 Wright had been on supervision by the probation agents and you
19 called probation agent, Biff Johnson, to testify; do you
20 remember him?

21 A: I do remember Biff and I do think he was there.

22 Q: So, Biff testified, but, but and -- with your theory
23 being that Biff testified that Marcus lived at 3635 Cates Bay,
24 but he couldn't quite connect the dots; do you remember that?

25 A: Mr. Ashmore, I don't specifically, but I don't doubt

1 that.

2 Q: Yes, sir. And again, I hate to challenge you on all of
3 this, facts that happened so long ago, but I appreciate you
4 being here this morning. Now, there was also a neighbor that
5 lived near 3635 Cates Bay and she testified at trial, but
6 after the suppression motion was denied, that Marcus lived at
7 3635 Cates Bay; do you remember that?

8 A: No.

9 Q: So, essentially there was a neighbor that could've
10 established that wasn't called, but a former probation agent
11 was called to testify and he couldn't connect the dots, and so
12 the Judge denied your basis on a lack of standing; do you
13 remember that?

14 A: I do -- I do remember that the Judge did not suppress the
15 evidence.

16 Q: Yes, sir. You also moved to suppress the search of a
17 hotel room and in fairness to you, you moved to sever the drug
18 charges from the murder charges, correct?

19 A: Yes, if you say I did, I would agree to that.

20 Q: You did and I'll let you opine on whether the Judge was
21 correct or not, but you tried both of those essentially
22 separate instances ---

23 A: Right.

24 Q: --- at the same time. So, as to the search of a hotel
25 room, you recall that Marcus and Lanard Powell were ultimately

1 arrested in a hotel room?

2 A: I do, yes.

3 Q: And you moved to suppress the evidence, which in this
4 case, was cocaine and other drugs, correct?

5 A: Yes.

6 Q: Okay. And do you remember your -- your arguments to --
7 to the Judge, obviously they were unsuccessful, but do you
8 remember what your arguments were in that regard?

9 A: Not with specifics. Was there a search warrant?

10 Q: There was not.

11 A: There was not. Well, that's probably where I started.

12 Q: Right. And then also, there was no warrant -- no arrest
13 warrant for Mr. Powell or Mr. Marcus Wright at that time?

14 A: Well, it would've been then that there was no probable
15 cause for which then to search that particular room that they
16 didn't have a search warrant and they didn't have an arrest
17 warrant, but I don't remember, you know, the specifics of the
18 argument past that.

19 Q: Some, some follow-up for you, please, Mr. Martin. Lanard
20 Powell, there was -- there was a letter that Mr. Brown
21 attempted to introduce that indicated -- that was written by
22 Lanard Powell that indicated someone else was the shooter,
23 someone else shot Mr. Green; do you recall that?

24 A: I think I do, yes.

25 Q: And Mr. Brown actually had the envelope of the letter

1 that said that, correct?

2 A: I, I think that's correct, yeah.

3 Q: Yeah. But he didn't have the actual letter?

4 A: My recollection is that he didn't the actual letter, but
5 I don't remember a lot about it other than that. I do
6 remember Lanard Powell had supposedly written a letter and I
7 think he was even cross examined about it, but Mr. Brown may
8 have a better memory than I do on that particular issue.

9 Q: This clearly is -- Mr. Brown, I think, would be more
10 knowledgeable. But, as you sat there and based on your
11 recollection, there would -- the letter apparently established
12 that another individual named, Two Guns, was the shooter; does
13 that ring a bell?

14 A: It is. I think as I recall, the basis of it was that
15 Powell had supposedly written a letter in which he said Marcus
16 Wright did not do this, that somebody else had done it. And
17 of course, that was -- again, you go back to what was the
18 theory of the case. Maybe that was part of the theory of the
19 case that Marcus didn't do the shooting, somebody else did.

20 Q: And so, there was a good bit of testimony about this
21 letter and that it essentially exonerated Marcus because it
22 named someone else as the shooter. And then I believe Ms.
23 Elder asked for the letter to be produced, at which time, it
24 could not be produced; do you remember that?

25 A: I think that is correct. I would rely on the record but

1 my memory is that's probably correct.

2 Q: And we'll let Mr. Brown speak for himself but,
3 apparently, he lost the letter?

4 A: Well, he might have. Again, the record probably reflects
5 that, and I'm not being evasive again, just -- I do think
6 you're correct in what you're stating.

7 Q: Of course. And so, at that stage, Judge Hayes struck the
8 testimony and gave a curative charge to the jury based on Ms.
9 Elder's objection; does that sound correct to you?

10 A: It sounds correct. Again, I would refer back to the
11 record. I'm sure that's stated exactly what happened and what
12 the Judge ruled.

13 Q: And so, Mr. McCray was not allowed to testify, Marcus
14 Wright was not allowed to testify and, and no defense
15 witnesses were put up, correct?

16 A: I believe that to be correct, yes, in terms of nobody
17 testified for the defense.

18 Q: And was that, can I call it a game-time decision, as
19 often is the case, did you have witnesses present waiting in
20 the wings to testify that you decided not to call?

21 A: I don't recall that we did. I don't remember
22 specifically. I know, you know, sometimes we lawyers, if we
23 don't have something that is really powerful, want the final
24 argument, fearful of what's there. But, I don't know that we
25 had witnesses there to testify. I think all of the decisions,

1 you know, were made as we went along and, at the end, it was
2 agreed upon all of us, including Marcus, that we weren't going
3 to call witnesses other than the issue of where we discussed
4 about Marcus himself.

5 Q: And I'm gonna wrap up with you, but I want to revisit
6 that just a bit. How many discussions did you have with him
7 about whether or not he should testify?

8 A: Well, I can't tell you exactly, but I know we would've
9 had multiple conversations about that.

10 Q: Sure. Do you recall you specifically talking to him
11 after you rested and, and, and before the charging conference
12 the following morning about testifying?

13 A: Do I remember specifically talking with him after the --
14 say that again, I'm sorry?

15 Q: Sure. You broke for the day. He apparently did not want
16 to testify, changed his mind overnight, and he let it be known
17 the next morning to Mr. Brown that he wanted to testify. Were
18 you there for that conversation?

19 A: No.

20 Q: So, it was just Mr. Brown that met with Marcus Wright
21 when Marcus indicated he wanted to testify?

22 A: That's my recollection.

23 Q: Did Mr. Brown let that be known to you?

24 A: Well, at some point in time, it became known to me. I
25 think from the, you know, when they came back out -- I can

1 only envision, that when they came back out and were sitting
2 at the defense counsel like you are, that mention was made by
3 Mr. Brown and/or Marcus about that and that there was some
4 discussion about it.

5 MR. ASHMORE: Your Honor, may I have just a moment to
6 confer with my client?

7 BY MR. ASHMORE:

8 Q: You attended the bond hearing, Mr. Martin, for Marcus
9 Wright?

10 A: I'm sure I did, yeah.

11 Q: I believe you did. Okay. And at the bond hearing, you
12 asserted on the record that this was a case of self-defense;
13 do you recall that?

14 A: I don't, but I might have.

15 MR. ASHMORE: Your Honor, I think that's all the
16 questions I have.

17 THE COURT: All right.

18 Mr. James?

19 CROSS EXAMINATION OF MORGAN MARTIN BY MR. JAMES:

20 Q: Mr. Martin?

21 A: Yes.

22 Q: How long have you been engaged in the practice of law?

23 A: Since 1978.

24 Q: How much of that practice has been criminal?

25 A: Much of it.

1 Q: We hinted at this -- and I understand if it's a non-
2 specific answer that you have to give me; it's been a long
3 time -- but how many times did you meet with Mr. Wright during
4 the course of your representation?

5 A: I would say dozens of times.

6 Q: And in those meetings did you discuss the indictments
7 with him?

8 A: I believe it's fair to say we would have discussed every
9 aspect of the case.

10 Q: And clearly, you've discussed with him his right to
11 testify or remain silent multiple times?

12 A: Yes.

13 Q: Is that correct?

14 A: Yes.

15 Q: Did he ever indicate to you prior to trial that he wanted
16 to testify?

17 A: I have no recollection of him saying that, you know, this
18 is a case which I'm gonna testify, I feel like I need to or
19 I'm going to; I just don't have that specific recollection.
20 But it is my recollection, you know, we did discuss it on
21 multiple occasions and that we were strongly considering the
22 strategy that he not testify and that he understood and agreed
23 to that at the time.

24 Q: Did he ever indicate to you that he wanted to testify on
25 the first day of trial?

1 A: Not -- no, sir, not that I recall.

2 Q: All right. Did he ever indicate to you that he wanted to
3 testify any time prior to that last morning?

4 A: No, not that I recall.

5 Q: So, you indicated earlier that your strategy was that the
6 state could not meet its burden of proving that he actually
7 did it beyond a reasonable doubt; is that a fair -- fair ---

8 A: Yes, that's correct. And let me say, I'm not saying I
9 think anytime you represent a defendant and the question about
10 are they gonna testify or not comes up, that, you know, there
11 probably are conversations in which you discuss, well, if you
12 do testify this and if you don't testify that, it is your
13 choice, you know, so there's advantages. So, I'm not saying
14 there was never a time in which Marcus might not've said hey,
15 maybe I ought to testify and say this or that. I guess what
16 I'm trying to say is that it is my recollection and my belief
17 that though there were probably, as I said, many conversations
18 or several conversations about whether or not he would
19 testify, that it was clear to me as we were proceeding through
20 the trial, that it would be his decision not to testify. As
21 he told the Judge on the record when it was questioned, that
22 came as no surprise to me what he told the Judge.

23 Q: But as a part of a complete exploration of his rights as
24 a defendant, you explored what options would be available to
25 him if he decided that he really did want to testify?

1 A: Yes. And Marcus is an intelligent guy, he knew that.

2 Q: Well, that answered my next question. You didn't notice
3 any sort of mental disabilities or learning deficiencies or
4 anything like that?

5 A: No.

6 Q: What, if anything, did Mr. Wright tell you about what
7 happened on the night in question?

8 A: I don't recall specifically what he told me about what
9 happened on the night in question.

10 Q: Did he give you any leads to pursue?

11 A: What -- yeah, we talked about different things and that
12 people weren't telling the truth about what happened and all
13 of that, and we did pursue, I think, some leads and we talked
14 to some witnesses and that sort of thing as I would do in any
15 case.

16 Q: You said he indicated that certain people weren't telling
17 the truth; is that what I just heard from you?

18 A: Correct.

19 Q: Did he give you a basis as to why he thought certain
20 people weren't telling the truth?

21 A: Well, you know, this -- I don't know -- other than, you
22 know, all of this seemed to center around drugs, selling
23 drugs, drug transactions. I do recall Roy Sinclair's house
24 was -- Roy was in a wheelchair, that somebody was selling
25 drugs out of his house. The allegations were that Marcus was

1 in the drug business. These other -- so it was all related.
2 It was some sort of setup, it was some sort of drug payback --
3 I don't know -- just that type general discussion. But I know
4 the way I approach it is, I'm trying to figure out what is the
5 best way to defend him. And I'll say again, it never struck
6 me that self-defense was a good one here. And the -- and the
7 other thing I had talked about, obviously, this was a
8 difficult case and we had worked on trying to get a plea for
9 him and -- and Ms. Elder was intransigent, I might say, in
10 doing anything that was really attractive in terms of a plea.
11 You know, I think, in fact, we did think we had a plea the
12 morning the trial started and, and we had discussed it with
13 Marcus and -- I can't remember exactly what it was, but I know
14 that it wasn't particularly attractive but it was better than
15 what happened here.

16 Q: Was it a plea offer to 25 years for voluntary
17 manslaughter?

18 A: It might've been. That might've been it. It was -- it
19 was probably at least 25 years, and it wasn't attractive, but
20 it did strike me that this was going to be a very difficult
21 case to win no matter what the strategy or theory of the case
22 was and that -- and I think I probably advised Marcus he ought
23 to take that plea. And I thought he -- and I do recall this,
24 I remember I thought he was -- Mr. Brown and I both thought he
25 was going to. And then that morning, when we came to do it,

1 he had a change of mind about that and he did not plead and we
2 had the trial.

3 Q: Did he indicate to you why he changed his mind?

4 A: Well, my recollection is he had family there were helping
5 advise him.

6 Q: Mr. Ashmore identified a private investigator earlier.
7 Did you separately employ the services of the private
8 investigator in this case?

9 A: I do not think so.

10 Q: Okay. But, you yourself followed up and investigated the
11 case in preparation for trial?

12 A: Yes.

13 Q: Did Mr. Wright give you any witnesses to try and
14 interview?

15 A: Well, I mean, I think the -- I don't recall specifically
16 the name -- any names that he would have given me other than,
17 you know, what were -- the witnesses who were named in the
18 file that the police had taken statements from, but there
19 may've been. I just -- I do not know for sure.

20 Q: In the course of your representation, did you file a
21 request for discovery pursuant to Rule 5 and Brady?

22 A: Yes.

23 Q: And did the state provide materials in response to your
24 request?

25 A: To the best of my recollection, yes.

1 Q: Did you review those materials?

2 A: Yes.

3 Q: Did you review them with your client?

4 A: Yes.

5 Q: When you went over all of the evidence the state had with
6 your client, did you explain the strengths and weaknesses of
7 the case against him?

8 A: Yes.

9 Q: There was some discussion of a statement of Kelly Pinnix
10 on direct examination.

11 A: Yes, sir.

12 Q: Do you recall receiving that as part of your discovery?

13 A: Yes.

14 Q: All right. Do you have a copy up there?

15 A: Yes.

16 Q: Isn't it true that Kelly told law enforcement -- and I'm
17 looking at Page 3 of the copy of the statement that I have in
18 my possession and I apologize if there's any discrepancy in
19 the pagination. But isn't it true that she told detectives,
20 they said that he pulled a gun out, referring to the victim,
21 and he never did; is that accurate?

22 A: I -- that sounds accurate. If you can tell me exactly
23 where it is in the statement, I'll -- I'll read it and ---

24 Q: I'm looking at Page 3, just below halfway down the page?

25 A: Come show me what you got?

1 Q: If I may approach, Your Honor?

2 A: Well, it reads, and then someone came down there and came
3 into the house and they said that he pulled a gun out and he
4 never did. Yeah, that's what it states.

5 Q: Moving on to Page 4 of that same statement, isn't it true
6 that Kelly told law enforcement, quote, I never saw a gun. I
7 know he had a broke finger.

8 A: Correct.

9 Q: Isn't it true that Kelly told law enforcement that Big
10 Money was from Columbia? And that is also on Page 4.

11 A: I'm trying to find that. Yeah, at the bottom of the page
12 where he was talking about being in Columbia.

13 Q: Yes. Who is Big Money?

14 A: I think Big Money was -- some people said that was Marcus
15 Wright.

16 Q: That is certainly the state's position, yes. Isn't it
17 true that she told law enforcement, Big Money said he had a
18 gun, and it was about 10 shots and the guy looked at me and
19 said, help, and took -- I guess took his last breath. Roy
20 said, what I do I do? I said call 911. And that's on Page 6?

21 A: Yes.

22 Q: Isn't it true, that on Page 8, Kelly told law
23 enforcement, right after he shot him, I guess he realized
24 there was no gun. He had a broken finger, didn't he? He had
25 a broken finger.

1 A: Yes.

2 Q: Moving on to Page 15 of Kelly Pinnix' statement, isn't it
3 true that Kelly told law enforcement, I recognized the
4 calmness in his eyes, he was calm the whole time he shot the
5 guy?

6 A: Yes.

7 Q: Moving on to Page 22, the detective asks, So did you see
8 J.J. with a gun? Isn't it true that Kelly responded, no, all
9 I seen J.J. with was a broken finger?

10 A: You better let me look at that; I can't follow you.
11 That is correct.

12 Q: And I'm not going to belabor this too much longer, I've
13 just got a couple more points I want to jump on. Isn't it
14 true that also on Page 22, Kelly told law enforcement, he just
15 kept shooting him with a calm look, like the calmest look on
16 his face, like I'll never forget, and then he had all the
17 bullets in the guy by the time before the guy even hit the
18 floor.

19 A: Well, let me look at it because you lost me in my
20 numbering here.

21 Q: I apologize.

22 A: That's all right. That's correct.

23 Q: And immediately after that, isn't it true that Kelly told
24 law enforcement, the next thing I know, there's a gun pointed
25 at me, and he says, make sure all those -- uses some profanity

1 there -- shell casings are up and that's when Capone pulled
2 up?

3 A: I do remember her saying he told her to pick up the shell
4 casings.

5 Q: Would you agree with me that many of the portions of
6 Kelly Pinnix' statement are highly damaging to your client?

7 A: They're highly damaging and one of the others -- and this
8 is one of the few things that stuck out in my mind, I remember
9 this, that in addition to those things, she does make a
10 statement in there in which she says the guy that got killed,
11 his back was to him when he was shot, and the first time and
12 it hit him in the arm and he turned around and just kept
13 shooting. And so, again, when we're factoring in self-
14 defense, that -- and I didn't know -- I don't think they
15 called Kelly Pinnix, but I don't -- I didn't know they
16 wouldn't have called her. We didn't know they wouldn't have
17 called her. So, her statement certainly was damaging and we
18 were not about to call Kelly Pinnix.

19 Q: You explained your theory of your case to your client,
20 correct?

21 A: Yeah. Yes.

22 Q: And did you feel like you were prepared to proceed to
23 trial on that strategy?

24 A: Yes.

25 MR. JAMES: I beg a moment of the Court's indulgence.

1 BY MR. JAMES:

2 Q: Isn't it true that there were multiple allegations of
3 witness tampering against your client throughout this trial?

4 A: Yes.

5 Q: What, if anything, did you do to deal with those
6 allegations?

7 A: Can you be more specific in what you're asking? I tried
8 to avoid those allegations, is one thing I tried to avoid at
9 the trial.

10 Q: Well, there was some discussion of the supposed letter
11 from Lanard Powell exonerating your client. Did you ever
12 actually see or personally possess that letter?

13 A: Well, not that I recall but, again, it's been a long time
14 ago and I -- not that I recall.

15 MR. JAMES: I beg a moment of the Court's indulgence?

16 BY MR. JAMES:

17 Q: There's some reference to the prior statement of Veronica
18 Chandler, do you have that in your file?

19 A: I think I do, yeah. I do.

20 MR. JAMES: May I approach the witness?

21 THE COURT: You may.

22 BY MR. JAMES:

23 Q: Now, you have produced from your file what is indicated as
24 State versus Marcus Wright, Veronica Chandler's statement; is
25 that correct?

1 A: Yes.

2 Q: All right. And was this produced from the materials that
3 you received from the State of South Carolina?

4 A: Yes.

5 Q: And did you rely on that statement during the course of
6 your representation of your client?

7 A: Yes.

8 Q: And is it your understanding that it is a true and
9 accurate statement as provided to you?

10 A: Yes.

11 Q: All right. I respectfully move to introduce this items,
12 State versus Marcus Wright, Veronica Chandler's statement,
13 this is State's Exhibit Number 1?

14 MR. ASHMORE: No objection.

15 THE COURT: State's Number 1 without objection.

16 STATE'S EXHIBIT NUMBER 1

17 ADMITTED INTO EVIDENCE

18 BY MR. JAMES:

19 Q: Isn't it true that Veronica said the victim -- and I'm
20 looking personally on -- well, it's Page 14 of mine, but yours
21 and mine don't quite line up -- but isn't it true that
22 Veronica tells the detective that the victim came into the
23 house and said hello to Mildred and then came over to her?

24 A: That's correct.

25 Q: And isn't it true that when asked what started the fight,

1 she replies, I'm not sure -- not quite sure what it was. J.J.
2 said yeah, yeah, yeah, I saw then the shirt came up and that's
3 when I heard the pow, pow, pow?

4 A: Let me look at it? That's correct.

5 Q: Isn't it true that when law enforcement asked her, did you
6 see anything when he pulled up his shirt, she replied, I'm
7 quite convinced I saw a gun, but I don't know?

8 A: That is correct.

9 Q: All right. And when the detective asks her to describe it
10 for him, she replies, I didn't get to look at it like that. I
11 mean, everything happened so quick, when he lifted up shirt,
12 I'm convinced in my head that I saw a gun?

13 A: I recall that, yes.

14 Q: And isn't it true that she wasn't able to describe the
15 color of it?

16 A: That is correct.

17 Q: And isn't it true that when the detective replies, I mean,
18 if you saw something, you should be able to describe it,
19 right? She tells him, but I mean, I didn't look at it like
20 that when you lift up your shirt, I mean, it looked like when
21 you pull, I mean, that's what I'm saying, it looked like he
22 had a gun, because he lifted up his shirt like, and the
23 detective completes her sentence, like he was reaching for it?

24 A: That is correct.

25 Q: All right. And doesn't she follow up and say, yeah, like

1 he was reaching, so I'm quite convinced it was a gun?

2 A: Correct.

3 Q: So, would you agree with me when I characterize the
4 statement of Veronica Chandler to say that it provides
5 something less than that she firmly saw a gun?

6 A: It provides something less than she firmly saw a gun. I
7 mean, I think that it, you know, that her words are better
8 than mine in describing what she said.

9 Q: And at trial, you did ask her about this statement,
10 correct?

11 A: I'd have to look at the transcript to know to what extent,
12 but, yes, I think she was asked about the statement.

13 Q: If I may approach the witness? If you'll flip back to
14 Page 209 of the trial transcript that I have provided to the
15 witness.

16 A: I got it here, yes.

17 Q: Starting at the very bottom of 209. All right. You told
18 the police at that time, you said, I don't know if he had a
19 gun or everything happened so fast. But he lift up his shirt?
20 She replied, yes, sir. Then you asked, Do you remember saying
21 that? And she said, yes, I did say that.

22 A: What line are you on just so I can follow you?

23 Q: I started on Page 209, Line 25 and then passed over to
24 Page 210, line ---

25 A: So, you're at the bottom of the page?

1 Q: Bottom of 209 and then over to the top of 210?

2 A: Okay. Ask your question again then?

3 Q: You asked Ms. Veronica Chandler: All right. But you told
4 the police at that time, you said I don't know if he had a gun
5 or everything happened so fast. Did he lift up his shirt?

6 A: Correct.

7 Q: So, you did ask her about the statement?

8 A: I did, yes.

9 Q: And she affirmed that she said that she saw him lift up
10 his shirt?

11 A: She affirmed, yeah, she said I don't know if he had a gun,
12 everything happened so fast, but he lift up his shirt. And
13 answer is yes.

14 Q: And then you also asked her about that she claimed that
15 she was quite convinced that she saw a gun and then she
16 replies she don't remember saying that?

17 A: That is correct.

18 Q: Okay. She simply declined to remember any of it?

19 A: She didn't deny she said it. She didn't admit she said
20 it. She said I don't remember saying that and then there was
21 a bench conference.

22 Q: Do you recall what was discussed at that bench conference?

23 A: I do not. And then she says -- I mean, you're asking
24 about it, I just read it, then she says on the bottom of the
25 page, I mean, like I say, I don't recall saying that, so I'm

1 not going to answer to that. If they got it in the paper,
2 then I evidently said it but I just don't recall saying it.

3 Q: And to a certain extent, she admits it?

4 A: Correct. And I do see where in the questioning about the
5 gun, I said, but you said that again, I'm convinced, I'm quite
6 convinced I saw the gun, but I don't know. Ms. Elder objected
7 and the Court sustained her objection for some reason. She
8 didn't really state an objection but, anyway, they sustained
9 it.

10 Q: Let's spring forward a little bit to sentencing. What
11 sort of mitigation did you have prepared to try and help your
12 client once he was convicted?

13 A: What page are you looking at?

14 Q: Well right now, I'm asking generally about ---

15 A: Oh in general, I ---

16 Q: --- back to sentencing?

17 A: I don't know that I had any mitigation prepared.

18 Q: Were you provided notice of attempt to seek life by the
19 state?

20 A: Independently sitting here today, I don't remember, but
21 I'm sure that if -- I'm sure that they did.

22 Q: Why didn't -- why not have something prepared for
23 mitigation?

24 A: Well, I think I knew that if he were convicted, what the
25 sentence was going to be. I'm not sure what I could've had in

1 mitigation in this particular case.

2 Q: So, you were firmly convinced it was going to be life or
3 nothing?

4 A: I don't recollect what the sentence was. I just -- what
5 was the sentence the Court gave him?

6 Q: It was life and then some.

7 A: Well, I mean it was clear to me, I didn't have any
8 mitigation that I was aware of that I thought would impact the
9 sentence or help Mr. Wright with regards to the sentencing,
10 that I recall. I mean, one of the reasons that I think that
11 the possibility of such a long sentence was one of the reasons
12 that I had -- and I think Mr. Brown too, that I probably --
13 that we both recommended that he take the plea that was -- as
14 you said, maybe the 25-year sentence was because there was a
15 possibility and/or likelihood and/or certainty that he would
16 get something like a life -- maybe a life sentence.

17 Q: Since I have a copy of the transcript up there with you,
18 would you do me a favor and flip back to Page 31?

19 A: Okay.

20 Q: From Lines 4 to 16, Juror Number 27 stands up and
21 indicates that she was once employed by the solicitor's office
22 as an assistant solicitor and it was about 10 years prior; do
23 you recall that?

24 A: Yeah. Yes, I sure do, Barbara Blain Olds, yeah.

25 Q: And I'm not intimately familiar with who is who here in

1 the 15th Circuit, but am I correct in ascertaining that that
2 is the Mayor of Conway?

3 A: Currently she is, yeah.

4 Q: Okay. Will you flip forward to Page 38?

5 A: Okay.

6 Q: Lines 8 through 10, the state indicates there, I believe
7 there are two additional witnesses that I received, Russell
8 Dean from Columbia, South Carolina, and Jacinda Wright. Did
9 you at any point potentially intend to call Ms. Wright as a
10 witness in this case?

11 A: Well, I'm not sure whether we, in looking back, whether we
12 intended to call her, but she was a person with knowledge and
13 so, it would've been consistent with what I usually do to at
14 least put her on the witness list so that that itself didn't
15 present a problem if we elected to call her.

16 Q: Who is Jacinda Wright?

17 A: She was Marcus' girlfriend and/or wife, I'm not sure, but
18 she was -- she was his girlfriend or wife.

19 Q: And if you look a little further down to Line 18 through
20 23, on that same page, isn't it true that Barbara Blain Olds,
21 Juror Number 27, indicates that Jacinda Wright was her niece
22 by marriage, by a former marriage?

23 A: That's what she says, yes, sir.

24 Q: She again affirms that she will continue to be fair and
25 impartial?

1 A: Yes.

2 Q: All right. And if you'll flip over to Page 40 running
3 over to 41?

4 A: Yeah.

5 Q: Barbara Blain Olds is presented. Mr. Brown indicates, may
6 we have a minute and then asked to seat the juror. Do you
7 recall if there was a specific reason for seating her or if I
8 may rephrase the question, did you seat her for an affirmative
9 reason or did you just not feel that -- that she was a
10 problem?

11 A: Well, it's clear -- one thing is clear is that we would
12 not have agreed to seat her unless Marcus wanted us to do
13 that. And I would say secondly, in this particular case, I do
14 know Barbara Blain, known her for years, she had worked at the
15 solicitor's office for a short period of time. You know, I,
16 looking for every angle we might get that would help us with
17 her, taking all facts and circumstances under consideration,
18 we, we obviously thought that she would be a good juror for
19 us. Sometimes you go with your gut, but there's no question
20 that if Marcus had've said, do not put that woman on my jury,
21 she would not've been here, you can bet on that.

22 Q: Ultimately, she became the foreman of the jury?

23 A: I don't recall that, but I take your word for it.

24 Q: I won't agonize further over the record. There are a
25 number of allegations that you were ineffective for failing to

1 challenge expert witness, Ms. Eichenmiller in her
2 qualifications to be an expert witness. Do you recall Ms.
3 Eichenmiller?

4 A: No.

5 Q: Will you flip with me to Page 410 of the trial transcript
6 or perhaps more 411?

7 A: Okay.

8 Q: Ms. Eichenmiller was introduced as the expert in forensic
9 testing of firearms and ammunition and you declined any desire
10 for voir dire on the following page, Page 412?

11 A: Yes, that's correct.

12 Q: Did you have any reason to question the qualifications of
13 Ms. Eichenmiller as an expert witness in forensic testing of
14 firearms and ammunition?

15 A: I must not have since I didn't.

16 Q: If you had any basis to challenge her qualifications or
17 findings, would you have done so?

18 A: Yes.

19 MR. JAMES: I beg a moment of the Court's indulgence, I'm
20 almost finished.

21 I have no further questions for this witness.

22 MR. ASHMORE: No further questions, Your Honor. Thank
23 you.

24 THE COURT: Are you ready to take a break for lunch or do
25 you have -- whatever suits you is fine with me.

1 MR. JAMES: I did not realize it was already 1 o'clock.
2 I can take a brief break for a snack. I'll defer to opposing
3 counsel.

4 THE COURT: Why don't we take a lunch break?

5 MR. ASHMORE: Yes, sir.

6 THE COURT: All right. Let's be back at 2:20.

7 MR. JAMES: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. MARTIN: Let me inquire, Judge, do I need to stay or
10 do they need me.

11 THE COURT: Does he need to stay?

12 MR. ASHMORE: I certainly don't need him; do you need
13 him?

14 MR. JAMES: I don't. I will object vociferously if new,
15 somehow, allegations not already alleged pop up in later
16 testimony.

17 THE COURT: All right. We'll call you if we need you.

18 MR. MARTIN: Well, if I have to come back, I will come
19 back if y'all need me.

20 THE COURT: You have a good afternoon.

21 See you back at 2:20.

22 MR. ASHMORE: Thank you, Your Honor.

23 **RECESS - 12:48 P.M.**

24 *******OFF THE RECORD*******

25 **(On the Record - 2:24 P.M.)**

1 THE COURT: Good afternoon. Everybody have a seat.

2 If you'd like to call your next witness, please?

3 MR. ASHMORE: I would call Ed Brown, please.

4 CLERK: Please stand and raise your right hand; stand and
5 put your hand on the Bible?

6 EDWARD M. BROWN, HAVING BEEN SWORN

7 TESTIFIES AS FOLLOWS:

8 CLERK: Please state your name and spell it for the
9 Court?

10 MR. BROWN: My name is Edward, E-D-W-A-R-D, M. Brown, B-
11 R-O-W-N.

12 MR. ASHMORE: Thank you, Your Honor, may it please the
13 Court?

14 DIRECT EXAMINATION OF EDWARD M. BROWN BY MR. ASHMORE:

15 Q: Mr. Brown, good afternoon; how are you?

16 A: Good afternoon, Mr. Ashmore; how are you?

17 Q: I am good. I filed a memorandum and I want to jump right
18 into it. I provided it to the Court and the assistant
19 attorney general. You represented Marcus Wright during the
20 trial of this case?

21 A: I did along with Mr. -- along with Mr. Martin.

22 Q: That's right. And did you have a particular role or did
23 y'all divide witnesses or, or how did you decide to approach
24 that?

25 A: I can't remember specifically how we approached it, but I

1 know I did participate in some cross examination in a couple
2 of witnesses. I don't remember how many.

3 Q: Sure. It was some years ago?

4 A: Yes, sir.

5 Q: Now, the first issue that I raised is the failure to
6 notify the Trial Court that the applicant wanted to testify.
7 So, let me take you back, but as I can tell from the
8 transcript, it looks like you took -- you rested on an
9 afternoon and Judge Hayes had a colloquy with Mr. Wright as to
10 whether or not he wanted to testify and Mr. Wright indicated
11 at that time that he did not; is that your recollection?

12 A: That is correct.

13 Q: And then you showed back up for court the next morning
14 and -- and you tell me what happened; did you talk to Mr.
15 Wright that morning?

16 A: As I recall, it was three-day or four-day trial, and I
17 did get to the courthouse, I think, before Mr. Martin did and
18 I did speak with Mr. Wright. And during the course of that
19 early morning conversation, he indicated that he wanted to
20 testify.

21 Q: Right. He had changed his mind?

22 A: He had changed his mind, yes.

23 Q: Okay. Did you communicate that to Mr. Martin?

24 A: I did.

25 Q: Okay. Do you remember when, in terms of the proceeding?

1 A: It probably would've been immediately after he came up.
2 Now, I don't know how long I was there with Mr. Wright by
3 myself. It was probably no more than five minutes, if that
4 long.

5 Q: Sure. Now, as I -- as I read the trial transcript, it
6 looks like Judge Hayes came in and you had a charging
7 conference, as we say, is that consistent with your
8 recollection?

9 A: It's been a while and I can't tell you that I remember
10 that specifically, but at some point, I'm sure we did. There
11 was a discussion of the charges.

12 Q: And so, the ultimate issue and what Mr. Wright complains
13 of in his PCR application is that -- is that after the
14 charging conference was -- was conducted, Mr. Wright, I think
15 even raised his hand to address the Court and notify the Court
16 that he wanted to testify. Do you recall that?

17 A: No, sir; I don't.

18 Q: Okay. Well, when was it that it was made known to Judge
19 Hayes that Mr. Wright had changed his mind?

20 A: I don't remember specifically, but I would suspect that
21 it would've been immediately after he told me and I conveyed
22 that to Mr. Martin that he wanted to testify.

23 Q: And again, it's -- you're at a disadvantage because I re-
24 read the trial transcript last night and it's been four years
25 for you, but it appears from the trial transcript that the

1 charging conference was held, the Judge ruled that he was not
2 going to charge self-defense for voluntary manslaughter and it
3 was at that point, that it was made known to him that Mr.
4 Wright had changed his mind and wanted to testify.

5 A: If that's what the transcript reflected, that is probably
6 what happened. I don't remember. I have no independent
7 recollection of the timeframe in regards to that.

8 Q: Sure. And as we articulate in the memorandum, and I
9 think it's evidenced in the Court of Appeals decision and
10 elsewhere, that Judge Hayes faulted the defense team for not
11 bringing that to his attention as you began court the
12 following morning?

13 A: Did you say falter?

14 Q: Faulted, F-A-U-L-T-E-D, yes, sir, or criticized.

15 A: He may have, I don't -- if that's what's in the
16 transcript, I'm sure that's what happened. But I have not
17 read the transcript.

18 Q: Fair enough. But that the issue, the problem is that
19 Judge Hayes felt like, according again to the transcript which
20 speaks for itself, Judge Hayes felt like because now Mr.
21 Wright would be able to tailor his testimony. That was his
22 basis for refusing to allow Mr. Wright to testify and
23 therefore, Mr. Wright never got a chance to give his side of
24 the story to the jury.

25 A: Well, I don't know what was in Judge Hayes' mind and I

1 don't what's in the transcript about that, but I know he did
2 not allow Mr. Wright to testify.

3 Q: Did you have an underlying theory of the case; what was
4 -- what your best theory of defense?

5 A: Self-defense was not one of our theories. We thought
6 perhaps we could punch enough holes in the state's
7 presentation to get Mr. Wright a not guilty verdict.

8 Q: And, and so -- so you -- it was not a theory -- self-
9 defense was not a theory of your defense?

10 A: Self-defense couldn't -- well, no, I wouldn't say
11 couldn't, but it -- the facts, as I knew them as Mr. Wright
12 had relayed them to me, self-defense was not a viable defense
13 in this matter.

14 Q: During the course of the trial, the defense made numerous
15 attempts at establishing that the decedent, Mr. Green, had a
16 weapon and/or was reaching for a weapon; do you recall that?

17 A: I don't recall that but, if that's what the testimony
18 reflects, I'm sure that's what we tried to do.

19 Q: And, and as a result, a number of the witnesses that
20 testified that there was -- that there was no gun --
21 apparently, you had gained through discovery prior
22 inconsistent statements but there were never any challenges to
23 those witnesses as to whether or not Mr. Green may have
24 possessed a firearm?

25 A: Well, I, I don't recall challenging any of those

1 witnesses, but I do recall that Mr. Wright told me repeatedly
2 during my various interviews with him.

3 Q: And, and what was that, Mr. Brown?

4 A: Well, I remember one very, very specifically and it was
5 that, if I recall correctly, he was at my office on that
6 occasion, and that was he said he -- I asked him, well, how
7 can we come up with a self-defense argument if you shoot
8 someone 10 times and a couple of times in the back, and then I
9 asked him also, well why did you keep shooting him, and he
10 said, well he kept moving.

11 Q: Well, that's -- that is consistent in -- consistent with
12 -- now, with -- with the theory of self-defense if -- if he
13 was in fact protecting his own life?

14 A: Not when the -- not when the victim was on the floor.

15 Q: Now, we've already had Mr. Martin testify this morning,
16 as you know, so, I'm gonna try and -- I've established many
17 points through him and I don't want to belabor those points,
18 so if you would bear with me.

19 A: Yes, sir.

20 Q: If you recall the dispute or discrepancy over Mr.
21 Wright's address, you and Mr. Martin had filed a motion to
22 suppress evidence seized from 3635 Cates Bay Road?

23 A: I vaguely remember that. As I said, I haven't reviewed
24 the transcript, but there was a very vehement argument, if I'm
25 not mistaken, made by Mr. Martin that the -- any evidence from

1 that search should've been suppressed and the judge -- Judge
2 Hayes ruled against us, of course.

3 Q: That's right. Well, was there any effort on your part to
4 establish that 3635 Cates Bay Road was in fact Marcus Wright's
5 residence?

6 A: I don't recall any -- we may have, but I don't -- I have
7 no independent recollection of that.

8 Q: Yes, sir. But because the motion was denied for lack of
9 standing?

10 A: That's correct.

11 Q: And Judge Hayes found that he didn't live there, correct?

12 A: That is true.

13 Q: And, and, and you and Mr. Martin were not able to
14 overcome that concern of Judge Hayes?

15 A: Well, if I recall correctly, there was one witness that
16 was called or maybe one or two witnesses, but I cannot -- it's
17 been five years or more.

18 Q: Absolutely.

19 A: And I can't remember specifically, but I think there was
20 one witness that was called where we tried to illustrate that
21 the motion should've been granted.

22 Q: And that might've been -- you might be referring to Biff
23 Johnson, who used to be with the probation office?

24 A: The probation officer; that's correct.

25 Q: Right. And it was his, his task to monitor, in part, Mr.

1 Wright, and so he would know where Mr. Wright lived is the
2 thinking; is that correct?

3 A: I would assume that if that was his task, he probably
4 would know where Mr. Martin -- where Mr. Wright lived, yes.

5 Q: But he didn't have a probation file or anything else with
6 him that, that satisfied the judge's concern that it was not
7 Mr. Wright's house?

8 A: Frankly, Mr. Ashmore, I don't remember what he had with
9 him. I vaguely remember his testimony.

10 Q: And did you -- did you take part in the argument
11 concerning the search at the hotel, where drugs were
12 recovered?

13 A: If I recall correctly, I took part in developing the
14 theory and doing some research, but if my memory serves me
15 correctly, I think Mr. Martin did the major portion, if not
16 all of that argument.

17 Q: And Lanard Powell, you remember he was co-defendant?

18 A: I do.

19 Q: Now, there's much concern over a letter that Mr. Powell
20 had, had apparently written. If I can help refresh your
21 recollection, I think you introduced an envelope that was
22 written from Mr. Powell, but not the actual letter itself?

23 A: That's correct.

24 Q: And the, the letter purportedly exonerated Mr. Wright and
25 indicated that someone named Two Guns was actually the person

1 that killed Mr. Green that day?

2 A: That is what the letter said.

3 Q: And but you were not able, when Judge Hayes demanded that
4 the letter be produced, you were not able to produce that
5 letter?

6 A: As I recall in the transcript, I did, I did -- I did
7 have, for another purpose, I had, I think about maybe a
8 hundred pages of the transcript, but as I said to the Court
9 then, in all candor, I had misplaced the letter.

10 Q: Yes, sir.

11 A: But, even if I had not misplaced the letter, I would not
12 have introduced that letter.

13 Q: Well, you understand that the testimony that was elicited
14 that exonerated Mr. Wright, when the letter couldn't be
15 produced, it was then ordered stricken and a curative charge
16 was given to the jury?

17 A: I do understand that.

18 Q: And likewise, you and Mr. Martin tried to get in a prior
19 inconsistent statement through Mr. McCray, who was Mr.
20 Powell's jail cellmate for a while; do you remember that in
21 camera hearing?

22 A: I, I vaguely -- I mean, I can't specifically remember
23 what happened or all the questions that were asked, all the
24 answers that were given to those questions.

25 Q: And, and the problem with that is that Mr. Powell had

1 told Mr. McCray something entirely different from what he told
2 the jury at the trial, and you never asked -- you never
3 challenged Mr. Powell whether or not he had told Mr. McCray
4 something different than that on another prior occasion?

5 A: Again, Mr. Ashmore, as I said, it's been more than five
6 years. I have not read but very specific portions of the
7 transcript for another purpose, another matter, and if that's
8 what the record reflects, then that's what is there.

9 Q: There were -- there were no witnesses put up for the
10 defense?

11 A: That's correct.

12 Q: Did you attend the bond hearing?

13 A: I, I don't think I attended the initial bond hearing, no.

14 Q: Do you -- were you ever present when a representation was
15 made that that this was a case of self-defense?

16 A: No, I wasn't present.

17 MR. JAMES: Objection, he answered the prior question and
18 said he doesn't recall being there.

19 MR. ASHMORE: I asked him -- I meant to ask -- let me ask
20 a better question.

21 BY MR. ASHMORE:

22 Q: At any occasion, at any occasion, was it represented that
23 on the record that this would be a case of self-defense?

24 A: Not that I recall.

25 MR. ASHMORE: May I have just a moment, Your Honor?

1 THE COURT: Yes, sir.

2 BY MR. ASHMORE:

3 Q: Did Mr. Wright ever tell you that the reason that, that
4 he fired that day was because he was in fear of his own life?

5 A: No, sir; he didn't tell me that.

6 Q: All right.

7 Your Honor, that's all I have. Thank you.

8 THE COURT: All right.

9 CROSS EXAMINATION OF EDWARD BROWN BY MR. JAMES:

10 Q: Good afternoon, Mr. Brown?

11 A: Good afternoon, Mr. James.

12 Q: How long have you been practicing law?

13 A: I literally retired five years ago. So, that would've
14 been 35 years, but I semi-retired, about 40 years total.

15 Q: And about how much of that practice has been criminal?

16 A: When I was practicing full time, probably more than 40
17 percent.

18 Q: There's some discussion about certain remarks your client
19 may have made to you in preparation for this case. What, if
20 anything, did Mr. Wright tell you about what happened on the
21 night in question?

22 A: Well, he told me a number of things, but I mean if you
23 could be more specific, I'll try to narrow it down?

24 Q: You indicated a moment ago that he was present there,
25 correct?

1 A: Present where?

2 Q: At the scene of the shooting?

3 A: Oh, yes, he was, yes.

4 Q: All right. And that he did in fact shoot the victim?

5 A: He did.

6 Q: All right. Did he ever indicate to you that he saw a
7 weapon?

8 A: No, sir.

9 Q: Did he explain to you why he shot the victim?

10 A: Because I was reviewing some of the, the initial notes
11 that I took when I interviewed Mr. Wright at the detention
12 center, it had to do with drugs. This guy -- there was a guy
13 who had a house that Mr. Wright apparently was financing with
14 the drugs and what have you, and this young man came in at the
15 -- what sticks out in my mind, Mr. Wright said something about
16 you got this young man, this young bro, I think, running your
17 house and this was -- I don't want to say a drug transaction,
18 you know what I'm saying, I think it was a situation where Mr.
19 Wright perhaps was trying to establish that he was in charge
20 of this and any challenges would be dealt with severely -- I
21 should say.

22 Q: You, at some point, came into possession of a letter
23 purportedly drafted by Lanard Powell, exonerating your client,
24 correct?

25 A: I did

1 Q: In what fashion did it exonerate your client or purport
2 to exonerate your client?

3 A: Well, the letter indicated that someone named Two Guns,
4 who was apparently an individual that lived in the Myrtle
5 Beach area, did the shooting. But I knew that wasn't true.

6 Q: So, earlier, you indicated that under no circumstances,
7 would you have introduced the letter is that because the
8 letter, you knew it to be false?

9 A: I knew the letter was false, yes, because of what Mr.
10 Wright told me repeatedly on prior occasions. And further, to
11 introduce the letter, as an officer of the court, would have
12 put me in the position of perjury and I was not gonna do that.

13 Q: Who actually delivered the letter to you?

14 A: You know, I can't remember and I don't want to guess, but
15 it was either Mrs. Wright -- if I had to guess, I would say it
16 was Mrs. Wright.

17 Q: So, what happened to the letter?

18 A: I got the letter.

19 Q: You got the letter?

20 A: I do.

21 Q: So, you misplaced it at trial but you were ultimately
22 able to locate it?

23 A: Yes, what happened, when -- if I remember correctly and I
24 can't tell you that this is absolutely what happened, but as I
25 remember, the letter, I think Mrs. Wright brought the letter

1 by my office. And back then, I had a table about twice the
2 size of what you have in terms of having -- there was a lot of
3 stuff all over the table and I misplaced the letter in --
4 through inadvertence in another file. I didn't lose the
5 letter, I just misplaced it, but I subsequently found the
6 letter.

7 Q: Were there any other characteristics of the letter that
8 you felt to try to confirm its credibility, aside from what
9 was obviously told to you by your client?

10 A: The handwriting.

11 Q: What about the handwriting gave you pause?

12 A: Can I look at something prior to answering that?

13 Q: Sure.

14 A: There was a familiar -- I had a familiarity with Mr.
15 Wright's handwriting and while I am no handwriting expert,
16 that letter was -- the, the cursive nature of that letter was
17 almost identical to Mr. Wright's handwriting.

18 Q: Have you got that letter in your possession right now?

19 A: Yes, sir.

20 MR. JAMES: If I may approach the witness?

21 THE COURT: Okay.

22 A: Bear with me a minute.

23 BY MR. JAMES:

24 Q: Take your time. All right. You have handed to me what
25 appears to be a scanned copy of a neatly handwritten letter

1 purportedly signed by Mr. L. Powell. Also, there is a sticker
2 on it that indicates Exhibit Number 6. Now, you indicated
3 this came from your file?

4 A: It did come from my file. I used that letter in another
5 matter.

6 Q: All right. And that was originally provided to you
7 purportedly by Ms. Wright?

8 A: As best I can remember, yes.

9 Q: All right. And that was on behalf of your client?

10 A: Yes.

11 Q: All right. And you know this to be a true and accurate
12 copy of the letter that was provided to you?

13 A: Yes.

14 MR. JAMES: I would respectfully move to enter this
15 document, purported letter of Lanard Powell, as State's
16 Exhibit Number 2?

17 THE COURT: Any objections?

18 MR. ASHMORE: No objection.

19 THE COURT: Number 2 is in evidence without objection.

20 STATE'S EXHIBIT NUMBER 2

21 ADMITTED INTO EVIDENCE

22 A: May I have a copy of that at some point, Your Honor?

23 THE COURT: Fine with me.

24 MR. JAMES: Absolutely, we'll ---

25 THE COURT: We can make one.

1 MR. JAMES: We'll make him one before we leave today.

2 A: Thank you.

3 BY MR. JAMES:

4 Q: At any point prior to trial, did your client ever
5 indicate to you that he wished to testify in his defense?

6 A: In preparation for trial, you -- I don't know that you
7 engage in an ironclad position as to whether or not a client
8 will testify. A trial is -- there's an ebb and flow in
9 trials, and I can't remember whether he indicated or not
10 whether he wanted -- whether he wanted to testify prior to
11 that. But, I do remember specifically he told Judge Hayes
12 that he chose to remain silent.

13 Q: But ultimately, you indicated that your strategy was not
14 self-defense?

15 A: This was not a self-defense case, no, sir.

16 Q: Did you ever meet with a private investigator by the name
17 of Russell Dean?

18 A: I didn't meet with him, but I vaguely remember talking to
19 him maybe once -- maybe once or maybe twice over the
20 telephone. I never met with him.

21 Q: Who is Russell Dean?

22 A: He was a private detective, as I -- if my memory is
23 correct, and I'm not sure that this part is correct, but I
24 think he was from Columbia and I think he hired -- he was
25 hired by Mr. Wright. Now, I, I don't remember meeting with

1 him. That don't mean that I didn't; I just don't remember.

2 Q: So to be clear, you didn't hire him?

3 A: No, sir; I did not.

4 Q: Okay. Did you hire any other private investigator in
5 this case?

6 A: I did not.

7 Q: All right. Did you personally conduct an investigation
8 into any of the witnesses or facts of this case?

9 A: What we did or what I did, along with Mr. Morgan, is we
10 did extensive examination of these witnesses' testimony as
11 they had been transcribed. Because initially, these -- the
12 witnesses' statements were given to us by CD's, and after Mr.
13 Morgan's office transcribed them, I remember specifically
14 meeting with Mr. Morgan and Mr. Wright in Mr. Morgan's office.
15 Also, I met extensively with Mr. Wright at my office for a
16 period of time because he got -- there was a point prior to
17 trial, I don't know how long prior to trial, but he was -- he
18 was on bond. I think they revoked bond and I think he got --
19 he was allowed to come out again, but he would -- and he was
20 allowed to come to go -- I think to go to church, to the
21 doctor, and to come to my office, which was in Charleston.
22 So, but to answer your question directly, no, I didn't -- I
23 didn't go to the scene of the crime or anything of that
24 nature, no.

25 Q: Did you feel that it was necessary at all or ---

1 A: Well, no, I didn't because, you know, the way -- if I
2 recall correctly, there was a drawing and maybe there was some
3 pictures, I'm not sure about that. Maybe there was some
4 pictures of the -- of the residence. I think it was a mobile
5 home where the shooting occurred. But, no, I didn't go to the
6 mobile home, nor did I go to the motel.

7 Q: When you followed up in your conversations with Russell
8 Dean, do you recall what information he communicated to you?

9 A: No, no, I don't. It had something to do with the black
10 Escalade or the black BMW. That's what I remember, but I
11 don't have any specific recollection of my conversations with
12 him.

13 MR. JAMES: A moment of the Court's indulgence?

14 THE COURT: Yes.

15 BY MR. JAMES:

16 Q: Now you indicated that there was no firm decision as to
17 whether or not to testify prior to trial, but you did have
18 discussions with your client about the right to testify prior
19 to trial; is that correct?

20 A: Oh, absolutely, yes.

21 Q: Okay. Do you recall about how many times you may have
22 had that discussion?

23 A: Well, I don't want to say every time I met with him, but
24 I'm sure we had those discussions a number of times.

25 Q: Do you recall the statement of Veronica Chandler?

1 A: No, not, not, not really, no. I need to correct
2 something that I said earlier.

3 Q: Absolutely.

4 A: I alluded to you that the reason I was leery about the
5 statement -- I think I said to you that I thought that it was
6 authored by Mr. Wright; that is not correct.

7 Q: Okay.

8 A: Here is what is correct. Mr. Wright or Mrs. Wright had
9 given me a number of statements or letters that were written
10 by Mr. Powell, and I compared those letters written by Mr.
11 Powell to that statement that was supposed to be written by
12 Mr. Powell, and there was no similarity to it.

13 Q: Thank you for clarifying on that.

14 A: Yeah, and I want you to understand -- but I just couldn't
15 remember, but I had something to refresh my memory.

16 Q: It's been a number of years, so I understand.

17 Did you file any motions pursuant to Rule 5 and Brady?

18 A: At, at -- I remember specifically the solicitor's office
19 being upset with me because I filed -- Mr. Martin had already
20 filed a motion for Rule 5 and Brady and I subsequently filed
21 another motion and -- I don't want say upset, but they just
22 didn't want to be duplicitous. I came in after Mr. Morgan.
23 Mr. Morgan was hired first. And I don't know how long after
24 he was hired that I was hired, but I did file a motion to
25 suppress, a motion to suppress and Brady motion, if I recall

1 correctly.

2 Q: Did the state provide materials in response to that
3 request or did they tell you to go talk to Mr. Martin?

4 A: You know, I think they provided some and I got -- Mr.
5 Morgan had the balance of it because -- and we, we got
6 everything that we needed in terms of what they had under
7 Brady and Rule 5.

8 Q: There was some indication that law enforcement was able
9 to track your client by way of cell phone pings. Did you ever
10 receive any records relating to pinging their cell phones?

11 A: I don't remember that.

12 Q: Okay. Do you remember that ever coming up in trial?

13 A: I don't remember that either.

14 Q: Okay. But the materials that you did receive, did you
15 review those materials?

16 A: Yes, sir.

17 Q: All right. Did you review them with your client?

18 A: Yes, there was one occasion there, I think I spent maybe
19 three -- it was an afternoon at Mr. Morgan's office, myself
20 and Mr. Morgan and Mr. Wright, reviewing the matters, or
21 reviewing the materials, I should say. And that's not the
22 only time I reviewed the materials with him.

23 Q: Was there any plea offers in this matter?

24 A: There was.

25 Q: All right. Do you recall what that plea offer was?

1 A: I, I, I recall what the amount of time was; I don't
2 recall exactly what the charge -- what the charge was that he
3 would plead to, but the amount of time was between 25 and 30
4 years, I think. Yeah, 25 and 30 years. I don't remember the
5 exact number.

6 Q: And you communicated that offer to your client?

7 A: We did.

8 Q: And what was his response?

9 A: Initially, he accepted it.

10 Q: Okay. Why did he end up not pleading?

11 A: Well, he had -- his spouse and his mother indicated that
12 they paid for a trial and they wanted a trial. And we
13 certainly tried to tell him that was not a good course to take
14 having the facts as we knew them in the case. So, he turned
15 it down.

16 MR. JAMES: I have no further questions for this witness,
17 Your Honor.

18 THE COURT: Mr. Ashmore?

19 REDIRECT EXAMINATION OF EDWARD BROWN BY MR. ASHMORE:

20 Q: You have more letters from Mr. Powell in your file?

21 A: I do.

22 Q: All right. Specifically, do you have a letter of
23 February 14th of 2013? And may I approach the witness, Your
24 Honor?

25 THE COURT: Sure, you may.

1 Q: And I'll show you just to see if I can refresh your
2 recollection.

3 A: This is the whole letter?

4 Q: Yes, sir.

5 A: I, I'm pretty sure I have this letter, but it's been a
6 long time since I've read it and they -- it's not that easy to
7 read, either.

8 Q: It's hard to read. It's hard to read.

9 A: Do you want me to read it?

10 Q: No, sir. Do you -- do you have that in your file; do you
11 have a copy of that in your file?

12 A: I might. This is the file, I would be happy to go
13 through it.

14 Q: Well, that's okay. Do you have any reason to doubt that
15 you are in possession of this particular letter during the
16 course of the proceedings?

17 A: I don't know that I had this particular letter during the
18 course of these proceedings. I know what I have in my file
19 and I -- I don't know that this is a part of it. It could be,
20 I don't ---

21 Q: Well, I hate to task you with this, but can you take a
22 look in your file and see if you have a letter that would
23 match that one?

24 A: Certainly.

25 MR. JAMES: Just to be clear, Mr. Ashmore, what's the

1 date on this letter again?

2 MR. ASHMORE: February 14, 2013.

3 MR. JAMES: May I?

4 MR. ASHMORE: Sure. Yes, February 14, 2013. May I show
5 it to ---

6 A: Forgive me for not having this organized, Judge.

7 MR. JAMES: If I may approach to observe the letter as
8 well?

9 THE COURT: You may.

10 A: These are all the letters that I have and I think I
11 prepared them alphabetical order, I'm sorry, numerical order,
12 but I think the earliest letter that I have from Mr. Wright is
13 April 1st, 2013.

14 BY MR. ASHMORE:

15 Q: My, my, my concern is, how do we know State's Exhibit
16 Number 2 is the missing letter, the letter that was discussed
17 in the transcript?

18 A: That's the letter that I misplaced. I explained to Mr.
19 Wright, I told Mr. Wright, the letter was misplaced. Bear
20 with me.

21 Q: How many letters do you have from Mr. Powell in your
22 file?

23 A: These are letters that were given to me by either Mrs.
24 Wright or Mr. Wright. I, I didn't count them, but I would --
25 these are the letters that I have.

1 Q: Okay. And just for the record, you're holding up paper;
2 is it two, is it 10? And I don't need particulars.

3 A: More than five, probably less than 10.

4 Q: Okay.

5 A: That letter is the letter that I couldn't find when we
6 went to trial and Mrs. Wright, if I recall correctly -- I
7 think maybe Mrs. Wright brought a copy of that letter by for
8 me. I'm not sure how -- how I got it again, because I -- and
9 if I'm not mistaken, the letter was brought initially to me by
10 Mrs. Wright and then I misplaced it.

11 Q: And when you say the letter, we're talking about State's
12 Exhibit Number 2, this letter?

13 A: That's correct.

14 Q: Because as I read that letter, it doesn't say anything in
15 there about Two Guns actually being the shooter?

16 A: Well ---

17 Q: It says he was running from the house?

18 A: That's what it says, yes.

19 Q: Okay. Is it possible that there's another letter that
20 actually names Two Guns as the shooter?

21 A: Not that I'm aware of.

22 Q: How about the letter of February 14th, 2013?

23 A: That which you just showed me, I haven't had a copy of
24 that.

25 Q: And you don't recognize it; you couldn't authenticate it

1 as we stand here, as I stand here?

2 A: No, sir.

3 Q: Understood.

4 A: And most of the letters that I got from Mr. Wright or
5 Mrs. Wright, didn't have a date on it. It began with -- some
6 language like that -- that's in the right hand corner.

7 Q: Understood. Thank you, Mr. Brown. I'm gonna wrap up
8 here. Did you ever have a chance to review the, the appeal,
9 the order handed down affirming the conviction from the Court
10 of Appeals?

11 A: I read parts of it last night, yes, sir.

12 Q: And, and again, the -- Powell's prior inconsistent
13 statement, the letter he wrote that allegedly exonerated
14 Wright and implicated another individual as the victim's
15 killer, that issue was not preserved for appeal, correct?

16 A: Apparent -- well, that's what the Appellant Court ruled,
17 yes.

18 Q: Yes, sir. Nor was -- was it preserved, Wright's argument
19 that the trial court erred in instructing the jury to
20 disregard Powell's statement. According to the Court of
21 Appeals, the defense acquiesced in that and that issue was not
22 preserved for appeal?

23 A: If that's what the opinion says, that's the law of the
24 case in terms of the Appellant Court.

25 Q: And then lastly, the Court of Appeals found that Wright

1 is ultimately asserting the trial court deprived him of his
2 right to testify by refusing to reopen the record and allow
3 him to testify after the defense rested, and then they add a
4 footnote, nothing in this opinion prevents Wright from seeking
5 PCR for ineffective assistance of counsel; you read that in
6 the appeal?

7 A: Well, that's in the appeal, yes, sir.

8 MR. ASHMORE: Could I have one moment, Your Honor,
9 please?

10 That's all we have, Your Honor, thank you.

11 THE COURT: Anything further?

12 MR. JAMES: Nothing from the state, Your Honor.

13 THE COURT: All right. You may step down. Any
14 objections to him leaving?

15 MR. ASHMORE: No, sir.

16 THE COURT: The state?

17 MR. JAMES: Same answer as before, no, Your Honor.

18 THE COURT: All right. You have a good day.

19 MR. BROWN: Thank you, Your Honor.

20 BY THE COURT:

21 THE COURT: All right. Call your next witness?

22 MR. ASHMORE: I would call Marcus Wright.

23 MR. JAMES: Before Mr. Wright takes the stand, I
24 understand that counsel wishes for a copy of the exhibit the
25 state introduced.

1 THE COURT: All right. Can you do that real quick?

2 COURT REPORTER: Gentlemen, has somebody picked up
3 State's Number 1, the statement of Veronica Chandler?

4 MR. JAMES: State's Number 1?

5 MR. ASHMORE: Statement of Veronica Chandler?

6 COURT REPORTER: I don't have it; somebody has picked it
7 up.

8 MR. ASHMORE: It wasn't me.

9 MR. BROWN: May I be excused?

10 THE COURT: Wait on your letter.

11 MR. BROWN: Yes, sir.

12 COURT REPORTER: This is yours.

13 MR. JAMES: That's what I thought.

14 COURT REPORTER: I don't have State's Number 1.

15 MR. ASHMORE: Mr. Martin might have that.

16 MR. JAMES: That's what I'm worried about.

17 THE COURT: Can you call him?

18 MR. JAMES: I suppose I should ask permission if I may
19 use my cell phone?

20 THE COURT: You may.

21 (REPORTER'S NOTE: Mr. Martin is contacted and placed on
22 speaker phone.)

23 MR. JAMES: Before we continue, I have an idea. I'm
24 going to approach the bench right now and I'm putting you on
25 speaker so that we can give Mr. Ashmore an opportunity to hear

1 what we're talking about here.

2 All right. Can you still hear me, Mr. Martin?

3 MR. MARTIN: I can.

4 MR. JAMES: So, what was that last question you had?

5 MR. MARTIN: Well, I can deliver it to the clerk's
6 office. The question is which clerk should I give it to
7 because they're probably going to say what is this?

8 THE COURT: To Renee.

9 MR. JAMES: To Renee.

10 MR. MARTIN: To Renee down in the clerk's office and it
11 is a PCR document for the purpose of this case.

12 MR. JAMES: And if you've got a sticky note, I'll give
13 you the caption for it real quick.

14 THE COURT: And Renee is coming here today to pick up
15 these exhibits to carry back and she knows about it.

16 MR. MARTIN: Renee, okay. What is the caption, Johnny?

17 MR. JAMES: That's going to be docket number 2017-CP-26-
18 02564.

19 MR. MARTIN: 26-02564.

20 MR. JAMES: That is correct and that is Marcus Dwain
21 Wright versus State of South Carolina.

22 MR. MARTIN: All right. I'll deliver it this afternoon.
23 I'll go now and take it.

24 MR. JAMES: All right, Mr. Ashmore, any objection?

25 MR. ASHMORE: That's without objection, Your Honor.

1 THE COURT: Okay. Thank you.

2 MR. JAMES: Thank you very much, sir.

3 MR. MARTIN: I apologize to all of you for having done
4 that but I will take it over.

5 MR. JAMES: Thank you.

6 THE COURT: All right.

7 MR. ASHMORE: You ready, Your Honor?

8 THE COURT: Go ahead.

9 MR. ASHMORE: I call Marcus Wright to the stand.

10 THE COURT: Put your left hand on the Bible and raise
11 your right hand?

12 MARCUS DWAIN WRIGHT, HAVING BEEN DULY
13 SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Please say and spell your full name for the
15 Court?

16 MR. WRIGHT: Marcus Dwain Wright, M-A-R-C-U-S D. W-R-I-G-
17 H-T.

18 CLERK: You may be seated.

19 DIRECT EXAMINATION OF MARCUS DWAIN WRIGHT BY MR. ASHMORE:

20 Q: Mr. Wright, where are you currently incarcerated?

21 A: Lieber Correctional Institution.

22 Q: And what sentence are you serving?

23 A: Life for murder, 25 drug trafficking, 15 possession with
24 intent to distribute, five on weapon.

25 Q: And you were represented at trial by Morgan Morton and Ed

1 Brown?

2 A: Yes, sir.

3 Q: And you have filed this PCR application that is the basis
4 for today's hearing, correct?

5 A: Yes, sir.

6 Q: Okay. Let's get right to it. You've heard the arguments.
7 Tell us, tell the Judge about your right to testify or -- or
8 inability to testify is probably a better way to phrase it.

9 Tell me in your own words what happened there, Marcus?

10 A: Well, I have the record, I could read off the record if
11 ---

12 Q: You don't need to do that. Your Honor, will do that.

13 A: Okay. Well, the Judge first asked me about testifying and
14 I told him I'm not sure. He asked me, do you got any
15 questions; I'm like, not exactly. He said, I can't say that;
16 I have to say yes or no. So, at the time, I said no, based on
17 me getting my witnesses in because they always told me, it's
18 better to let somebody else testify to what happened, what
19 they seen. First of all, that was the whole reason for me
20 even kind of being -- if they don't testify because it was ---

21 Q: Well, let's slow down and be clear. But that afternoon,
22 you told the Judge you did not want to testify?

23 A: Yes, sir.

24 Q: You had your reasons for doing so, but that's what you
25 told him?

1 A: Yes, sir.

2 Q: What happened the next morning?

3 A: The next morning, when we came up, when I -- you know,
4 they bring you up in the back office. So, I'm in the back
5 office, I'm speaking to Brown and Morgan. Morgan was back
6 there, too. But Morgan went out to do something. They were
7 trying to talk me into taking a plea. They did do that but I
8 was like, you know, this wasn't murder. We -- I'd asked him
9 about the statement, because the statement never mentioned
10 nothing about ---

11 Q: Hold on. You got to stay focused, all right?

12 A: All right.

13 Q: So, that morning, what was the conversation about whether
14 or not you would testify?

15 A: I told them I wanted to testify. Mr. Brown went out, he
16 came back. He said, they're not gonna allow you to testify.
17 I said, you asked? He said, yes, I spoke to them, they said
18 they're not gonna allow you to testify. So, when we did go
19 out, I'm sitting here and I'm listening to the Judge talk and
20 I could tell, based on his mannerisms, they didn't tell him I
21 wanted to testify. So, at that point, I raised my hand and
22 told him I wished to testify.

23 Q: You told the Judge that?

24 A: Yes, because they wasn't conveying my messages to him.

25 Q: All right. And what, what did the -- what did the Judge

1 say?

2 A: Well, the Judge was more concerned with what I had heard
3 rather than -- and he was like he -- first of all, he asked
4 them did I tell them that I wished to testify. Mr. Martin,
5 first Mr. Martin denied that I told him that, but then Mr.
6 Brown admitted that I told him that. So, when Mr. Brown
7 admitted that I told him that, Mr. Martin then admitted that
8 yes, when we came out, we did talk to him about me testifying.
9 So, regardless of what he said, I had already mentioned that I
10 wanted to testify prior to them speaking.

11 Q: Okay. Did they ask you to proffer testimony; do you know
12 what that means?

13 A: I know what it means now but, no, sir, not at that time,
14 but the Judge mentioned it. He said, y'all can proffer it,
15 but they never proffered me any testimony so the Appellant
16 Court couldn't review it.

17 Q: All right. Well, we're gonna do that now. What would you
18 had told the jury had you been given the chance to do so?

19 A: The same thing I always told my attorneys, that I shot him
20 in self-defense like. The guy came in, I can -- do you want
21 me to start from the beginning?

22 Q: Well, I want you to stay focused, Marcus, but what would
23 you've told that, that jury what happened that day?

24 A: Well, when I was over there, first of all, I had took them
25 grocery shopping. So, I was in there waiting for them to

1 cook, but she left some type of Ragu sauce. So, when they
2 went to get it, Mr. Sinclair came flying around in his
3 wheelchair to the front door. When he got to the door, I
4 tried to stop him from opening the door. Me and him went back
5 and forth a little bit. I said, who is it at the door because
6 Capone (spelled phonetically) isn't here, which is Lanard
7 Powell. Why are you letting all these people in -- because he
8 already let two females in. So, I want to know why you
9 letting these people in. He says, it's my cousin, it's my
10 house, too, and he opened up the door abruptly. He opened it
11 up real fast. So, when he tried to open it up, I tried to
12 beat him to the door but he had already stepped out the door,
13 and him and J.J. was ---

14 Q: Well, hold on -- hold on. Who is J.J.?

15 A: Jerome Green, that's the deceased.

16 Q: Jerome Green?

17 A: Yes.

18 Q: All right. Keep on.

19 A: The deceased -- they were -- if you ever seen how a mobile
20 door is, it's pretty small. So, if you've got a guy trying to
21 get out in a wheelchair and you've got another individual
22 trying to come in at the same time, it was kind of like a
23 struggle getting in the door. I don't know if Mr. Sinclair
24 was trying to tell him not to come in, because Capone wasn't
25 in there, but he was focusing on Sinclair when he stepped in,

1 and he was looking down at Sinclair because Sinclair is in a
2 wheelchair. And he said, you've got these little niggers
3 running this spot, and he said I'm about to put the squeeze on
4 me a nigger. Terminology is -- squeeze, the only thing I
5 could picture of him squeezing was a gun. So, when he
6 brandished the weapon, when he pulled it out, I seen the butt
7 of the gun first, because like they said, his back was semi-
8 towards me. But I screamed gun, like -- I thought I said more
9 than that; I thought I said he got a gun -- but I screamed
10 gun. And when he went to turn on me, I fired. It hit him in
11 the leg and then hit him in the arm and he spun around. And
12 when he spun around, I kept firing, trying to step away from
13 him into the kitchen. And he tried to bring his hands
14 together and I shot him in his hands because I'm focusing on
15 the gun. I wasn't looking at -- I couldn't take him in yet
16 because this is happening in a split second. So, when I shot
17 him in his hands like, it must've hit his groin and that's
18 what took him down. But as he was going down, it was still
19 firing, but it never fired with him on the floor. If any
20 firing came from him on the floor, he was discharging his gun
21 into the floor, because it's noted on the scene. The
22 solicitors noted it and the detectives have noted it that it
23 was multiple different types of ammunitions picked up from the
24 scene. The state never put up any evidence that he was shot
25 on the floor at my trial and I shot him in fear of my life

1 like ---

2 Q: Well, that was my question. Why did you shoot, Marcus?

3 A: Because I was scared, like I was defending myself, and I
4 told the law that, I told anybody that would listen that. I
5 told my attorneys that. The day I met you, I told you that.

6 Q: And this is what you would have told a jury had you been
7 given the chance?

8 A: Yes, sir, and I believe they knew that.

9 Q: When you say they?

10 A: I believe my attorneys knew that I would testify to that.

11 Q: Well, did you talk to them about that?

12 A: Yes, that's what the whole -- that's what the whole trial
13 was about. Even at my bond hearing, they told the Judge, this
14 is self-defense. This is absolutely without a doubt a case of
15 self-defense. He admitted on the record that I was there. I
16 had a right to be there. I stayed there at times. So, you've
17 already admitted half of your case.

18 Q: Well, when you say -- who were you speaking with?

19 A: Mr. Martin, Morgan Martin. I mean, I have a actual copy
20 of the transcript, you don't want to introduce it, but it's
21 the original. So, I don't have to put no words in nobody
22 mouth, it can be strictly what Mr. Martin told the Judge.

23 Q: All right.

24 MR. JAMES: Just to be clear, the entire original trial
25 transcript is in the record before the Court today?

1 A: Of the bond hearing, no. We're talking about the bond
2 hearing when Mr. Martin told the Judge that this is a case of
3 self-defense.

4 MR. JAMES: I have not provided the bond hearing
5 transcript.

6 A: Well, I have it right here, sir, this is the original.

7 MR. ASHMORE: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 A: So, for my attorneys to now get up here and ---

10 BY MR. ASHMORE:

11 Q: Hold on.

12 A: Page 4 of 6.

13 MR. ASHMORE: Your Honor, we offer this as Applicant's
14 Number 3, I believe.

15 COURT REPORTER: 2.

16 MR. JAMES: No objection, Your Honor.

17 THE COURT: 2 is in evidence.

18 MR. JAMES: There are some highlights throughout that
19 transcript, but I didn't see any annotations.

20 APPLICANT'S EXHIBIT NUMBER 2

21 ADMITTED INTO EVIDENCE

22 BY MR. ASHMORE:

23 Q: All right. Let's shift gears and talk about Cates Bay
24 Road?

25 A: Yes, sir.

1 Q: As you know, there was a motion to suppress that was filed
2 and then dealt with at the end of the day where you lived?

3 A: Yes, sir.

4 Q: Do you remember that?

5 A: Yes, sir.

6 Q: Okay. And what could your attorneys have done differently
7 to establish that you lived there?

8 A: Well, it's numerous things. First of all, I have the real
9 estate contract where I gave it to my attorneys where I owned
10 the home.

11 Q: Well, now, let's be clear, you're saying you have a
12 contract and you had 3635 Cates Bay on the contract?

13 A: Yes, sir, Britt Tanner was my realtor, who he was selling
14 the home for me.

15 Q: And you had provided that to your attorney?

16 A: Yes, sir, and I have it for the courts if they would like
17 to read it.

18 Q: And that did not get submitted into evidence?

19 A: No, sir.

20 Q: And what else did you have?

21 A: I was on community supervision from the moment I was
22 released. I was released March 1st, 2011 to August 2012, I
23 was own community supervision and I have a letter from them
24 saying I was out at 3635 Cates Bay.

25 Q: Well, you heard earlier that there was one of your

1 supervising probation agents apparently couldn't say exactly
2 where you lived; how do you explain that?

3 A: The funny thing about that is, that isn't who he
4 subpoenaed to court. He subpoenaed Scott Herrington. So, I
5 wrote Scott Herrington and Scott Herrington provided me with
6 my physical address. Biff Johnson testified he was no longer
7 employed at the probation office but, yet, if we would have
8 bring the records, the record states that Mr. Morgan said he's
9 waiting for somebody to come over from probation and parole.

10 Q: And who was that person?

11 A: He never stated. Biff Johnson is who came, but he
12 subpoenaed Scott Herrington. So, if he would've actually
13 interviewed the guy he subpoenaed, then that guy would've been
14 able to testify where I lived.

15 Q: Anything else that your attorneys could've done
16 differently to establish that was your residence?

17 A: It was pictures of the home. All throughout the crime
18 scene, they to -- everywhere they go they take pictures. So,
19 he could've easily shown the guy the picture of the home and
20 said, is this the home that you actually visited?

21 Q: Do you know if they interviewed any of your -- any of your
22 neighbors?

23 A: Yes, actually 3643 -- no, not Morgan, no. They didn't
24 interview the neighbors, but 3643 was actually the deceased
25 house, but this guy lived there for 90 some years. 3643 was

1 66 acres of land to be correct. My ex-wife at that time
2 inherited an acre. So, we moved a home on the land; it was
3 actually 3643. That was the discrepancies of the title. The
4 title listed 3643 because that's exactly where the home was
5 put because it was 66 acres. We had to zone the land to 3635
6 and my real estate contract list that and it show pictures of
7 the home, size of the home, all the amenities the home offers,
8 blah, blah, blah.

9 Q: Now, the other suppression motion dealt with the -- with
10 your arrest at the hotel and the seizure of drugs. Tell us
11 what happened there?

12 A: Well, the affidavit states that we stepped outside of the
13 room and the officers identified us and entered the room, but
14 that isn't what happened. A phone call came to the room.
15 They stated that you have a package at the front desk. I knew
16 there shouldn't have been no packages at the front desk
17 because this room wasn't rented to anybody's name that they
18 would know. So, I told Lanard, they're out there. I didn't
19 know what he had done, but more than likely that he probably
20 called somebody. But, I told him they're out there.

21 Q: When you say they, you're talking about law enforcement?

22 A: Yes, law enforcement. So, Lanard being kind of curious,
23 he went to the door and he -- as soon as he cracked the door,
24 a barrel came through the door, a gun, and he was fighting
25 like -- I never seen a cop, he never seen a cop, the cop never

1 seen us because -- it was a neat trick, I must admit, but I
2 don't think it was a lawful trick. As soon as the door was
3 cracking, a gun came through. I can read Lanard Powell's
4 testimony; he testified exactly to that. A forfeiture
5 hearing, Detective Justin Cole, he is the guy who stuck the
6 gun through the door. He testified at my forfeiture hearing
7 to exactly what he did and he testified we never stepped
8 outside of the room as the affidavit states. So, at that
9 point, my counsel was ineffective for failing to actually
10 investigate and quash the affidavit under false evidence like
11 a false affidavit.

12 Q: Was it -- did you tell your attorneys what had happened?

13 A: Yes, sir, and I hired that guy, Russell Dean. Russell
14 Dean, investigator, a private investigator that they speak of,
15 I personally hired him to go to The Sleep Inn and try to get
16 the video to show that no one stepped out of the room as the
17 affidavit stated, because there were the exigent circumstances
18 they used to, to file my appeal.

19 Q: Did Mr. Dean have any success?

20 A: No, they kind of like, that's -- they kind of like
21 blackballed him in that town. They told him he needed to
22 leave it alone. That town was pretty tightknit, so he didn't
23 get nowhere.

24 Q: Now, what witnesses, if any, did you suggest to your
25 attorneys that could be called to the defense of your case?

1 A: Christopher McCray was one, Russell Dean was another one,
2 me too, because they put on the record they were supposed to
3 call me to the stand to testify for standing. And they never
4 called me to testify to standing. So, once they did that,
5 right, that's why I addressed to the Judge. That's another
6 reason I addressed him, because I couldn't let that keep going
7 by. You will put something on the record and you're gonna
8 call me to testify. I could tell you better than anybody who
9 lived there, but they never called me, so -- any other
10 witnesses, I can't think of any.

11 Q: Now, we've raised a number of issues in the PCR
12 application, Mr. Wright.

13 A: Yes, sir.

14 Q: But, tell this Judge about your claim about what we call
15 Brady violations?

16 A: Yes, the Brady violation. There were emails. If I could
17 let the record reflect or do I need to read the emails or ---

18 Q: No, just -- just if you would summarize for us?

19 A: Well, first of all, she put a witness up by the name of
20 Daisy -- Marthena Daisy Menendez, which is Jacinda's aunt.
21 The solicitor did. She put the witness up to testify against
22 me. Yet, she never disclosed this witness' criminal
23 background, that she had prosecuted this witness for perjury,
24 misconduct in office, and forgery. I have the paperwork to
25 show that and her name on it as the prosecutor. But she

1 brought it to the Judge's attention about Juror Number 187.
2 She remembered prosecuting him, but for some reason, she
3 didn't give us any Brady stuff on to impeach this witness on
4 their prior relationships or whatever and that's a Brady
5 violation.

6 Emails between the crime scene investigator and -- emails
7 between the crime scene investigator and SLED. They searched
8 a 2012 Camaro that my ex-wife had rented for me. Inside the
9 Camaro, they found a Hi-Point handgun. The email from the
10 crime scene investigator stated that they possibly believed
11 that that gun belonged to the victim, Jerome Green, and she
12 put that. And she put -- check it for DNA for me and Mr.
13 Green. Now, if the state had no idea that this man had a gun,
14 why would you be thinking a gun 50 miles away belonged to him
15 unless you knew this gun was taken from the scene. So, they
16 withheld that evidence. Had we had that evidence, I believe
17 we would've been more believable for the jury that this guy
18 had a firearm, because the state was now saying we possibly
19 believe this gun belonged to the victim.

20 Q: Now, during the course of the trial, your attorneys made
21 numerous attempts to establish that Mr. Green possessed a
22 firearm; do you recall that?

23 A: Yes, sir; that's what my whole trial was about.

24 Q: Well, that was my question. I mean, was that not your --
25 your theory of the case in your mind?

1 A: Yes, sir, that's the whole reason I introduced that bond
2 hearing transcript. Could I see that bond hearing transcript
3 for a second.

4 Q: That's all right. I understand that, but that was your --
5 your theory was self-defense, correct?

6 A: Yes, sir, and I told them that and they told the Judge
7 that and they had already admitted I been there, and I had a
8 right to be there, and this was a case of self-defense.

9 MR. JAMES: I may be a little late with my objection but
10 I was waiting to see if they're going to loop back into it,
11 but there was extensive testimony about the contents of an
12 email between two people, who ain't here. Is the email here
13 ---

14 MR. ASHMORE: Yes.

15 MR. JAMES: --- are those individuals going to testify
16 that wouldn't be actual hearsay?

17 A: I have the emails if you would like them.

18 MR. ASHMORE: I think -- I think, Your Honor, he's just
19 talking in general terms about some of his complaints of
20 Brady.

21 MR. ASHMORE: I don't know that we need to get into the
22 particulars of that. So, if I may, Your Honor?

23 BY MR. ASHMORE:

24 Q: Did you -- did you talk to your lawyers about them not
25 challenging the witnesses on their prior inconsistent

1 statements?

2 A: Well, he didn't provide me with every witness statement.
3 They were telling me that nobody said that it was a gun.
4 Nobody said it was gun up there. They gave me a witness
5 statement and I kept saying I need the case file, give me
6 everything you have. Once they got me, once the last time I
7 was locked up, I kept demanding the case file. So, once I got
8 the case file, I was able to read through the case file to see
9 what each witness said that I either told them that I was
10 pulling the gun or they physically saw him pulling the gun,
11 but then testified that never said such things or I had told
12 them such things, and the solicitor allowed them to testify to
13 that, which is prosecutorial misconduct.

14 Q: Were there any other witnesses that you brought to the
15 attention of your lawyers so they were not called to testify?

16 A: Well, besides, I told them me, Christopher McCray, Russell
17 Dean, Jacinda. I told them about the family, about her
18 extended family, who owns what land and things of that nature.
19 But, I could only tell my attorney what I have or what's to
20 offer. They didn't take it.

21 Q: Are you aware of during the suppression motion, there was
22 discussion about SLED and your phone pinging, P-I-N-G-I-N-G,
23 pinging -- do you know what I'm talking about when I say
24 pinging ---

25 A: Yes, sir.

1 Q: --- off a cell tower?

2 A: Yes, sir.

3 Q: Okay. Did you ever obtain records from -- did your ---

4 A: Yes, I obtained -- I had, during my incarceration, are you
5 talking about from Morgan and during my incarceration?

6 Q: Did your attorneys obtain any such information?

7 A: No, sir, they never gave them any evidence of any ping.

8 Q: Okay. And, and --- and since that time, what were you
9 about to say?

10 A: Since that time, I had wrote SLED from FOIA, Freedom of
11 Information Act, and they responded to me and told me that
12 they had no information concerning ping doing to my case.

13 Q: And that dealt with the Cates Bay Road search warrant?

14 A: Yes, sir.

15 Q: All right. Mr. Wright, this is your day, any other -- any
16 other failings of either Mr. Brown or Mr. Martin or
17 collectively that you think rises to the level of ineffective
18 assistance of counsel?

19 A: Well, sir, to be honest, I'm completely baffled at how I
20 put my life in two attorneys' hand, told them exactly what
21 happened and they dropped the ball on it, and then to
22 backpedal and say, this was not a case of self-defense; that
23 was never our theory. When, from the beginning, from day one,
24 they told the Judge, like I say, this is a case, and I don't
25 want to -- look, can you give me that motion right there?

1 Morgan states, Page 6, Line 20, but simply in this instance,
2 Marcus was in a location when the deceased in this case came
3 in; so, he's admitted to him being there. He was at a place
4 where he was an invitee into this home, a place where he had a
5 right to be, a place where he even stayed at times, because I
6 told him that. I believe that there will be evidence in this
7 case without a question of the issue of self-defense is
8 involved. This is what he told them at my bond hearing dated
9 June 6, 2012, a year before my trial. So, for him to get up
10 here now and state that wasn't his theory, I was already
11 prepared for that. He said I was not -- that I was
12 intelligent. I was intelligent enough to know that the only
13 way he would try to wiggle out of this, if he said that wasn't
14 his theory. So, I made sure I got that bond hearing
15 transcript. I told him I was there. He had not told the
16 solicitor I was there. It's nothing to hide at that point.

17 Q: Okay.

18 A: I shot him in self-defense and I feared for my life.
19 Also, they asked me, where did I stay. He told them he owns a
20 home here in Horry County. So, for me to lose standing to
21 hold my own, when he knew this since the day I was
22 incarcerated.

23 Now, my appeal, the state's appeal, well they denied my
24 appeal, they're whole case is Page 2 of my appeal, where they
25 state the facts. Wright was charged with fatally shooting the

1 victim on the evening of April 30th, 2012 at the residence of
2 Roy Sinclair, where Wright was selling drugs. At trial,
3 Wright sought to show that he shot the victim in self-defense.
4 So, how do they now take a step back and say that wasn't the
5 theory. I was highly prejudiced because they failed to
6 properly cross examine the witness and introduce their prior
7 inconsistent statement. Veronica for example, she told law
8 enforcement, I'm convinced in my head I saw this guy pulling a
9 gun. That's one of the elements required to self-defense,
10 because of another ordinary person entertaining the same
11 belief. Ms. Kelly Pinnix, yes, he told law enforcement that
12 she didn't see a gun, but she also told law enforcement that
13 the shooter screamed gun. That's the shooter's state of mind.
14 She also testified that Mr. Sinclair locked us in the home.
15 She wrote that in her statement. I can read that on the
16 record, so nobody can say I put things in people mouth. Ms.
17 Pinnix testified -- told law enforcement, Mr. Sinclair wasn't
18 in the home when the shots were fired. He locked us in the
19 home immediately upon him leaving. I couldn't retreat. I had
20 no choice but to fire them gun.

21 Q: Let me show you, there's much talk about the letter,
22 missing letter, and let me show you State's Exhibit 2 and you
23 explain to the Judge -- you explain to the Judge your thoughts
24 on that letter; is that the missing letter?

25 A: No, sir. No, sir, on the record, this is one of many

1 letters that Capone, a/k/a Lanard Powell, sent to my home. He
2 sent plenty of letters to me, but the letter they're trying to
3 deny was February, because I wasn't incarcerated at that time.
4 So, I couldn't force him to write it, but none of the letters
5 never exonerated me. He never wrote a letter and that's why
6 they never read the letters for the record. He never wrote a
7 letter saying I didn't shoot the guy. Two Guns was J.J.'s
8 accomplice and I told law enforcement that when they were
9 interviewing me. I told them two or more individuals entered
10 the home. So, the Two Gun guy that they seen run from around
11 the building wasn't me. Big Money, I never went by that name.
12 If you read the police reports, they called me King. Big
13 Money is the name of this other guy. That's why I always
14 said, Big Money isn't me. If you're going to call me
15 somebody, you better call me by the alias that I went by. I
16 was Marcus Wright a/k/a King. I can show you in the police
17 investigative reports where they wrote Big Money at first, but
18 then when they found out my name was King, they then changed
19 it to King. So, like I don't even know where to begin or to
20 end with this, sir.

21 Q: Okay. All right. But it is your testimony that you don't
22 believe that's the missing letter in question?

23 A: No, sir, that isn't the missing letter in question. The
24 missing letter in question was February -- what's the date on
25 it; I gave it to you? Something -- but anyway, no, this isn't

1 the missing letter. There were several letters he wrote, but
2 none of them never exonerated me like they stated like.

3 MR. ASHMORE: Okay. Your Honor, I believe that's --
4 that's all I have now.

5 THE COURT: All right. Thank you. Mr. James?

6 CROSS EXAMINATION OF MARCUS DWAIN WRIGHT BY MR. JAMES:

7 Q: Mr. Wright?

8 A: Yes, sir.

9 Q: What did you do after the shooting?

10 A: Well, sir, immediately after the shooting -- immediately
11 after he hit the floor, you talking about shooting like that?

12 Q: Let's start right after J.J. hits the floor, what did you
13 do?

14 A: Well, he looked like he was gonna get up, so I ran around
15 and like I ran around the countertop, just to look, the white
16 girl, Kelly Pinnix, she looked like she was in a zone.

17 Mildred, the older lady, she was oh so calm to me, she was
18 like, baby, he ain't moving no more. At that point, everybody
19 started fleeing. So, I had left, too. I had my own issues
20 with the police, so I had left, too.

21 Q: Where did you go?

22 A: Well, first I -- I pulled off and I made a right and then
23 I got to the stoplight and I realized that my headlights were
24 off because I couldn't see my car and the other car behind me.
25 So, I cut my lights on and I was -- I was panicking like. I

1 didn't know who was friends or foe at that place at that time
2 because I'm not from around there. I just come in -- I'm not
3 from around that area. So, the guy that was supposed to be my
4 friend, that I knew, he let a guy in to try to shoot me or
5 whatever. So, I defended myself. I don't -- I don't know who
6 to trust there, so I'm leaving. I'm going down the road. I
7 see that white car with Mildred and Veronica bear off to your
8 right, and that time -- like they left the scene to go and
9 park across the street. So, I made the next right, I'm
10 getting lost, I'm cussing at getting lost. I go back down and
11 I finally found my way off of whatever that boulevard is.
12 That's when I got the call from Lanard. They were already
13 almost to Conway. So, that lets you know how many times I was
14 just rolling in circles. And then I went and put my car -- I
15 went to Marthena's house and I put the car at Marthena's house
16 and Qwanda had picked me up. And she told me that they had
17 gotten lost, that they had somehow split up or separated. So,
18 I told Qwanda, I asked Qwanda was there anything in the car
19 and she told me he got something, a bag in the back. He was
20 like there's a bag in the back. So, I went to the back, I
21 went and got that and I put that inside of the BMW at
22 Marthena's house and -- because I didn't know what was in the
23 bag, I didn't have time to look. So, I jumped in the car with
24 her and we ride and we get out to like I think 378 red light.
25 It's going towards the country and she's re -- she's re --

1 like refollowing her steps on where she went. So, we find him
2 and it's late, I mean it's in the middle of the night. We'd
3 been riding all night trying to find him. So, we finally find
4 him and I ask him why he left her, what in the world are y'all
5 even doing.

6 Q: Let's be clear, when you say find him, are you referring
7 to ---

8 A: Lanard Powell, yes.

9 Q: Okay.

10 A: Well, we finally find Lanard Powell. I was like, why did
11 -- how -- what in the world are you doing out here like, how
12 did y'all get separated like this? That's when I found out
13 that he had took the deceased's truck and he said that the
14 white girl gave it to him. So, I was like, what in the world,
15 like what truck; I didn't see a truck when I was leaving. So,
16 I'm like what truck are you talking about. So, he asked -- he
17 asked her about something with the bag. I told him, I got the
18 bag. I put that bag in my car and he gave a funny look then.
19 So, I knew something wasn't right. But come to find out, what
20 he had done was taken the deceased's gun and that was in that
21 bag. I didn't see that until the next morning like, Jacinda
22 had gotten me a rental car. So, now people are talking to me
23 and they're telling me there was no gun in there. So, now I'm
24 looking at him and I'm asking him where is the gun. He tell
25 law enforcement that in his statement, if I need to read it.

1 He said I told him, where is the gun. Now, he tells me, he
2 took the gun. So, and I told Morgan and them this. I told
3 Morgan I didn't know where the gun is because Lanard had
4 buried the gun. But once he told me he took the gun, I knew I
5 was some -- it's bad now. It's very bad now because there's
6 no gun there at the scene. So, I told Jacinda to bring me the
7 items out of that car. So, she came to the hotel room where
8 we was staying at, it was the first hotel. She came to the
9 hotel and she brought the bag. That was the first time that I
10 seen the gun since that night. It was a chrome; it was a
11 small handgun. It was like a chrome .380. Showed it to him,
12 okay, he was like, this is the gun he took and the money and
13 everything he was selling out of the house. Now, I went and
14 got the rental car. They had them take me to get the rental
15 car. So, I now I had Jacinda calling Attorney Whetstone in
16 Columbia because the police take me when I was like five years
17 old, so, I don't have too much talk to the police, they beat
18 me and my mother. So, I was going strictly to an attorney to
19 let him know what was going on. So, I had her give me
20 anything dealing with any firearms that she may have owned and
21 I was taking all of them to the attorney so the attorney could
22 then, I guess, turn everything over to the police. But before
23 that happened, we were apprehended at that hotel that split us
24 up. So, at that point, I couldn't get the guns. So, I told
25 Mr. Martin, look, look, Lanard has buried the guns. I need to

1 get Lanard out. Every night it rained, I kept getting more
2 and more like, I knew that DNA or whatever was on the guns,
3 it's washed away. Me and Mr. Martin talked about that, too.
4 He said that he's had instances where people had shot somebody
5 and drove to the sheriff's department and DNA isn't on it.
6 So, I kept trying to get Lanard out. I could never get him
7 out, but I told him, look, Mr. Martin told me that I need to
8 go to the police, tell them where the gun is and if the guns
9 are together -- if the gun that was used to shoot Jerome is
10 with that gun, it will give more credence [sic] to the guns
11 like. Because he was like, the gun was taken from the scene,
12 so that will be your word. But I was like, Lanard took it and
13 he'll tell you he took it. So, that he was like, if you take
14 them to the -- if you take them to it, then if both of them
15 are together and they see that this is the gun that shot him,
16 then they will believe more that this was the gun that was
17 taken from the scene. Is -- does that answer your question,
18 or do you want me to go over in more depth of anything?

19 Q: Well, I just ask the questions. That was certainly a
20 very thorough answer.

21 A: I mean, I'm trying to be as honest with the courts as I
22 can be.

23 Q: Was there ever an effort to burn the victim's truck?

24 A: Sir, I don't think it would take a rocket scientist to
25 burn something; strike a match or a lighter and it burns.

1 You know, not putting forth any effort to burn -- I mean,
2 first of all, why is somebody even driving around in a Dodge
3 Durango. Why is -- why is there any need to burn the truck.
4 You have a dead person in the house, burning the truck
5 wouldn't cover up the crime. Burning the truck wouldn't do
6 anything but whatever purpose of the burning the truck would
7 be, like, I don't know where that notion come from. Was there
8 anything burned in the truck, sir? Do you see him -- was
9 anything noted that anything was burned, I'm talking about
10 carpet or does it -- is it noted that a fire was tried to be
11 started and didn't burn?

12 Q: I'll treat those as rhetorical questions. Ultimately we
13 don't ---

14 A: No, I'm -- but I take that as no, there was no signs of
15 anything trying to be burnt, right?

16 Q: It's just a matter of courtroom procedure, I ask the
17 questions and you provide the answers.

18 A: Gotcha, big man.

19 Q: Did you talk to the police afterwards?

20 A: Yes, sir.

21 Q: Do you recall what you told them?

22 A: Sir?

23 Q: Do you recall what you told them?

24 A: Sir, I told them several things.

25 Q: What did you tell them?

1 A: I don't know what you're talking about, I talked to my
2 lawyer about that, those mainly -- well, beating around in
3 circles trying to see exactly what they knew, because I
4 already knew the situation was pretty bad. At that point, I
5 was more concerned with getting to Whetstone and let Whetstone
6 talk to them. Once they got me to the jail, I found Mr.
7 Morgan and tried to like talk to Mr. Morgan, but I talked to
8 him that day.

9 Q: Do you recall telling him, I hear a jack move went wrong,
10 that's all I hear, man?

11 A: Told Morgan that, yes, but I -- I recall telling him that,
12 and I can refer to my -- I need to get my statement. Where in
13 the last statement are you referring to, sir?

14 Q: Unfortunately, I lack pagination on this here if you'll
15 give me just a moment?

16 A: But a jack move is like a robbery or something.

17 Q: What we're talking about is on Page 23, on the 23rd page
18 that I've got here, it's towards the bottom, and you really
19 have a whole exchange. One of the deputies asked, just tell
20 us -- just tell us what happened, man. And your reply, I hear
21 a jack move went wrong; that's all I hear, man. And Officer
22 Chatfield replied, Jack did what? And you replied a jack move
23 went wrong; that's what I heard. Jack move, and then he says
24 okay. And you replied, seriously, I heard some boys came up
25 in there.

1 A: Yes, like -- let's be honest. I didn't actually live a
2 life that was, you know, like how you would, how you would
3 cooperate with the law. I didn't actually live a life like
4 that, so, I was more speaking in a way to see what they were
5 gonna say but, you know, let them still know what happened.
6 But they pretty much knew what happened because the detective
7 tells me, if you want to read something, the detective say
8 look here, I ain't gonna spend too much time. This is your
9 opportunity to tell me what happened. Okay, if you went up in
10 that house and somebody had a gun and you had to defend
11 yourself, that's fine, I need to know that. If not, I don't
12 give a shit. We'll go to court and you're a cold-blooded
13 killer. So, the detective had known, because you -- like you
14 saying, I'm not telling them I did anything. He'd already
15 known that the guy came in the house with a gun. He says it
16 to me again, now, listen, if you went up in that trailer and
17 that dude had a gun and you had to defend yourself, we need to
18 know about it. Now, could you find anywhere where I told them
19 I had a gun and I had to defend myself; the detective already
20 knew these things.

21 Q: Well, now, he's asking questions, and I've always taken
22 the position that asking questions does not assert the truth
23 but rather seeks to elicit a truth and that's very key. For
24 example, when you're talking about hearsay.

25 A: Well, for the record ---

1 Q: Why didn't you tell them that -- why didn't you just tell
2 the police, and I understand you come from a different
3 background than I do, it's probably not as different as you
4 would imagine, but still substantially different. Why didn't
5 you tell the police that you fired in self-defense if this was
6 a -- you know, they were attempting to pull a lick on you at
7 this house?

8 A: Because I'll repeat it again, in the life that I live, you
9 don't talk to the police, you talk to an attorney. So, I told
10 my attorney that and my attorney told that to the judge at my
11 bond hearing. So, I did what I thought best at that time was
12 to talk to somebody who was for my side in my favor, which I
13 believed somebody I hired to protect my best interest. A cop
14 is just trying to make an arrest. He's just trying to close
15 his case. I don't think he was trying to be my friend. So, I
16 took it at that. The last time I had a altercation with the
17 police, they beat me and my mother, like I said. So, ever
18 since, I have never really questioned the loyalty of a police
19 officer, especially when it comes to my best interest.

20 MR. JAMES: I beg a moment of the Court's indulgence.

21 I have no further questions for this witness, Your Honor.

22 THE COURT: All right. Anything further?

23 MR. ASHMORE: Nothing further, Your Honor.

24 THE COURT: All right. You may step down.

25 A: Can I put something on the record if it would please the

1 Court?

2 THE COURT: You may want to talk to your lawyer first.

3 MR. ASHMORE: I couldn't hear, I'm sorry?

4 A: I said, if I could put something on the record, if I
5 could, because I want to get my shot at my apple. I'm just
6 trying to put everything I can on the record.

7 REDIRECT EXAMINATION OF MARCUS DWAIN WRIGHT BY ASHMORE:

8 Q: I had already asked you, Marcus, if there's anything else
9 that you needed to complain about your lawyers.

10 A: My lawyers, yes, when they failed to cross examine my co-
11 defendant and any other witness on something that they said
12 prior to their statement.

13 Q: Yeah, I think we've covered that.

14 A: All right. And I told you I was prejudiced by their
15 performance because that was not a fair trial, so, I'd ask the
16 Court.

17 MR. ASHMORE: That's all we have, Your Honor.

18 THE COURT: All right. You may step down. Thank you.
19 Any other witnesses?

20 MR. ASHMORE: No, sir, Your Honor.

21 THE COURT: Anything from the state?

22 MR. JAMES: One witness from the state, Your Honor.

23 THE COURT: All right.

24 MR. JAMES: The state calls Donna Barton. We'll
25 straighten it out here in just a moment.

1 DONNA ELDER BARTON, HAVING BEEN DULY

2 SWORN TESTIFIES AS FOLLOWS:

3 CLERK: Please state and spell your full name for the
4 Court.

5 MS. BARTON: It's Donna, D-O-N-N-A, Elder, E-L-D-E-R,
6 Barton, B-A-R-T-O-N.

7 CLERK: You may be seated.

8 DIRECT EXAMINATION OF DONNA ELDER BARTON BY MR. JAMES:

9 Q: Good afternoon, Ms. Barton, thank you for so patiently
10 waiting today?

11 A: Absolutely.

12 Q: Where do you work?

13 A: I currently work for the South Carolina Legislature.

14 Q: Where did you work prior to that?

15 A: The 15th Circuit Solicitor's Office.

16 Q: And in your employment as a solicitor of the 15th Circuit
17 Solicitor's Office, did you have occasion to prosecute the
18 matter of State versus Marcus Dwain Wright?

19 A: I did.

20 Q: All right. During the course of your prosecution of that
21 case, did you receive motions pursuant to Rule 5 and Brady?

22 A: I did.

23 Q: All right. And did you reply to those motions?

24 A: Yes, I did.

25 Q: Did you provide discovery materials for the state pursuant

1 to those motions?

2 A: Yes, I did.

3 Q: Do you recall a broad outline of certain materials that
4 were provided?

5 A: They went from everything that a list of what was on the
6 search warrant returns, to the statements, to CDs of the
7 statements. We did some cell phone records of the phones,
8 that once we had them in evidence we got a search warrant for
9 those cell phones so that we could do a Cellebrite. We
10 provided those records as well. We provided -- I provided
11 actually prior to trial, a copy of the CDs with the proper
12 statements of the witnesses that we wanted to proffer and what
13 -- the state agreed and did not agree to if there was anything
14 out there that we had made a deal with basically for them to
15 proffer.

16 Q: Did you have any specific records from the pinging of the
17 suspects' cell phones that led to their capture?

18 A: The only -- no, I did not. The, from what I remember, in
19 2012, the U.S. Marshall Service had a system of pinging, so to
20 speak, that was used for apprehension purposes only. It did
21 not require any type of search warrant and it would only ping
22 to a general location. SLED had the capability of using the
23 U.S. Marshall Services Program for pinging and they did that,
24 I believe, in this case to get a general location following
25 the murder.

1 Q: But it produced no records for you to rely upon?

2 A: No, it did not. And again, it was just -- my
3 understanding of how that program worked, it was for
4 apprehension purposes only, and it would not have -- the
5 information contained in it would not have gone back to the
6 night of the murder because it was a ping is like a live act.
7 It was not a tracer.

8 Q: So, to put it in sort of in practical terms, maybe you
9 punch in a number and it says it's somewhere over here?

10 A: It's active right here, right now.

11 Q: Okay.

12 A: Yes. It's kind of like Find My Phone.

13 Q: Were there any materials that you did not provide to the
14 defense?

15 A: No.

16 Q: You didn't find anything at any point and go, oh, no, we
17 forgot to give this to them?

18 A: No. Actually, prior to trial as well, Mr. Martin had made
19 a couple of motions, I believe, pretrial, and I responded in a
20 letter to him, I believe dated May of 2013, regarding those
21 motions and what I had previously supplied. In going through,
22 I believe I supplied, out of an abundance of caution,
23 additional copies of the things that he had requested in his
24 pretrial motions.

25 MR. JAMES: If I may approach the witness, Your Honor?

1 THE COURT: You may.

2 MR. JAMES: If was can Premark this for identification.

3 BY MR. JAMES:

4 Q: All right. I have marked for identification, State's
5 Exhibit Number 3; do you recognize this document?

6 A: Yes.

7 Q: All right. What is this document?

8 A: That is a letter that I would've sent Mr. Martin on May
9 29th, 2013, and actually to Mr. Brown as well regarding some
10 -- regarding our proffers, regarding some statements and some
11 cell phone evidence. There was a track phone that could not
12 be downloaded, so, we had done a manual. I also indicate that
13 all the phones were in evidence, if they needed to verify any
14 of those logs themselves, that they were available. That I
15 also provided additional copies of interviews, even though
16 that I had previously provided them. And we talked about some
17 of the charges that we were gonna try together, I believe.
18 I also identified a federal inmate that had reached out to us,
19 as they commonly do, and ask for -- indicated that they knew
20 some -- had some information about this case. I gave that and
21 the statement that we took from him. I didn't put any weight
22 to what he had to offer.

23 MR. JAMES: The state would respectfully move to
24 introduce this letter dated May 29th, 2013 by Solicitor Elder
25 into evidence as State's Number 3?

1 MR. ASHOMORE: No objection, Your Honor.

2 THE COURT: Number 3 is in evidence without objection.

3 STATE'S EXHIBIT NUMBER 3

4 ADMITTED INTO EVIDENCE

5 BY MR. JAMES:

6 Q: Did you have any subsequent conversations about insuring
7 that discovery was complete?

8 A: I feel certain I would've -- going up to trial, we had a
9 pretty serious deputy solicitor that wanted to prevent any
10 type of continuances, so, we would always take extraordinary
11 measures to make sure all the discovery was in, in -- had been
12 provided. I also checked the RMS System, which is -- at the
13 time; I don't know if it still is -- but at the time, it was
14 the police department's internal system, to see if anything or
15 any report or anything else had been listed in there that we
16 may not have previously provided and there was none.

17 Q: At what point in time, did you provide a witness list to
18 the defense?

19 A: I, I typically would not have provided a witness list to
20 the defense. At the start of the trial, I would certainly
21 give the list to the Presiding Trial Judge and he would read
22 that list out in front of the jury panel to see if there was
23 any type of conflict.

24 Q: Do you recall if there was a warrant outstanding for Mr.
25 Wright's arrest at the time of the storming of the hotel room?

1 A: I can't -- I know that there was -- I feel certain that
2 there was an outstanding warrant against Mr. Powell. I'm
3 almost positive there was an outstanding warrant against Mr.
4 Wright, although I didn't review that. There were warrants in
5 preparation for today. I think the officer, one of the
6 officers, Detective Chatfield, had indicated he was not aware
7 of the warrant. But I think that that warrant had actually
8 been secured.

9 MR. JAMES: I beg a moment of the Court's indulgence.
10 No further questions for this witness.

11 THE COURT: All right. Yes, sir?

12 MR. ASHMORE: If it you please, Your Honor. May I
13 approach the witness?

14 THE COURT: Yes.

15 CROSS EXAMINATION OF DONNA ELDER BARTON BY MR. ASHMORE:

16 Q: I see in your letter to Mr. Martin, that you had copies of
17 letters from Lanard Powell?

18 A: I did.

19 Q: Do you recognize the one that's been introduced today,
20 which is State's Exhibit Number 2?

21 A: I do not. When you were actually -- when you were
22 inquiring, I looked through the letters that I had received or
23 asked the solicitor's office to send me a file, so I could
24 review it in preparation for today. This letter was not in
25 there and it has -- it actually, if you look at the letters

1 Mr. Powell did write, it's -- it's really completely different
2 handwriting as Mr. Brown was talking about. But, no, I have
3 not seen this letter.

4 Q: Do you have a February 14th, 2013 letter from Mr. Powell?

5 A: No, sir.

6 Q: How many letters do you have from him?

7 A: I would say there's probably -- some of them are from Mr.
8 Wright back to Mr. Powell. But I'd say, in all, probably, I
9 don't know, 10 to 15. I haven't counted them.

10 Q: Okay. All right.

11 Can I have just one moment, Your Honor?

12 THE COURT: Sure.

13 Q: Did you -- did you prosecute Ms. Jackson, one of the
14 witnesses?

15 MR. JAMES: Objection, relevance.

16 THE COURT: What's the relevance?

17 MR. ASHMORE: Maybe to find out whether or not it was
18 disclosed. That's the allegation on my client, that it's --
19 there were charges that were not made known to the jury.

20 THE COURT: Overruled. Go ahead.

21 BY MR. ASHMORE:

22 Q: Did you prosecute Ms. Jackson?

23 A: Your Honor, can we ---

24 MR. ASHMORE: May I approach the witness?

25 THE COURT: You may.

1 MR. ASHMORE: Let me give you some writings to refresh
2 your recollection, if I may. And -- and let me just hand all
3 those to you.

4 MR. JAMES: May I also approach the witness, Your Honor,
5 to see the documents handed up?

6 THE COURT: You may.

7 BY MR. ASHMORE:

8 Q: So, if I may, you heard my client testify. It's his
9 position that Ms. Jackson testified and it was not revealed
10 that she had prior criminal charges?

11 A: It was not revealed that she had a prior conviction, I
12 would assume.

13 Q: Same. So, do you recall whether or not it was disclosed?

14 A: I don't recall. I, I -- these charges that you handed up
15 to me that were nolle prossed dealing with misconduct in
16 office. Looking at them, I know that she was not -- I think
17 that these were eventually expunged from her record.

18 Q: So, as we talk years later and without the aid of the
19 file, it's your best recollection that at the time she
20 testified, she did not have any convictions?

21 A: That's correct.

22 MR. ASHMORE: if I may briefly follow up with my client,
23 I think we might be finished, Your Honor.

24 THE COURT: Sure.

25 BY MR. ASHMORE:

1 Q: And if the records reflect that she pled guilty to a
2 forgery account in 2011, that should've come out at trial; is
3 that correct?

4 A: If, if -- what I would've done at trial is when I prepare
5 for trial, I get a -- run a certified criminal record for
6 witnesses and I present that to the Court. So, if I did not
7 present it to the Court, then it would've not -- it was not
8 appearing on her criminal convictions.

9 Q: And as we said again, it's been years ago and you've
10 handled a lot of cases, do you recall whether or not you might
11 have prosecuted Ms. Jackson?

12 A: I recall when you showed this to me and what it was about,
13 it was in reference to a Family Court proceeding with Judge
14 Kinon, I believe.

15 Q: Okay. But did you handle that case?

16 A: I don't recall that at all.

17 Q: Okay.

18 A: I'm sorry.

19 MR. ASHMORE: Your Honor, that's all we have.

20 BY THE COURT:

21 THE COURT: All right. Thank you.

22 Any other witnesses from the state?

23 MR. JAMES: Nothing further from the state, Your Honor.

24 THE COURT: Anything you need to put on the record before
25 we conclude the hearing?

1 MR. JAMES: Given that we have previously asked for, in
2 chambers, the opportunity for both parties to submit proposed
3 orders, giving that a completeness of the record before the
4 Court and I have the opportunity to set forth the law and
5 point out the facts in that record, I believe that would be
6 the adequate opportunity to follow up.

7 THE COURT: All right. The applicant, anything you'd
8 like to put on the record today?

9 MR. ASHMORE: Your Honor, again, thank you for your time
10 today and assistance in scheduling this matter. It was a long
11 time coming and we appreciate your time. As we had asked, if
12 it meets with your permission, if I could have 30 days to
13 submit a proposed order after I receive the transcript of
14 today's proceeding, that would be greatly appreciated.

15 THE COURT: That will be fine. If you would both do
16 that, that would be appreciative to the Court.

17 MR. JAMES: Absolutely.

18 THE COURT: Also, I have the Clerk of Court for Horry
19 County back here. If you would, review the exhibits and we're
20 gonna give those to her and entrust those with her, and she's
21 going to take them back with her and have them filed. So,
22 check them out and make sure we have them all. And Morgan
23 Martin has one that he took and he's going to bring it to you
24 today. So, check them out real quick and let's make sure
25 they're in order.

1 MR. JAMES: Thank you very much, Your Honor.

2 THE COURT: Thank you.

3 MR. JAMES: Obviously, may Ms. Barton be excused?

4 THE COURT: Yes.

5 ADJOURNED - 4:23 P.M.

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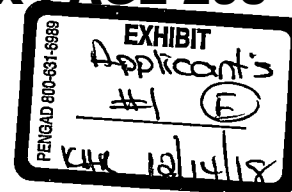
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STATE V MARCUS WRIGHT
KELLEY PINNIX STATEMENT

DET: YOU REALLY SHOULD HAVE MISS, BUT THAT'S OK, I'M NOT
MAD AT YOU

KP: I'M SCARED

DET: I UNDERSTAND YOU'RE SCARED

KP: SOMEBODY KILLED SOMEBODY IN FRONT OF ME, ITS KINDA
SCARY, I'M SCARED FOR MY ON SAFETY

DET: I UNDERSTAND ALRIGHT ITS MAY 1ST AT 2:30 A.M.

KP: IS HE DEAD

DET: YEAH

KP: (INAUDIBLE)

DET: THAT'S WHAT I HEAR

KP: (INAUDIBLE) NEVER PULLED OUT A GUN

DET: OK HOLD ON WHAT'S YOUR NAME, KELLEY

KP: KELLEY PINNIX

DET: SPELL THE LAST NAME

KP: P-I-N-N-I-X

DET: YOU GOT A MIDDLE NAME

KP: RACHEL

DET: WHAT'S YOUR ADDRESS

KP: I JUST MOVED DOWN HERE

DET: FROM WHERE

KP: FLORIDA

DET: DO YOU KNOW WHAT THE ADDRESS IS ON [REDACTED]

KP: [REDACTED]

DET: YOU HAVE A PHONE NUMBER WE CAN GET YOU AT

KP: [REDACTED] THAT'S MY STEPFATHER'S PHONE BUT I ANSWER IT

DET: WHAT'S HIS NAME

KP: KEVIN

DET: KEVIN WHAT

KP: LAIRD, L-A-I-R-D

DET: OK SO WHAT PART OF FLORIDA DID YOU COME FROM

KP: MEMPHIS

DET: HUH

KP: MIAMI, I'M SORRY

DET: SO WERE YOU IN MEMPHIS TENNESSEE BEFORE YOU WERE IN FLORIDA

KP: HUH

DET: WERE YOU IN MEMPHIS BEFORE YOU WERE IN FLORIDA, YOU SAID MEMPHIS

KP: NO I WAS IN NORTH CAROLINA

DET: WHAT PART OF NORTH CAROLINA

KP: (INAUDIBLE)

DET: ALRIGHT I UNDERSTAND YOU WERE OVER AT JJ'S HOUSE
TONIGHT

KP: JJ

DET: UM ROY'S HOUSE, ALRIGHT HOW LONG YOU KNOWN ROY

KP: SINCE I MOVED HERE ABOUT A MONTH AGO

DET: HOW'D YOU MEET HIM

KP: HE KNOWS MY MOM AND DAD

DET: OK SO YOU'RE OVER THERE AT ROY'S HOUSE TELL ME WHAT
HAPPENED TONIGHT

KP: I WAS JUST DOWN THERE HANGING OUT WITH HIM, HE'S
TRYING TO MAKE A RELATIONSHIP

DET: WITH YOU

KP: YEAH

DET: HUM, OK

KP: AND THEN SOMEONE CAME DOWN THERE AND CAME INTO THE
HOUSE AND THEY SAID THAT HE PULLED A GUN OUT AND HE
NEVER DID

DET: OK SLOW DOWN A LITTLE BIT, WHERE ARE YOU INSIDE THE
HOUSE

KP: I WAS SITTING IN THE LIVINGROOM (INAUDIBLE) TOOK HIS
LAST BREATH AND I CAN'T GET THE PICTURE OUT OF MY
HEAD

DET: OK, AND WHO'S THE PERSON THAT SHOT HIM

KP: I HAVE NO IDEA WHO HE IS (INAUDIBLE)

DET: OK SO YOU'RE SITTING IN THE LIVING ROOM AND THEN

KP: WE WERE ALL JUST TALKING

DET: OK

KP: AND THEN SOMEONE KNOCKED ON THE DOOR, THEY OPENED
THE DOOR AND THEY SAID HE PULLED OUT A GUN

DET: OK NOT THAT THEY SAID I WANT TO KNOW WHAT YOU SAW

KP: I NEVER SAW A GUN, I KNOW HE HAD A BROKE FINGER
BECAUSE (INAUDIBLE)

DET: THE PERSON COMES TO THE DOOR AND KNOCKS ON THE DOOR

KP: THEY OPEN THE DOOR

DET: THEY OPEN THE DOOR, WHO OPENS THE DOOR

KP: BIG MONEY

DET: BIG MONEY

KP: THAT'S WHAT I MET HIM AS, THAT'S WHAT I KNOW HIM AS

DET: WHAT'S HE LOOK LIKE

KP: TALL, BLACK MALE, HE'S THE SHOOTER

DET: WHERE'S BIG MONEY FROM, ANY IDEA

KP: COLUMBIA

DET: HOW DO YOU KNOW THAT

KP: (INAUDIBLE)

DET: WHAT ARE THEY SAYING

KP: (INAUDIBLE)(PHONE RINGING CAN'T UNDERSTAND)

DET: YEAH, WE'LL LET IT SHUT OFF FOR A MINUTE, THERE WE GO,
ALRIGHT, SO HE'S TALKING ABOUT BEING IN COLUMBIA, BIG

MONEY, DID ANY OTHER NAME BESIDES BIG MONEY

KP: BIG MONEY AND COTRELL (INAUDIBLE)

DET: COTRELL

KP: YEAH, (INAUDIBLE)

DET: OK COTRELL IS

KP: HE'S ROY'S NEPHEW OR SOMETHING

DET: THAT'S THE GUY THAT GOT SHOT

KP: (INAUDIBLE)

DET: OK BUT YOU KNOW HIM AS COTRELL

KP: I KNOW HIM AS COTRELL (INAUDIBLE) BUT HE'S NOT THE SHOOTER

DET: OK THAT'S FINE

KP: HE WASN'T HERE

DET: BUT HE WAS INSIDE THE HOUSE

KP: COTRELL WASN'T HERE WHEN IT HAPPENED

DET: OH WELL THAT'S WHAT I NEED TO KNOW WHO WAS INSIDE THE HOUSE, TRY TO STAY WITH ME HERE

KP: JUST ME, ROY AND BIG MONEY

DET: BIG MONEY, OK, WELL HOW, NOW THE DUDE THAT GOT SHOT JJ

KP: (INAUDIBLE)

DET: YEAH

KP: HE KNOCKED ON THE DOOR

DET: OK

KP: ROY LET HIM IN, I BELIEVE

DET: OK

KP: I HAD BEEN DRINKING (INAUDIBLE)

DET: THAT'S FINE, YOU'RE ALLOWED, YOU'RE OLD ENOUGH

KP: I HAD BEEN DRINKING, AND ALL OF A SUDDEN IT'S LIKE IT HAPPENED SO FAST ALL I HEARD WAS HE'S GOT A GUN AND ABOUT TEN SHOTS

DET: ALRIGHT WHO SAID HE'S GOT A GUN

KP: BIG MONEY SAID HE HAD A GUN AND IT WAS ABOUT TEN SHOTS AND THE GUY LOOKED AT ME AND SAID HELP AND TOOK, I GUESS HE TOOK HIS LAST BREATH ROY SAID WHAT DO I DO I SAID CALL 911

DET: WHERE DID BIG MONEY GO AFTER THE SHOOTING

KP: THEY ALL TOOK OFF

DET: THEY ALL BEING WHO

KP: BIG MONEY CALLED COTRELL (INAUDIBLE)

DET: WELL WHERE WAS COTRELL

KP: HE HAD GONE TO THE STORE

DET: OK SO WHAT WAS HE DRIVING

KP: A BURGUNDY, NO HE WAS DRIVING HIS WIFE'S CAR, A WHITE CAR I'M NOT SURE WHAT MODEL, A WHITE CAR

DET: OK WHO WAS DRIVING THE BLACK ESCALADE

KP: BIG MONEY

DET: OK THAT'S HIS CAR SO HE GOT IN THE ESCALADE AND TOOK
OFF YOU THINK

KP: YEAH HE WAS, RIGHT AFTER THE SHOOTING HE ASKED ME TO
PICK UP THE CASINGS AND I WOULDN'T

DET: OK

KP: COTRELL RAN IN THERE AND PICKED UP THE CASINGS

DET: OK

KP: BUT HE SHOT HIM ABOUT TEN TIMES I BELIEVE

DET: OK

KP: RIGHT IN FRONT OF ME (INAUDIBLE)

DET: OK

KP: AND I CAN'T GET THE PICTURE OUT OF MY HEAD

DET: ALRIGHT SO BIG MONEY

KP: BIG MONEY IS THE ONE THAT KILLED THAT GUY

DET: ALRIGHT DOES THE NAME BRA MEAN ANYTHING TO YOU, DO
YOU EVER HEAR HIM CALLED BRA TOO

KP: BRA

DET: BRAGH, BRO OR BRA OR SOMETHING LIKE THAT

KP: BRA, YEAH I'VE HEARD HIM CALLED THAT

DET: OK SO BIG MONEY'S ALSO BRO

KP: (INAUDIBLE) I'M SCARED FOR MY LIFE (INAUDIBLE) IF HE'LL
KILL A MAN IN FRONT OF ME HE'LL KILL ME

DET: OK WELL THAT'S WHY WE GOT TO GET HIM AND PUT HIM IN
JAIL SO HE CAN'T HURT NOBODY RIGHT

KP: HE'S PROBABLY GONE BACK TO COLUMBIA

DET: OK WELL WE GOT PEOPLE LOOKING FOR HIM

KP: HE'S GOT A BLACK TRUCK WITH SOME BIG RIMS ON IT AND A BRAND NEW LIKE 2000, HE WASN'T IN A TRUCK (INAUDIBLE) HE WAS IN A BMW BRAND NEW

DET: WHEN WAS THIS TODAY

KP: YEAH WHEN HE SHOT THE MAN

DET: WELL WHO WAS DRIVING THE TRUCK, YOU SAID THERE WAS A TRUCK

KP: THERE WASN'T A TRUCK, HE OWNS A TRUCK BUT HE WAS DRIVING A BMW BRAND NEW LIKE 2011

DET: HOW DO YOU KNOW THAT, DID YOU SEE IT

KP: YEAH, ITS ALL BLACK, RIMS, WINDOWS TINTED

DET: OK NOW WHERE WAS THE BMW PARKED

KP: RIGHT BESIDE THE PORCH, RIGHT AFTER HE SHOT HIM I GUESS HE REALIZED THERE WAS NO GUN, HE HAD A BROKE FINGER DIDN'T HE

DET: I HAVE NO IDEA

KP: HE HAD A BROKE FINGER

DET: OK, HE BEING THE DEAD GUY, OK

KP: IF IT CAN HAPPEN IN FRONT OF ME (INAUDIBLE)

DET: OK SO AFTER THE SHOOTING YOU SAW

KP: I RAN OUT

DET: OK YOU RUN OUT AND YOU SAW THE BMW PARKED BACKED UP NEXT TO THE PORCH

KP: YEAH THE CAR WAS PARKED BACKED IN RIGHT THERE, HE
CALLED COTRELL AS HE WAS RUNNING OUT THE HOUSE

DET: ON THE PHONE

KP: ON THE PHONE, COTRELL JUMPED IN THE CAR TOOK OFF TOO

DET: SO COTRELL GOT HERE BY THAT TIME

KP: YEAH

DET: AND THAT WAS THE WHITE CAR

KP: YEAH

DET: WITH HIS GIRLFRIEND

KP: HIS WIFE

DET: WITH HIS WIFE, OK ALRIGHT STAY RIGHT HERE

(END OF FIRST INTERVIEW)

DET: (INAUDIBLE) PACK OF CIGARETTES (INAUDIBLE)

KP: SOMEBODY'S GONNA DIE SOME WAY

DET: AS HOMICIDE DETECTIVE I'M THINKING THERE'S BETTER
WAYS TO GO THAN WHAT YOU'RE TALKING ABOUT, SO LET'S
UH, ALRIGHT FIRST OF ALL I APPRECIATE YOU COMING IN, FOR
THE RECORD TODAY IS APRIL, MAY 2, 2012 THAT'S WHAT
HAPPENS WHEN YOU'RE UP FOR 48 HOURS, ITS 7:15 P.M. WE'RE
HERE AT THE HORRY COUNTY POLICE DEPARTMENT
INTERVIEW ROOM SAID DATE I'M DETECTIVE NEIL
FREBROWITZ AND DETECTIVE WILLIAMS AND WE'RE HERE
WITH, I KNOW YOUR NAME, BUT FOR THE TAPE WHAT'S YOUR
NAME

KP: KELLY PINNIX

DET: KELLY, MIDDLE NAME

KP: MICHELLE

DET: M-I-C-H-E

KP: L-L-E

DET: SPELL YOUR LAST NAME

KP: P-I-N-N-I-X

DET: WHAT'S YOUR DATE OF BIRTH KELLY

KP: [REDACTED]

DET: THAT MAKES YOU HOW OLD NOW

KP: [REDACTED]

DET: I DON'T KNOW WHAT YOU TOLD ME, THAT'S WHY WE'RE
HERE, WE'RE TRYING TO FIGURE STUFF OUT CAUSE

DET: AND FOR THE RECORD THE CASE NUMBER IS GOING TO BE
12041053

DET: 41053

KP: WHAT'S THAT MEAN

DET: THAT'S OUR CASE NUMBER SO WE KNOW, 41053 ALRIGHT WE
DO THIS WITH EVERYBODY, (INAUDIBLE)

DET: KELLY YOU GOT A PHONE

KP: UM ITS MY STEP DAD'S PHONE ITS [REDACTED]

DET: HOW FAR YOU'D GO IN SCHOOL

KP: 8TH GRADE

DET: OK YOU GONNA TRY AND GO BACK AND GET YOUR GED

KP: YEAH

DET: GOOD FOR YOU, ITS IMPORTANT, WHERE DID YOU GO TO SCHOOL

KP: I WENT TO SCHOOL IN NORTH CAROLINA

DET: OK, ARE YOU UNDER THE INFLUENCE OF ANY KIND OF DRUGS OR ALCOHOL RIGHT NOW, I KNOW THAT NIGHT YOU WERE DRINKING A LITTLE BIT

KP: OH I WAS DRINKING A LOT

DET: OK, NORTH CAROLINA

KP: COMPLETELY SOBER

DET: COOL, THAT'S GOOD, ALRIGHT WE JUST (INAUDIBLE) ITS PART OF OUR POLICY AND IT SAYS YOU HAVE THE RIGHT TO REMAIN SILENT, ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW, YOU HAVE THE RIGHT TO TALK WITH A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU'RE BEING QUESTIONED, IF YOU CANNOT AFFORD TO HIRE A LAWYER ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU DESIRE IF YOU MAKE A STATEMENT OR ANSWER ANY QUESTIONS YOU HAVE THE RIGHT TO STOP AT ANY TIME DO YOU UNDERSTAND THESE RIGHTS AS WE HAVE READ THEM TO YOU

KP: YEAH, I ALREADY HAVE A LAWYER BUT I DON'T THINK I NEED HIM

DET: OK THEN PRINT YOUR NAME AND SIGN IT RIGHT THERE

KP: PRINT AND SIGN IT

DET: YEAH, PLEASE, YOU GOT NICE HANDWRITING

KP: THANKS

DET: I'M ALWAYS JEALOUS OF PEOPLE WITH GOOD HANDWRITING, ALRIGHT NOW WE'RE HERE BECAUSE ON APRIL 30TH (INAUDIBLE)

KP: WELL YEAH CAUSE HE GOT KILLED ABOUT 11:20

DET: 11 WHAT

KP: ABOUT 11:20 SOMETHING LIKE THAT

DET: OK YOU SAID HE GOT KILLED, OBVIOUSLY WE KNOW YOU WERE THERE AGAIN START FROM THE VERY BEGINNING JUST IN YOUR OWN WORDS TELL ME WHAT HAPPENED THAT NIGHT

KP: START FROM THE DAY

DET: YEAH IF YOU NEED TO GO BACK AS FAR AS YOU CAN TO KINDA PUT THE PIECES OF THE PUZZLE IN PERSPECTIVE

KP: I'D BEEN DOWN THERE WITH, I CALL HIM WILLIE BUT ITS ROY

DET: CALL WHAT

KP: I CALL HIM WILLIE BUT ITS ROY AND COTRELL, CAPONE WHATEVER THEY CALL HIM, THEY CALL HIM CAPONE HE WAS THERE HIS WIFE I CALL HER Q, AND BIG MONEY THEY HAD BEEN THERE ALL DAY AND ME AND WILLIE WE'D SAT ON THE PORCH MOST OF THE DAY DRINKING, WELL IT WAS ABOUT 11:20 AND ALL OF SUDDEN NOW THAT I SIT BACK AND I THINK ABOUT IT TO ME IT SEEMS PRETTY MEDITATED AND THE REASON I SAY THAT THERE WAS A KNOCK ON THE DOOR, WHICH WAS JERROD GREEN, JJ, THE GUY THAT GOT KILLED

DET: DID YOU KNOW HIS NAME THAT NIGHT

KP: NO, MY MOM SAW IT ON THE NEWS

DET: YOU SAW IT ON THE NEWS, OK

KP: WELL NOW THAT I'M REMEMBERING BACK, THE ONLY WAY TO LOCK THE FRONT DOOR IS TO LOCK IT FROM THE OUTSIDE WELL WILLIE ANSWERS THE DOOR AND HE STAYS OUTSIDE AND HE LOCKS ME IN THERE NO LONGER THAN 30 SECONDS AFTER THIS GUY WAS IN THE HOUSE HE HADN'T EVEN SAID A WORD, BIG MONEY WAS SITTING IN THE KITCHEN JJ WAS STANDING IN THE LIVINGROOM AND ALL OF A SUDDEN YOU

HEAR BIG MONEY SAY GUN AND THEN ALL OF A SUDDEN JUST BAM, BAM, BAM, AND HIS BACK, THE GUY THAT GOT KILLED, HIS BACK WAS TO HIM WHEN HE SHOT HIM THE FIRST TIME AND IT HIT HIM IN THE ARM AND HE TURNED AROUND AND HE JUST KEPT SHOOTING AND SHOOTING

DET: OK DID JJ COME IN THROUGH THAT SIDE DOOR

KP: THE FRONT DOOR

DET: THE FRONT DOOR, OK THAT WAS UNLOCKED

KP: YEAH WELL WILLIE LET HIM IN, THEN WILLIE LOCKED THE DOOR

DET: SO YOU COULDN'T GET OUT

KP: THE ONLY WAY I GOT OUT WAS AFTER IT WAS ALL SAID AND DONE I HAD TO GO OUT THE BACK DOOR THAT WAS THE ONLY WAY I COULD GET OUT I WAS LOCKED IN THE HOUSE THAT'S WHY I THINK IT WAS PREMEDITATED

DET: WILLIE SET THIS UP

KP: I DON'T KNOW IF IT WAS WILLIE, IF IT WAS CAPONE, I THINK IT MIGHT HAVE BEEN CAPONE AND BIG MONEY WORKING TOGETHER BECAUSE CAPONE LEFT, THE GUY CAME, THE JJ GUY CAME, BIG MONEY SHOT HIM (INAUDIBLE)

DET: OK AND THEN WHAT HAPPENED

KP: THEY ALL JUST TOOK OFF AND THEN WILLIE LOOKS AT ME WHAT DO I DO AND THE FIRST THING I TOLD HIM CALL 911 I SAID YOU GOT A DEAD GUY IN YOUR HOUSE AND THE COP CAME AND THE FIRST COP I TALKED TO HE SAID WHAT DOORS UNLOCKED CAUSE HE COULDN'T GET IN THE FRONT DOOR I SAID THE BACK DOOR AND I WAS IN SHOCK, I WAS IN PANIC, I WAS DRUNK, I WENT HOME (INAUDIBLE)

DET: OK, THAT'S COOL NOW DID JJ SAY ANYTHING WHEN HE CAME INTO THE HOUSE

KP: HE DIDN'T EVEN GET A WORD, NOT EVEN ONE WORD OUT, HE WASN'T IN THERE THAT LONG TO EVEN SPEAK A WORD

DET: WHERE WERE YOU SITTING (INAUDIBLE)

KP: I WAS SITTING ON THE ARM OF THE COUCH

DET: OK

KP: AND I SAW THE GUN WELL AS SOON AS THE GUY SAID GUN I JUMPED THIS WAY TOWARDS THE DOOR

DET: WOULD YOU RECOGNIZE THE GUY WITH THE GUN IF YOU SAW HIM

KP: YEAH I'D RECOGNIZE CAPONE

DET: I'M SHOWING YOU A PHOTO ARRAY OF SIX INDIVIDUAL LIKELY LIKE (INAUDIBLE)

KP: THEY ALL LOOK ALIKE, ITS EITHER 2 OR 4

DET: YOU WILL BE ASKED TO LOOK AT SEVERAL PHOTOGRAPHS THE FACT THE PHOTOGRAPHS ARE SHOWN TO YOU SHOULD NOT INFLUENCE YOUR JUDGMENT YOU SHOULD NOT CONCLUDE OR GUESS THAT THE PHOTOGRAPHS CONTAIN A PICTURE OF A PERSON WHO COMMITTED THE CRIME YOU ARE NOT OBLIGED TO IDENTIFY ANYONE IT IS JUST AS IMPORTANT TO FREE THIS PERSON FROM SUSPICION AS TO IDENTIFY GUILTY PARTIES

KP: HE DON'T HAVE HAIR (INAUDIBLE) I DON'T BELIEVE, YES HE DOES HE'S BALD AND GOT (INAUDIBLE) 4

DET: OK AND INITIAL

KP: BUT I DON'T KNOW ITS BETWEEN THEM TWO, I'M TRYING TO BETWEEN 2 AND 4

DET: OK WELL THEN JUST WRITE BETWEEN TWO AND FOUR, CAUSE WE'RE NOT GONNA (INAUDIBLE) WHAT YOU WANT TO DO IS TAKE THE PHOTO AND JUST WRITE BETWEEN 2 AND 4

(INAUDIBLE) FIGURE EIGHT (INAUDIBLE)

KP: AND THAT'S BIG MONEY

DET: WHO'S BIG MONEY

KP: THE SHOOTER

DET: WHICH ONE

KP: (INAUDIBLE) ONE OF THEM TWO IS BIG MONEY FOR SURE HE HAS A CALMNESS IN HIS EYES

DET: DO WHAT

KP: I RECOGNIZE THE CALMNESS IN HIS EYES, HE WAS CALM THE WHOLE TIME HE SHOT THE GUY

DET: OK ALRIGHT SO LET ME START FOR THE BEGINNING, JJ COMES INTO THE PLACE HE DON'T HAVE TIME TO SAY ANYTHING AND BIG MONEY JUST YELLS GUN AND STARTS SHOOTING AT HIM

KP: YEAH

DET: THE DISTANCE BETWEEN WHERE HE WAS STANDING AND WHERE YOU WERE STANDING, WHERE JJ WAS (INAUDIBLE)

KP: BIG MONEY AND JJ ABOUT 7 FEET AT THE MOST

DET: OK WHERE WERE YOU STANDING OR SITTING AT

KP: WELL WHEN THE GUN FIRST CAME OUT I WAS SITTING BETWEEN THE KITCHEN AND LIVINGROOM ON THE ARM OF THE COUCH, AND WHEN I HEARD GUN AND I TURNED MY HEAD AND I LOOKED AT THE SHOOTER BIG MONEY I JUMPED THAT WAY TOWARDS THE DOOR

DET: SURE

KP: LIKE I LEANED AGAINST THE DOOR AND IF DIDN'T SWING OPEN IT WAS LOCKED I COULDN'T GET OUT OF IT AFTER EVERYTHING WAS ALL SAID AND DONE

DET: SURE HAD YOU SEEN JJ BEFORE

KP: I'D NEVER SEEN HIM BEFORE BUT MY UNCLE SAID HE HAD SEEN HIM BEFORE

DET: I NEED TO KNOW WHAT YOU SAW

KP: I NEVER SAW HIM

DET: AFTER

KP: BUT I FOUND OUT HE'S TWO OF OUR FRIENDS' COUSIN

DET: OK AFTER THE SHOOTING, AND I'M SURE IT'S CHAOTIC BUT WHAT HAPPENS IN THAT, WALK ME THROUGH EXACTLY WHAT HAPPENS IN THAT TRAILER WHEN THE SHOOTING STOPS

KP: OK SO NOW THE ONLY PEOPLE LEFT IN THERE ARE BIG MONEY AND ME, AND I LOOKED AT BIG MONEY AND I SAID WHAT THE FUCK YOU JUST KILLED SOMEBODY AND I GO OUT THE BACK DOOR AND ABOUT THAT TIME THAT'S WHEN CAPONE WAS PULLING UP AND HE UNLOCKED THE FRONT DOOR BIG MONEY RAN OUT THE FRONT JUMPED IN HIS CAR TOOK OFF CAPONE WENT IN THE HOUSE I DON'T KNOW WHAT HE DONE, AND HE CAME OUT JUMPED IN THE CAR AND LEFT

DET: WHICH CAR DID HE JUMP IN

KP: THE WHITE ONE

DET: OK

KP: AND BIG MONEY LEFT IN THE BLACK BMW

DET: OK AND YOU WERE STANDING OUTSIDE WHEN THAT WAS GOING ON, YOU SAW THAT HAPPEN

KP: YEAH I SAW THEM LEAVE

DET: YOU SAID Q WAS THERE

KP: YEAH HIS WIFE, CAPONE'S WIFE

DET: NOW SHE WAS IN THAT TRAILER AT THE TIME ALL THIS WAS GOING ON TOO

KP: SHE DIDN'T GO IN AFTER THE SHOOTING, SHE STAYED IN THE CAR, CAPONE WENT IN

DET: OK I'M SORRY YOU GOT ME A LITTLE CONFUSED I ASKED YOU WHO WAS IN THE TRAILER AND YOU TOLD ME WILLIE OR ROY YOU, COTRELL

KP: WELL THAT HAD BEEN THE PEOPLE FROM THAT WAS IN THERE ALL DAY BUT AT THE TIME OF THE SHOOTING IT WAS JUST ME WILLIE AND THE GUY THAT GOT KILLED BUT WILLIE AFTER HE OPENED THE DOOR HE STAYED OUTSIDE

DET: OK NOW WE GOT ITS JUST YOU, BIG MONEY AND WILLIE IN THE HOUSE JJ COME INTO THE DOOR, SHOTS WERE FIRED WHAT DO YOU DO THEN

KP: I SCREAMED AT THE GUY WHAT THE FUCK YOU JUST KILLED SOMEBODY AND I HAVE TO STEP OVER THIS MAN AND I'M PANICKING JUST GO OUT THE BACK DOOR AND THEN THAT'S WHEN CAPONE PULLS UP

DET: WHAT DOES HE PULL UP IN

KP: THE WHITE CAR WITH HIS WIFE AND LIKE HE KNEW IT HAD HAPPENED OR SOMETHING

DET: HOW DO YOU KNOW THAT

KP: CAUSE HE I DON'T KNOW, ITS JUST, HE'S ALL PANICKY WHEN HE GETS THERE AND HE UNLOCKS THE DOOR BIG MONEY RUNS OUT JUMPS IN THE CAR

DET: DID THEY SAY ANYTHING TO EACH OTHER

KP: NUH-UH CAPONE GOES IN, I THINK HE GRABBED A GUN

DET: WHO

KP: CAPONE I THINK CAPONE GRABBED A GUN OUT OF THE HOUSE

AND HE JUMPS IN HIS CAR WITH THE WIFE IN THE WHITE CAR
AND THEY TOOK OFF

DET: OK YOU SAID SOMETHING YOU SAW HIM GET THE GUN OUT OF
THE HOUSE

KP: YEAH HE GRABBED A GUN AND TOOK IT OUT OF THE HOUSE

DET: OK NOW SO THAT MEANS YOU HAD TO BE IN THE HOUSE

KP: NO I WAS OUTSIDE

DET: WELL HOW DO YOU KNOW HE GRABBED A GUN THAT WAS IN
THE HOUSE

KP: CAUSE HE HAD IT IN HIS HAND WALKING OUT THE HOUSE

DET: OK SO YOU SAW HIM, YOU KNOW BE CAREFUL WHAT YOU SAY
HERE BECAUSE THE WORDS HAVE A VERY SPECIFIC

KP: HE CAME WALKING OUT THE HOUSE WITH THE GUN IN HIS
HAND

DET: OK AND HE DIDN'T HAVE A GUN (INAUDIBLE) BEFORE

KP: NO

DET: WHEN HE WENT IN THERE

KP: NO ANYTIME THAT I'VE BEEN DOWN THERE I'VE KNOCKED ON
THE DOOR AND HE'LL ANSWER THE DOOR WITH A GUN

DET: OK THAT'S CAPONE

KP: YEAH

DET: DID YOU HEAR ANY SHOTS WHEN YOU WERE STANDING
OUTSIDE WHEN CAPONE WAS STILL IN THE HOUSE

KP: NUH-UH

DET: DIDN'T HEAR ANY SHOTS

KP: NO BUT I WAS TOLD THAT HE WAS SHOT WITH TWO GUNS

DET: WHO TOLD YOU THAT

KP: WILLIE, HE CAME UP TO GET A CIGARETTE AND HE TOLD MY STEPDA DAD THAT HE WAS SHOT BY TWO GUNS IN THE STATE OF PANIC I DON'T KNOW MY MOM SAID I COULD HAVE BEEN IN SHOCK AND NOT HEARD THEM IT WASN'T BUT I WOULDN'T PUT IT PAST HIM

DET: SO YOU'RE POSITIVE THAT BIG MONEY JUMPED IN THAT WHITE CAR WITH Q I MEAN CAPONE JUMPED IN THAT WHITE CAR Q AND ALL OF THAT

KP: YEAH 100% POSITIVE HE WAS DRIVING

DET: OK AND YOU SAID THAT BIG MONEY WAS DRIVING WHAT

KP: THE BLACK BMW

DET: AND WHERE WAS THAT PARKED

KP: IT WAS PARKED RIGHT BESIDE THE PORCH

DET: OK AND WHERE WAS THE GREEN

KP: THE WHITE CAR

DET: NO THERE WAS A GREEN

KP: THERE WAS NO GREEN DURANGO I DON'T KNOW WHERE THAT CAME FROM

DET: OK

KP: YOU TOLD ME THAT THAT ONE NIGHT

DET: I ASKED YOU ABOUT THAT

KP: YEAH YOU SAID GREEN DURANGO

DET: YOU DIDN'T SEE NO GREEN DURANGO

KP: NO THERE WAS NO GREEN DURANGO THERE WAS A WHITE CAR, THE BLACK BMW AND HE HAD THAT CAR PARKED IN THE DRIVEWAY NEXT DOOR I NEVER SAW A GREEN DURANGO

DET: WHEN THE SHOOTING WAS OVER, RIGHT AFTER THE SHOOTING STOPS, YOU KNOW THE KAPOW, KAPOW, KAPOW STOPS WHAT DOES BIG MONEY SAY TO YOU AFTER YOU SAY WHAT THE FUCK

KP: HE DON'T SAY NOTHING TO ME I JUST GO OUT THE BACK DOOR AND THAT'S WHEN CAPONE PULLED UP AND UNLOCKED THE FRONT DOOR HE RUNS JUMPS IN HIS CAR TAKES OFF CAPONE GOES INSIDE COMES OUTSIDE WITH THE GUN IN HIS HAND JUMPS IN THE CAR WITH HIS WIFE AND HE DROVE OFF

DET: OK YOU KNOW WE HAVE THIS STUFF CALLED DNA AND STUFF AND THERE WERE SOME THINGS THAT WERE SUBSEQUENTLY RECOVERED AS PART OF OUR INVESTIGATION IS THERE ANY REASON WHY YOUR DNA MIGHT BE ON THE SHELL CASINGS

KP: CAUSE A GUN WAS POINTED AT ME AND WAS TOLD FOR ME TO PICK UP THE SHELL CASINGS

DET: WELL YOU KNOW WHAT WHEN I SAID WHAT DID YOU DO IN THAT HOUSE THAT'S AN IMPORTANT PART OF THE COMPONENT YOU LEFT OUT ISN'T IT

KP: YEAH

DET: IS THERE ANYTHING ELSE YOU'RE LEAVING OUT CAUSE PLEASE I'M TRYING TO BE NICE TO YOU I'VE BEEN UP A LONG TIME

KP: HE POINTED THE GUN AT ME AND SAID

DET: OK START OVER

KP: START COMPLETELY OVER

DET: START OVER, DON'T LEAVE NOTHING OUT, IF SOMEBODY POINTED A GUN AT YOU, SOMEBODY MADE YOU DO SOMETHING IF YOU STAND ON THE TABLE DO A TAP DANCE IF

YOU STAND ON YOUR HEAD IF YOU EAT A BANANA YOU
START FROM THE BEGINNING AND DON'T LEAVE ANYTHING
OUT

KP: AFTER HE SHOT HIM

DET: START OVER FROM THE BEGINNING

DET: SO YOU IN THERE, WHO'S INSIDE THE HOUSE CAUSE YOU LEFT
OUT A COUPLE OF PEOPLE

KP: NOT WHEN THE SHOOTING OCCURRED

DET: YEAH JUST AFTER THE SHOOTING WHO ELSE WAS IN THE
HOUSE

KP: RIGHT, THERE WAS NOBODY ELSE IN THE HOUSE WHEN THE
SHOOTING HAPPENED

DET: THERE WEREN'T TWO BLACK GIRLS IN THE HOUSE

KP: NO

DET: OK JUST BEFORE THE SHOOTING STARTED WHAT HAPPENED

KP: JUST EVERYTHING CAPONE AND HIS WIFE THEY SAID THEY
WAS GOING TO THE STORE

DET: OK YOU LEFT THAT OUT BEFORE SO THEY LEAVE AND GO TO
THE STORE

KP: THAT'S WHAT THEY SAID, THEY LEFT I TOLD YOU CAPONE
AND HIS WIFE WASN'T THERE CAUSE THEY WERE GOING TO
THE STORE WELL THAT'S WHEN THE KNOCK CAME TO THE
DOOR WHICH WAS JJ, AND WILLIE OPENS THE DOOR, HE SAYS
WILLIE SAYS THAT HE WENT OUTSIDE AFTER THE FIRST SHOT
WILLIE STAYED OUTSIDE, THE DOOR WAS LOCKED, HE YELLS
GUN, SHOTS HIM

DET: WAIT A MINUTE, STOP, WHO YELLS GUN

KP: BIG MONEY, HE SAID THE JJ GUY HAD A GUN

DET: HE SAID THAT JJ HAD A GUN

KP: YEAH

DET: HOW EXACTLY DID HE SAY THAT WHAT DID HE SAY, HE JUST SAID GUN

KP: HE JUST SAID GUN, THAT'S ALL HE SAID WAS GUN

DET: SO DID YOU SEE JJ WITH A GUN

KP: NO ALL I SEEN JJ WITH WAS A BROKEN FINGER

DET: HOW DO YOU KNOW THAT BIG MONEY SAID JJ HAD A GUN

KP: WELL JJ JUMPED UP AND SAID GUN, I MEAN NOT JJ BIG MONEY JUMPED UP AND SAID GUN AND I NEVER SAW A GUN

DET: OK WHAT HAPPENED NEXT

KP: HE SHOT HIM

DET: HOW MANY TIMES

KP: LIKE TEN TIMES, LIKE HE JUST KEPT SHOOTING HIM WITH A CALM LOOK, LIKE THE CALMEST LOOK ON HIS FACE, LIKE I'LL NEVER FORGET, AND THEN HE HAD ALL THE BULLETS IN THE GUY BY THE TIME BEFORE THE GUY EVEN HIT THE FLOOR AND THE NEXT THING I KNOW THERE'S A GUN POINTED AT ME HE SAYS MAKE SURE ALL THOSE GOD DAMN SHELL CASINGS ARE UP, THAT'S WHEN CAPONE PULLED UP, CAPONE TOOK THEM FROM ME, HE WENT INSIDE, I'M OUTSIDE AFTER I WENT OUT THE BACKDOOR, CAPONE PULLED UP, HE GOT THE SHELL CASINGS FROM ME AND CAME BACK OUTSIDE WITH THE GUN IN HIS HAND AND THEN TOOK OFF

DET: AND WHAT DID CAPONE DRIVE AGAIN

KP: THE WHITE CAR, DRIVING HIS WHITE CAR

DET: OK YOU SAY YOU DIDN'T SEE A GREEN DURANGO

KP: I NEVER SAW A GREEN DURANGO

DET: AGAIN USING DNA, WOULD THERE BE ANY REASON THERE'D BE A SET OF, YOUR DNA ON A SET OF KEYS BELONGING TO A GREEN DURANGO

KP: NO

DET: DID YOU GIVE HIM ANYTHING OTHER THAN SHELL CASINGS

KP: NO

DET: DID YOU GO THROUGH JJ'S POCKETS, YOU KNOW MAYBE ITS SOMEONE ELSE'S

KP: NO, I NEVER TOUCHED THE GUY, NEVER, I NEVER TOUCHED THAT MAN, I'LL PUT THAT ON EVERYTHING I LOVE I NEVER TOUCHED THAT MAN, I DIDN'T EVEN KNOW THE MAN, I THOUGHT THE MAN WALKED OVER THERE

DET: WHAT MAN

KP: JJ, NEVER SAW NO GREEN DURANGO, AT ANY TIME

DET: THERE WEREN'T TWO OTHER CHICKS IN THAT PLACE

KP: UH-UH

DET: HOW LONG WERE YOU THERE BEFORE THE INCIDENT OCCURRED

KP: I HAD BEEN THERE SINCE ABOUT 2:30 THAT DAY AND THE ONLY FEMALE THAT WAS THERE WAS ME AND Q WHICH IS CAPONE'S WIFE, AND EVERYTHING WAS CALM AND THE NEXT THING YOU KNOW THERE'S A MURDER

DET: OK SO HE POINTS A GUN AT YOU AND SAYS PICK UP THEM SHELL CASINGS

KP: HE SAID MAKE SURE ALL THOSE GOD DAMN SHELL CASINGS ARE UP

DET: SHELL CASINGS ARE UP, OK AND THEN HE JETS OUT THE FRONT DOOR AND CAPONE COMES IN

KP: I RUN OUT THE BACK DOOR, CAPONE HAD TO UNLOCK THE FRONT DOOR, BIG MONEY TAKES OFF, I'M OUT THE BACK DOOR BY THIS POINT AND THEN CAPONE WALKS OUT TAKES THE SHELL CASINGS, CAPONE'S GOT A GUN IN HIS HAND, JUMPS IN THE CAR AND HE'S GONE

DET: OK YOU UNDERSTAND THIS IS A MURDER INVESTIGATION

KP: YES I'M BEING COMPLETELY HONEST WITH YOU

DET: WELL AFTER WE CAUGHT YOU IN A LIE, YOU'RE BEING COMPLETELY HONEST

KP: BECAUSE I WAS SCARED, I MEAN I WASN'T TRYING TO LIE

DET: YOU WEREN'T TRYING TO LIE BUT (INAUDIBLE)

KP: I DIDN'T MEAN TO LIE

DET: WELL DID YOU TELL ME THE TRUTH, IT WAS AN IMPORTANT PART OF FACT THAT YOU LEFT OUT

KP: (INAUDIBLE)

DET: WHAT ELSE HAVE YOU LEFT OUT

KP: I HAVEN'T LEFT OUT ANYTHING ELSE, I DID NOT SEE A GREEN DURANGO, I MEAN I'M BEING COMPLETELY HONEST WITH YOU

DET: WELL YOU SAID THAT THE FIRST TWO TIMES BEFORE I (INAUDIBLE) THE SHELL CASINGS

KP: I'M BEING 100% HONEST WITH YOU, A GUN WAS POINTED AT ME, I HAD NO CHOICE BUT TO DO IT

DET: OK ACTUALLY LET ME TELL YOU WHAT HAPPENED, MOST OF THE STUFF YOU'RE TELLING ME IS TRUE, THERE WAS A SHOOTING IN THERE HAPPENED PRETTY MUCH THE WAY YOU (INAUDIBLE) YOU'RE SAYING YOU DIDN'T HEAR JJ SAY

ANYTHING

KP: I NEVER HEARD HIM SAY A WORD

DET: OK WE'LL GO WITH THAT, AND THEN THERE'S THE SOUND OF GUNSHOTS (INAUDIBLE) GUN, SHOTS ARE FIRED THEN BIG MONEY MAYBE POINTS A GUN AND YOU AND SAYS PICK UP THE SHELL CASINGS AND IT TOOK A WHILE TO GET THOSE SHELL CASINGS, IT DIDN'T TAKE TWO SECONDS CAUSE WE KNOW WHERE THEY WERE, THEY LEAVE TRACES SO, SO YOU TOOK A WHILE TO GET THE SHELL CASINGS, HE WAS NO LONGER THERE (INAUDIBLE)

KP: YES HE WAS, HE NEVER LEFT UNTIL CAPONE GOT BACK, HE NEVER LEFT UNTIL CAPONE GOT BACK

DET: CAPONE GETS BACK

KP: THAT'S WHY I SAID I THOUGHT IT WAS PREMEDITATED

DET: AND THEN CAPONE GETS BACK AND WHAT

KP: AND CAPONE TAKES THE SHELL CASINGS AND COMES WALKING OUT, CAPONE GOES TO THE FRONT DOOR, UNLOCKS IT

DET: NOW WHERE'S BIG MONEY WHEN CAPONE COMES TO THE FRONT DOOR AND UNLOCKS IT

KP: CAPONE'S IN THE HOUSE, I MEAN BIG MONEY'S IN THE HOUSE

DET: BIG MONEY'S IN THE HOUSE

KP: BIG MONEY'S IN THE HOUSE

DET: STILL IN THE HOUSE

KP: YEAH AND THEN I'M OUT THE DOOR BY THE TIME CAPONE PULLS UP, HE UNLOCKS THE FRONT DOOR, BIG MONEY RUNS OUT, CAPONE GETS THE SHELL CASINGS, WALKS, WELL, WALKS OUT OF THE HOUSE WITH THE GUN, GETS THE SHELL CASINGS, JUMPS IN THE CAR AND HE'S GONE

DET: AND YOU KNEW YOU HAD DONE THIS, (INAUDIBLE) UNDER
DURESS NOW (INAUDIBLE)

KP: UNDER WHAT

DET: UNDER DURESS, YOU'RE CLAIMING DURESS, THEY FORCED
YOU TO DO IT, YOU'RE SCARED

KP: OF COURSE I'M SCARED SOMEBODY WAS KILLED IN FRONT OF
ME

DET: NOW THAT NIGHT, THE FIRST NIGHT YOU WERE SITTING IN MY
POLICE CAR AND WE WERE HAVING A CONVERSATION AND I
ASKED YOU THESE SAME QUESTIONS RIGHT HERE (INAUDIBLE)
DO YOU REMEMBER WHAT YOU SAID THAT NIGHT

KP: SOMEWHAT

DET: SOMEWHAT, YOU'RE LEAVING OUT SOME OF THE VERY VERY
IMPORTANT PARTS OF THIS PUZZLE THAT NIGHT

KP: I MEAN I'M TELLING YOU EXACTLY WHAT I KNOW

DET: WELL MAYBE YOU ARE NOW SINCE WE'VE ALREADY CAUGHT
YOU IN SOME LIES

KP: BUT I'M STILL NOT, THERE WAS NO GREEN DURANGO

DET: OK, AND NO OTHER CHICKS IN THE PLACE

KP: NO

DET: DO YOU KNOW WHAT A POLYGRAPH IS

KP: YEAH

DET: WHAT IS IT

KP: ITS LIE DETECTOR TEST

DET: OK, DO YOU KNOW HOW IT WORKS

KP: (INAUDIBLE)

DET: WOULD YOU TAKE ONE

KP: YEAH I'D TAKE ONE

DET: (INAUDIBLE) HOW WOULD YOU DO ON IT

KP: I WOULD PASS IT

DET: YEAH

KP: YEAH, I WAS SCARED TO DEATH, IF HE, I MEAN HAS ANYBODY EVER BEEN KILLED IN FRONT OF YOU BEFORE

DET: THIS ISN'T ABOUT ME THIS IS ABOUT YOU

KP: I KNOW BUT I'M JUST SAYING

DET: ITS ABOUT YOU AND ITS ABOUT YOU NOT TELLING US THE TRUTH THAT FIRST NIGHT

KP: I WAS TELLING YOU

DET: YOU'RE DOING IT NOW YOU DIDN'T DO IT THE FIRST TIME, TELLING US THAT YOU HAD PICKED UP SHELL CASINGS UNDER DURESS THAT NIGHT, TELLING US YOU HAD GIVEN THEM TO CAPONE, TELLING US THOSE THINGS WOULD HAVE HELPED YOU BECAUSE US FINDING OUT AFTER THE FACT MAKES YOU LOOK LIKE YOU HELPED

KP: NO

DET: AND THEN IT MAKES IT LOOKS LIKE YOU TOLD LIES TO US ABOUT IT

KP: NO I DID NOT HELP

DET: ALRIGHT THEN IF YOU DIDN'T HELP, WHEN YOU WERE SAFE SITTING IN A POLICE CAR SURROUNDED BY POLICEMEN WHY DIDN'T YOU TELL ME THE WHOLE STORY

KP: I WAS DRUNK

DET: YOU WEREN'T THAT DRUNK

KP: I WAS REALLY DRUNK

DET: YOU KNEW, YOU REMEMBERED, YOU KNEW WHAT YOU HAD DONE, YOU KNEW WHAT HAPPENED, THAT WAS PRETTY IMPORTANT PART, EVEN PEOPLE THAT ARE DRUNK (INAUDIBLE) WHEN THEY GET SCARED

KP: I WAS SCARED

DET: YOU WERE SCARED, OK WHAT WERE YOU SCARED OF

KP: SOMEBODY HAD JUST BEEN KILLED IN FRONT OF ME

DET: YOU WERE PROTECTED, YOU WERE IN A POLICE CAR, YOU WERE BEING PROTECTED BY THE POLICE

KP: I WAS STILL IN PANIC AND SHOCK, SOMEBODY HAD JUST GOT KILLED IN FRONT OF ME, I DIDN'T KNOW THE GUY

DET: RIGHT I UNDERSTAND

KP: I MEAN I DON'T KNOW HOW ELSE TO EXPLAIN IT, I'M TELLING YOU EVERYTHING I KNOW

DET: WHAT WAS EVERYBODY DOING IN THE HOUSE BEFORE THE SHOOTING, I UNDERSTAND THAT CAPONE AND Q LEAVE, THEY WENT TO THE STORE

KP: YEAH

DET: OK WAS THERE ANY PHONE CALLS BACK AND FORTH BETWEEN CAPONE AND BIG MONEY TO THE BEST OF YOUR RECOLLECTION

KP: NOT THAT I KNOW OF I THINK BIG MONEY'S PHONE MIGHT HAVE RANG ONE TIME BUT (INAUDIBLE)

DET: SO THIS JJ FELLOW (INAUDIBLE)

KP: HE'S NOT EVEN THERE 30 SECONDS BEFORE HE'S KILLED

DET: OK AND THEN BIG MONEY TURNED TO YOU NOW HE FIRED THAT GUN, YOU KNOW WHAT KIND OF GUN IT WAS RIGHT (INAUDIBLE) SQUARE GUN

KP: IT WAS A BLACK GUN

DET: BLACK GUN, SQUARE GUN, DO YOU KNOW ANYTHING ABOUT GUNS

KP: I KNOW THAT HE JUST KEPT SHOOTING, I GUESS UNTIL IT WAS EMPTY

DET: UNTIL IT WAS EMPTY SO THEN HE TAKES THE GUN AND POINTS IT AT YOU (INAUDIBLE)

KP: OF COURSE I'M SCARED TO DEATH, I'M STILL SCARED FOR MY LIFE

DET: IS THAT WHY YOU'RE NOT TELLING ME THE WHOLE TRUTH

KP: I'M TELLING YOU EVERYTHING, THERE WAS NO GREEN DURANGO, HE POINTED THE GUN AT ME, MADE ME GET THE SHELLS UP, CAPONE GOT THE SHELLS FROM ME, I MEAN THAT'S IT, I HAD NO, I DIDN'T HELP, I DIDN'T KNOW THIS SHIT WAS GOING TO HAPPEN

DET: I UNDERSTAND I DON'T THINK YOU DIDN'T KNOW (INAUDIBLE)

KP: I DIDN'T HELP

DET: WELL, YOU DID HELP, (INAUDIBLE) YOU KNOW WHAT DURESS MEANS

KP: YEAH

DET: OK BUT SINCE YOU DIDN'T TELL US MAKES YOU LOOK LIKE YOU HELPED

KP: NO I DIDN'T

DET: BUT IT MAKES IT LOOK LIKE IT, YOU SEE HOW IT MAKES IT LOOK

KP: YEAH BUT I DIDN'T HELP I MEAN IF HE WOULD SHOOT THAT GUY HE WOULD'VE SHOT ME

DET: OK THAT PICTURE I SHOWED YOU, YOU SPENT ALL DAY WITH BIG MONEY, BIG MONEY'S PICTURE IN THERE

KP: YEAH I KNOW

DET: YOU PICK OUT THE PICTURE, YOU RECOGNIZE BIG MONEY OR PICK SOMEONE ELSE ON PURPOSE

KP: NO IT WAS BETWEEN 2 & 4, THEY ALL LOOK ALIKE ON THAT PAPER

DET: OK, IS THERE ANYTHING ELSE THAT I DIDN'T ASK YOU THAT YOU THINK WE SHOULD KNOW, DID ANYTHING ELSE HAPPEN THAT NIGHT THAT YOU FORGOT TO TELL ME AND NOW YOU REMEMBER

KP: NO JUST DOWN THERE DRINKING

DET: IS THAT ALL YOU WERE DOING

KP: YEAH I WAS JUST DRINKING

DET: WHAT WERE THEY DOING

KP: CAPONE AND BIG MONEY THEY WAS SMOKING WEED AND AS YOU COULD SEE I WAS DRINKING

DET: THAT'S FINE

KP: BUT I DID NOT HELP, I AM NOT AN ACCOMPLICE TO A MURDER, I SWEAR TO GOD ON EVERYTHING, I DON'T EVEN, I MEAN I'VE BEEN DOWN HERE 5 WEEKS, WHY WOULD I HELP KILL SOMEBODY

DET: (INAUDIBLE) KNOW IF YOU HELPED KILL SOMEBODY BUT YOU NOT TELLING ME WHAT HAPPENED THAT NIGHT WHEN YOU

KINDA DID KNOW AND DECIDED NOT, FIRST OF ALL YOU GO HOME, RIGHT YOU DON'T STICK AROUND YOU JUST SEE SOMEBODY GET KILLED RIGHT IF I WAS A GOOD CITIZEN THAT WAS NOT INVOLVED WHEN THE POLICE SHOWED UP I'D BE TELLING OFFICERS THIS IS WHAT I SAW, BUT THAT'S NOT WHAT YOU DID

KP: EVEN LAST (INAUDIBLE) I WAS DRUNK, THE NEXT MORNING WE WAS GOING TO, IF YOU HADN'T CAME UP THE NEXT MORNING HE WAS GONNA BRING ME TO TELL WHAT I SEEN

DET: DON'T YOU THINK ITS IMPORTANT TO GET REAL TIME INFORMATION, YOU'RE IN A HOUSE SOMEBODY GETS MURDERED BY YOUR ADMISSION AND INSTEAD OF STAYING AROUND AND VOLUNTEERING TO HELP POLICE

KP: I WAS DRUNK, I WAS SCARED, I WAS PANIC, I WAS IN SHOCK I DIDN'T KNOW WHAT TO DO

DET: OK AND I THINK YOU DID THE WRONG THING, YOU DIDN'T KNOW WHAT TO DO YOU HAD SEVERAL CHOICES THE RIGHT CHOICE WAS TO STICK AROUND THE RIGHT CHOICE WAS NOT TO MAKE US HUNT YOU DOWN THE RIGHT WAS TO TELL US THE WHOLE STORY NOT A PIECE OF IT EVEN (INAUDIBLE) IF YOU WERE SO SCARED WHY DID YOU LEAVE THAT PIECE OF THAT PUZZLE OUT ABOUT PICKING UP SHELLS (INAUDIBLE) UNTIL SUCH TIME I WAS ABLE TO PROVE (INAUDIBLE) WHY DIDN'T YOU TELL ME THAT STRAIGHT UP

KP: CAUSE I WAS SCARED

DET: WHAT ARE YOU SCARED OF

KP: CAUSE THIS IS MAKING IT LOOK LIKE I'M ACCESSORY TO THE FACT OF A MURDER THAT I'M NOT

DET: I NEVER SAID THAT, I NEVER EVEN

KP: YOU TOLD ME THAT FIRST NIGHT, I COULD CHARGE YOU FOR ACCESSORY TO THE FACT

DET: I SAID YOU IF YOU DON'T TELL ME THE TRUTH

KP: I MEAN I HAD NOTHING TO DO WITH THAT MAN

DET: (INAUDIBLE) THAT IT WAS VERY IMPORTANT THAT YOU TELL ME THE TRUTH, AND THEN YOU (INAUDIBLE) THE TRUTH, THAT SOMEBODY ELSE HAD TO YOU KNOW KNOWING THAT SOMEBODY HAD A GUN, SOMEBODY ELSE HAD A GUN THAT THERE WAS SHELL CASINGS AND THINGS LIKE THAT DON'T YOU THINK THAT YOU SAY YOU WATCH THE FIRST 48 ISN'T THAT THE KINDA THING COPS (INAUDIBLE)

KP: YEAH

DET: AND YOU KNEW IT RIGHT AND DID YOU TELL US, NO (INAUDIBLE)

DET: ANYTHING, ANY ADVANCES

DET: NO I THINK AT LEAST NOW THAT KELLY UNDERSTANDS, SHE REMINDED ME WHAT I (INAUDIBLE) TO REMEMBER THAT WHEN I WAS SPEAKING WITH HER THAT NIGHT THAT I ACTUALLY CAUTIONED HER THAT HER ATTEMPT TO LEAVE MATERIAL FACTS OR MATERIAL EVIDENCE OUT OF HER STATEMENT COULD BE CONSTRUED AS CRIMINAL ACTIVITY AND IT WAS VERY IMPORTANT TO TELL EVERYTHING AND THAT'S WHY I GAVE HER SOME CHANCES TO THINK ABOUT IT AND THEN SHE COMES IN HERE AND SHE LEAVES A BIG PIECE OUT, SHELL CASINGS, (INAUDIBLE) CAPONE HAD A GUN

KP: I TOLD YOU CAPONE HAD A GUN

DET: YEAH, YEAH I KNOW NOW WHEN CAPONE COME BACK IN THE HOUSE, WERE YOU STILL IN THE HOUSE

KP: NO I WAS OUTSIDE

DET: OK WHERE DID YOU GIVE HIM THE SHELLS

KP: OUTSIDE

DET: WAS HE SITTING IN HIS CAR OR STANDING AT HIS CAR

KP: HE WAS WALKING UP TO HIS CAR

DET: WHICH CAR

KP: THE WHITE CAR

DET: OK, DRIVER'S SIDE, PASSENGER SIDE

KP: DRIVER'S SIDE, HE WAS DRIVING

DET: OK

KP: NO I THINK HIS WIFE, NO HE WAS DRIVING

DET: OK

KP: HE TOOK THEM

DET: HOW MANY SHELL CASINGS WERE THERE

KP: I'M NOT SURE, THERE WAS LIKE 10 OF THEM, I MEAN

DET: YOU GIVE THEM TO CAPONE AND THEN WHAT HAPPENS

KP: THEY TAKE OFF

DET: AND THEN WHERE DO YOU GO

KP: I WAS LOOKING FOR WILLIE, HE ASKED ME WHAT TO DO, I TOLD HIM TO CALL 911, I WAS THERE WHEN THE FIRST COP GOT THERE, HE SAID WHAT DOORS UNLOCKED AND I TOLD THE COP THE BACK DOOR, AND I WAS IN SHOCK I WAS IN PANIC I WAS SCARED, I WENT HOME AND I TOLD MY MAMA SOMEONE JUST GOT MURDERED

DET: I WANT YOU TO DO SOMETHING FOR ME, THIS IS A SMALL EXAMPLE OF THE TRAILER OK, YOU GOT THE FRONT PORCH HERE, THE DOOR

KP: THE KITCHEN'S OVER HERE

DET: EXACTLY, DURING, I WANT YOU TO LISTEN TO ME CAREFULLY ALRIGHT, SO FAR YOU'VE TOLD US THAT WHEN JJ COMES HE COMES IN THE FRONT DOOR, CORRECT, ON HIM COMING IN

THE FRONT DOOR WILLIE OR ROY HE WAS ON THE PORCH, OK
AND HE HAD BEEN ON THE PORCH HOW LONG PRIOR TO JJ
GETTING

KP: HE WASN'T, HE UNLOCKED THE DOOR, OR HE OPENED THE
DOOR AND HE WENT OUTSIDE AND JJ CAME IN

DET: ALRIGHT STOP RIGHT THERE YOU'RE SAYING HE UNLOCKED
THE DOOR AND WENT OUTSIDE WHEN JJ CAME IN

KP: YEAH

DET: ALRIGHT SO I WANT YOU TO CLARIFY THIS FOR ME,
(INAUDIBLE) IS IMPORTANT, SO JJ COMES IN AND WILLIE GOES
OUT OR WAS WILLIE ALREADY OUTSIDE PRIOR TO JJ COMING

KP: HE WAS NOT ALREADY OUTSIDE

DET: SO HE WAS INSIDE, CORRECT

KP: UM-UM

DET: SO JJ KNOCKS ON THE DOOR, WHO OPENS THE DOOR

KP: WILLIE, ROY

DET: ROY, ROY OPENS THE DOOR

KP: AND HE GOES OUTSIDE

DET: OK WAIT A SECOND, ROY OPENS THE DOOR FOR JJ CAUSE JJ
KNOCKED

KP: YEAH JJ COMES IN

DET: EXACTLY JJ WALKS IN FIRST

KP: AND ROY GOES OUT

DET: AND THEN ROY GOES OUT AFTER HIM, IMMEDIATELY AFTER JJ
WALKS IN (INAUDIBLE) ROY WALKS OUT OR WAS THERE

KP: ROY SAYS HE WAS IN THERE WHEN THE FIRST SHOT THEN HE WENT OUT, NO

DET: NO, THAT'S NOT, I'M NOT WORRIED WHAT ROY SAID, I'M WORRIED ABOUT WHAT YOU OBSERVED

KP: I WAS LOCKED IN THE HOUSE HE WENT OUT THE DOOR AFTER JJ WENT IN, CLOSED THE DOOR AND LOCKED IT

DET: SO YOU'RE SAYING ESSENTIALLY THIS NO TIME THAT PAST, JJ WALKS IN AND WILLIE IMMEDIATELY ROLLS OUT RIGHT

KP: YEAH

DET: DID THEY SPEAK TO EACH OTHER

KP: NO I DIDN'T EVEN HERE JJ EVEN SPEAK A WORD

DET: ALRIGHT WE'LL STEP BACK ON THAT, WHERE ARE YOU, WHERE WOULD YOU SAY YOU WERE IN RELATION TO

KP: THE DOOR'S RIGHT HERE, THE KITCHEN'S RIGHT HERE, HERE'S THE COUCH I WAS SITTING ON THE EDGE OF THE COUCH

DET: EDGE OF THE COUCH NEAREST THE DOOR

KP: YEAH

DET: ALRIGHT IF YOU WOULD JUST MAKE A LITTLE K WHERE YOU WERE, OK SO YOU'RE SITTING ON THE COUCH RIGHT

KP: I'M SITTING ON THE ARM OF THE COUCH

DET: ARM OF THE COUCH, GOT YOU, JJ KNOCKS

KP: AND WILLIE WAS SITTING ABOUT RIGHT HERE

DET: WILLIE'S ABOUT RIGHT HERE

KP: ME AND HIM WERE JUST SITTING THERE TALKING

DET: JJ WALKS IN, WILLIE ROLLS OUT, WHO CLOSES THE DOOR

KP: WILLIE

DET: WILLIE CLOSED THE DOOR BEHIND HIM AND YOU ALSO SAID
WILLIE LOCKS IT

KP: YEAH

DET: HOW DO YOU KNOW

KP: CAUSE WHEN THE GUY PULLED THE GUN OUT I JUMPED
TOWARDS THE DOOR AND IT DIDN'T OPEN

DET: DID YOU TURN THE KNOB AND EVERYTHING

KP: NO THERE'S NO KNOB ON IT, THE ONLY WAY TO LOCK IT IS
FROM THE OUTSIDE AND IT WAS LOCKED

DET: SO JJ COMES IN WILLIE GOES OUT YOU'RE SITTING HERE ON
THE ARM OF THE COUCH WHERE WOULD YOU SAY BIG MONEY
WAS

KP: HE WAS SITTING ABOUT

DET: (INAUDIBLE)

KP: RIGHT HERE IN THE KITCHEN AND THEN THERE'S WHERE I
WAS ON THE ARM OF THE COUCH AND HERE'S A LITTLE
COFFEE TABLE, AND JJ WAS STANDING (INAUDIBLE)

DET: OK SO JJ WAS STANDING

KP: AND HIS BACK WAS TURNED TO HIM WHEN HE SAID GUN

DET: OK SO JJ CAN GO HERE RIGHT, MAYBE UP A LITTLE FURTHER

KP: YEAH

DET: (INAUDIBLE) BOUT RIGHT THERE PUT AN M NEXT TO HIM,
ALRIGHT YOU'RE SAYING JJ'S BACK WAS TO BIG MONEY

KP: BIG MONEY, BIG MONEY SAID GUN

- DET: WHAT WAS JJ DOING TO HAVE HIS BACK TO HIM, WAS HE LOOKING AT SOMETHING, TALKING TO SOMEBODY
- KP: NO HE HAD JUST WALKED IN AND WILLIE WENT OUT ON THE PORCH AND HIS BACK WAS TURNED ALL OF A SUDDEN HE JUST JUMPS UP AND SAYS GUN AND I LOOK AT BIG MONEY AND I SEE HIM PULL OUT A GUN AND HE SHOT HIM ONE TIME AND I GUESS THAT'S WHEN IT HIT HIM IN THE ARM AND I JUMP OVER HERE AGAINST THE DOOR AND THE DOOR DON'T OPEN SO I GO OVER HERE AND I'M STANDING LIKE RIGHT HERE BESIDE THE DOOR LIKE CAUSE I WAS SCARED TO MOVE AND AFTER HE SHOOTS HIM WITH HIS BACK TURNED HE HIT HIM IN THE ARM AND HE TURNS AROUND AND THAT'S WHEN HE JUST KEPT SHOOTING
- DET: DID YOU EVER SEE JJ WITH A GUN
- KP: NO, NO I NEVER SAW JJ WITH A GUN
- DET: ALRIGHT, I'M UNDER THE IMPRESSION THAT SOMETHING MORE HAD TO BE SAID, I MEAN THIS MAN WALKS IN THE HOUSE, WALKS BY YOU DOESN'T SAY HI DOESN'T SAY NOTHING JUST WALKS OVER HERE AND TURNS AROUND
- KP: I GUESS I THINK HE MIGHT HAVE BEEN WAITING ON CAPONE OR SOMETHING I DON'T KNOW, I DIDN'T KNOW, THE TWO NEVER EVEN SPOKE, HE DIDN'T SPEAK TO ME, HE WAS THERE MAYBE 30 SECONDS
- DET: OK WELL 30 SECONDS WHEN WE TALK ABOUT WORDS A LOT CAN BE SAID A LOT CAN BE DONE, SO YOU'RE SAYING ESSENTIALLY THIS MAN COMES TO THIS HOUSE WITH PEOPLE IN IT, KNOCKS ON THE DOOR WALKS INTO THE PLACE
- KP: WILLIE SAID HELLO TO HIM
- DET: OK WHAT DID HE SAY TO WILLIE
- KP: I DON'T THINK HE EVEN SPOKE BACK I MEAN I WAS REALLY DRUNK BUT I DON'T THINK HE EVEN SPOKE BACK
- DET: OK WHAT DID WILLIE SAY TO HIM

KP: WHAT'S UP

DET: AND HE COMES IN

KP: AND HE COMES IN

DET: HE DIDN'T SAY ANYTHING YOU'RE SAYING, WHAT DID HE SAY TO YOU

KP: HE DIDN'T SPEAK TO ME

DET: HE DIDN'T SPEAK TO YOU, DID HE SPEAK TO BIG MONEY

KP: NO

DET: OK SO HE WALKS OVER HERE

KP: LIKE PRETTY MUCH BIG MONEY KILLED AN INNOCENT MAN, HE KILLED HIM FOR NO REASON

DET: AND YOU'RE SAYING HIS BACK WAS TO BIG MONEY

KP: HIS BACK WAS TO BIG MONEY, BIG MONEY YELLED GUN, AND I LOOKED UP AND BIG MONEY HAS A GUN AND HE SHOOTS HIM AND HITS THE BOY IN THE ARM I GUESS AND THAT'S WHEN HE TURNED AROUND

DET: DO YOU KNOW WHY BIG MONEY WOULD YELL GUN

KP: THE GUY HAD A BROKE FINGER, I HAVE NO IDEA

DET: THE GUY WHO WAS THAT

KP: JJ IT LOOKED LIKE HE HAD HAD A BROKE FINGER, IT HAPPENED SO FAST

DET: PRIOR TO JJ COMING OVER TO THE HOUSE WAS THERE ANY FRICTION OVER THEREABOUT ANYTHING

KP: WILLIE AND CAPONE HAD GOTTEN INTO AN ARGUMENT BECAUSE HE CALLED HIS WIFE A BITCH BUT IT WASN'T A BIG ARGUMENT IT WAS JUST DON'T CALL MY GIRL A BITCH,

EVERYTHING WAS CALM

DET: SO THE BIGGEST ALTERCATION THAT HAPPENED PRIOR TO THIS INCIDENT WAS THE CALLING THE WIFE A BITCH THING

KP: YEAH

DET: THE JJ GUY HAD YOU EVER MET HIM BEFORE THAT DAY

KP: NO

DET: DO YOU RECALL AT ALL HEARING JJ SAY ANYTHING AT ALL TO WILLIE (INAUDIBLE)

KP: NOT THAT I KNOW OF

DET: DO YOU KNOW WHY OR WHAT IS YOUR OPINION OF WHY WILLIE WENT OUTSIDE

KP: I THINK WILLIE KNEW, I DON'T KNOW I MEAN

DET: BUT YOU SAID YOU DID LUNGE FOR THE DOOR THE DOOR HAD NO KNOB

KP: AND IF IT WASN'T LOCKED IT WOULD HAVE OPENED

DET: IT WAS, YOU COULDN'T GET OUT

KP: IT WAS LOCKED

DET: OK SO BIG MONEY SHOOTS JJ, UPON HIM FIRING THE LAST SHOT WHAT DOES HE DO, BIG MONEY WHAT DOES HE SAY OR DO

KP: I LOOKED AT HIM I SAID WHAT THE FUCK YOU JUST KILLED THE GUY AND THEN HE TURNS THE GUN AND SAYS MAKE SURE ALL THOSE GOD DAMN SHELL CASINGS ARE UP AND I GRAB THEM AND I RUN OUT THE BACK DOOR

DET: YOU GRABBED THEM AND WHAT DID YOU PUT THEM IN HOW DID YOU HOLD THEM

DET: MAKE SURE WHAT

KP: THAT THE SHELL CASINGS WERE UP

DET: WHAT HE DON'T LIKE LITTERING, I MEAN, HE DON'T WANT TO LEAVE THEM THERE, WHAT DID HE WANT TO BE DONE WITH THE SHELL CASINGS

KP: I GUESS GET RID OF THEM

DET: DID HE SAY THAT, WHAT DID HE SAY

KP: HE JUST TOLD ME TO MAKE SURE, TO GET ALL THEM FUCKING SHELL CASINGS UP AND THEN CAPONE WHEN HE CAME JUST GAVE THEM TO HIM

DET: SO WHEN CAPONE COMES UP

KP: I'M STANDING ON THE OUTSIDE

DET: OK GO AHEAD

KP: AND HE, I SAID HERE AND I DROPPED THEM IN HIS HAND

DET: AND YOU WENT TO HIM AND SAID HERE

KP: HE WAS STANDING RIGHT, YEAH

DET: HE DIDN'T COME TO YOU AND SAY YOU GOT SOMETHING FOR ME

KP: NUH-UH

DET: OK SO YOU WENT TO HIM, WHAT MADE YOU THINK TO GIVE THE SHELLS TO HIM

KP: CAUSE I WASN'T KEEPING THEM

DET: OK BUT I MEAN YOU COULD OF PUT THEM IN THE GARBAGE, YOU COULD OF BROUGHT THEM TO THE POLICE STATION YOU COULD OF DUG A HOLE AND BURIED THEM WHAT MADE YOU WANT TO GIVE THEM TO CAPONE

KP: I WAS HOLDING THEM IN MY HAND

DET: HOLDING THEM IN YOUR HAND

KP: AND I GAVE THEM TO CAPONE

DET: OK BACK UP, YOU WERE PICKING UP THE SHELLS AS YOU WERE PICKING UP THE SHELLS WHAT'S BIG MONEY DOING

KP: HE'S JUST STANDING THERE LOOKING AT ME, HE STILL HAS HIS GUN POINTED AT ME AND I'M FREAKING OUT

DET: OK SO HE HAS A GUN ON YOU, YOU PICK UP THE SHELLS, ONCE YOU GET ALL THE SHELLS UP WHAT DID HE SAY

KP: NOTHING

DET: HE DIDN'T GIVE YOU INSTRUCTIONS, HE DIDN'T SAY GIVE ME THE SHELLS, GO GET RID OF THEM JUST PICK THEM UP

KP: NO

DET: PICK THEM UP AND GIVE THEM TO (INAUDIBLE)

KP: NO I PICKED THEM UP I WENT OUT THE BACK DOOR, AND THAT'S WHEN CAPONE HAD PULLED UP AND HE WAS UNLOCKING THE FRONT DOOR

DET: DID HE SAY PICK THEM UP AND GIVE THEM TO CAPONE

KP: I DON'T KNOW, HE MIGHT HAVE, NO, NO HE DIDN'T TELL ME TO GIVE THEM TO CAPONE

DET: SO HE DIDN'T TELL YOU WHAT TO DO WITH THEM HE JUST WANTED YOU TO PICK THEM UP AND HAVE THEM

KP: I GUESS HE WANTED ME TO GET RID OF THEM

DET: DID HE SAY THAT

KP: NO HE SAID JUST MAKE SURE

KP: I JUST HANDED THEM TO HIM AND THEY TOOK OFF AND THE COP CAME, THE FIRST COP AND TOLD HIM THE BACK DOOR WAS UNLOCKED AND I JUST RAN HOME, IN A STATE OF PANIC AND A STATE OF SHOCK

DET: I'M SURE YOU WERE

KP: I NEVER SEEN NOBODY KILLED

DET: I'M NOT SAYING YOU SHOULDN'T OF BEEN IN PANIC, I SAY YES BE IN PANIC, BE IN A STATE OF SHOCK BUT NOW THIS IS WHAT THE DETECTIVE SAID WE WAITED A WHILE TO LET YOU CALM BACK DOWN, THE IMPORTANCE IS THIS

KP: I WAS NOT INVOLVED

DET: HERE'S THE DEAL, I DON'T KNOW IF YOU UNDERSTAND THIS, YOU'RE A YOUNG LADY, AND YOU MAY NOT UNDERSTAND HOW THIS THING WORKS, WE HAD AN ISSUE A LITTLE WHILE AGO BECAUSE WE (INAUDIBLE) A LIE, (INAUDIBLE) I DON'T KNOW IF YOU UNDERSTAND THAT, OMISSION WHEN YOU LEAVE THINGS OUT THAT WE ALREADY KNOW IN A SITUATION LIKE THIS THAT'S CALLED LYING ITS SERIOUS ITS LIKE YOU TALK ABOUT COURT AND ALL THESE THINGS, THAT WHOLE SETTING IS TO DETERMINE THE TRUTH OF WHAT HAPPENED, OK, IF ANY OF US ARE GOING TO GO FORWARD WITHHOLDING THAT

KP: I EVEN SAID I WOULD TESTIFY

DET: OK, YOU RECOGNIZE THEM GIRLS

KP: NO

DET: THEN WHY WOULD THEY RECOGNIZE YOU

KP: I MEAN THEY, I SEEN THEM DOWN THERE BEFORE BUT NOT THAT DAY

DET: SO YOU DO RECOGNIZE THEM

DET: I ASKED YOU DO YOU RECOGNIZE THEM

KP: NOT FROM THAT NIGHT

DET: REALLY

KP: THEY WAS NOT THERE THAT DAY I'VE NEVER SEEN HER BUT I RECOGNIZE HER, I DON'T RECOGNIZE HER, I RECOGNIZE HER AND THEY WERE NOT THERE THAT DAY, NONE THAT DAY CAUSE I HAD BEEN THERE SINCE 2:00, THEY WAS NOT THERE

DET: THEN WHY WOULD THEY PICK YOU OUT OF A PICTURE (INAUDIBLE) LIKE THIS AND SAY YOU WERE THERE, THEY (INAUDIBLE) AND THAT THEY KNEW YOU, THEY KNEW YOU WERE THERE, SO IF THEY KNEW YOU WERE THERE THEY WOULD HAVE HAD TO OF BEEN THERE THEMSELVES RIGHT, (INAUDIBLE) FOUND YOU, JUST SHOWED UP ONE DAY

KP: THEY COULD HAVE RODE BY I MEAN ME AND WILLIE SAT ON THE PORCH MOST OF THE DAY, EVERYBODY IN THE NEIGHBORHOOD WAS OUTSIDE, THEY WAS NOT THERE, THEY WAS REALLY NOT THERE

DET: THERE'S PHYSICAL EVIDENCE TO SUPPORT THAT THEY WERE THERE

KP: THEY WAS NOT THERE

DET: PHYSICAL EVIDENCE THAT IS BETTER THAN SOMEBODY'S LYING EYES

KP: THEY WAS NOT THERE, THEY REALLY WAS NOT THERE, THE ONLY FEMALE THAT WAS THERE EARLIER THAT DAY WAS A WOMAN NAMED JILL, SHE WAS THERE EARLIER THAT DAY

DET: COULD THEY HAVE BEEN IN THE BACK (INAUDIBLE)

KP: EARLIER THAT DAY

DET: WHO'S THAT

KP: A WOMAN NAMED JILL

DET: COULD THEY HAVE BEEN IN THE BACK BEDROOM AND YOU

DIDN'T EVEN KNOW THEY WERE THERE

KP: NO, I MEAN I WAS DRUNK BUT THEY WAS NOT THERE WHEN,
NO THEY WAS NOT THERE, REALLY FOR REAL THEY WAS NOT
THERE, THEY REALLY WASN'T, THAT'S THE GODS HONEST
TRUTH, THEY WAS NOT THERE, IF THEY WERE THERE I WOULD
OF TOLD YOU THERE WERE MORE PEOPLE THERE (INAUDIBLE)

DET: (INAUDIBLE) THERE

KP: THEY REALLY WAS NOT THERE

DET: ALRIGHT

KP: THEY WAS NOT THERE, I MEAN I HAVE NO REASON TO LIE IF
THE FEMALES WERE THERE

DET: WAIT A MINUTE, YOU JUST TOLD ME THE REASON YOU LIED
WAS BECAUSE YOU WERE SCARED, YOU SEEN SOMEBODY GET
MURDERED, AND (INAUDIBLE)

KP: THEM GIRLS WERE NOT THERE

DET: SO DO YOU HAVE A REASON TO LIE OR YOU HAVE NO REASON
TO LIE

KP: NOT ABOUT THESE FEMALES BEING THERE

DET: SO WHAT DO YOU HAVE A REASON TO LIE ABOUT

KP: I'M NOT LYING ABOUT ANYTHING, I'M LYING ABOUT
NOTHING, I'M TELLING YOU WHAT I RECALL, WHAT I
REMEMBER THEY WERE NOT THERE

DET: DID THEY COME IN AFTERWARDS

KP: I WAS GONE, THEY COULDN'T OF CAME IN AFTERWARDS I WAS
GONE, IF THEY DID I WAS GONE I MEAN I WAS AT THE WRONG
PLACE AT THE WRONG TIME (INAUDIBLE)

DET: FIRST THING YOU SAID I AGREE WITH, YOU WAS AT THE
WRONG PLACE, THERE'S NO GOOD TIME TO BE THERE SO ITS

ALWAYS A BAD TIME, A 22 YEAR OLD GIRL CAPABLE OF HAVING A JOB SITTING ON A PORCH DRINKING WITH SOME HALF CRACK HEAD FROM THE HOOD, WITH PEOPLE LIKE THAT, THERE'S NEVER A GOOD TIME TO BE THERE, YEAH YOU WAS IN THE WRONG PLACE

KP: MAMA TOLD ME TO BE HOME AT 11 IF I HAD LEFT I WOULDN'T OF EVEN SAW IT, ITS STILL HAUNTING ME CAUSE I SEEN IT, I MEAN, I DON'T KNOW WHAT YA'LL WANT ME TO DO, WHAT DO YA'LL WANT

DET: THE TRUTH

KP: I'M TELLING THE TRUTH THEM GIRLS WERE NOT THERE

DET: WE HAVE WHOLE BUNCH OF PEOPLE TELLING US SOMETHING DIFFERENT

KP: THAT IS THE TRUTH I'M TELLING YOU EXACTLY WHAT I REMEMBER

DET: YOU'VE MADE IT A HABIT TO LEAVE CERTAIN THINGS OUT, I DON'T KNOW IF IT'S THE WAY YOU THINK MAYBE YOU THINK THESE THINGS ARE NOT IMPORTANT BUT THEY ARE VERY IMPORTANT AND THAT'S WHAT YOU NEED TO DO TELL THE WHOLE STORY

KP: WHAT I TOLD YOU IS EXACTLY WHAT I REMEMBER

DET: IS THAT RIGHT

KP: YES ITS WHAT I REMEMBER I MEAN I TOLD THE TRUTH, I MEAN WHAT ELSE AM I SUPPOSE TO DO I DIDN'T KILL JJ, I HAD NO PART OF KILLING JJ

DET: THAT'S TRUE, WE KNOW THAT

KP: I WAS NOT AN ACCOMPLICE TO KILLING THE MAN

DET: BUT YOU ADMITTED EARLIER THAT THAT NIGHT WHEN I ASKED YOU TO TELL ME WHAT HAPPENED AND NOT LEAVE NOTHING OUT YOU LEFT THINGS OUT, THE IMPORTANT PART

ABOUT CLEANING UP THE BULLETS AND GIVING THEM TO
CAPONE AND ALL THAT STUFF RIGHT AND THEN WHEN WE
ASKED YOU AGAIN TODAY YOU TOLD THE WHOLE STORY AND
I SAID IS THERE ANYTHING ELSE AND YOU SAID NOPE THAT'S
IT THE SAME WORDS YOU'RE USING RIGHT NOW MATTER OF
FACT AND THEN I SAID TO YOU WHY WOULD YOUR DNA BE ON
THE BULLETS (INAUDIBLE) YOU WENT OH SHIT HE CAUGHT ME
IN A LIE AND THEN YOU TOLD THE TRUTH

KP: ITS NOT THAT I'M TRYING TO LIE, I'M SCARED

DET: YOU AREN'T TRYING, YOU'RE SCARED ABOUT WHAT

KP: I MEAN, I FEEL LIKE I'M GETTING BLAMED FOR KILLING
SOMEBODY

DET: NO YOU'RE NOT GETTING BLAMED FOR KILLING ANYBODY
YOU'RE GETTING BLAMED FOR NOT TELLING US THE TRUTH
WHEN WE ASKED YOU THE FIRST 25 TIMES

KP: I DON'T KNOW WHAT TO DO I'M SCARED TO DEATH

DET: DO YOU UNDERSTAND THAT, I KNOW YOU'RE SAYING YOU'RE
SCARED, BUT AT THIS POINT WE CAN'T GO BACK AND UNDO
ANYTHING OK, I MEAN YOU'RE SITTING IN THIS CHAIR IN THIS
POSITION MANY PEOPLE HAVE BEEN IN THIS POSITION
BEFORE, (INAUDIBLE) CAUSE AND EFFECT YOU WERE AT THE
WRONG PLACE, WRONG TIME IS ALL THE TIME, ALRIGHT BUT
ITS DONE YOU'RE A BIG GIRL YOU MADE THAT DECISION AND
AT THIS POINT I'M GONNA BE HONEST WITH YOU LIKE I SAID
WE KNOW PLENTY YOU HAVE THE BEST THING YOU CAN DO
FOR YOU IS TO TELL THE WHOLE STORY, THE TRUE STORY
YOU WERE THERE OK ITS CONVENIENT TO SAY WELL I DON'T
REMEMBER THAT PART, I DON'T REMEMBER THAT PART I
DON'T REMEMBER THAT'S NOT GONNA FLY, FOR YOU LIKE I
SAID I DIDN'T MEAN TO, HOW DID YOU SAY IT, I DON'T KNOW
YOU DIDN'T WANT TO LIE BUT YOU WERE SCARED PUT THAT
ASIDE BESIDE BECAUSE HONESTLY OMISSION OR LEAVING
OUT THE TRUTH OR LYING ITS ALL THE SAME WITH US

KP: I'M TRYING TO HELP YA'LL

DET: NO, NO, NO YOU GOTTA UNDERSTAND SOMETHING, LET ME
TELL YOU SOMETHING, KELLY YOU WERE PRESENT DURING A
MURDER

KP: I KNOW

DET: LISTEN TO ME, IF THAT WOULD OF BEEN ME THERE,
GRANDMA, GRANDPA ANYBODY ITS NOT ANYTHING
PERSONAL WHEN YOU'RE PRESENT DURING A MURDER
YOU'VE GOT TO MAKE A DECISION AND THAT DECISION IS
EITHER YOU'RE ON THE SIDE OF THE MURDERER OR YOU ON
THE SIDE OF THE STATE OF SOUTH CAROLINA OR THE UNITED
STATES VS THE MURDERER WHICH EVER IT IS

KP: I'M ON YA'LLS SIDE

DET: NO WAIT A MINUTE, WELL IN ORDER TO BE ON OUR SIDE
YOU'VE GOT TO TELL THE ENTIRE TRUTH, WAIT A MINUTE,
ANYTHING SHORT OF THAT PUTS YOU ON THE OTHER SIDE
AND YOU ALREADY KNOW WHERE THAT PERSON IS AND
GONNA BE, OK, SO DON'T HELP US HELP YOU

KP: I AM

DET: I'M SERIOUS, YOU UNDERSTAND WHAT I'M TELLING YOU, YOU
DON'T HAVE A CHOICE, I DON'T KNOW LIKE HOW STUDIED
YOU ARE WHEN IT COMES TO THE LAW BUT SIMPLY BECAUSE
YOU DID NOT PUT YOUR FINGER IN THERE WITH HIS AND PULL
THE TRIGGER TOGETHER DOES NOT MEAN THAT YOU ARE
TOTALLY WITHOUT GUILT, NOT TO SAY THAT YOU'RE GUILTY
OR INNOCENT BECAUSE AS FAR AS WE'RE CONCERNED AS
LONG AS YOU TELL THE ENTIRE AND TRUTHFUL STORY
YOU'RE ON THE SAME SIDE AS US, WHEN YOU COME IN HERE
AND YOU SIT AND YOU LEAVE OUT ALL THESE PORTIONS AND
YOU CONVENIENTLY DO NOT REMEMBER THAT PUTS YOU ON
THE OTHER SIDE, WE'VE GOT TO MAKE A DECISION, THE FACT
THAT YOU WERE THERE YOU CAN'T SAY I WERE AT
GRANDMA'S HOUSE

KP: I WAS THERE

DET: EXACTLY THAT PUTS A MAJOR RESPONSIBILITY UPON YOU, DO

YOU UNDERSTAND THAT, YOU CANNOT GO FORWARD,
HYPOTHETICALLY LET'S SAY THIS THING WENT TO TRIAL AND
SIT UP THERE AND SAY I WAS THERE BUT I JUST DON'T
REMEMBER

KP: NO IF THE THING GOES TO TRIAL I'LL TELL EVERYTHING I SAW

DET: LISTEN, PERSON TO PERSON, DO YOU THINK OK THAT 12
JURORS ARE GOING TO SIT UP THERE AND BUY I JUST DON'T
REMEMBER I'M SORRY, HONESTLY, YOU'RE NOT A SLOW
PERSON, NO ONE'S GOING TO BUY THAT, NO ONE'S GOING TO
BUY THE FACT OK I DIDN'T REMEMBER THAT THEN OK BUT I
REMEMBER THIS PORTION NOW YOU NEED TO MAKE A
DECISION RIGHT NOW

KP: I DON'T KNOW WHAT ELSE YOU WANT ME TO TELL YOU

DET: YOU KNOW WHAT I WANT YOU TO (INAUDIBLE) MAKE A
DECISION OF YOUR SO CALLED BEING AFRAID VS YOUR
FUTURE, IF YOU'RE NOT GONNA DO IT FOR YOU THEN DO IT
FOR YOUR CHILD

KP: THAT'S WHY I'M HERE

DET: YOU NEED TO MAKE A DECISION AND BE TOTALLY HONEST

KP: I MEAN THERE'S NOTHING ELSE TO TELL I TOLD YOU EXACTLY
WHAT I KNOW, BIG MONEY KILLED HIM FOR NO REASON

DET: FOR NO REASON, I'M UNDER THE IMPRESSION AND CORRECT
ME IF I'M WRONG OR IF I'M RIGHT THEN LET ME KNOW,
THERE'S A LITTLE MORE, THE CLIFF NOTES VERSION WE GOT
HERE A LITTLE MORE WAS SAID, YOU KNOW IN WALKING YOU
THROUGH THIS WE FOUND SOME EXTRA THINGS SOME THINGS
THAT JUST DON'T MAKE SENSE, I DON'T THINK YOU QUITE GET
IT

KP: WHAT DON'T MAKE SENSE

DET: WHICH SIDE YOU WANNA BE ON

KP: I'M ON YA'LLS SIDE THAT'S WHY I'M HERE, I MEAN

DET: ITS NOT EVEN AN US THING IT'S A YOU, ARE YOU ON YOUR OWN SIDE OR SOMEONE ELSE'S SIDE

KP: I'M NOT ON THE MURDERER'S SIDE

DET: WELL THEN YOU NEED TO SHOW THAT

KP: I DON'T KNOW WHAT YOU WANT ME TO TELL YOU

DET: WE WANT YOUR MEMORY TO GET BETTER, CAUSE IT SEEMS THE MORE YOU THINK ABOUT IT THE BETTER OFF YOUR MEMORY GETS

DET: I AGREE

DET: AND I THINK, LET ME ASK YOU A SERIOUS QUESTION IF WE DRUG TEST YOU RIGHT NOW ARE WE GOING TO FIND ANYTHING IN YOUR SYSTEM, OK, READY (INAUDIBLE)

KP: I WANT A LAWYER, I MEAN I DIDN'T DO THIS

DET: OK YOU ARE CERTAINLY ENTITLED TO ONE

KP: I (INAUDIBLE), I DON'T, I DON'T KNOW WHAT YOU WANT ME TO DO

DET: THAT'S OK YOU HAVE THE ABSOLUTE RIGHT TO A LAWYER THAT'S YOUR CONSTITUTIONAL RIGHTS AND WE CERTAINLY APPRECIATE THAT (INAUDIBLE) THERE'S GOING TO BE AN OPPORTUNITY LATER ON DOWN THE ROAD WHEN YOU REMEMBER MORE TO TALK WITH US, WE CAN'T REALLY TALK TO YOU ANYMORE BECAUSE YOU WANTED A LAWYER, I THINK THAT'S YOUR RIGHT, BUT WE'LL LEAVE YOU OUR CARDS AND YOU CAN CALL US BUT FOR NOW JUST SO YOU KNOW IN SOUTH CAROLINA LYING TO THE POLICE IN A MURDER INVESTIGATION IS A CRIME SO WE'RE GONNA GO AHEAD AND PUT YOU UNDER ARREST

KP: WHY, PUT ME UNDER ARREST FOR WHAT

DET: STAND UP

KP: WHAT AM I UNDER ARREST FOR

DET: ACCESSORY AFTER THE FACT

KP: NO

DET: (INAUDIBLE)

KP: I DIDN'T

DET: SSSH, DON'T TALK ANYMORE YOU WANTED A LAWYER
(INAUDIBLE) YOUR RIGHT

KP: I MEAN IS THAT WHY YOU'RE ARRESTING ME BECAUSE I SAID I
WANTED A LAWYER

DET: NO, NO NOT AT ALL WE BELIEVED YOU LIED TO THE POLICE,
WITHHELD MATERIAL EVIDENCE (INAUDIBLE) DISPOSED OF
EVIDENCE (INAUDIBLE)

KP: NO I'M NOT AN ACCESSORY

DET: IT IS NOW 8:20

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) M972464, M972473, M972474

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

June 6, 2012

MARCUS D. WRIGHT,)

Defendant.)

B E F O R E:

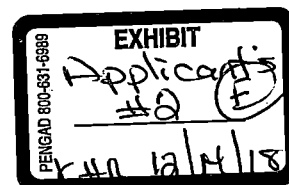
Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Donna Elder, Esquire
Attorney for Plaintiff

Morgan Martin, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter



State v. Wright - M972464, M972473, M972474
BOND HEARING

2

1 (June 6, 2012)

2 MS. ELDER: Your Honor, this is -- this is a bond
3 hearing, a bond set. Mr. -- This is State vs. Marcus Wright.
4 He is before you on the charges Warrant M972464, murder;
5 M972473, trafficking cocaine, 28 to 100 grams; and PWID crack
6 cocaine, M972474.

7 Your Honor, he's represented by Mr. Martin. The family
8 -- the victim's family is here today.

9 THE COURT: Has bond didn't set on the lesser charges?

10 MS. ELDER: It's my understanding that it has not, Your
11 Honor. (To Mr. Martin) Did they set the ---

12 MR. MARTIN: Not that I'm aware of. We can -- might as
13 well deal with all of them ---

14 MS. ELDER: I think that they just -- yeah, they just
15 waived it, Your Honor, until this was set.

16 THE COURT: All right.

17 MS. ELDER: The victim's sister ---

18 THE COURT: So, it's a trafficking and ---

19 MR. MARTIN: Wait a minute. He's telling me they did set
20 bail on the other charges.

21 MS. ELDER: How much was it?

22 MR. MARTIN: 10,000 on each count.

23 THE COURT: Okay. All right.

24 MS. ELDER: Your Honor, Katrina Green is here. She is
25 the sister of the victim in this matter on murder and she

State v. Wright - M972464, M972473, M972474
BOND HEARING

3

1 would like to address the Court at the appropriate time.

2 THE COURT: All right.

3 MS. ELDER: She also has several family members with her
4 on the first two rows directly behind her, Your Honor.

5 This -- the allegations in this case are that on April
6 30th, 2012, this Defendant along with a Codefendant and
7 several other female accessories did go to a location in Horry
8 County. They were inside a mobile home when the victim
9 entered into the home. There was some statements made ---

10 THE COURT: They were there and the victim came?

11 MS. ELDER: Yes, sir, Your Honor, but this was ---

12 THE COURT: I would assume they know each other?

13 MS. ELDER: No, sir.

14 THE COURT: Okay.

15 MS. ELDER: This was not their home either. They were at
16 a witness -- a third-party witness ---

17 THE COURT: Third-party's home?

18 MS. ELDER: Yes, sir. The victim comes into that home,
19 he is not there for a very significant period of time. He
20 asked the owner of that home, who is in a wheelchair some kind
21 of statement, basically, Are you gonna let them come up here
22 and run your house like that? We believe there were some
23 drugs and stuff happening at that time when he walked in. The
24 allegations, Your Honor, are from the witnesses there that saw
25 the shooting indicate that this Defendant began basically just

State v. Wright - M972464, M972473, M972474
BOND HEARING

4

1 went off on the victim not knowing him and began shooting him.
2 The victim was, in fact, shot approximately fourteen times.
3 We're waiting on the autopsy report. There is an indication
4 that this Defendant starting shooting. Once the victim was
5 possibly on the ground from those -- from those wounds, the
6 second Codefendant fired a couple of shots at the victim while
7 he was on the floor. ~~There were two different types of~~
8 ~~weapons or casings -- not weapons, but the casings and~~
9 ~~projectiles noted at the crime scene. There was absolutely no~~
10 ~~indication that the victim was armed in any way, shape or~~
11 ~~form.~~ That they knew -- even knew each other. This Defendant
12 then fled the scene.

13 THE COURT: Well, they apparently both knew homeowner?

14 MS. ELDER: They knew the -- yes, sir.

15 THE COURT: The homeowner, okay.

16 MS. ELDER: Yes, sir. And he is a witness and he has
17 provided a statement to the facts that I'm giving you.

18 THE COURT: All right.

19 MS. ELDER: They fled the scene. When they fled the
20 scene, they actually took the victim's vehicle with the.
21 There was some statements that were given that night that led
22 to the identifying of Marcus Wright who we knew as Big Money.
23 They were able to pinpoint his location through the assistance
24 of the State Law Enforcement Division to a hotel after --
25 immediately after the homicide. They were able to pinpoint

State v. Wright - M972464, M972473, M972474
BOND HEARING

5

1 that. They did make an arrest or entry onto a local hotel two
2 days later. When they did so, Your Honor, Mr. Wright and his
3 Codefendant were taken into custody at that time. They were
4 also identified approximately -- we do have a drug report back
5 -- there was significant amount of cocaine in the house or in
6 the hotel room, approximately 30 to 40 grams of powder
7 cocaine. There was over a gram of cocaine base as well. They
8 also had approximately \$3,000 in cash at the hotel. They
9 don't know -- I don't think they have -- they were able to
10 retrace the weapon itself from the homicide but several items
11 were taken into evidence, Your Honor. That led to the
12 charges, the trafficking charges in conjunction with the
13 murder.

14 This Defendant has a much more significant record than
15 the Codefendant. He has a '99 criminal domestic violence; a
16 2000 PWID crack, possession of marijuana; a 2002 unlawful
17 carrying; a 2002 ABHAN; -- these all were separate
18 convictions -- a 2002 malicious damage and receiving stolen
19 goods; and a 2002 carjacking. Your Honor, once we verify that
20 that carjacking occurred, that was a conviction out of
21 Columbia, South Carolina. It is our intent that this
22 Defendant is going to be eligible for the two strikes, Your
23 Honor, and we would be serving him a life -- notice of life at
24 that point once we get a certified conviction of that
25 carjacking.

State v. Wright - M972464, M972473, M972474
BOND HEARING

6

1 That would be the State's presentation other than the ---

2 THE COURT: No record since 2002?

3 MS. ELDER: That's correct, Your Honor. I believe he got
4 some active time on that carjacking.

5 THE COURT: Has the bond been set on cocaine?

6 MS. ELDER: No, Your Honor. That's scheduled for this
7 morning as well.

8 THE COURT: Okay.

9 MS. ELDER: He received on the carjacking, Your Honor,
10 ten years with a credit, it looks like, for about seventy-
11 something days. That's according to his NCIC.

12 THE COURT: Okay. All right. All right. Let me hear
13 from Mr. Martin.

14 Mr. Martin, are you retained or appointed?

15 MR. MARTIN: Retained.

16 THE COURT: All right.

17 MR. MARTIN: Your Honor, if it please the Court, first of
18 all, let me lay the background for this. First of all, as far
19 as any sentence, he's charged with murder and that carries a
20 life sentence. But secondly, in this instance, Marcus was at
21 a location when the deceased in this case came in. He was at
22 a place where he was invitee into the home, at a place where
23 he had a right to be, at a place where he even stayed
24 sometimes. If you move past that point, there -- I -- ~~believe that there will be evidence in this case without~~

State v. Wright - M972464, M972473, M972474
BOND HEARING

7

1 ~~question that the issue of self-defense is involved.~~ And in
2 spite of the seriousness of the case, certainly he is entitled
3 to the presumption of innocence and entitled to a reasonable
4 bail in this case as in any case. As I said, the Judge --
5 apparently, I didn't know this but he says they've already set
6 bail on those drug charges. He's retained an attorney. ~~He~~
7 ~~owns a home here in Horry County.~~ I would think that those
8 things means that he is not a risk to flee. That a bail
9 properly conditioned could not assure his presence and, again,
10 assure the safety of the community. So, we think he's
11 entitled to a bail and we think that under the circumstances
12 of this particular case and -- of course, Ms. Elder knows, she
13 and I have talked about it. I have tried to get some of the
14 discovery in the case but they're in the process of working on
15 that and don't have the file together yet, can't get it to me.
16 I know she will as soon as she can. ~~But, I have talked to a~~
17 ~~couple of the witnesses, I've talked to a couple of the police~~
18 ~~officers in this case and my conversations with them lead me~~
19 ~~to believe that there will be evidence of whether or not self-~~
20 ~~defense is a legitimate issue in this particular case.~~ And we
21 would ask that the Court -- that he's entitled to bail under
22 certain circumstances and we would ask that the Court set a
23 bail on him with whatever conditions the Court believes is
24 proper to assure his appearance.

25 THE COURT: Where does he live?

State v. Wright - M972464, M972473, M972474
BOND HEARING

8

1 MR. MARTIN: ~~He lives at --- on Gates Bay Highway.~~ He's
2 married, has a child or two, I believe. I know he's married
3 because I've talked to his wife on numerous occasions.

4 THE COURT: Where did this occur?

5 MR. MARTIN: This occurred down in the Burgess or
6 Socastee Community, I believe it is, on a place called ---

7 MS. ELDER: Figure Eight Road, Your Honor. It's right
8 near the high school down there.

9 THE COURT: All right. Let me hear from -- did you say
10 there's someone from the victim's family?

11 MS. ELDER: Ms. Green, Your Honor.

12 THE COURT: Okay. Let me hear from her.

13 All right, Ms. Green.

14 MS. GREEN: My full name is Katrina Green.

15 THE COURT: Yes, ma'am.

16 MS. GREEN: What I would like to say what was done to our
17 loved one was monstrous, unmerciful and senseless without a
18 bit of sympathy or remorse. We, the family, desire to see no
19 bond. Please, Your Honor, deny this individual's bond which
20 he don't deserve. Don't give another chance to take another
21 life. No bond. We're in extreme fear for our lives if they
22 were released. Thank you. The family.

23 THE COURT: All right. Anything further, Ms. Elder?

24 MS. ELDER: Your Honor, there is some evidence that when
25 they fled the scene that not only did they steal the victim's

State v. Wright - M972464, M972473, M972474
BOND HEARING

9

1 car but they then intentionally hid the vehicle that they were
2 driving in a neighbor's garage so that it would not be
3 sighted. As far as this Defendant goes, Your Honor, I would
4 concur with the family and request no bond at this time. I
5 think that's appropriate. ~~There is absolutely not one person~~
6 ~~in that house that indicates that the victim was armed in any~~
7 ~~way shape or form.~~

8 THE COURT: Well, you know, I believe that he is entitled
9 to some sort of bond but I think it has to be substantial
10 bond. This is a very serious case and I'm concerned about the
11 fact that he left the scene. If there's evidence of self-
12 defense, the better policy would've been to stay.

13 I'm going to set a bond at \$100,000 and make -- require
14 that to be established by surety and I'm going to, of course,
15 have a no-contact order. I'm mostly concerned about the
16 witnesses in this case. Okay?

17 MS. ELDER: Your Honor, I'd also ask that he not leave
18 Horry County. He has some substantial contacts with Richland
19 and Lexington.

20 THE COURT: I am going to certainly do that that he
21 remain within Horry County. Okay?

22 MR. MARTIN: Thank you, Your Honor.

23 THE COURT: All right. Okay. Thank you very much.

24 MS. ELDER: Thank you, Your Honor.

25 ADJOURNED.

ORIGINAL

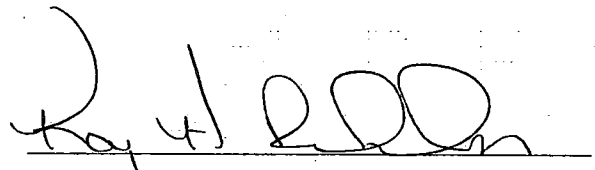
State v. Wright - M972464, M972473, M972474
CERTIFICATE OF COURT REPORTER

10

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Marcus Wright, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on June 6, 2012.

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



Kay H. Richardson

Official Court Reporter

August 20, 2014.

STATE V MARCUS WRIGHT
VERONICA CHANDLER STATEMENT

DET: ITS MAY 1, 2102 THE TIME IS ABOUT 3:42, IS THAT ABOUT WHAT YOU GOT DAVE

DET2: YEP, 3:42

DET: 3:42 A.M., I'M DETECTIVE COX WITH THE COUNTY POLICE THIS IS DETECTIVE WEAVER WITH THE HORRY COUNTY POLICE AND WE'RE AT THE SOUTH PRECINCT WHAT'S YOUR NAME MA'AM

VC: VERONICA DENISE CHANDLER

DET: AND WHAT'S YOUR DATE OF BIRTH

VC: 4-13-1986

DET: AND YOUR SOCIAL

VC: 250-63-0967

DET: YOUR ADDRESS

VC: 10702 FREEWOODS ROAD, MYRTLE BEACH, SOUTH YOU GOT THAT ON IT, 29588

DET: YOU HAVE A HOME PHONE

VC: I CAN GIVE YOU MY MOM'S HOUSE PHONE NUMBER 843-750-0031 AND I ALSO HAVE A CELL PHONE 855-9421

DET: ALRIGHT TONIGHT, OR ACTUALLY THE NIGHT OF APRIL 30TH WHICH WAS EARLIER THIS EVENING YOU WERE AT ROY'S HOUSE RIGHT

VC: YES SIR

DET: NOW TELL ME WHERE DOES ROY LIVE

VC: FIGURE EIGHT ROAD, I DON'T KNOW THE EXACT ADDRESS

DET: DID YOU GO THERE BY YOURSELF

VC: NO SIR I WENT THERE WITH MILDRED, I THINK HER LAST NAME IS SMALLS, WE STOPPED BY THERE ON THE WAY COMING, WE WERE ACTUALLY JUST LEAVING THE BEACH HEADED HOME TO BURGESS

DET: AND YOU WERE IN WHAT VEHICLE

VC: A WHITE TOYOTA CAMRY, A 1991 WHITE TOYOTA CAMRY

DET: THAT'S YOUR CAR

VC: YES SIR I HAVE THE TITLE AND EVERYTHING FOR IT

DET: OK SO WAS ANYBODY ELSE WITH YA'LL

VC: NO SIR JUST ME AND HER

DET: ABOUT WHAT TIME ARE WE TALKING ABOUT, DO YOU KNOW

VC: YOU'VE GOTTA GIVE ME A MINUTE TO THINK

DET: IF YOU DON'T KNOW THAT'S FINE

VC: I DON'T, I DON'T KNOW THE TIME

DET: OK, BUT YA'LL WERE LEAVING THE BEACH

VC: YES SIR WE LEFT THE BEACH AND WHEN WE GOING HOME WE STOPPED BY THERE

DET: OK WHEN YOU GOT THERE WHO WAS THERE

VC: IT WAS ROY, A DUDE THAT I NEVER SEEN BEFORE WHO ROY INTRODUCED HIM AS HIS NEPHEW AND A WHITE CAUCASIAN FEMALE, SHE WAS SITTING AT THE KITCHEN TABLE

DET: OK, AN UNKNOWN

VC: UNKNOWN BLACK MALE

DET: OK

VC: AND A GIRL, I DIDN'T KNOW THE GIRL EITHER

DET: AND ROY SAID IT WAS HIS NEPHEW

VC: ROY INTRODUCED HIM, HE DIDN'T GIVE HIM A NAME HE SAID THIS IS MY NEPHEW

DET: OK AND THEN A WHITE FEMALE

VC: YES SIR

DET: WHAT WAS HER NAME

VC: I DIDN'T EVEN ASK, I WAS SITTING THERE WAITING ON CAPONE TO COME BACK, THE DUDE THAT WAS STAYING WITH HIM

DET: OK SO YOU GOT THERE WHERE WAS ROY

VC: ROY WAS IN THE LIVING ROOM IN HIS WHEELCHAIR

DET: OK WHERE WAS THIS BLACK GUY

VC: OH HE CAME TO THE DOOR, THEY USUALLY COME TO THE DOOR WITH THEIR GUNS DRAWN CAUSE THEY SELL DRUGS

DET: OK SO THIS GUY HAD HIS GUN OUT

VC: HE HAD HIS GUN OUT TOO SO I GUESS ITS SOME KIND OF TRADITION OR WHATNOT CAUSE CAPONE DOES IT TOO

DET: OK SO THIS DUDE HAD HIS GUN OUT, WHAT DID HIS GUN LOOK LIKE

VC: I SAW, ALL I KEEP SEEING IS A BLACK GUN

DET: SO HE LET YOU IN OR WHAT

VC: YEAH HE'S THE ONE THAT OPENED THE DOOR FOR US IF I'M NOT MISTAKEN

DET: OK YA'LL WENT IN

VC: MATTER OF FACT, NO I'M NOT, WHEN WE GOT THERE I'M SORRY ROY WAS NOT IN THE ROOM HE WAS SITTING ON THE PORCH, THE DOOR WAS OPEN, THE FRONT DOOR WAS WIDE OPEN WHEN WE GOT THERE, MILDRED ROLLED DOWN HER WINDOW AND HOLLER AT ROY AND THAT'S WHEN I ASKED HIM WHERE CAPONE WAS AT AND HE SAID CAPONE HAD JUST LEFT AND THAT'S WHEN WE ALL WENT INSIDE THE HOUSE AND SHUT THE DOOR

DET: OK, SO YOU GO INSIDE THE WHITE GIRL'S IN THERE, WHERE'S SHE AT

VC: SHE'S SITTING AT THE KITCHEN TABLE

DET: OK ANYBODY ELSE SITTING AT THE KITCHEN TABLE

VC: YEAH, MILDRED WENT IN THE KITCHEN IF I'M NOT MISTAKEN CAUSE SHE WAS ABOUT TO OPEN A BEER AND THE BOY WHO ROY CALLED HIS NEPHEW HE WAS IN THE KITCHEN ALSO AND ROY WAS LIKE RIGHT IN THE LIVINGROOM AT THE DOOR LIKE IF SOMEBODY KNOCKED HE COULD OPEN THE DOOR AND I WAS SITTING WHERE THE TV WAS AT, I WAS SITTING I GUESS ITS A SOFA, NOT A SOFA A ROCKING CHAIR

DET: AND WHAT HAPPENED, YA'LL HUNG OUT OR WHAT

VC: I WAS SITTING THERE WAITING ON CAPONE TO COME BACK, I MEAN I'M A TRUTHFUL PERSON I WENT THERE TO GET SOMETHING, WENT THERE TO BUY SOMETHING

DET: YOU SMOKE ROCK

VC: YES SIR, EVERY ONCE IN A WHILE AND I KNOW I SHOULDN'T I'M TRYING TO

DET: HEY IT HAPPENS

VC: (INAUDIBLE)

DET: AT THIS POINT IN TIME ITS NOT LIKE THE BIGGEST CRIME IN

THE WORLD FOR US TO BE DEALING WITH OK SO DON'T
WORRY ABOUT IT, WE APPRECIATE YOUR HONESTY THAT'S
ALL WE ASK OF YOU IS TO BE HONEST WITH US

VC: I WAS KINDA SCARED TO SAY IT

DET: DON'T HANG UP OVER IT, IS THAT WAY YOU WANTED TO SEE
CAPONE

VC: YES SIR

DET: OK ALRIGHT SO YA'LL WERE JUST CHILLIN DID YA'LL HAVE
SOME ROCK THERE OR DID YOU HAVE TO WAIT ON CAPONE

VC: WAITING ON CAPONE TO COME BACK

DET: OK HOW LONG DID YOU WAIT

VC: I'LL SAY IT WASN'T LONGER THAN SEVEN OR EIGHT MINUTES
AT THE MOST, IT WASN'T THAT LONG

DET: OK LET'S RIGHT NOW FIGURE OUT WHO CAPONE IS
(RECEIVES TELEPHONE CALL)

VC: WILL I GET MY CAR BACK

DET: YEAH

VC: I DON'T HAVE TO PAY FOR IT (INAUDIBLE)

DET: OK SO YOU'RE WAITING FOR CAPONE, WHAT WERE YOU DOING
YOU JUST CHILLIN

VC: JUST SITTING IN THERE AND THE DUDE WAS AT THE KITCHEN
TABLE AND THEY WAS TALKING ABOUT FLORIDA

DET: ABOUT WHAT

VC: I THINK THEY MENTIONED FLORIDA, IF I'M NOT MISTAKEN I
HEARD FLORIDA, BUT ANYWAYS IT WAS ME AND ROY, I MEAN
ROY JAMES WE WERE TALKING AND THEN MILDRED, NO
GAWD, I'M GETTING THINGS ALL BACKWARD, WHEN WE WERE

HAVING A CONVERSATION I CAN REMEMBER AT ONE POINT AND TIME THAT MILDRED WAS SITTING ON THE SOFA AND WAS ME ON THAT BLUE CHAIR ROY JAMES AT THE DOOR AND MILDRED AT THE EDGE OF THAT SOFA (INAUDIBLE)

DET: LET ME ASK YOU THIS WHO IS CAPONE

VC: CAPONE I JUST MET CAPONE LIKE TWO WEEKS AGO I MEAN I MET HIM THROUGH A BOY NAMED PUMPKIN THAT TOOK ME THERE WHEN HE WENT TO THERE TO GET SOME DOPE AND I FIGURED SINCE I LIVE IN SOCASTEE WITH MY MOM TO KEEP ME FROM GOING ALL THE WAY TO MYRTLE BEACH I COULD JUST STOP THERE AND THAT COULD BE MORE CONVENIENT

DET: SO THIS CAPONE GUY, TELL ME WHAT YOU KNOW ABOUT HIM, WHERE'S HE FROM

VC: FROM UPSTATE, ROY SAID FROM COLUMBIA ROY ALSO SAID THAT WAS HIS NEPHEW TOO HE SAID THAT WAS FAMILY, I MEAN I'M NOT GONNA SIT HERE AND LIE, (INAUDIBLE)

DET: ALRIGHT WHAT ELSE DO YOU KNOW ABOUT HIM, WHAT KIND OF CAR DOES HE DRIVE

VC: HIS GIRLFRIEND DRIVE A WHITE CAR, I KNOW A WHITE CAR USUALLY BE THERE PARKED

DET: WHO'S HIS GIRLFRIEND

VC: (INAUDIBLE)

DET: GIRLFRIEND DRIVES, HOW DO YOU KNOW THAT THE GIRLFRIEND DRIVES A WHITE CAR

VC: BECAUSE ONE DAY, WELL WHEN I FIRST WENT THERE AND I ASKED ABOUT THE CAR DID HE NEED A RIDE HE WAS LIKE NAW MY GIRLFRIEND SHE'S PARKED OUTSIDE, SHE'S IN THE ROOM SLEEPING, AND HE WAS TELLING ME NOT TO MAKE A BUNCH OF NOISE BECAUSE IF I WAS TO GET SOMETHING MORE THAN LIKELY LIKE I SAID I WASN'T SMOKING LIKE THAT BUT THE TIMES I BEEN THERE IF I GET SOMETHING I ASK ROY IF WE CAN GO IN HIS ROOM AND SMOKE BUT THAT NIGHT HE DIDN'T

WANT ME TO BE THERE HE WAS LIKE HIS GIRLFRIEND WAS IN THE ROOM RESTING

DET: ALRIGHT SO ANYWAY THAT'S WHY YOU WERE THERE TONIGHT WAS TO MEET UP WITH THIS CAPONE GUY SO THAT YOU COULD GET SOME ROCK

VC: YES SIR

DET: AND YA'LL ARE WAITING ON CAPONE

VC: YES SIR

DET: ALRIGHT SITTING AROUND YOU IN THE BLUE CHAIR, MILDRED IS ON THE COUCH RIGHT

VC: WELL AT THE TIME, AFTER THE CONVERSATION BETWEEN ME ROY JAMES AND HER SOMEHOW SHE ENDED UP AT THE KITCHEN TABLE

DET: ALRIGHT SO THEN WHAT HAPPENS DID ANYBODY COME OR GO

VC: YEAH I MEAN LIKE FIVE MINUTES AFTER US BEING THERE GIVE OR TAKE IT WAS A KNOCK AT THE DOOR AND ROY JAMES SAID CALLED THE NAME JJ AND WHEN I SAW THE BOY I KNOW I SEEN HIM LIKE 3 OR 4 YEARS AGO BECAUSE THAT'S MY BABY'S DADDY'S COUSIN AND I REMEMBER SEEING HIM BEFORE

DET: WHO'S YOUR BABY'S DADDY

VC: MONROE HOLMES

DET: OK

VC: AND WHEN HE CAME IN I MEAN THERE WAS NO ARGUMENT OR NOTHING, I MEAN THERE WAS NO LOUD ARGUMENT

DET: HOW DID HE GET THERE, JJ

VC: I DON'T KNOW I WAS SITTING INSIDE

DET: OK WAS HE BY HIMSELF

VC: YEAH HE CAME IN BY HIMSELF, THERE WAS NOBODY ELSE BUT HIM

DET: HE CAME IN AND HE WAS TALKING TO ROY

VC: YEAH HIM AND ROY WAS TALKING AND ROY WAS LIKE SOMETHING ABOUT A DRINK I GUESS HE WAS SUPPOSE TO BRING ROY A DRINK BACK CAUSE ROY MENTIONED SOMETHING ABOUT A DRINK AND AT THAT TIME I DID NOTICE THAT THE DUDE THAT WAS IN THE KITCHEN HE WAS SITTING DOWN BEFORE JJ WALKED IN THE HOUSE BUT WHEN JJ CAME IN THE HOUSE HE WAS STANDING UP, HE DIDN'T SIT BACK DOWN

DET: OK ALRIGHT SO THEY'RE TALKING HE DIDN'T BRING ROY BACK A DRINK OR WHAT

VC: I DON'T KNOW, I MEAN BY THE TIME EVERYTHING, I MEAN IT WENT SO FAST LIKE I SAID HE CAME OVER TO ME I WAS LIKE HEY FAM CAUSE LIKE I SAID THAT'S MY BABY'S DADDY'S COUSIN AFTER THEY TALKED ABOUT THE DRINK HE CAME OVER TO ME AND I GAVE HIM (INAUDIBLE) AND HE WASN'T EVEN BESIDE ME NO MORE THAN 30 SECONDS OR MORE AND THE DUDE IN THE KITCHEN SAID SOMETHING AND ALL I SAW WAS WHEN JJ I DON'T KNOW IF JJ HAD A GUN EVERYTHING HAPPENED SO FAST HE LIFT UP HIS SHIRT AND I WAS LIKE CLOSE TO HIM AND IT WAS THE POW, POW, POW, POW AND I SAW THE BACK DOOR OPEN AND I HAD TO LET MYSELF OUT THE BACK DOOR, IT WAS STUCK, I WAS SO SCARED I WAS STANDING THERE SHAKING BECAUSE STUFF WAS HITTING ME AND I THOUGHT I WAS SHOT

DET: OK LET'S BACK UP A MINUTE HERE

VC: CAPONE DID CAME BACK TOO

DET: BEFORE THIS HAPPENED

VC: NAW HE CAME BACK LIKE AFTER EVERYTHING, WHEN I WAS RUNNING THROUGH THE BACKDOOR WHEN I GLIMPSED THE

LIVINGROOM THAT'S WHEN I SEEN JJ OR THAT'S WHAT THEY CALL HIM I SAW LIKE FROM THE BACKDOOR LOOKING INTO THE LIVINGROOM YOU COULDN'T SEE HIM LAYING THERE AND YOU COULDN'T SEE LIKE THE BULLETS BUT THE BLOOD AND I RAN OUT, MILDRED SHE WAS ALREADY IN MY CAR SHE WAS BEHIND THE STEERING WHEEL TELLING ME LET'S GO, LET'S GO, LET'S GO, LET'S GET THE HELL OUT OF HERE, LET'S GO, LET'S GO, LET'S GO AND I WAS LIKE JUST IN SHOCK ALL I WANTED TO KNOW WAS I WAS SHOT OR NOT

DET: OK SO YOU RAN OUT AND GOT IN THE CAR, MILDRED WAS BEHIND THE WHEEL

VC: YEAH SHE DROVE THE CAR OUT

DET: OK WHO ELSE GOT IN THE CAR WITH YA'LL

VC: JUST ME AND MILDRED IN MY VEHICLE MATTER OF FACT BEFORE WE GET TO PULL OUT I DIDN'T KNOW WHAT KIND OF CAR IT WAS BECAUSE THE DUDE HAD IT BACKED WAY BACK IN THE DARK AND WHEN HE LEFT OUT HE DIDN'T TURN ON HEADLIGHTS AS I REMEMBER I DON'T THINK HE DID BUT HE SAID IF WE TELL HE WAS GOING TO KILL US

DET: WHEN DID HE SAY THAT

VC: ON THE WAY LEAVING OUT HE YELLED IT, IF I'M NOT MISTAKEN SIR I MEAN EVERYTHING YOU HAVE TO FORGIVE ME I'M NERVOUS NOT FROM TALKING TO YA'LL BUT JUST THE WHOLE THING

DET: YEAH BUT VERONICA THE TRUTH IS THE TRUTH AND IT DON'T EVER CHANGE

VC: YES SIR

DET: THE TRUTH IS ALWAYS CONSISTENT NOW, THE TRUTH DON'T EVER CHANGE NO MATTER HOW NERVOUS YOU ARE, HOW HAPPY YOU ARE, HOW SCARED YOU ARE, HOW MAD YOU ARE WHATEVER

VC: WELL I'M GOING BY WHAT MILDRED TOLD ME, SHE WAS OUT

FRONT, SHE SAID HE YELLED THAT, HONESTLY I DIDN'T HEAR THE DUDE SAY THAT, THAT'S THE TRUTH

DET: WHAT KIND OF CAR DID HE LEAVE IN

VC: I THINK IT WAS A DARK COLORED CAR, I DIDN'T EVEN LOOK AT THE BRAND THE NAME OF IT OR NOTHING

DET: WAS IT A TRUCK, AN SUV

VC: NO IT WAS A CAR, IT WAS A CAR, IT WAS NOT A TRUCK OR A SUV

DET: WHEN YOU WENT OUT THERE DID YOU SEE JJ'S CAR

VC: JJ, IT WAS A LIKE A SUV IN THE YARD, AFTER MY BABY DADDY THE FIRST THING WHEN WE LEFT THERE WE DID WENT TOWARD BURGESS AND I WENT TO MY BABY'S DADDY HOUSE AND WOKE HIM UP CAUSE I WAS SHAKING AND WANTING TO KNOW IF I WAS SHOT ANYWAYS I MENTIONED WHAT MILDRED WAS SAYING WHO JJ WAS AND I MENTIONED IT TO MONROE AND HE ASKED ABOUT THE VEHICLE AND I TOLD HIM IT WAS AN SUV IF YOU ASK ME WHAT COLOR I DON'T KNOW I DIDN'T PAY THAT ANY ATTENTION I WAS JUST WORRIED ABOUT ME BEING SHOT SHOULD I GO TO THE HOSPITAL AND I KEPT LOOKING AT MY STOMACH

DET: WHERE WAS JJ STANDING WHEN HE GOT SHOT

VC: WE WERE STANDING LIKE, WE HAD JUST GAVE EACH OTHER DAP AND I WAS LIKE I HAVEN'T SEEN YOU IN A WHILE

DET: WHERE IN THE HOUSE WAS HE STANDING

VC: WHERE THE TV'S AT

DET: IN THE LIVINGROOM

VC: IN THE LIVINGROOM

DET: OK

VC: AND I WAS RIGHT THERE

DET: AND THE OTHER DUDE WAS IN THE KITCHEN

VC: IN THE KITCHEN BEHIND , MATTER OF FACT HE WAS BEHIND A SINK, THERE'S A LITTLE BAR IN THERE THAT'S WHERE HE WAS STANDING AT, SO AND MILDRED WAS ALSO IN THE KITCHEN I MEAN MILDRED AND THE WHITE GIRL, EXCUSE MY LANGUAGE THEY WERE IN THE KITCHEN WHEN HE STARTED SHOOTING

DET: WHAT WERE THEY ARGUING ABOUT

VC: I DIDN'T EVEN HEAR AN ARGUMENT, I MEAN TO BE HONEST LIKE MOST GUYS ARGUING AND WANT TO SHOOT EACH OTHER OR FIGHT HONESTLY I DIDN'T HEAR AN ARGUMENT, YOU WANT TO QUESTION ME SIR

DET2: (INAUDIBLE)

DET: ALRIGHT SO YOU WENT OUT THE DOOR THE BACK DOOR

VC: THE BACKDOOR

DET: WHERE DID ALL THESE OTHER PEOPLE GO

VC: AT THIS POINT WHEN I GOT TO THE BACK DOOR LIKE I SAID MILDRED WAS IN MY CAR SHE WAS ALREADY HAD THE CAR CRANKED UP BACKING UP TELLING ME TO GET IN THE CAR, GET IN THE CAR I DID SAW ROY JAMES HE WAS OUT IN THE STREET IN HIS WHEELCHAIR, I DID NOT SEE NO WHITE GIRL I WAS NOT EVEN LOOKING FOR HER CAPONE I REMEMBER HIM HE WENT INSIDE THE HOUSE WHEN WE LEFT CAPONE WAS STILL THERE, CAPONE, ROY JAMES AND THE WHITE GIRL AND THE WHITE CAR THAT CAPONE CAME IN AND THE TRUCK, SUV THEY WERE STILL THERE WHEN WE LEFT

DET: BUT THE GUY WHO SHOT HAD HAULED ASS

VC: HE HAULED ASS

DET: IN WHAT KIND OF CAR

VC: IT WAS A DARK COLORED VEHICLE, I'M BEING HONEST WITH YOU, I MEAN IT WAS BACKED UP IN A CORNER I MEAN BACKED UP

DET: WHAT DID ROY CALL HIM

VC: HE SAID HIS NEPHEW

DET: BUT HE HAD A NAME FOR HIM RIGHT NOT HIS REAL NAME BUT A STREET NAME

VC: ALL I HEARD HIM SAY WAS THIS MY NEPHEW, AND COME TO FIND OUT MY BABY DADDY TOLD ME HE CALLED MOST OF THE DRUG BOYS HE DEALS WITH HIS FAMILY, HIS NEPHEW I DIDN'T KNOW THAT I THOUGHT THAT EVEN CAPONE WAS HIS REAL NEPHEW I'M JUST FINDING OUT TONIGHT THAT THAT'S NOT EVEN HIS BLOOD RELATIVE THE DUDE JUST STAYS WITH HIM

DET2: SO YOU'RE SAYING CAPONE WAS IN THE HOUSE

VC: NO HE CAME AFTER EVERYTHING HAPPENED THAT'S WHEN HE RAN IN THE HOUSE, I'M GOING BY WHAT MILDRED TOLD ME, MILDRED TOLD ME THAT WHEN HE RAN INTO THE HOUSE HE HAD HIS GUN OUT TOO, WHEN HE RAN IN THE HOUSE, SHE WAS ON THE FRONT AT THE TIME SHE WAS ALREADY AT MY CAR SHE SAW EVERYTHING THAT HAPPENED FROM THE FRONT POINT OF VIEW I DIDN'T I TOOK OFF THROUGH THE BACK AND WHEN I GOT AROUND THE CORNER THAT'S WHEN SHE YELLED GET IN THE CAR, GET IN THE CAR, GET IN THE CAR, LET'S GO, LET'S GO, LET'S GO

DET2: WHO WAS DRIVING THE SUV

VC: THEY SAID IT WAS JJ'S TRUCK

DET2: IT WAS JJ'S, DID YOU SEE IT

VC: I SAW IT PARKED IN, ON THE WAY BACKING OUT WHEN I WAS GETTING IN THE CAR ALL I SAW WAS LIKE A SUV IT WASN'T A TRUCK OR A CAR IT WAS A SUV

DET2: WHAT DID IT LOOK LIKE

VC: I DIDN'T EVEN NOTICE THE COLOR I MEAN I'M GOING BY WHAT MY BABY DADDY TOLD ME TONIGHT HE ASKED WAS IT A GREEN, I CAN'T REMEMBER THE MAKE OR MODEL, HE ASKED WAS IT WAS GREEN I DO REMEMBER HIM ASKING THE COLOR GREEN AND I TOLD HIM YEAH I THINK SO IT WAS A DARK COLOR

DET2: BUT YOU DON'T KNOW

VC: YES SIR I'M NOT POSITIVE AT THAT TIME I COULDN'T

DET2: SO WHEN JJ KNOCKED ON THE DOOR WHO LET HIM IN

VC: WE GOT INTO AN ARGUMENT OVER THAT, I THOUGHT THAT THE TALL DUDE LET HIM IN BUT MILDRED WAS SAYING THAT ROY JAMES LET HIM IN CAUSE I THOUGHT THAT I OVERHEARD JJ CAME IN AND WAS LIKE DANG YOU GOT OTHER PEOPLE ANSWERING YOUR DOOR NOW, BUT SHE SAID THAT DIDN'T HAPPEN, SO AND I KNOW I'M NOT CRAZY I MEAN I HEARD IT BUT SHE SAID THAT THAT DIDN'T HAPPEN

DET2: IS THAT WHAT THE ARGUMENT WAS OVER

VC: NO IT WASN'T EVEN AN ARGUMENT I DIDN'T EVEN, IT WASN'T EVEN NO LOUDNESS NO CURSING NO NOTHING, ALL I KNOW THEY MADE A COUPLE REMARKS TO EACH OTHER AND POW, POW, POW

DET2: SOME REMARKS BUT YOU DON'T KNOW WHAT WAS SAID

VC: I WASN'T, I MEAN IT WAS JUST IT WAS LIKE SIMPLE LIKE DUDE I'M TALKING TO YOU NOW, I MEAN IT WASN'T NO CURSING NO NIGGER THIS NO NOTHING, IT WASN'T NOTHING

DET2: SO WHERE WAS THE GUN

VC: MILDRED SAID WHEN SHE WENT IN THE KITCHEN

DET2: NOT WHAT MILDRED SAID, WHAT DID YOU SEE

VC: OK ALL I SAW WAS WHEN, I SAW THE GUN AT FIRST, WHEN WE FIRST WENT THERE LIKE I SAY HE HAD A GUN

DET2: WHERE WAS IT

VC: IN HIS HAND, THAT'S HOW THEY

DET2: HE CAME THROUGH THE DOOR WITH IT IN HIS HAND

VC: NAW HE USUALLY KEEPS IT IN HIS HAND, LIKE HE WASN'T ON THE PORCH HE WAS STANDING AT THE DOOR , ROY JAMES AND THE WHITE FEMALE WERE ON THE PORCH WHEN WE PULL UP THE DUDE WAS STANDING, IT'S A LITTLE, WE CALL IT THE RAMP IT'S A CHAIR, ROY JAMES IN HIS WHEELCHAIR THE DUDE WAS IN THE DOORWAY, IN THE DOORWAY WITH HIS GUN, AND THAT THE SAME WAY HOW CAPONE ANSWERS THE DOOR WHEN YOU GO KNOCK THERE TO GET DOPE OR WHATEVER HE COMES TO THE DOOR WITH THE GUN IN HIS HAND

DET2: OK SO HE HAD IT IN HIS HAND AND HE WENT TO THE KITCHEN BEHIND THE BAR

VC: YES WENT AND SIT AT THE KITCHEN TABLE

DET2: WAIT HE SAT AT THE TABLE OR HE WAS STANDING UP

VC; HE WAS STANDING UP WHEN JJ CAME IN, HE WAS SITTING DOWN THE WHOLE TIME

DET2: WHAT DID HE DO WITH THE GUN WHEN HE SAT AT THE TABLE

VC: I WASN'T LOOKING OVER THERE THAT'S WHEN I GOT IN A CONVERSATION WITH ROY CAUSE I DIDN'T KNOW HIM SO I MEAN

DET: WHAT WAS HE DOING AT THE TABLE, WAS HE EATING

VC: NO

DET: WAS HE DRINKING

VC: HE WAS JUST SITTING , THE GIRL WAS SITTING, THE WHITE

FEMALE FROM MY POINT OF VIEW, SHE WAS SITTING IN THAT CHAIR BEFORE MILDRED WENT IN THERE MILDRED WAS SITTING IN THIS CHAIR AND I THINK IT WAS A REFRIGERATOR HE WAS SITTING IN THAT CHAIR AND WHEN MILDRED WENT IN THERE THEY STARTED HAVING CONVERSATIONS, NOW I'M GOING BY WHAT BY MILDRED TOLD ME ABOUT THE CONVERSATION THEY HAD

DET2: SO JJ COMES INTO THE HOUSE

VC: YES SIR

DET2: AND HE COMES OVER TO YOU AND SAYS HELLO RIGHT

VC: YES SIR AFTER MILDRED SAYS HEY CUZ AND WHATNOT CAUSE THAT'S HER FAMILY TOO

DET2: SOME WORDS WERE EXCHANGED BUT IT WASN'T AN ARGUMENT

VC: IT WASN'T AN ARGUMENT

DET2: WHAT STARTED THE SHOOTING, YOU SAID SOMEBODY PULLED UP THEIR SHIRT

VC: YEAH ALL I KNOW, LIKE I SAID WITH THE WORDS THAT CAME, AND I'M GOING BY WHAT I , I MEAN I'M QUITE SURE I SAW WHEN THE DUDE IN THE KITCHEN SAID SOMETHING. I'M NOT QUITE SURE WHAT IT WAS, JJ SAID YEAH, YEAH, YEAH, I SAW WHEN THE SHIRT CAME UP AND THAT'S WHEN I HEARD THE POW, POW, POW

DET2: DID YOU SEE ANYTHING WHEN HE PULLED HIS SHIRT UP

VC: I'M QUITE CONVINCED I SAW A GUN, BUT I DON'T KNOW

DET2: DESCRIBE IT FOR ME

VC: I DIDN'T GET TO LOOK AT IT LIKE THAT, I MEAN EVERYTHING HAPPENED SO QUICK, WHEN HE LIFT UP HIS SHIRT I'M CONVINCED IN MY HEAD THAT I SAW A GUN

DET2: WHAT COLOR WAS IT WAS IT BLACK, RED, ORANGE WHAT COLOR WAS IT

VC: I MEAN

DET2: I MEAN IF YOU SAW SOMETHING YOU SHOULD BE ABLE TO DESCRIBE IT RIGHT

VC: BUT I MEAN I DIDN'T LOOK AT IT LIKE THAT, WHEN HE LIFT UP HIS SHIRT I MEAN LOOK LIKE WHEN YOU PULL I MEAN THAT'S WHAT I'M SAYING IT LOOKED LIKE HE HAD A GUN CAUSE HE LIFT UP HIS SHIRT LIKE

DET2: LIKE HE WAS REACHING FOR IT

VC: YEAH LIKE HE WAS REACHING SO I'M QUITE CONVINCED IT WAS A GUN I MEAN

DET2: AND THAT'S WHEN

VC: AND WHEN HE DID THAT I REMEMBER JJ TURNING AROUND AND THAT'S WHEN I HEARD POW, POW, POW, POW I MEAN AND ITS LIKE I SAW LIKE SPARKS FLYING AND I FELT THINGS BUT I DIDN'T EVEN KNOW JJ WAS ON THE FLOOR LIKE I SAID SO WHEN I GOT TO THE BACK DOOR AND LOOKED IN THE LIVINGROOM THAT'S WHEN I SAW THE BODY ON THE FLOOR AND YOU COULD OF SEE ALL THE BLOOD FROM, IF YA'LL GO THERE NOW FROM THE POINT OF VIEW THAT I SAW YOU COULD OF SEE THE BLOOD

DET2: OK SO YOU RAN OUT THE BACK AND IN THE FRONT

VC: I RAN AROUND

DET2: OK DID YOU SEE CAPONE GO IN THE HOUSE

VC: YEAH CAPONE HAD JUST CAME UP

DET2: WHERE WERE YOU WHEN YOU SAW

VC: COMING AROUND THE CORNER, COMING AROUND THE CORNER

DET2: AROUND THE CORNER FROM THE BACK

VC: FROM THE BACK OF THE HOUSE HE WAS GOING IN THE HOUSE

DET2: OK WHO WAS HE WITH

VC: I GUESS HIS GIRLFRIEND CAUSE HE DON'T EVER DRIVE ANY PLACE AND IT WAS THE WHITE CAR, THE WHITE CAR BROUGHT HIM BACK

DET2: AGAIN WHAT DID YOU SEE

VC: HIM GOING IN

DET2: DID YOU SEE A FEMALE OR NOT

VC: I DIDN'T SEE A FEMALE SIR

DET2: HOW WOULD YOU KNOW SHE'S INSIDE

VC: I MEAN, I'M JUST GUESSING

DET2: OK LISTEN

VC: I'M SORRY, I'M BEING HONEST

DET2: I APPRECIATE IT BUT I DON'T NEED YOU GUESSING I JUST WANT TO KNOW WHAT YOU SAW

VC: NO SIR I DID NOT SEE A FEMALE, I DID NOT ALL I SAW WAS HIM AND I'M GOING BY WHAT THEY SAID I DID NOT SEE HIM RUN IN THE HOUSE WITH A GUN

DET2: ASIDE FROM WHAT MILDRED WAS TELLING YOU WHAT ELSE DID YOU HEAR FROM OUTSIDE WHAT DID YOU HEAR INSIDE

VC: I MEAN MILDRED WAS JUST YELLING, SHE WAS YELLING GET IN THE CAR, GET IN THE CAR, GET IN THE CAR, AND MY BODY WAS SHAKING, I WAS MORE CONCERNED WAS I SHOT MORE THAN ANYTHING AND SHE KEPT YELLING GET IN THE CAR, GET IN THE CAR, GET IN THE CAR SO OTHER THAN THAT I DON'T EVEN KNOW WHAT WENT ON IN THE HOUSE AFTER WE

LEFT, LIKE I SAID WE LEFT CAPONE THERE, ROY JAMES AND THE CAUCASIAN FEMALE AND I DON'T EVEN KNOW WHERE SHE WENT

DET: SO YA'LL GET IN THE CAR AND WHERE DID YOU GO

VC: RIGHT THERE WHEN MILDRED WAS DRIVING WE WENT STRAIGHT ACROSS IT'S A THAT'S A BRICK BUILDING, LIKE WHEN YOU LEAVE

DET: RIGHT THERE ON 707, SOCASTEE BLVD

VC: SOCASTEE BLVD, WHEN YOU'RE LEAVING OUT THAT ROAD INSTEAD OF TURNING LEFT OR RIGHT YOU CAN GO STRAIGHT ACROSS ITS LIKE A PLAZA AND THEN ME AND MILDRED I WAS JUST SHAKING ASKING HER WAS I SHOT SHE STOPPED THE CAR LOOKED AT ME UNDER THE LIGHTS AND SHE SAID NO I WASN'T SHOT I GOT BEHIND MY STEERING WHEEL WE DID HEAD TOWARD BURGESS WE WENT TO BURGESS SHE GOT ON THE PHONE AND CALLED HER HUSBAND, BOOGIE I MEAN I'M NOT PRONOUNCING HIS NAME RIGHT, ANYWAY SHE GOT ON THE PHONE TO CALL HER HUSBAND AND TOLD WHAT JUST HAPPENED AND SHE WAS TELLING HIM TO HAVE THE BACKDOOR OPEN SO WHEN SHE COME THERE THEY CAN GO AND SEE WHAT WENT ON WHEN WE GOT THERE HE WAS ALREADY GONE WE SAT THERE FOR A MINUTE, WE SAT THERE AND WE SAT THERE, SO I WAS LIKE MAN I CAN'T STAY HERE I'M SCARED LIKE I SAID I DIDN'T HEAR THE BOY SAY HE WAS GONNA KILL US IF WE TALKED I WENT BY WHAT SHE SAID I MEAN AND SHE SOUNDED CONVINCING AND SO I WAS LIKE WELL I'M NOT GONNA STAY HERE MY FIRST CHOICE WAS EITHER TO GO TO KINGSTREE CAUSE THAT'S WHERE I 'M FROM OR JUST GO SOMEPLACE RIDE SOMEPLACE SO WE PASSED BACK BY THERE IT HAD BEEN LONG ENOUGH, WE PASSED BACK BY THERE GOING TO THE BEACH WE COULDN'T SEE THE POLICE LIGHTS OR WHATNOT AND THAT'S WHEN I WAS LIKE MILDRED WHAT SHOULD WE DO AND SHE DIALED 911 AND IF YA'LL GET THE 911 CALL YA'LL SHOULD, THEY SHOULD RECORD IT, THEY SHOULD HAVE HAD THE CONVERSATION RECORDED LIKE ALL WHAT WAS SAID SO

DET: OK DID YOU GO TO A CLUB IN MYRTLE BEACH

VC: YES SIR (INAUDIBLE)

DET: ON 10TH AVENUE

VC: YES SIR, PINK CLUB

DET: PINK CLUB, DID YOU TELL PEOPLE THERE WHAT HAPPENED

VC: YES SIR I DID, I WAS SHAKEN UP

DET: OK

VC; I DIDN'T KNOW WHAT ELSE TO DO

DET: THEN WHAT DID YOU DO

VC: GOT A PIECE, NO I DIDN'T GET IT FROM HIM DID I, I DON'T KNOW, DID I GET IT FROM HIM, IT WAS A DUDE IN A JEEP HE CAME OUT OF THE CLUB WAS LIKE WHY ARE YA'LL STANDING AROUND MY JEEP LIKE THIS AND I ASKED HIM IF HE WAS STRAIGHT CAUSE I HAD EIGHT DOLLARS ON ME AND AT THE TIME I WAS LIKE FUCK IT I REALLY NEED IT SO I BOUGHT A PIECE OF DOPE

DET: OK

VC: AND DT CAME UP AND PEOPLE WERE STANDING OUTSIDE THE CLUB AND DT WAS LIKE THIS IS CONSIDERED LOITERING SO WE WENT ON WHITE STREET AND KNOCKED ON, THERE'S SOME APARTMENTS OVER THERE AND I KNOW THE, WELL I DON'T KNOW HIM BUT HE'S AN OLDER GENTLEMAN KNOCKED ON HIS DOOR FIRST CAUSE WE WERE GONNA TELL HIM WHAT HAPPENED HE DIDN'T ANSWER THE DOOR SO WE WENT TO THE APARTMENT OVER, GARY WENT TO GARY'S APARTMENT AND AFTER WE SAT THERE WE TOLD PUMPKIN WHAT HAPPENED AND HE WAS LIKE THAT'S HIS FIRST COUSIN HE WANTED TO COME TO BURGESS, ON THE WAY AFTER WE DECIDED TO COME BACK TO BURGESS WE RAN OUT OF GAS SO PUMPKIN JUMPED IN THE CAR WITH SOMEBODY OFF OF PINE (INAUDIBLE) ROAD AND LEFT, MILDRED SHE WAS ALREADY GONE BECAUSE ONE OF THE FRIENDS THAT THEY KNOW HE STOPPED BY ON A MOTORCYCLE AND TOOK HER TO GO GET

GAS SHE SAID SHE WOULD STOP BY A FAMILY MEMBERS HOUSE AND GET A GAS TANK SO I WAS STUCK OUT THERE LEFT BY MYSELF FOR ABOUT 5 MINUTES, ANYWAYS SHE CAME BACK FROM THE GAS STATION AND THE DUDE WITH THE MOTORCYCLE HE FOLLOWED US WE WENT STRAIGHT ACROSS ON PINE ALLEN DRIVE WE DIDN'T TURN TO GO BY THE (INAUDIBLE) WE WENT STRAIGHT ACROSS AND HIT THE BYPASS SO WE COULD STAY ON STRAIGHT ROADS BECAUSE IT WAS LIKE A WATER JUG FULL OF GAS THAT THEY BROUGHT BACK, STAYED ON THAT ROAD AND HE FOLLOWED US ALL THE WAY TO MILDRED'S HOUSE WE WERE SITTING THERE EVER SINCE

DET: OK WHO WAS THE GUY ON THE MOTORCYCLE

VC: I THINK THEY CALL HIM HONEY, I KNOW HIM I USED TO WORK WITH HIS SON AT K & W CAFETERIA ABOUT 3 OR 4 YEARS AGO AND HIS SON, HIS SON WAS CLOSE, HIS SON HAD GOT KILLED ON 17 BYPASS SOMEBODY HAD HIT HIM AND DRAGGED HIM

DET: OK THIS GUY THAT SHOT JJ WHAT DID HE LOOK LIKE

VC: HE WAS TALL, I'LL SAY ABOUT 5'9", CAN YOU LIKE CAN ONE OF YA'LL STAND UP, I THINK HE WAS TALLER THAN YOU

DET: ABOUT HOW OLD

VC: I'LL SAY IN HIS 20'S

DET: HEAVY, SKINNY

VC: MEDIUM

DET: FACIAL HAIR

VC: UM, I DON'T WANT TO TELL A LIE

DET: IF YOU DON'T REMEMBER THAT'S FINE

VC: I DON'T REMEMBER

DET: OK WHAT ABOUT THE HAIR ON HIS HEAD

VC: I THINK HE HAD ON A HAT, I MEAN I DON'T WANT TO THINK

DET: DO YOU REMEMBER WHAT KIND OF CLOTHES HE HAD ON

VC: NO SIR

DET: DO YOU REMEMBER IF HE HAD JEWELRY ON

VC: NO SIR I WASN'T THAT CLOSE TO HIM

DET: DO YOU REMEMBER IF HE HAD TATTOOS

VC: I WASN'T THAT CLOSE TO HIM

DET: DO YOU REMEMBER HOW HE TALKED, DID HE HAVE AN
ACCENT OF ANY TYPE

VC: I DON'T KNOW, I MEAN LIKE A NORMAL PERSON I'M SORRY I
DON'T KNOW HOW YOU WANT ME TO ANSWER THAT, BUT HE, I
MEAN HE DOESN'T TALK SOUTHERN I KNOW HOW A
SOUTHERN PERSON TALKS LIKE (INAUDIBLE) HE DIDN'T TALK
LIKE THAT

DET: OK

DET2: FROM THE TIME JJ GOT THERE, GOT IN THE HOUSE HOW MUCH
TIME WOULD YOU SAY WENT BY BEFORE THE SHOOTING
STARTED

VC: NOT EVEN A GOOD FULL 2 MINUTES, 2 - 2/12 MINUTES

DET2: ARE YOU SURE YOU DIDN'T HEAR ANY ARGUMENT OR
ANYTHING SAID, SOME SLY REMARK

VC: I MEAN I SAID THE DUDE IN THE KITCHEN I HEARD HE SAID
SOMETHING AND JJ HE WAS SO CLOSE TO ME I HEARD HIM
SAID YEAH, YEAH YEAH AFTER WE GAVE EACH OTHER DAP
AND I WAS LIKE I HADN'T SEEN YOU IN A WHILE I DIDN'T
HEAR WHAT THE DUDE IN THE KITCHEN SAID BECAUSE I
WASN'T IN THAT AREA OF THE HOUSE AND LIKE I SAID IT
WASN'T NO ARGUMENT LIKE A NORMAL PERSON WOULD
ARGUE SO THAT'S WHY I'M STILL LIKE IN SHOCK BECAUSE

NOBODY ARGUED I MEAN

DET2: WHEN THIS GUY STARTED SHOOTING DID HE STAY BEHIND
THE BAR OR DID HE COME FORWARD

VC: HE STAYED BEHIND

DET2: YOUR BEST GUESS ESTIMATE HOW FAR AWAY WOULD YOU
SAY HE WAS

VC: I'LL HAVE TO DO IT LONG WAYS, OK, I'LL SAY PROBABLY TO
THE CORNER OF THAT WALL LIKE THE ANGLE I WOULD THINK
FROM ABOUT RIGHT HERE TO THE ANGLE OF THAT WALL

DET2: ABOUT 12 - 14 FEET, DOES THAT SOUND ABOUT RIGHT

VC: YES SIR (INAUDIBLE) I DON'T KNOW MY MEASUREMENTS

DET2: THAT'S ALRIGHT, I WASN'T THERE I NEED YOU TO PAINT A
PICTURE FOR ME THAT'S WHY WE'RE ASKING THESE
QUESTIONS YOU WERE THERE WE WEREN'T

VC: OK

DET2: SO ALL THREE OF YA'LL WERE IN THE KITCHEN, NOT YA'LL
THREE WERE IN THE KITCHEN YOU AND JJ WERE IN THE
LIVINGROOM

VC: YEAH ME AND JJ , WHEN JJ CAME ROY JAMES HE WAS STILL
LIKE IN HIS WHEELCHAIR HE STAYED BY THAT DOOR, HE
USUALLY STAYED BY THE DOOR

DET2: WAS HE ON THE PORCH OR WAS HE INSIDE

VC: HE WAS INSIDE, THE DOOR WAS CLOSED

DET2: OVER BY THE THRESHOLD

VC: RIGHT IN FRONT OF THE DOOR

DET2: OK

DET: VERONICA I DIDN'T STRESS TO YOU BEFORE WE STARTED THE IMPORTANCE OF THE TRUTH AND TELLING US THE TRUTH, ESPECIALLY IN A CASE LIKE THIS IN A MURDER CASE ITS OF THE UP MOST IMPORTANCE THAT YOU TELL THE TRUTH BECAUSE WHAT HAPPENS INEVITABLY AND I'M NOT SAYING THAT YOU'RE NOT TELLING THE TRUTH BUT I WANT TO MAKE SURE THAT YOU ABSOLUTELY UNDERSTAND WHAT COMES INTO PLAY AND WHAT THE RAMIFICATIONS ARE FOR NOT TELLING THE TRUTH, IN A MURDER CASE IF YOU SIT THERE AND GIVE US A STATEMENT THAT IS NOT THE ABSOLUTE TRUTH OR YOU LEAVE THINGS OUT OR IF YOU TELL US FLAT OUT LIES THEN YOU GET CHARGED WITH ACCESSORY

VC: EVERYTHING I'VE TOLD IS THE TRUTH

DET: WELL THAT KIND OF LEADS ME TO MY NEXT QUESTION AND PROBABLY MY LAST QUESTION AND ITS IS THERE ANYTHING THAT YOU TOLD US, ANYTHING THAT YOU TOLD US THAT YOU WANT TO CHANGE AND GET OUT THAT WASN'T ENTIRELY TRUE, THAT WAS ENTIRELY ACCURATE DID YOU LEAVE ANYTHING OUT NOW IS THE TIME AND THIS IS THE PLACE TO GET IT OUT ON THE TABLE SO WE CAN DO BUSINESS WITH IT OK THERE'S NO HARM AND NO FOUL IF YOU SAY YOU KNOW WHAT I LIED ABOUT THIS BUT I WANT TO MAKE IT RIGHT NOW IS YOUR CHANCE TO MAKE IT RIGHT WITHOUT ANY PENALTY WHATSOEVER NOW'S THE TIME TO DO IT IF YOU WANT TO CHANGE YOUR STATEMENT

VC: THAT'S EVERYTHING THAT HAPPENED SINCE ME AND MILDRED LEFT MYRTLE BEACH CAME OVER THERE LIKE I SAID THE TIME WAS ABOUT 7, 8 MINUTES IT WASN'T LONG EVERYTHING HAPPENED THE WAY, HOW IT HAPPENED

DET: WHEN'S THE LAST TIME BEFORE TONIGHT YOU WERE AT ROY'S HOUSE

VC: LAST NIGHT

DET: OK THIS GUY WAS THERE LAST NIGHT

VC: NO IT WAS ONLY ME, ROY JAMES AND SOMEBODY CAPONE CALLS BROTHER I NEVER DID GOT THE DUDE'S NAME HE'S

LIKE RED BONED IT HE DRIVES AN SUV TOO, I THINK ITS LIKE A WHITE SILVERY COLOR I DIDN'T NEVER GOT HIS NAME BUT HE'S A YOUNGER DUDE, AND I DID KNOW LAST NIGHT WHEN I WANTED (INAUDIBLE) WHEN I WENT BACK TO COP SOME DOPE, I'M SORRY, HE WAS OUT BUT AS FAR AS CAPONE SAID THAT ME AND THE DUDE THAT WAS WITH ME THAT WANTED TO SPEND THE \$50 HE WAS LIKE WELL HE'S IN CONWAY, YA'LL HAVE TO GO MEET HIM IN CONWAY HE'S ALREADY (INAUDIBLE) CONWAY SO THAT DUDE AS FAR AS I KNOW HE LIVES IN CONWAY BUT THE DUDE THAT WAS THERE TONIGHT I SWEAR I'VE NEVER SEEN HIM BEFORE IN MY LIFE

DET: HOW DO YOU GET UP WITH CAPONE

VC: I MET HIM THROUGH PUMPKIN

DET: YEAH BUT IF YOU NEED TO GET UP WITH HIM DO YOU CALL HIM OR WHAT

VC: YES SIR MY PHONE IS IN MY BABY DADDY IN HIS CAR THAT'S WHY I WANT TO CALL HIM I HAVE A NUMBER IN MY PHONE

DET: WHERE'S YOUR BABY DADDY AT

VC: HE LEFT BECAUSE I WAS SUPPOSE TO BE MEETING HIM ACTUALLY THE ROAD YA'LL CAME DOWN WE'VE BEEN TOGETHER 5 YEARS BUT THAT'S WHERE HIS WIFE STAYS AND HE'S BACK STAYING WITH HIS WIFE WHERE HE'S GOT KIDS THAT STAYS, HE'S GOT OLDER KIDS AND THEY DON'T LIKE THE FACT THAT I BE ON THAT ROAD BUT I CAN GET YOU HIS NUMBER TO CALL IF YOU DON'T MIND

DET: YEAH WHAT'S HIS NAME

VC: MONROE HOLMES, DATE OF BIRTH 2-16-52 AND HIS PHONE NUMBER, I'M SORRY, 843-957-8524 IT IS, I LEFT SOMETHING OUT, I'M SORRY

DET: WHAT

VC: NOTHING ABOUT THE MURDER SCENE BUT AFTER WE CAME BACK FROM RUNNING OUT OF GAS WE DID RODE WITH

MONROE TO MURRELLS INLET, HE WENT TO MURRELLS INLET
ME AND MILDRED RODE WITH HIM TO MURRELLS INLET TO HIS
COUSIN WILLIAM'S HOUSE

DET: WHERE'S THAT AT, THE HOT ROAD

VC: (INAUDIBLE) CIRCLE, HE SAID HE WAS GOING TO GO BORROW
SOME MONEY, I ASKED HIM FOR SOME MONEY, BECAUSE I
TOLD HIM THE HONEST TRUTH THAT I IN MY MIND, MY MIND'S
TELLING ME THAT I JUST NEED TO GET HIGH AND BLOCK
EVERYTHING OUT THAT'S WHAT MY MIND WAS TELLING ME
SO HE WENT TO BORROW MONEY FOR ME AND AS SOON AS WE
GOT BACK THERE HE DROPPED US OFF AROUND THE BACK HIS
DAUGHTER WAS STANDING OUT AND IT WASN'T LONG BEFORE
HE LEFT, I WAS SUPPOSE TO BE MEETING HIM DOWN THE ROAD
ACTUALLY, AS SOON AS I WAS ABOUT, WELL AS SOON AS I
GOT IN THE CAR AND MILDRED WENT TO THE WHITE
EXPLORER SHE WAS TALKING TO THE PEOPLE PUMPKIN CAME
AND HE BLOCKED THE DOOR AND HE WAS LIKE NOPE, NOPE
YOU'RE NOT GOING ANYWHERE THE DETECTIVES ARE
COMING, THE DETECTIVES ARE COMING AND I WAS LIKE
WHERE THEY AT I'M SUPPOSE TO GO MEET MY BABY DADDY
HE SAID THAT YA'LL WERE COMING (INAUDIBLE) GOT OUT
WENT TO THE WHITE JEEP AND STOOD THERE AND TALKED TO
THE PEOPLE AND THAT'S WHERE I WAS AT WHEN YA'LL
POPPED UP

DET: PUMPKIN WAS THERE WHEN WE WERE THERE HE WAS ONE OF
THE TWO PEOPLE THERE

VC: ACTUALLY HE TOLD US WHEN HE CAME TO THE CAR, HE TOLD
US THAT YA'LL HAD HIM IN THE BACK, I GUESS THAT THE
POLICE HAD HIM IN THE BACK QUESTIONING HIM, HE'S

DET: WHAT WAS HE WEARING TONIGHT

VC: I THINK LIKE A PLAID SHIRT, I WANNA THINK (INAUDIBLE) A
BUTTON UP SHIRT, I DO REMEMBER THAT

DET: WHAT'S HIS REAL NAME

VC: I CALL HIM PUMPKIN, I'VE NEVER KNOWN HIS REAL NAME

THAT HIS STREET NAME PUMPKIN AND ALL I KNOW IS THAT
HIS DAD POOCHIE (INAUDIBLE) HE STAYS WITH HIS DAD
THERE HIS DAD'S NAME IS POOCHIE

DET: OK WHAT'S HIS PHONE NUMBER

VC: PUMPKIN DON'T HAVE A PHONE

DET: ALRIGHT SIT TIGHT

(END OF TAPE)

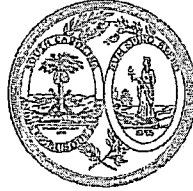
This is a voluntary statement on the behalf of the Figure Eight Rd. shooting in which took place on April 30th, 2012. I Larnard Powell did not "Marcus Wright" run from 5456 Figure Eight Rd. To my knowledge, it a guy I only know as "2 guns" running from the residence and go inside the home. Also, Mr. Wright's wife didn't provide me nor Mr. Wright with any fire-arms to do any crimes associated with murder & have I ever been to the Wright's home, 3635 Kates Bay Hwy. Also think "2 guns" drove the vehicle to Johnsonville to dispose of it. Basically, what I told the cops was a lie just to get on through to find out the detectives were going to lie on me in the motion. I can't say Mr. Wright murdered Jerome Green for the simple fact I wasn't there at the time of the accident.

- Respectfully,
submitted,
L. Powell

EXHIBIT

6

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



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Deputy Solicitor

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J. GREGORY HEMBREE
Solicitor

May 29, 2013

Mr. Morgan Martin
Mr. Ed Brown
1121 Third Avenue
Conway South Carolina 29526

Re: State v. Marcus Wright

SCANNED

Dear Morgan:

I have reviewed all of the discovery in my file as well as what is listed on the RMS police system. I believe you should have everything with the exception of the proffer statements of Lanard Powell and Kelly Pinnex. I do not believe proffer statements are discoverable prior to trial however I am providing those to you at this time. We have made no promises regarding Mr. Powell's cooperation or Ms. Pinnex. In addition I anticipate that Ms. Brown will also proffer for the State prior to trial but has not done so as of this date.

In addition as we have previously spoken regarding your motions on phone records and recordings, I had a search warrant executed on several phones in evidence. I have previously provided to your office copies of those results and it is my understanding that that satisfies your motion. In regards to the victims phone, it is a tracphone which cannot be downloaded through our technology, however I have attached a print out that was prepared by evidence manually. All phones are in evidence should you need to view the logs for yourself.

Insofar as recordings are concerned I have reviewed your motion and believe all recorded interviews have been previously provided however out of an abundance of caution I have attached a disc with all known interviews that were conducted by police that evening and at the time of arrest. That should comply with your second motion.

It is my intent to call for trial ALL of Mr. Wright's charges to include the drug charges and 2 new indictments that will go to the Grand Jury Thursday. These charges do not arise out of new discovery or new evidence, they are standard charges associated with a shooting incident. One is possession of a weapon during a violent crime and the other is possession of a weapon by a person previously convicted of a violent crime. I will need to serve your client prior to June 17, 2013, please let me know what day

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

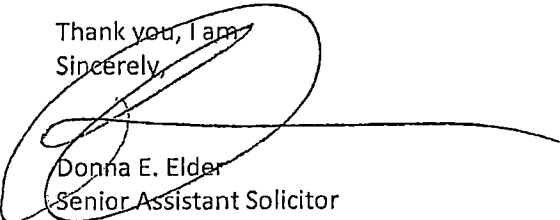
during the week of the 10th that you will be available to bring your client before the Judge for service of those indictments. I have already excused him from Roll Call on the 7th. I have attached copies of all the indictments that we are going forwarding on at this time.

In addition I had received notice that a Federal Inmate in Florence wanted to provide information regarding this case as well as another unrelated case. He had been an inmate at JRLDC for a period of time when one or more of the defendants were incarcerated. Our investigator went to interview him his name is Kashief Spain. He provided information that he could have obtained by looking at the discovery of the defendants. I did not find his information to be any different than that already provided by the defendants in their statements. I do not intend to call him as a witness but am providing this information to you to do as you determine.

And finally as I interviewed Mr. Powell he provided me copies of letters he had received from your client, some are difficult to read, but the originals appear in the same condition. Mr. Powell indicated that when Mr. Wright was last incarcerated he forced him to write a statement. I have not been provided a copy of that statement. I would ask that you forward that to me, in the event that you do not have that or do not wish to provide it to me please let me know and I will file the proper motion to have it produced.

I believe this covers everything if you have any questions or if I have left something out that we had previously discussed let me know.

Thank you, I am
Sincerely,



Donna E. Elder
Senior Assistant Solicitor

SCANNED

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Marcus Dwain Wright,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case No. 2017-CP-26-02564

APPLICANT'S MOTION TO
ALTER OR AMEND THE JUDGMENT

FILED
HORRY COUNTY
2023 SEP - 9 P 1:19
JENNIE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

NOW COMES the applicant, Marcus Dwain Wright, by and through his undersigned counsel, and moves this Court to alter or amend the judgment pursuant to Rule 59(e), SCRPC. The applicant was denied the most precious of constitutional rights – the right to testify in his own defense. The record is clear from the underlying proceedings and from the Post-Conviction Relief hearing held on December 14, 2019, that despite knowing the applicant wanted to testify in his own defense, his attorneys did not make that known to the trial judge until a point in the trial that was incorrectly deemed too late by the trial judge. (ROA 480:20-481:9). In a footnote in the Court of Appeals' decision related to this issue, the Court held that "nothing in [its] opinion prevents [the applicant] from seeking PCR for ineffective assistance of counsel." State v. Wright, 416 S.C. 353, 374, fn. 2, 785 S.E.2d 479, 490, fn. 2 (Ct. App. 2016).

Citing a Fourth Circuit case, this Court held that "all that is necessary for a defendant to waive the right [to testify] is to know that a right to testify exists." (Order at 15). However, this is not the law in South Carolina. *See, e.g., State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993) ("A defendant's knowing and voluntary waiver of a statutory or constitutional right must be established by a complete record; and may be accomplished by colloquy between the court and the defendant, between the court and defendant's counsel, or both"). The record establishes that

the applicant never actually waived his right to testify with any finality. He was essentially given the chance to consider the issue overnight and although he indicated he intended to waive that right as court concluded in the afternoon, the next morning prior to trial he communicated to his attorneys that he wanted to testify in his own defense. He was never given that chance. He was not “bound at the point” he was asked whether or not he would testify in his own defense.

The trial court explained to the applicant his right to testify. (ROA 440:6-441:15). It then questioned the applicant regarding his right to testify, stating that he was not bound by his decision:

The Court: Now, this is your decision, to testify or not ... I ask you now - - **you’re not bound at this point**, but have you determined whether you wish to testify or exercise your right to remain silent?

Mr. Wright: Exercise my right to remain silent.

(ROA 442:4-13) (bold added); *see also Wright*, 416 S.C. at 373, 785 S.E.2d at 489. The trial then convened for the day and the trial Judge never asked the applicant for his final response as to whether or not he chose to waive this most precious of constitutional rights.

The right to testify is “essential to due process of law in a fair adversary process.” Rock v. Arkansas, 483 U.S. 44, 51, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987). “A person’s right to be heard in his defense – a right to his day in court – is basic in our system of jurisprudence.” State v. Rivera, 402 S.C. 225, 242, 741 S.E.2d 694, 703 (2013) (quoting Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973)). Defense counsels’ failure to promptly notify the trial court that the applicant wanted to testify fell below an objective standard of reasonableness. *See Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836, 840 (2018), reh’g denied (Mar. 29, 2018).

The next morning, prior to the case being called, the applicant told trial counsel that he wanted to testify. (ROA 480:20-22). Trial counsel admitted this on the record. Id. At the PCR hearing, one of the attorneys testified:

A: ... I did speak with Mr. Wright. And during the course of that early morning conversation, he indicated that he wanted to testify.

Q: Right. He had changed his mind?

A: He had changed his mind, yes.

Q: Okay. Did you communicate that to Mr. Martin?

A: I did.

Q: Okay. Do you remember when, in terms of the proceeding?

A: It probably would've been immediately after he came up. Now, I don't know how long I was there with Mr. Wright by myself. It was probably no more than five minutes, if that long.

(Tr. 54:18-55:4). The applicant's other attorney testified at the PCR hearing as follows:

Q: And so, at the end of the day, it's clear that Marcus Wright was not able to testify on his own behalf?

A: That - - that's clear, yes.

(Tr. 13:4-6).

As indicated by both the trial court and Court of Appeals, the trial court did not permit the applicant to testify because, by the time it was informed of the applicant's wish to testify, it had already ruled that it would not charge self-defense and voluntary manslaughter to the jury. (*Contra* Order at 18, 26-27, stating that "there is little to no possibility" that the trial court would have permitted the applicant to testify after the defense rested, but before it ruled on the self-defense and voluntary manslaughter jury charges). As stated by the trial court, "[a]nd why wasn't [the applicant's wish to testify] called to the Court's attention before the Court ruled ... I just ruled on

the two, voluntary manslaughter and self-defense, just a few minutes ago ... That would have been the time, before the Court ruled. (ROA 480: 24-25; 481:3-8) (bold added). Similarly, as held by the Court of Appeals, “the trial court did not abuse its discretion in refusing to reopen the record to allow [the applicant] to testify after the defense had rested **and the trial court had ruled it would not charge the jury on voluntary manslaughter and self-defense.**” Wright, 416 S.C. at 374, 785 S.E.2d at 490 (bold added). The Court of Appeals stated that “[t]he trial court was concerned that if it permitted [the applicant] to testify after hearing its **ruling** on the voluntary manslaughter and self-defense jury charges and learning which supporting evidence the trial court said was missing, [the applicant] would be able to fit his testimony into the required parameters for those charges by testifying that he shot the [decédent] because he feared for his life.” Wright, 416 S.C. at 374, 785 S.E.2d at 490 (bold added).

If counsel timely notified the trial court that the applicant wanted to testify, it would have permitted him to do so. (ROA 481:3-482:1); *see also* State v. Pepin, No. 2013-0467, 2014 WL 11665509, at *4 (N.H. Aug. 15, 2014) (agreeing with the trial court that if the defendant would have told trial counsel, after the defense rested, that the defendant wished to testify, counsel would have asked the court to re-open the record to allow such testimony). Prior to ruling on the self-defense and voluntary manslaughter jury charges, the trial court would not have had any legitimate grounds to deny a request to reopen the record and permit the applicant to testify. State v. Dauzart, 769 So. 2d 1206, 1208 (La. 2000) (trial court abused its discretion by refusing to reopen case to permit defendant to testify where the “deviation from normal practice would have had no impact on the orderly flow of trial from jury selection to verdict” and cost the defendant “his only opportunity to face jurors and persuade them of his version of events”); State v. Cullen, 428 N.J. Super. 107, 112, 50 A.3d 686, 689 (App. Div. 2012) (“Although consideration should be given to

the prejudice to the opposing party ... as well as to the potential for jury confusion when a defendant tardily seeks to exercise the right to testify or offer other evidence relating to guilt or innocence, those considerations will normally give way to the interests of justice”).

The improper refusal to permit a defendant to testify in his own defense is a structural error that requires reversal without a particularized prejudice inquiry. State v. Rivera, 402 S.C. 225, 247, 741 S.E.2d 694, 706 (2013) (“The Supreme Court has not directly addressed whether a trial court’s improper refusal to permit a defendant to testify in his own defense is a structural error or one which is subject to harmless-error analysis. We find this error is not amenable to harmless-error analysis and requires reversal without a particularized prejudice inquiry”) (citations omitted). Although trial counsel’s errors do not require a particularized prejudice inquiry, the applicant was prejudiced. (*Contra* Order at 26-27).

This Court held that “[t]he facts and evidence before Counsels more than justified making the strategic decision to not make self-defense their *core* strategy.” (Order at 26) (*italics added*). Self-defense was at least one trial strategy, and, as stated by the Court of Appeals, trial counsel “**sought to show** that ... [the applicant] shot the Victim in self-defense because he believed the Victim was reaching for a gun ...” Wright, 416 S.C. at 362, 785 S.E.2d at 484 (Ct. App. 2016) (**bold added**).¹

This Court stated that the applicant was not prejudiced because “his testimony would have been devastatingly harmful to his own case.” (Order at 27). However, whether his testimony would have been harmful or not, if counsel had timely notified the trial court that the applicant wished to

¹ This Court also stated that “self-defense was *not* the strategy Counsels employed at trial, even if they had considered it earlier in the course of the representation.” (Order at 26) (*italics original*). This statement contradicts the Court of Appeals decision, Wright, 416 S.C. at 362, 785 S.E.2d at 484, and the fact that trial counsel sought, and argued for, a self-defense jury charge. (ROA 469:24 – 470:25; 473:4-25; 474:1-21).

testify, he would have had the opportunity to do so. *See supra*. The right to testify in your own defense is an absolute guarantee under the Constitution regardless of the content of the testimony. Moreover, it is undisputed that the defense would have received its requested jury charges of self-defense and voluntary manslaughter if the applicant was permitted to testify.

In declining to charge self-defense and voluntary manslaughter, the trial court found there was “no evidence whatsoever of the crucial element required for both voluntary manslaughter and self-defense, of any fear of imminent danger on behalf of the Defendant at the time the shots were allegedly fired by - - allegedly by Mr. Wright, the Defendant ...” (ROA 477:4-9). There was substantial evidence (in addition to the applicant’s testimony) that would have supported self-defense and voluntary manslaughter jury charges, but trial counsel failed to elicit and introduce that evidence.

At trial, Lanard Powell testified that he saw the decedent lying on the floor and kicked him a bit to see if he was alive. (ROA 270:13-15). He then jumped over the decedent’s body and grabbed a bag of money. (ROA 270:13-15). No mention was made about a gun found near the decedent. However, *in camera* trial testimony demonstrated that Powell told McCray that he (Powell) “Picked up a gun by the decedent” and removed it from the scene. (ROA 449:25-450:2; 450:4-9). In its Order, this Court stated that “Powell told [McCray] that he [Powell] found a pistol on the floor, which he picked up and took with him from the scene. (Order at 11). This Court does not mention that Powell told Christopher McCray that the pistol was found *near the decedent*. (See Order at 11). The jury was never permitted to hear this evidence because trial counsel failed to ask Powell about these statements. (ROA 460:4-461:7); *see also* S.C. Rules of Evidence, Rule 613(b)

(extrinsic evidence of prior inconsistent statement of witness); *see also* PCR Tr. 20, 62 (trial counsel testified “that’s what the record reflects, then that’s what is there”).²

The introduction of McCray as a witness would not have been “merely cumulative” impeachment evidence. (*See* Order at 15). The trial court would have been required to instruct the jury on self-defense; an instruction that was sought by the defense counsel at trial. *See Wright*, 416 S.C. at 375, 785 S.E.2d at 491 (“If there is any evidence in the record from which it could be reasonably inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial court’s refusal to do so is reversible error”). It would have supported a voluntary manslaughter jury charge, which was also sought by defense counsel at trial. *See Wright*, 416 S.C. at 374, 785 S.E.2d at 490.

Moreover, the evidence would have directly contradicted the State’s case. For example, in its opening statement, the State told the jury that “[the decedent] had no weapon. There was no weapon on [the decedent] at the crime scene when police got there.” (ROA 169:14-15). In its closing, the State emphasized Veronica Chandler’s testimony that the decedent had no weapon and made no threats. (ROA 512:2-5) (“Now we have Veronica [Chandler]. Veronica gets up there. She doesn’t know [the applicant]. She described him as a black male sitting at the table in the kitchen. She also tells you that [the decedent] had no weapon, that [the decedent] made no threats”). The evidence would have also contradicted the testimony of the State’s witness Roy Sinclair that he “ain’t never known [the decedent] to have a weapon.” (ROA 186:4-8). The State emphasized Sinclair’s testimony in its closing as well: “[Sinclair] told you that [the decedent] had no gun, didn’t even normally carry a gun, he made no threat, he knocked on the door, said what

² There is *no* evidence that the applicant engaged in “witness tampering” with respect to McCray’s *in camera* trial testimony. (*Contra* Order at 14).

have you got these guys running your house for, and [the applicant] picks up the gun on the table and just starts firing.” (ROA 511:22-512:1).

Kelley Pinnix gave a recorded statement to law enforcement that prior to hearing gunshots, she heard the applicant yell that the decedent had a gun. (Applicant Ex. 1). Pinnix said that after the shooting she ran outside. *Id.* She then saw Powell run inside the house without a gun and come out of the house with a gun. *Id.* This is consistent with Powell’s statement to McCray that he (Powell) saw a gun on the floor next to the decedent and removed it from the scene. (ROA 449:25-450:2). Although at least one theory of the case was self-defense, *see supra*, trial counsel failed to elicit this testimony. Moreover, this evidence would have necessitated self-defense and voluntary manslaughter jury charges, which were requested by trial counsel. It would have also directly contradicted the State’s case. *See supra*.

Prior to trial, Chandler gave a recorded statement to law enforcement that “when [the decedent] lifted up his shirt I’m convinced in my head that I saw a gun” and that “I’m quite convinced it was a gun.” PCR State’s Ex. 1. At trial, on direct examination Chandler testified that she did not see a gun. (ROA 209:14-16; Tr. 16:5-10). She further testified that she did not recall telling the police that she thought she saw a gun. (ROA 211:16-19; Tr. 46:7-20).

This Court held that “Chandler’s statements are not so clearly inconsistent as to lead this Court to conclude their introduction would have substantially impeached Chandler.” (Order at 33). However, it incorrectly cites to Rule 612(b), rather than 613(b), and states that “[i]f a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence that the prior statement was made is *inadmissible*.” (Order at 27-28) (*italics added*). Rule of Evidence 613(b) states that “[i]f a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is *admissible*.” (*italics added*). Chandler’s testimony was not an

unequivocal admission, yet trial counsel failed to admit Chandler's prior inconsistent statement pursuant to Rule 613(b). State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003) ("In determining whether a witness has admitted making a prior inconsistent statement and thereby obviated the need for extrinsic proof, the courts of our state and other jurisdictions have held that the witness must admit making the prior statement unequivocally and without qualification") (citations omitted); *see also* 613(b), SCRE (after laying the proper foundation, "if a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible"). This prior inconsistent statement would have necessitated the self-defense and voluntary manslaughter jury charges.

Prior to trial, Mildred Small gave a recorded statement to law enforcement that the decedent always carried a gun on him and that he did not go anywhere without that gun. (Tr. 17:17-25). The State called Small to testify, but trial counsel failed to elicit this testimony. Although trial counsel testified at the PCR hearing that Small stated she did not know who did the shooting, (Tr. 18:15-18), her prior statement would have corroborated Chandler's prior statement. It would have also necessitated self-defense and voluntary manslaughter jury charges. This Court did not rule on this issue. *See* S.C. Code Ann. § 17-27-80 ("The Court shall make specific findings of fact, and state expressly its conclusions of law, relating to each position presented).

Trial counsel's failures fell below an objective standard of reasonableness. The trial transcript reflects that trial counsel did not follow the requirements Rule 613(b), SCRE, and the trial court suggested that trial counsel did not understand the Rule. (ROA 459:13-461:7); *see also* Hinton v. Alabama, 571 U.S. 263, 134 S. Ct. 1081, 1089, 188 L. Ed. 2d 1 (2014) ("An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under

Strickland”). Even assuming that trial counsel knew and understood what was required under Rule 613(b), SCRE, their failure to elicit testimony to support jury charges of self-defense and voluntary manslaughter fell below an objective standard of reasonableness and prejudiced the applicant. As stated by the Court of Appeals, the applicant sought to show that he shot the decedent in self-defense and that he acted in a sudden heat of passion. Wright, 416 S.C. at 362, 785 S.E.2d at 484. Ample evidence was available to trial counsel to support their requested jury charges of self-defense and voluntary manslaughter, yet they failed to introduce such evidence at trial.

Trial counsels’ purported reasoning for their strategy, whether their strategy was to not present self-defense as a defense or not present self-defense as a core defense, was not objectively valid. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (bold original) (citations omitted) (“Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. ... Where counsel articulates a strategy, it is measured under an objective standard of reasonableness”). This Court found that “[t]he facts and evidence before Counsels more than justified making the strategic decision to not make self-defense their core strategy: no witness could credibly testify that [the decedent] was ever armed with anything, [the decedent’s] broken finger substantially diminished the likelihood of a jury would believe he was even capable of wielding a pistol, and any realistic self-defense strategy would all but require them to concede that the applicant was in fact the shooter when the identity of the perpetrator was the weakest element of the State’s case.” (Order at 26).

First, Chandler, Small, Pinnix, and Powell’s statements to McCray all corroborate each other. See Curran v. State, 229 So.3d 1266, 1269 (Fla. Ct. App. 2017) (“the admission of a corroborative statement can provide powerful evidence to support credibility and reliability”) (citation omitted). This evidence would have also corroborated the applicant’s testimony.

Second, this Court states that Pinnix “asserts [in her statement] that [the decedent] had a broken finger.” (Order at 43). However, this is not a valid reason to not present evidence of self-defense or voluntary manslaughter. The crime scene investigator Heather Brummett had already testified at trial that the decedent had “some type of splint or something on one of his fingers.” (ROA 371:12-13). There was no evidence that the decedent could not fire his weapon with an alleged broken finger on one of his hands. Even assuming there was such evidence, it would not defeat a self-defense or voluntary manslaughter jury charge.

Third, at trial, counsel was not concerned that self-defense would “all but require them to concede that Applicant was in fact the shooter.” (See Order at 26). Trial counsel wanted, and advocated for, self-defense and voluntary manslaughter charges. At trial, counsel argued that “Powell’s testimony was that the [applicant] said he tried a jack move, a jack move, which in their world is pull a gun and rob him. ... In addition to that, it is my recollection that Lanard Powell testified that in some other conversations that [the applicant] said that he thought [the decedent] was pulling a gun, because the question was asked, well, did he say he ever saw a gun, to which the answer was no, but it’s clear that Lanard Powell testified that [the applicant] told him that he came in, made those comments about who’s up - - and you’re letting these boys up in your place, and was moving around, and that he reached for something. ... You’ve got Mildred Small who testified to the effect ... that the [decedent] in the case reached for something, and you’ve got Veronica Chandler ... [who testified] something to the effect that [the decedent] reached or went for something.” (ROA 466:11-467:17).³ It would not have been objectively reasonable for trial counsel to argue in support of self-defense and voluntary manslaughter jury charges if they did not

³ This also demonstrates that self-defense is not the applicant’s “*now-preferred* theory of defense” as stated by this Court. (Order at 14) (*italics added*). Trial counsel wanted, and advocated for, self-defense and voluntary manslaughter charges at trial.

consider it to be a self-defense or voluntary manslaughter case. If trial counsel would have thought that it was problematic to argue self-defense and voluntary manslaughter, they would have not sought these charges.

This Court incorrectly found that “Brown testified that Applicant admitted ... that he never saw a weapon” on the decedent. (Order at 12). However, this was not Brown’s testimony. Brown testified that the applicant never *indicated to Brown* that the applicant saw a weapon. (Tr. 64:6-8) (“Q: All right. Did he ever indicate to you that he saw a weapon? A: No, sir.”). This is not the same as applicant admitting to his attorneys that he never saw a weapon on the decedent. Nevertheless, such alleged admission would not negate the self-defense and voluntary manslaughter jury charges.

In addition to the above, this Court did not make specific findings of fact and conclusions of law on the applicant’s due process claim that his “attorneys’ actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process.” (See Order at 4); *see also* S.C. Code Ann. § 17-27-80. The Court did not make findings of fact or conclusions of law on claims 1(i) – (o), stating that they are “wholly subsumed by the other claims for relief.” *See Id.* It did not make findings of fact or conclusions of law on the claim that the cumulative effect of trial counsels’ errors constituted ineffective assistance and formed a cumulative prejudicial effect.

The applicant therefore respectfully moves this Court to alter or amend the judgment.

Dated this 3rd day of September, 2020



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Marcus Dwain Wright,) Case No.: 2017-CP-26-02564
S.C.D.C. No. 289646,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**RETURN TO APPLICANT'S MOTION TO
ALTER OR AMEND THE ORDER OF
DISMISSAL**

FILED
HORRY COUNTY
SEP 21 P 1:47
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

In response to the Motion to Alter or Amend the Judgment filed by Marcus Dwain Wright (Applicant) dated September 3, 2020, and filed September 9, 2020. Respondent would show this Court:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed April 24, 2017. Respondent made its return on or about August 7, 2017. The Court convened an evidentiary hearing into the matter on Friday, December 14, 2018, at the Georgetown County Judicial Center in Georgetown, South Carolina. At the conclusion of the day-long hearing, this Court requested orders from both parties. Both parties complied. The Court adopted Respondent's proposed Order of Dismissal and filed it on August 14, 2020. The Horry County Clerk of Court served the Order and written notice thereof on the parties by e-mail on Friday, August 21, 2020, and Respondent additionally served the Order on Applicant's counsel by e-mail on Wednesday, August 26, 2020. Respondent received Applicant's motion on or about September 8, 2020. Upon inquiry by Respondent, the Court indicated a desire for a response. The requested response so follows.

II.

Applicant has failed to timely file the motion to alter or amend. “A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRCP. The ten-day deadline in Rule 59(e) is an absolute deadline, and a trial court does not have power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion. Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018). “The failure to serve a Rule 59(e) motion within ten days of receipt of the notice of entry of the order converts the order into a final judgment, and the aggrieved party’s only recourse is to file a notice of intent to appeal.” Id., 423 S.C. at 257, 815 S.E.2d at 433.

According to the public index, both parties were served the Order of Dismissal by e-mail on Friday, August 21, 2020. Accordingly, any motions pursuant to Rule 59(e), SCRCP, were due to be served no later than Monday, August 31, 2020. Applicant dated his motion Thursday, September 3, 2020. Therefore, even assuming the most generous date of service, Applicant’s filing is untimely and must be denied.

Nonetheless, Respondent has thoroughly reviewed the motion and responds to its merits below.¹ Notwithstanding the untimely character of the motion, Applicant’s motion should be denied on the merits save where errors are otherwise conceded by Respondent.

¹ Respondent hesitates to even submit its timeliness argument, as a couple of errors not effecting the outcome of the proceedings do exist in the order which would otherwise merit correction. While the procedures of PCR are extraordinarily flexible, though, the timeliness of motions filed under Rule 59, SCRCP remain firm. Respondent notes here, as well as in the e-mail by which this return is concurrently submitted to the Court and Applicant’s counsel, that if the motion is untimely, the notice of appeal must be filed by Monday, September 21, 2020.

III.

The primary thrust of Applicant's motion is that had Counsels more timely informed the trial court of Applicant's newfound wish to testify, the trial court would have been compelled to grant him that opportunity, would have done so, and that refusal to so permit Applicant to testify would have constituted an abuse of discretion. This issue was raised to and ruled upon by the Court:

Second, the Court finds Counsels reasonably and accurately informed Applicant the following morning after he asserted his desire to testify that it was too late to go back and try to reopen the record that had been closed the previous day. By the time Applicant told them that he wanted to testify, the record was closed, and the trial court had already initiated the conference on whether to charge self-defense and voluntary manslaughter, where it opined on what testimony would have been necessary to support the charges.

...

As to prejudice, first, the Court finds that even if Counsels had immediately confronted the trial court with Applicant's newfound desire to testify, there is not a reasonable probability the outcome would have been different. As noted above, the trial court had already explained at the end of the previous day what testimony would have been necessary to support instructions on voluntary manslaughter and/or self-defense, such that there is little to no possibility the trial court would have ruled differently had it been more promptly informed of Applicant's desire to testify on the following morning.

Order of Dismissal at 26-27. Given the reasons provided, the trial court would have been well within its prerogative to not reopen the record and permit Applicant to testify even if Counsels more quickly informed the trial court of Applicant's change of heart.

Applicant cites to a number of cases from other jurisdictions to argue to the contrary, but in doing so either (1) misapprehends the rulings or (2) fails to recognize that his argument in this regard fails for factual reasons which distinguish the present matter from those considered by other jurisdictions. In Applicant's first example, the unreported opinion of State v. Pepin, the Supreme Court of New Hampshire affirmed there was no ineffective assistance of counsel where

the defendant never communicated his desire to testify to his attorney, which is a factual scenario that provides little if any guidance on how to resolve the present case. Pepin, Case No. 2013-0467, 2014 WL 11665509 (N.H. Sup. Ct. 2014).

The Supreme Court of Louisiana's circumstances in State v. Dauzart, Applicant's second case, are more interesting: Dauzart's attorney discussed with Dauzart *off the record* whether he should testify, then informed the trial court that the defense would rest subject to introducing certain medical records. Dauzart, 769 So.2d 1206, 1208-09 (La. 2000). The parties and the court then spent more than a half-hour pulling relevant medical documents from a much larger file. Id. at 1209. "Toward the end of this process, with the jury still out and with discussion about the court's *general* charge to the jury also underway," Dauzart's attorney informed the trial court that upon further reflection, Dauzart had changed his mind and wished to take the stand, and further wished to introduce an additional witness. Id. (emphasis added); see also State v. Dauzart, 749 So.2d 806, 810-11 (La. Ct. App. 1999) (mentions the additional witness desired). The trial court refused, and appears to have only done so because the defense had already technically rested its case. Dauzart, 769 So.2d at 1209; Dauzart, 749 So.2d at 811.

The facts in Dauzart present important differences from the present matter before the Court. Whereas Dauzart himself said nothing to the court about his right to testify² and his attorney only equivocally³ rested, here Applicant himself affirmed on the record to the trial court that he wished to exercise his right to remain silent, thus rejecting the trial court's offer to permit him further time to consider his options. Whereas the delay in Dauzart was only 30-45 minutes,

²Louisiana jurisprudence provides that "absent extraordinary circumstances that should alert the trial court to a conflict between attorney and client, the court should not inquire into a criminal defendant's right to testify. The court should assume, that a criminal defendant, by not 'attempting to take the stand,' has knowingly and voluntarily waived his right[.]" State v. Hampton, 818 So.2d 720 (2002) (quoting Passos-Paternina v. United States, 12 F.Supp.2d 231 (D.P.R. 1998)). While a common approach, the refusal to simply ask the defendant himself or herself in Louisiana appears to be a source of complications.

³ Resting "subject" to something else is not quite a firm declination of the right to testify or present further evidence.

and the proceedings had only dealt with picking through papers and a discussion of a general jury charge, here Applicant delayed until the following day, after substantial arguments and until after the trial court had already taken up and opined upon which specific charges he would give to the jury and what testimony would have been necessary to support the instructions he was inclined to reject. Whereas the trial court in Dauzart evidently *only* rejected Dauzart's request to testify on the technical basis that Dauzart's attorney had rested his case, here Judge Hayes was more specifically frustrated that Applicant waited until he learned of the trial court's thinking about the adequacy of the testimony to support certain jury instructions. Altogether, the cold rejection of Dauzart's opportunity to testify, without ever actually hearing from Dauzart, upon the strictest technical basis in Louisiana is a far cry from the substantive justifications Judge Hayes possessed for holding Applicant to his personal assertion of the right to remain silent in South Carolina.

Applicant finally offers State v. Cullen, 50 A.3d 686 (N.J. App. Div. 2012). As did Applicant in the present matter, upon a sworn colloquy with the trial court, Cullen advised the court that he would not testify, then changed his mind the following morning. Id. at 688. When the court asked for the prosecution's position, it only asserted that "because defendant had rested he had no right to a reopening of the record." Id. The New Jersey Appellate Division focused on the prosecution's limited procedural argument, and held that since "no concerns about prejudice or confusion were urged in opposition to defendant's late request" and none were asserted by the trial court, there was no reason to deny defendant's request, and doing so was an abuse of discretion. Id. at 689-90. As was set forth in the Order of Dismissal and in the treatment of Dauzart, above, the key factual distinction between these cases and the present

matter is that prejudice to the State, and indeed to justice, was identified and relied upon by the trial court.

Applicant presents no precedent or argument sufficient to show, under the present facts and circumstances, that the trial court would have been compelled to grant Applicant the opportunity to testify if only Counsels had more quickly informed the trial court of his desire to do so; to the contrary, Counsels correctly informed Applicant that it was too late. Applicant presents no valid basis to alter or amend the Order of Dismissal through these arguments and the motion should thus be denied.

IV.

Applicant also argues that the Order of Dismissal should be altered or amended because the error he claims is structural such that he need not prove prejudice, and cites to State v. Rivera, 402 S.C. 225, 247, 741 S.E.2d 694, 706 (2013). The South Carolina Supreme Court in Rivera was dealing with the direct appeal review of the *trial court's* error in refusing Applicant's explicit request to testify made at the appropriate time. Id., 402 S.C. at 230-37, 741 S.E.2d at 696-700. The present matter is a post-conviction relief action and the issue presented is whether Counsels' conduct amounted to an unconstitutional interference in the right to testify, which is properly analyzed under the two-pronged Strickland standard. Johnson v. Cain, 712 F.3d 227, 232 n.2 (5th Cir. 2013) ("[C]laims of attorney interference with the federal right to testify are governed by the standard announced in Strickland v. Washington[']"); United States v. Mullins, 315 F.3d 449, 452 (5th Cir. 2002) ("[W]here the defendant contends that his counsel interfered with his right to testify, the 'appropriate vehicle for such claims is a claim of ineffective assistance of counsel.'"); White v. Kelley, 824 F.3d 753, 757-58 (8th Cir. 2016) (finding the Arkansas Supreme Court's application of both prongs to a claim defense counsel did not permit a

defendant to testify was not an unreasonable application of federal law); Owens v. United States, 483 F.3d 48 (1st Cir. 2007) (abrogated on other grounds by Weaver v. Massachusetts, __ U.S. __, 137 S.Ct. 1899 (2017))⁴ (explaining how claims of interference or neglect by defense counsel in the exercise of the right to testify may be analyzed for prejudice under Strickland). Furthermore, the United States Supreme Court recently threw cold water on casually dispensing with the prejudice requirement of Strickland in matters dealing with structural errors:

When an ineffective-assistance-of-counsel claim is raised in postconviction proceedings, the costs and uncertainties of a new trial are greater because more time will have elapsed in most cases. The finality interest is more at risk, see Strickland, 466 U.S., at 693-694, 104 S.Ct. 2052 (noting the “profound importance of finality in criminal proceedings”), and direct review often has given at least one opportunity for an appellate review of trial proceedings. These differences justify a different standard for evaluating a structural error depending on whether it is raised in direct review or raised instead in a claim alleging ineffective assistance of counsel.

In sum, “an ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial,” thus undermining the finality of jury verdicts. Harrington v. Richter, 562 U.S. 86, 105, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011). For this reason, the rules governing ineffective-assistance claims “must be applied with scrupulous care.” Premo v. Moore, 562 U.S. 115, 112, 131 S.Ct. 733 (2011).

Weaver v. Massachusetts, __ U.S. __, 137 S.Ct. 1899, 1912 (2017) (cleaned up). The Supreme Court’s concerns are only made more evident in cases like the present one, where the extraordinary multiplicity of issues raised on appeal and thereafter in post-conviction relief taxes the resources of both the parties and the Court, such that resolution of the matter is inevitably further delayed.

This Court rightly applied the complete Strickland standard in conducting a prejudice analysis, and in that analysis rightly concluded that Applicant’s proffered testimony at the

⁴ Owens is particularly interesting as the First Circuit Court of Appeals at the same time dispensed with a prejudice analysis for a claim that the courtroom was closed to the public at the time of his trial, which was thereafter addressed and abrogated by the United States Supreme Court. Owens at 63.

hearing, if given at trial, would have been highly counterproductive to the efforts made in his defense. Accordingly, Applicant presents no valid basis to alter or amend the Order of Dismissal through this arguments and the motion should thus be denied.

V.

Applicant further argues the Order of Dismissal is impermissibly inconsistent with the findings set forth in the opinion by the South Carolina Court of Appeals. The Court of Appeals did not enjoy the benefit of Counsels' testimony regarding what was and was not the primary defense strategy. The Court of Appeals sat in review of a trial court decision, not as a binding finder of fact. The conclusions in the Order of Dismissal regarding which strategies were actually employed at trial are consistent with and supported by the record before the Court. The motion should thus be denied.

VI.

Applicant takes exception to the Court's failure to emphasize that Christopher McCray testified *in camera* that Leonard Powell told him that Applicant told him that Applicant found a pistol "*near the decedent*" after returning to find the victim dead. Applicant does not provide a specific citation for the "*near the decedent*" qualifier, but appears to draw it from Counsel Brown's framing of a question to McCray:

A. Say [Applicant] got out of the car, went into the house and noticed a body laying on the floor motionless. Say so he kind of kicked the leg, like kicked it with his foot to see if the body respond. Say the body was limp and the leg kind of moved a little bit, and he noticed a pistol on the floor.

Q. He noticed a what?

A. A pistol, a gun. Say he picked the gun up and picked a set of keys up.

...

Q. Okay. All right. Now, let me make sure I understand. Did Mr. Capone or Mr. Powell tell you at any point that he saw – *he picked up a gun by the decedent*?

A. Yes sir.

Q. Repeat that for me.

A. He walked in the house and noticed the body laying on the floor. It wasn't moving, motionless, say he kind of kicked it a little bit to see what it – would it respond or whatever. Said the leg moved a little bit. I guess that it was limp. Say the leg moved a little bit and he noticed a gun. Say he picked it up and he picked up a set of keys.

(Trial Tr. 448, ll. 7-14; Trial Tr. 449-50) (emphasis added). It is noteworthy that McCray repeatedly fails to do what Counsel Brown appears to want him to do, which is unequivocally state in his own words what Applicant now asserts—that the supposed gun supposedly taken by Powell was supposedly immediately adjacent to the victim.

Whether McCray's agreement to Counsel Brown's "he picked up a gun by the decedent" is sufficient evidence in the record to construe McCray's testimony as tantamount to McCray himself testifying that Powell said he found a gun "near the decedent" is a matter of interpretation. Respondent defers to the Court's judgment as to whether Page 11 of the Order of Dismissal should be revised, but opines that the record is not sufficiently clear so as to establish whether McCray understood Powell's meaning (or Counsel Brown's meaning for that matter) to be an inch, foot, five feet, or ten feet from the victim—neither McCray nor Powell were presented at the evidentiary hearing to further clarify the point.

VII.

Applicant contends there was considerable evidence to show that he acted in self-defense, which Counsels failed to elicit. Applicant presents nothing new in this regard, but merely reasserts arguments raised to and ruled upon by the Court, and evidence contemplated by the Court's Order. The Order of Dismissal properly found that Counsels' primary theory of the case was that Applicant did not shoot the victim, and thus evidence to the contrary to justify

Applicant shooting the victim was inconsistent with their reasonably selected trial strategy. The motion should thus be denied.

VIII.

Applicant indicates the Order of Dismissal erroneously cites to Rule 612(b) rather than Rule 613(b), SCRE, on pages 27-28, and incorrectly states the rule. Applicant is correct—the wrong rule number is cited, the quotation erroneously states “inadmissible” rather than “admissible,” and does not quote the entirety of the relevant part of the rule. Respondent concedes the Order of Dismissal should be amended on page 27 to reflect an accurate citation to and statement of Rule 613(b), SCRE.

To the extent Applicant seeks the Court reconsider its findings in Section II.A.3 of the Order of Dismissal, the Order’s conclusions remain accurate and supported by the evidence in the record, and the motion should thus be denied.

IX.

Applicant contends the Court errs in holding that Counsels’ were reasonable in choosing to focus primarily upon one of two mutually exclusive theories of the case: namely that Applicant did not shoot the Victim rather than that Applicant shot the Victim in self-defense. Applicant merely re-litigates issues raised to and ruled upon by the Court, and persists in committing the cardinal sin of post-conviction relief: substituting the opinion of one criminal defense attorney for that of another. Counsels’ decision to focus on Strategy A to the detriment of Strategy B is not rendered “ineffective” by Counsels’ hedging, fleeting effort to also obtain jury instructions consistent with Strategy B *without* the introduction of evidence which would tend to contradict the theory relied upon in Strategy A, which would be wholly to Applicant’s benefit if such instructions could be so obtained. The motion should thus be denied.

X.

Applicant asserts the Court errs in its summation of testimony on page 12 of the Order of Dismissal; to wit: "On cross-examination, Brown testified Applicant admitted shooting Green to him, and that he never saw a weapon." (PCR Tr. 63-64). The transcript reflects:

Q: All right. Did he ever indicate to you that he saw a weapon?

A: No, sir.

(PCR Tr. 64, ll. 6-8). Applicant asserts this testimony does not support the summation that Applicant admitted to Counsel Brown that he never saw a weapon.

Respondent concedes the distinction and that the Order should be amended to more accurately reflect the testimony at the PCR hearing. Respondent submits the line in question should be substituted with the following:

On cross-examination, Brown testified Applicant admitted to him that he shot Green, but never indicated that he saw a weapon. (PCR Tr. 63-64). Brown explained his understanding that Applicant shot Green in relation to drugs, and "to establish that he was in charge of this and any challenges would be dealt with severely[.]" (PCR Tr. 64, ll. 9-21).

The Court's findings would not be disturbed by the modification. Accordingly, to the extent the motion seeks any further alteration on this basis, it should be denied.

XI.

Applicant argues the Court failed to satisfy its responsibility to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented insofar as the Court did not make findings "on the applicant's due process claim that his attorneys' actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process." (Motion at 12). Applicant's argument is without merit.

Attorney performance as considered in the context of the Due Process Clauses is indistinguishable from attorney performance as considered in the context of the Sixth

Amendment's guarantees. The United States Supreme Court in Strickland v. Washington explained how the different clauses work together in its effort to construct the singular claim of "ineffective assistance of counsel":

In a long line of cases . . . this Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause[.] . . . Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding.

466 U.S. at 684-85. The South Carolina Supreme Court has consequently and repeatedly recognized that "in most instances, a PCR claim is properly presented as a Sixth Amendment claim for ineffective assistance of counsel." Fortune v. State, 428 S.C. 545, 558, 837 S.E.2d 37, 44 (2019). Thus, Applicant's claims that Counsels' conduct "as more specifically described above" deprived him of due process is nothing more than a restatement of all the *specific* claims of ineffective assistance of counsel, each of which were considered and ruled upon in the Order of Dismissal. Accordingly, the motion to alter or amend the Order of Dismissal on this ground is without merit and should be denied.

XII.

Applicant argues the Court failed to satisfy its responsibility to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented insofar as the Court held that claims 1.i through 1.o., as restated in the Order of Dismissal, were "wholly subsumed by the other claims for relief." (Motion at 12). The claims at issue are as follows:

1. "Ineffective assistance of counsel"
 - i. "failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings;"
 - j. "failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s);"

- k. “failure to adequately investigate the case;”
- l. “failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing;”
- m. “Failing to object to misstatements during motions;”
- n. “failure to lay the proper foundation to introduce evidence;”
- o. “failing to object to the Court’s instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury;”

The claims identified are general and nonspecific, and it is a mandated courtesy by the Court to construe that they must have been intended to go in hand with the more specific claims alleged. See Rule 8(a), SCRPC (Pleadings which set forth a cause of action must contain a short and plain statement of the facts showing that the pleader is entitled to relief); Rule 8(e), SCRPC (“Each averment of a pleading shall be simple, concise, and direct.”); Rule 8(f), SCRPC (“All pleadings shall be so construed as to do substantial justice to all parties.”). The Court cannot make specific findings of fact and law on unspecific claims of ineffectiveness. Applicant enjoyed ample time and judicial flexibility prior to the evidentiary hearing to amend his application to provide more specific guidance as to which objections or non-objections Counsels missed, or which leads they failed to investigate, or which courtroom processes they failed to properly execute—Applicant never so amended. See Mangal v. State, 421 S.C. 85, 99-100, 805 S.E.2d 568, 576 (2017) (“We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our rules—to reach the merits of substantial issues.”). Neither the Court nor Respondent is required to ferret through the entirety of the record searching for which issues Applicant *may* have intended to raise. Neither the Court nor Respondent is compelled to take measure of every objection, every conceivable non-objection, and every conceivable line of investigation by virtue of Applicant’s general pleadings—the burden of proof *and pleading* is on Applicant.

Still now Applicant does not clarify by specific reference to the record what claims 1.i through 1.o, as restated in the Order of Dismissal, were intended to allege. To whatever extent they can be sustained as claims, the Order of Dismissal considers them in the context of the application as a whole and the evidence presented. The motion to alter or amend should be denied.

XIII.

Applicant argues the Court failed to satisfy its responsibility to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented insofar as the Court did not make findings on whether “the cumulative effect of trial counsels’ errors constituted ineffective assistance and formed a cumulative prejudicial effect.” (Motion at 12).

“Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.” Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 324-25 (2002). The present matter is not the appropriate circumstance to resolve this question, as (1) Applicant has not heretofore asked this Court to conduct such an analysis, and (2) Applicant has shown no deficient performance. A multiplicity of zero deficiency still produces only zero prejudice.

In any event, though the Order of Dismissal endeavors to identify the portions of the record most immediately relevant to the resolution of each individual claim for relief, each individual claim is, and must be, analyzed in the context of the record in its entirety and thereupon dispensed as simply and expeditiously as a complete understanding of the record permits. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (“In determining whether the applicant has proven prejudice, the PCR court should consider the impact counsel’s error had on the outcome of trial. . . . In addition, the PCR court should consider the strength of the State’s

case in light of all the evidence presented to the jury.”); Strickland, 466 U.S. at 695 (“In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury.”). Thus, each individual error is already analyzed in the “cumulative” context of the record as a whole.

To the extent Applicant advances “cumulative error” as a means of analyzing Strickland prejudice by totaling some ephemeral quanta of prejudice across the numerous allegations, Applicant’s demand runs contrary to the anti-mechanical tilt of Strickland. The Strickland court explicitly advises against such calculus when it tells lower courts to approach the problem in whatever order is quickest:

Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one. In particular, a court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *The object of an ineffectiveness claim is not to grade counsel’s performance.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

Strickland, 466 U.S. at 697 (emphasis added). The cumulative summation of prejudice would require this Court, and indeed every court, to analyze both prongs in every case in mechanical, burdensome fashion. The cumulative summation of prejudice would also perversely incentivize applicants to raise not only their best grounds for relief (as is consistent with best practices for appellate advocacy), but raise as many allegations as possible in every case in the hopes of landing enough glancing blows to knock out their conviction. A plethora of post-conviction relief and appellate allegations cannot accumulate to an applicant’s benefit; to the contrary, the multiplicity betrays the inadequacy of any single allegation. See, e.g. Fifth Third Mortgage Co.

v. Chicago Title Ins. Co., 692 F.3d 507, 509 (6th Cir. 2010) (“When a party comes to us with nine grounds for reversing the district court, that usually means there are none.”); Pierce v. Visteon Corp., 791 F.3d 782, 788 (7th Cir. 2015) (raising 13 issues on appeal violates principle that counsel must concentrate attention on best issues).

To whatever extent an attorney’s performance may be so broadly deficient as to entitle an applicant to specialized relief unburdened by the prejudice prong of Strickland, his only avenue is by way of the extremely high showing required of United States v. Cronic, 466 U.S. 648, 659-60 (1984). See also Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006) (Explaining the three circumstances under which prejudice may be presumed *per se*, which includes “a constructive denial of counsel from an attorney’s complete failure to subject the prosecution’s case to meaningful adversarial testing.”). Applicant has neither alleged nor argued he is entitled to relief under Cronic, it is too late do so now, and he is not entitled to such relief in light of the skilled, thoughtful, and constitutionally effective representation he received from Counsels.

For these reasons, the Order remains an accurate and complete treatment of the issues raised as required by S.C. Code Ann. § 17-27-80, and the motion to alter or amend for further treatment should be denied. In the alternative, Respondent requests the Court adopt the analysis set forth above and deny relief on such grounds.

XIV.

WHEREFORE, Respondent respectfully requests the Court deny Applicant's motion as untimely, or in the alternative grant the motion as conceded in Sections VIII and X, above, and otherwise deny the motion as without merit.

Respectfully submitted,

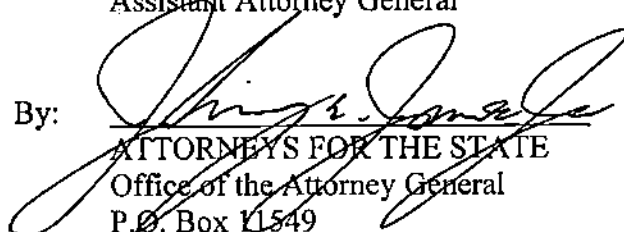
ALAN WILSON
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By:


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18 Sept., 2020

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-26-02564

Marcus Dwain Wright,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Marcus Dwain Wright appeals the Order of the Honorable William H. Seals, Jr. dated August 13, 2020 denying the appellant post-conviction relief. The appellant received written notice of this Order on August 26, 2020.

/s/ Beattie B. Ashmore
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Dated this 21st day of September, 2020
Greenville, South Carolina

Other Counsel of Record:
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P.O. Box 11549
Columbia, SC 29211

The Honorable Alan Wilson
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

FILED
HORRY COUNTY
2020 SEP 23 P 1:30
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
Appellant,

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-26-02564

Marcus Dwain Wright,

v.

State of South Carolina,

FILED
HORRY COUNTY
2020 SEP 23 P 1:30
RENEE N. ELLIS
CLERK OF COURT
HORRY COUNTY, SC

Respondent.

PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal on the State of South Carolina, South Carolina Attorney General's Office, by depositing a copy of it in the United States Mail, postage prepaid, on the 21st day of September, 2020, addressed to its attorneys of record:

Johnny Ellis James, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

The Honorable Alan Wilson
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Dated this 21st day of September, 2020
Greenville, South Carolina

/s/ Beattie B. Ashmore
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-26-02564

FILED
HORRY COUNTY
200 SEP 23 P 1:30
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Marcus Dwain Wright,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal, Final Order from which the appeal is taken, and Proof of Service of the Notice of Appeal on the Respondent by depositing a copy of the same in the United States Mail, postage prepaid, addressed to the following persons on this 21st day of September, 2020:

The Honorable Alan Wilson
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

The Honorable Renee Elvis
Clerk of Court
P.O. Box 677
Conway, SC 29528

Johnny Ellis James, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

I hereby certify that I have filed the same with the Clerk of the South Carolina Supreme Court, The Honorable Daniel E. Shearouse, through the Court's e-filing system.

/s/ Beattie B. Asmore
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Dated this 21st day of September, 2020
Greenville, South Carolina

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Beattie@BeattiteAshmore.com

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Marcus Dwain Wright,
S.C.D.C. No. 289646,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2017-CP-26-02564
)
)

) ORDER OF DISMISSAL
)

RENEE R. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2020 AUG 14 PM 1:27

FILED

This matter comes before the Court by way of an application for post-conviction relief filed by Marcus Dwain Wright ("Applicant"), by and through attorney Beattie B. Ashmore, Esq., on April 24, 2017. Respondent made its return on or about August 7, 2017. The Court convened an evidentiary hearing into the matter on December 14, 2018, at the Georgetown County Judicial Center in Georgetown, South Carolina. Applicant was present at the hearing and represented by attorney Ashmore. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsels, L. Morgan Martin, Esq. ("Martin") and Edward M. Brown, Esq. ("Brown") (collectively "Counsels"), and the prosecuting solicitor, Donna E. Elder, Esq. ("Elder") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the June 2012 term of the Horry County Grand Jury for murder (2012-GS-26-02551). Attorneys Martin and Brown represented Applicant, and solicitor Elder, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On June 17, 2013, Applicant proceeded to trial before the Honorable John C. Hayes, III and a jury. The jury found Applicant guilty as indicted on June 20, 2013. Judge Hayes sentenced Applicant to imprisonment for a term of life for murder. Consecutive to the life sentence, but concurrent to each other, Judge Hayes sentenced Applicant to 25 years for trafficking, 15 years for PWID cocaine base, and 5 years for the weapons charge.

Applicant filed a timely notice of appeal and a direct appeal was perfected by J. Falkner Wilkes, Esq., who raised the following thirteen issues (verbatim):

1. Did the court err in admitting evidence from the search of residence?
2. Did the defendant have a reasonable expectation in the residence searched?
3. Did the court apply the proper analysis?
4. Was the search warrant affidavit was sufficient?
5. Could the affidavit be supplemented by oral evidence where the affidavit contained false information?
6. Did the court err in admission of SCDMV records?
7. Did the court err in admission of evidence which was the result of illegal search of the defendant's hotel room?
8. Did the court err in excluding evidence of witness's prior inconsistent statement?
9. Did the court err in denying defendant's request to testify?
10. Does the court have to make specific findings as to prior convictions before it can sentence under LWOP?
11. Does the record support sentencing under LWOP?
12. If life is imposed and it is not clear whether or not it is under LWOP, should this Court remand for re-sentencing?
13. Did the trial court err in refusing to charge the jury on the law of self-defense and manslaughter?

The parties proceeded to oral arguments before the Court of Appeals on November 10, 2015.

Attorney Wilkes represented Applicant, and J. Anthony Mabry, Esq., of the South Carolina

Attorney General's Office, represented the State. By opinion decided April 27, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Wright, 416 S.C. 353, 785 S.E.2d 479 (Ct. App. 2016). The Remittitur was issued on May 13, 2016.

Present Application

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

1. "Ineffective assistance of counsel"
 - a. "Failure to timely produce letter(s) and/or statement(s) from Lanard Powell to the State;"
 - b. "losing and/or misplacing evidence;"
 - c. "failing to question Powell regarding letter(s) and/or statement(s);"
 - d. "failing to question Powell if he told McCray that he saw a gun and/or failing to give Powell an opportunity to admit or deny statement(s);"
 - e. "failing to enter letter(s) and/or statement(s) into evidence;"
 - f. "failing to proffer evidence and/or make an offer of proof, including an offer of proof of Powell's testimony;"
 - g. "indicating that counsel was satisfied with his cross-examination of Powell;"
 - h. "acquiescing to court's ruling(s), including the court's rulings regarding Powell and the letter(s) and/or statement(s);"
 - i. "failing to refute objection(s) made by the State and/or requesting that the Court and/or the State make a complete record and give reasons for their objection(s) and/or rulings;"
 - j. "failing to object when the State articulated no basis for its objection(s) and the Court articulated no reasons for its ruling(s);"
 - k. "failure to adequately investigate the case;"
 - l. "failing to elicit and/or introduce favorable evidence during motions, trial, and/or sentencing;"
 - m. "failing to object to misstatements during motions;"
 - n. "failure to lay the proper foundation to introduce evidence;"
 - o. "failing to object to the Court's instruction(s) (including curative instruction(s)) and/or charge(s) when proposed, when given to jury, and/or after given to jury;"
 - p. "failure to timely inform the trial court that the petitioner wanted to testify;"
 - q. "failing to discuss with the petitioner regarding his right to testify;"
 - r. "failing to consult with petitioner regarding his right to testify prior to resting;"
 - s. "failing to introduce prior inconsistent statement(s) of Veronica Chandler;"

- t. "failing to use prior inconsistent statement(s) of Chandler to support self-defense charge;"
 - u. "failure to make adequate argument for leniency at sentencing;"
 - v. "failure to prepare the petitioner for sentencing;"
 - w. "seating a former assistant solicitor on the jury;"
 - x. "failing to be prepared for and introduce evidence to establish the petitioner's reasonable expectation of privacy in the Kate's Bay residence;"
 - y. "failing to object to life without parole or require that certified copies of convictions be admitted into the record;"
 - z. "in failing to elicit, follow up on, and/or clarify testimony to establish jury charges for self-defense and/or voluntary manslaughter;"
 - aa. "failing to subpoena and/or call witness(es) to testify during motions, trial, and/or sentencing, including Kelly Phoenix;"
 - bb. "failure to cross examine witness(es) on prior conviction(s);"
 - cc. "failing to investigate, follow up on, or bring to the court's attention Brady violations;"
 - dd. "failure to object to Ms. Eichenmiller's qualifications as an expert and/or further question her qualifications;"
 - ee. "failure to object to Ms. Eichenmiller's methodology and/or lack of methodology;"
 - ff. "failure to object to State's failure to lay an adequate foundation for Ms. Eichenmiller's testimony;"
 - gg. "failure to object to Ms. Eichenmiller's testimony and opinions;"
 - hh. "failure to object due to the lack of testing and/or error rate in Ms. Eichenmiller's identification;"
 - ii. "failure to move to strike Ms. Eichenmiller's testimony and opinions;"
 - jj. "and other such issues that may be determined through the discovery process."
2. "Due Process violations"
- a. "State's failure to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;"
 - b. "prosecutorial misconduct in failing to make disclosures of material and/or preserve material pursuant to Brady v. Maryland, Kyles v. Whitley, and related case law;"
 - c. "upon information and belief, prosecutorial misconduct in failing to correct false evidence;"
 - d. "the petitioner's attorneys' actions and inactions, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;"
 - e. "the State's actions and inactions, including the actions and inactions of the prosecutor, along with the actions and inactions of the petitioner's attorneys, as more specifically described above, so infected the case with unfairness resulting in a denial of due process;"
 - f. "and other such issues that may be determined through the discovery process."

3. "Other such issues that may be determined through the discovery process"

Applicant requests relief as follows:

- "A new trial and resentencing"

Applicant's great preponderance of claims in many instances overlap, in part or in whole. The Court finds the more general claims for relief restated above as 1.i. through 1.o. are wholly subsumed by the other claims for relief. Furthermore, in light of their closely related character and the evidence provided at the hearing, the Court addresses the following claims together:

1. Ineffective assistance of trial counsels, in that:
 - a. Counsels failed to question witness Lanard Powell or otherwise introduce evidence of his prior statements tending to exculpate Applicant (Claims 1.a. through 1.h., above);
 - b. Counsels failed to consult with Applicant regarding his right to testify prior to resting their case, and failed to timely inform the trial court of his desire to testify (Claims 1.p. through 1.r., above);
 - c. Counsels failed to introduce the prior inconsistent statements of witness Veronica Chandler and use the statements to support Applicant's claim of self-defense (Claims 1.s. & 1.t; above);
 - d. Counsels failed to prepare or present an adequate case in mitigation (Claims 1.u. & 1.v., above);
 - e. Counsels failed to object to the testimony of witness Michelle Eichenmiller (Claims 1.dd. through 1.ii., above); and,
 - f. Counsels failed to cross-examine witnesses regarding their prior convictions, or otherwise investigate, follow up upon, or bring to the trial court's attention alleged violations of Brady v. Maryland regarding prior convictions (Claims 1.bb and 1.cc., above).
2. Prosecutorial misconduct in failing to turn over materials pursuant to Brady v. Maryland (Claims 2.a. through 2.f., above).

All other allegations are addressed independently (Claims 1.w. through 1.cc, above).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

As an overarching finding, the Court broadly finds the testimony provided by Morgan, Brown, and Elder to be credible. As to Applicant, the Court finds his testimony to be wholly lacking in credibility. Although broadly negative credibility findings should be rendered with caution, the Court is satisfied that it should give no credence to Applicant's testimony, based upon (both individually and together) the Court's close observation of Applicant's testimony, the evidence in the record tending to show his efforts at witness tampering, and based upon his admitted efforts to frustrate the pursuit of justice in favor of his own self-interest. (PCR Tr. 106-09).

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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 the 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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). 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 Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466

U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to Introduce, Confront Lanard Powell with Prior Statements

Applicant contends Counsel was ineffective in failing to confront and impeach witness Lanard Powell with a letter he purportedly wrote tending to exculpate Applicant; in failing to introduce the letter in question, and in failing to question him regarding statements he allegedly made to one Christopher McCray. "The touchstone of an ineffective-assistance claim is the fairness of the adversary proceeding, and in judging prejudice and the likelihood of a different outcome, a defendant has no entitlement to the luck of a lawless decisionmaker." *Lockhart v. Fretwell*, 506 U.S. 364, 370 (1993). "Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law." *Nix v. Whiteside*, 475 U.S. 157, 166 (1986). "[A]n attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct; it specifically ensures that the client may not use false evidence." *Id.* at 168; *see also* Preamble, RPC, Rule 407, SCACR ("A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."); Rule 3.3(a)(3), RPC, Rule 407, SCACR ("A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity,

the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”); but see Rule 3.3 cmt. 5, RPC, Rule 407, SCACR (“A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.”). “[T]he right to counsel includes no right to have a lawyer who will cooperate with planned perjury. A lawyer who would so cooperate would be at the risk of prosecution for suborning perjury, and disciplinary proceedings, including suspension or disbarment.” Nix at 173.

Trial

At trial, Lanard Powell, a/k/a “Capone,” testified at length to his drug-selling relationship with Applicant and the events occurring the night of Green’s shooting. On cross-examination, attorney Brown questioned Powell about letters he wrote to Applicant while both were in jail awaiting trial. (Tr. 286-87). Powell admitted to writing Applicant fifteen letters in the hope that Applicant would help him get out of jail. (Tr. 286-87; Tr. 294, ll. 12-16). Brown tied the letters back to Powell’s testimony at trial, and Powell admitted he was in court testifying against Applicant in order to help get himself out of jail. (Tr. 287, ll. 13-21).

After a series of questions unrelated to the letters, Brown returned to them and introduced an envelope dated May 21, but did not introduce the letter therein mailed. (Tr. 291-93). Brown elicited testimony from Powell that he had been trying to get Applicant to help him make bond, and Brown implied that Powell was angered by Applicant’s failure to help him get out and pay bond. (Tr. 293-95). Brown further questioned Powell regarding statements he made to a jail roommate Christopher McCray, challenging Powell that he had expressed to McCray that he was “disturbed” by Applicant’s failure to keep his promises. (Tr. 295-96).

After a detour into other statements, Brown again returned to the letters, and specifically asked Powell:

Q. Did you write a statement exonerating Mr. Wright at one point?

A. Well, actually, he forced me to write that?

Q. Oh, so now he forced you to write that?

A. He asked me to.

(Tr. 304-05). Powell thereafter admitted that Applicant could not put his hands on Powell while both were incarcerated, but that they communicated through a go-between, and that Applicant told Powell that if he wrote the statement, Applicant would get him out of jail. (Tr. 305-07). Powell testified he copied in his own handwriting a letter of what to say that was provided by Applicant. (Tr. 307-08). Brown began to drill into the contents of the letter and asked Applicant if he stated in the letter that a person named "Two Guns" shot Green, to which the State objected; the jury was thereafter excused. (Tr. 308, ll. 3-17). Despite the State's demand and the trial court's insistence, Brown was unable to produce the letter, stating he could not locate it. (Tr. 308-13). The Court instructed Brown to stay away from questions regarding the contents of the written statement that he could not produce, and thereafter instructed the jury to disregard the question regarding "Two Guns." (Tr. 313-14).

Powell also testified on cross-examination that he never saw Applicant shoot Green. (Tr. 288, ll. 23-25; Tr. 289-90). Brown also questioned Powell regarding his statements to law enforcement that the other witnesses present at the scene had been up all night smoking crack cocaine, and that Powell had been carrying a gun for his own protection. (Tr. 299-301).

Later, Brown proffered the testimony of Christopher McCray, who shared a cell with Powell on two occasions. (Tr. 445, ll. 10-24). McCray testified that Powell discussed the case

with him, explaining that Powell had seen Applicant's car at a McDonald's parking lot after sneaking off with his girlfriend, and when Powell returned to the trailer, he saw a man known as both "Big Money" and "Two Guns" run out with a gun in hand and get into a black Dodge Charger and leave with the headlights turned off; Powell then found Green's corpse. (Tr. 445-48). McCray continued that Powell told him he found a pistol on the floor, which he picked up and took with him from the scene. (Tr. 448-50). McCray denied any relationship with Applicant, and that he only incidentally met Applicant in jail, where he reported what Powell had told him. (Tr. 451-53).

The State objected to McCray's testimony, arguing it was inadmissible extrinsic evidence of a prior inconsistent statement. (Tr. 458-59). Brown admitted he had not asked Powell about statements made to McCray, but rather had asked him questions about the substantive facts at issue in the statements. (Tr. 459-60). The trial court refused to permit McCray to testify, ruling his testimony was hearsay and did not fall within any exceptions to the rule prohibiting hearsay. (Tr. 460-61).

Appeal

On appeal, Applicant raised the issue of the trial court's refusal to admit evidence of the contents of Powell's "Two Guns" letter. The South Carolina Court of Appeals found the issue unpreserved for appellate review because Counsel (1) failed to proffer Powell's testimony regarding the letter and (2) failed to object to the subsequent curative instruction. Wright, 416 S.C. at 371, 785 S.E.2d at 488.

Evidentiary Hearing

At the evidentiary hearing, Martin acknowledged Brown's effort regarding the "Two Guns" letter from Powell. (PCR Tr. 28-29). Martin recalled that "Powell had supposedly

written a letter in which he said Marcus Wright did not do this, that somebody else had done it." (PCR Tr. 29, ll. 9-16). Martin testified it was perhaps part of the theory of the case, but largely deferred to the record, testifying his memory on the subject was limited. (PCR Tr. 29-30). Martin could not recall ever actually seeing or possessing the letter in question. (PCR Tr. 42, ll. 10-14). As to McCray's testimony, Martin testified he had no memory of the issue, explaining that Brown had handled the witness. (PCR Tr. 19-20).

Brown confirmed the events at trial and testified that even if he had not misplaced the letter, he would not have introduced it at trial. (PCR Tr. 60-61). Brown denied Applicant ever told him that he shot Green out of fear for his own life. (PCR Tr. 63, ll. 3-5). On cross-examination, Brown testified Applicant admitted shooting Green to him, and that he never saw a weapon. (PCR Tr. 63-64). Brown recalled possessing the letter purportedly drafted by Powell, indicating that Green had been shot by "Two Guns," but explained he knew the letter was not true because Applicant had already privately admitted to shooting Green. (PCR Tr. 64-65). Brown testified that "to introduce the letter, as an officer of the court, would have put me in the position of perjury and I was not gonna do that." (PCR Tr. 65, ll. 10-12). Brown recalled the letter was delivered to him by Mrs. Wright, and that he subsequently misplaced the letter amid stacks of papers and files in his office, and did not find it until after Applicant's trial. (PCR Tr. 65-67; State's Exhibit #2). Brown, reviewing the handwriting of the letter, initially recalled that it appeared to be "almost identical to Mr. Wright's handwriting." (PCR Tr. 66, ll. 7-17). However, Brown later corrected his testimony, and testified he had been leery of the letter "because there was no similarity between the handwriting of the "Two Guns" letter and the other statements and letters Powell had written. (PCR Tr. 71, ll. 1-15). On cross-examination, Brown

dismissed Applicant's suggestion that the letter introduced as State's Exhibit #2 was *not* the letter in question. (PCR Tr. 75-76).

Applicant testified that State's Exhibit #2 was not the letter missing at the time of trial. (PCR Tr. 99-101). Applicant further denied that any of Powell's letters exonerated him. (PCR Tr. 100, ll. 4-7). Applicant testified that "Two Guns was [Green's] accomplice and I told law enforcement that when they were interviewing me, I told them two or more individuals entered the home. So, the Two Gun guy that they seen run from around the building wasn't me." (PCR Tr. 100, ll. 7-11). Applicant testified at some length to providing statements to law enforcement, and that he had been "beating around in circles trying to see exactly what they knew[.]" (PCR Tr. 106-09). Applicant explained that he "didn't actually live a life that was, you know, like how you would, how you would cooperate with the law." (PCR Tr. 108, ll. 1-3).

Findings

The Court finds no ineffectiveness on the part of Counsels. To the extent Morgan and Brown could remember the proceedings, the Court finds their testimony to be credible. The Court finds that State's Exhibit #2 is, in fact, the letter that was missing at the time of trial. Applicant told Brown that he shot Green, such that Brown had good reason to believe Powell's statements tending to exculpate his client at the expense of "Two Guns" were entirely false. As such, Brown could not ethically introduce the letter for the truth of the matter asserted. Brown *could* introduce evidence of Powell's statements for the purpose of demonstrating their falsity and Powell's falsity, but doing so would not have been entirely consistent with Brown and Martin's trial strategy. Where Counsels sought to challenge the adequacy of the identification of their client as the perpetrator, taking the detour of deconstructing a witness' prior statements implicating a third party would not have been clearly helpful, as a strategy focused on attacking

the identification of their client as the perpetrator implicitly relies upon a theory that somebody else committed the shooting. In that context, discrediting evidence tending to inculcate a third party would be potentially self-defeating. Considering the evidence in the light of Applicant's now-preferred theory of defense that he shot Green in self-defense, evidence tending to inculcate third-parties would not be helpful there either. And in either case, introduction of the letter would have exposed Applicant, through Powell and potentially McCray, to further testimony regarding Powell's motivations for writing it—namely that he did so at Applicant's behest.

The Court also sits with discomfort at the prospect of any finding of ineffectiveness of counsel for an issue that was generated by the Applicant's own malfeasance. The trial record, in combination with the testimony provided at the evidentiary hearing, tends to show that Applicant repeatedly engaged in witness tampering, thus producing the false letter written by Powell and the purported extrinsic statements he made to McCray. Applicant now seeks to prevail upon an application for post-conviction relief based in part on allegations that his attorneys did not navigate to his satisfaction the ethical minefield he created. The interests of justice would not be served, and the judiciary would undermine the fundamental fairness of the justice system, by granting any relief to an applicant on grounds that his or her attorney did not fully utilize false statements made by a witness which were induced by the applicant.

Assuming for the sake of argument that the letter introduced as State's Exhibit #2 was not the letter in question, no other letter was introduced as representative of that which was missing at the time of trial. Thus, if State's Exhibit #2 were not the letter that was missing, Applicant would have failed to present the evidence necessary (i.e. the letter) to meet his burden of proof, and his claim would fail as merely speculative.

Finally, even if Counsels were constitutionally deficient in failing to introduce the fraudulent letter, the letter could have only served the purpose of impeaching Powell. Brown had already impeached Powell for his (1) prior record, (2) pending charges, (3) role in peddling drugs, (4) role in the flight from the scene after the killing, (5) statements to law enforcement, and (6) unjustified fear of Applicant while both were in jail. Brown had made substantial efforts to impeach Powell such that introduction of the letter and/or the introduction of McCray as a witness would have been merely cumulative impeachment evidence.

For all of these reasons, the Court finds no deficiency on the part of Counsels, nor any prejudice from the deficiencies alleged. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Consult Applicant Regarding Right to Testify, Inform Court of Desire to Testify

Applicant contends Counsels were ineffective in failing to adequately and timely consult with him regarding his decision on whether or not to testify, and in failing to timely communicate his desire to testify to the trial court. "The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments." State v. Wright, 416 S.C. 353, 372, 785 S.E.2d 479, 489 (Ct. App. 2016) (citing Rock v. Arkansas, 483 U.S. 44, 51-52 (1987)).

"A motion to reopen the evidentiary record and to allow additional evidence is addressed to the sound discretion of the trial court, and the trial court's ruling will not be reversed absent an abuse of discretion." Wright, 416 S.C. at 371, 785 S.E.2d at 489 (quoting State v. Wren, 470 S.E.2d 111, 112 (Ct. App. 1996)). However, the right may be waived, and all that is necessary for a defendant to waive the right is to know that a right to testify exists. United States v. McMeans, 927 F.2d 162, 163 (4th Cir. 1991).

Trial

After the State rested at trial, the trial court engaged Applicant in a colloquy regarding his right to testify. (Tr. 438-39). The trial court explained to Applicant he had the right to present a defense, but that he did not have to present any defense or any evidence whatsoever. (Tr. 439, ll. 23-25). The trial court reminded Applicant that the burden of proof was on the State to prove his guilt beyond a reasonable doubt, and that he was still presumed innocent. (Tr. 440, ll. 1-3). The trial court then advised Applicant that he had the right to testify, if he so desired, and that he had the right to remain silent. (Tr. 440, ll. 6-7). The State noted Applicant's prior convictions for receiving stolen goods and assault and battery of a high and aggravated nature. (Tr. 440, ll. 11-12). The trial court explained that though the State could ask Applicant about his prior offenses, it could only do so for the purposes of attacking Applicant's credibility, and that he would instruct the jury to that effect. (Tr. 440-41). The trial court also explained how if Applicant exercised his right to remain silent, he would instruct the jury that they could not hold that decision against him. (Tr. 441, ll. 3-15).

Applicant confirmed he understood. (Tr. 441, ll. 16-17). When asked if he had any questions, Applicant initially replied "not exactly," but then reaffirmed he understood everything when pressed upon by the trial court. (Tr. 441-42). Counsels confirmed they had also already explained the rights and choices available to Applicant. (Tr. 442, ll. 1-3). The trial court then asked Applicant whether he wished to testify or exercise his right to remain silent, qualified with the admonition that Applicant was "not bound at this point[.]" (Tr. 442, 4-12). Applicant replied: "Exercise my right to remain silent." (Tr. 442, line 13). After the defense proffered the testimony of Christopher McCray, which was excluded by the trial court, the defense rested its case without presenting any witnesses to the jury. (Tr. 444-62; Rests at Tr. 462, ll. 10-11).

The parties then proceeded with a partial charge conference regarding Applicant's requests to charge the jury on voluntary manslaughter and self-defense. (Tr. 465, ll. 7-11). The trial court encouraged the parties to conduct further research overnight, but noted the only testimony he could recall to support the charges was "a self-serving . . . comment by the Defendant as he fled. My recollection is that the comment was something to the effect is the [epithet] tried to pull a jack." (Tr. 465, ll. 9-23). Martin noted testimony from Lanard Powell that Applicant reported the victim "tried a jack move," but the trial court noted the ambiguity of precisely what constituted "a jack move" and that it did not necessarily mean a gun was pulled. (Tr. 466, ll. 9-22). Martin also emphasized the numerous instances of testimony to show Green was generally hostile when he came in the house, and that he "reached for something" immediately prior to being shot. (Tr. 466-68). Upon a review of the testimony by the court reporter, the trial court cited to State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010), and explained:

. . . it talks about there having to be fear, and if he wasn't afraid, under Starnes it does not look like he would be entitled to voluntary manslaughter. And under the general self-defense, he's got to be in reasonable fear of imminent harm, imminent danger. He must be either actually – was actually in imminent danger of death or bodily injury or believed he was, and if he testified he was not, then that might end the inquiry[.]

(Tr. 469, ll. 1-23). Martin testified Applicant did not testify he was not in fear, and that Powell's testimony that Applicant never said he was afraid of Green was not dispositive. (Tr. 469-72). The trial court again noted that all involved could look at the issue overnight, and the court took recess for the evening. (Tr. 742, ll. 1-16)

When court reconvened on the morning of June 20, 2013, the trial court promptly returned to the jury charge argument and invited a resumption of the argument. (Tr. 472-73). Martin again argued that even under Starnes, given the totality of the circumstances, there was

evidence to support the charges requested. (Tr. 473-74). The State replied that Starnes established there had to be not only fear for voluntary manslaughter, but that the fear had to be the "result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence." (Tr. 474-75). Speaking practically, the State argued:

If we listen to and we go along with the fact that somebody merely has to lift up their shirt and somebody can put ten rounds in them because they lifted up their shirt, we're in a very dangerous position, Your Honor. That is the only thing in the record is that he lifted his shirt. No one saw a gun. Absolutely no witness said there was a gun. No witness said that they heard J.J. make any kind of threat and Lanard Powell actually said that Marcus never said he threatened him.

(Tr. 475-76). The State asserted there was nothing to support either charge, and the Court agreed, ruling that there was "no evidence whatsoever of the crucial element required for both voluntary manslaughter and self-defense, of any fear of imminent danger on behalf of the Defendant at the time the shots were allegedly fired[.]" (Tr. 476-77).

Martin then reported to the Court that Applicant had changed his mind and now wished to testify. (Tr. 477, ll. 20-24). Martin reported that he had told Applicant the opportunity passed when he exercised his right to remain silent, and Applicant confirmed their conversation. (Tr. 477-78). The trial court curtly denied the request, and opined that Applicant only wished to testify in light of the ruling on the jury charges. (Tr. 478, ll. 7-15). Martin noted the trial court had previously told Applicant he was not bound by his prior decision, which the court acknowledged, but rejected on grounds that "any reasonable person would believe that that right to testify was extinguished after the Defense rests." (Tr. 478-79). Martin explained Applicant never told him or Brown that he wished to testify prior to resting. (Tr. 479, ll. 6-11). The trial court reaffirmed its refusal to permit Applicant to testify and ruled the record was closed. (Tr. 479, ll. 12-19).

Martin nonetheless continued by reporting Applicant's complaint that Counsels never had a specific conversation with him about testifying after McCray was not permitted to testify, but again acknowledged Applicant did not indicate prior to that morning that he wished to testify. (Tr. 480, ll. 5-19). The trial court asked Brown, who explained Applicant indicated his desire to testify when they met prior to proceedings resuming that morning. (Tr. 480-81). The trial court chastised Applicant and Counsels for not bringing the issue to his attention before he ruled on the requested jury charges, and reaffirmed its belief that Applicant waited until the court ruled to express his desire to testify. (Tr. 481-82). The trial court refused to permit Applicant to testify. (Tr. 482, ll. 3-5).

After the jury returned its verdict, and during mitigation, Applicant briefly addressed the Court:

The family want to know what happened to him. They heard what happened. Maybe the jury didn't because you dismissed the witness, but the family heard what happened to him. It wasn't me.

(Tr. 552, ll. 10-13) (emphasis added).

Appeal

The issue of the trial court's refusal was thereafter raised on direct appeal. Wright, 416 S.C. at 371-74, 785 S.E.2d at 489-90. In rejecting Applicant's argument, the South Carolina Court of Appeals noted the trial court's concern that Applicant was seeking to craft his testimony to fit the parameters of the trial court's rulings, and held that the concern was a legitimate ground to refuse to reopen the record. Id., 416 S.C. at 374, 785 S.E.2d at 490.

Evidentiary Hearing

At the evidentiary hearing, Martin testified he did not speak with Applicant in the holding area after the court took overnight recess on June 19, 2013. (PCR Tr. 9, ll. 17-19; PCR Tr. 31, ll. 10-22). Martin recalled that when Applicant was brought out from the holding cell that morning

and seated at the defense table, there was a discussion that he *possibly* wanted to testify. (PCR Tr. 9, ll. 21-25). Martin recalled explaining to Applicant that their "position had been all along and with Marcus, and Marcus agreed, that it was better that he not testify for multiple reasons." (PCR Tr. 10, ll. 2-5). Martin told Applicant that his advised position had not changed, and Martin believed Applicant "had reconciled himself with the fact that it was in his better interest not to testify." (PCR Tr. 10, ll. 5-11). Nonetheless, after the trial court ruled on the jury charges, Martin testified Applicant raised his hand to get the trial court's attention. (PCR Tr. 10-11).

Both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State's case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15). Martin testified at some length about why, despite requesting the charge, structuring the theory of defense around self-defense was problematic; Applicant gave statements to law enforcement without ever mentioning he acted in self-defense; or that he was the shooter; Green was shot ten times; no gun was found at the scene; Applicant was not in his own home; and Applicant would have had to testify, which Martin believed would have been fatal to an already difficult case. (PCR Tr. 14-15). Nonetheless, Martin asked for the self-defense charge and argued for it "because we're looking for whatever we could find." (PCR Tr. 17-18). Martin testified he had multiple conversations with Applicant regarding the decision to testify, though he could not say specifically how many. (PCR Tr. 31, ll. 5-9; PCR Tr. 33, ll. 10-14).

On cross-examination, Martin testified he had no recollection of Applicant ever telling him he wanted to testify, or that Applicant felt that he needed to testify, but that they had

multiple conversations regarding whether Applicant would testify and that they all agreed to a trial strategy that would not involve him testifying. (PCR Tr. 33, ll. 15-23). Martin testified he could not recall Applicant ever indicating his desire to testify prior to the morning of June 20, 2013, but cautioned that he did not mean to say there was never an instance in their many conversations in which Applicant may have said "maybe I ought to testify and say this or that." (PCR Tr. 33-34). As noted in the previous section, Martin also acknowledged the allegations of witness tampering against his client. (PCR Tr. 42, ll. 2-9)."

Brown testified he got to the courthouse before Martin on the last day of trial and spoke with Applicant early that morning, at which time Applicant indicated he had changed his mind and wanted to testify. (PCR Tr. 54, ll. 13-22). Brown testified he informed Martin immediately after "he came up." (PCR Tr. 54-55). Brown could not independently recall precisely when it was that the trial court was informed of Applicant's newfound desire to testify. (PCR Tr. 55-56).

Questioned regarding the viability of self-defense as a theory of defense, Brown opined that it was not viable based on what Applicant had told him. (PCR Tr. 54, ll. 8-13). Brown recalled meeting at his office with Applicant, where Brown questioned how he could advance a self-defense strategy when Applicant shot Green ten times, including a couple of times in the back. (PCR Tr. 57-58). Brown in particular recalled asking Applicant why he kept shooting Green, to which Applicant replied "well he kept moving." (PCR Tr. 58, ll. 8-10). Brown further noted the victim was on the floor while Applicant continued shooting him. (PCR Tr. 58, ll. 11-14). Brown denied Applicant ever told him he shot Green because he was in fear for his own life. (PCR Tr. 63, ll. 3-5).

On cross-examination, Brown confirmed that Applicant told him he was present in the house that evening, that he shot Green, and that he never indicated seeing Green with a weapon.

(PCR Tr. 63-64). Brown explained that "there's an ebb and flow in trials," such that they did not have an ironclad position as to whether Applicant would testify, but ultimately Applicant told Judge Hayes that he would remain silent. (PCR Tr. 68, ll. 4-12). Brown and Applicant discussed the question of whether to testify "a number of times[,] but not every single meeting. (PCR Tr. 70, ll. 16-24). As explored in greater detail in Section II.A.1., above, Brown also testified he received a letter from Mrs. Wright purportedly written by Lanard Powell, which he concluded was not written by Powell and constituted a false writing. (PCR Tr. 64-68; PCR Tr. 71, ll. 1-12).

Applicant testified at the evidentiary hearing that when the trial court first asked him about testifying, Applicant replied that he was not sure, but that he did not exactly have any questions. (PCR Tr. 82, ll. 13-15). When pressed by the trial court for a yes or no answer, Applicant answered "no," reasoning it was better for his other potential witnesses to testify to what happened. (PCR Tr. 82-83). The following morning, while discussing the possibility of changing his plea to guilty, Applicant told Brown that he wished to testify. (PCR Tr. 83, ll. 3-15). Applicant testified Brown left, then returned and told him "they said they're not gonna allow you to testify." (PCR Tr. 83, ll. 16-18). Applicant claimed that when he went out and listened to the trial court's language and mannerisms, he could tell that nobody had informed the judge, so Applicant raised his hand and informed the trial court of his desire to testify. (PCR Tr. 83, ll. 18-22). The exchange with the trial court thereafter proceeded as reflected in the trial transcript. Applicant recalled that his testimony was never proffered. (PCR Tr. 84, ll. 11-16).

Applicant proffered at the evidentiary hearing the testimony he would have given at trial. Applicant testified he shot Green in self-defense. (PCR Tr. 84, ll. 19-20). Applicant testified Roy Sinclair "came flying around in his wheelchair to the front door[,] but Applicant stopped

him from opening the door and the two "went back and forth a little bit[,] as Applicant did not want to let people in while "Capone" was away. (PCR Tr. 84-85). Sinclair managed to open the door, declaring it was his cousin, and let Green into the house. (PCR Tr. 85, ll. 9-17). Applicant testified Green focused on Sinclair as he came in and said "you've got these little [ephitet] running this spot," and "I'm about to put the squeeze on me a [ephitet]." (PCR Tr. 85-86). Applicant understood Green to mean he was going to shoot somebody. (PCR Tr. 86, ll. 4-5). Applicant testified Green then pulled out and brandished a weapon; Applicant recalled he screamed that Green had a gun, and when Green turned towards him, Applicant opened fire. (PCR Tr. 86, ll. 5-10). Applicant testified the first shots hit Green in the leg and the arm, such that the victim "spun around." (PCR Tr. 86, ll. 10-11). Applicant kept firing, but denied continuing to shoot Green after he hit the floor, and offered that any bullets in the floor must have come from Green discharging his gun into the floor. (PCR Tr. 86-87). Applicant testified he shot Green because he was scared, and in order to defend himself. (PCR Tr. 87, ll. 2-4).

Applicant asserted he told his story to his attorneys, and that the whole trial was about self-defense. (PCR Tr. 87, ll. 4-13). Applicant further asserted that Martin had previously asserted during a bond hearing that the case was one of self-defense, and offered a transcript of the bond hearing. (PCR Tr. 87-88; Applicant's Exhibit #2). Applicant expressed his bafflement that Counsels denied the case was one of self-defense, and again reaffirmed he shot Green in self-defense and feared for his life. (PCR Tr. 97-98). Applicant denied coercing Powell into writing any letters, and denied Powell ever wrote a letter saying Applicant did not shoot Green. (PCR Tr. 99-100);

On cross-examination, the State elicited further testimony from Applicant regarding the events occurring after the shooting. Applicant testified Green looked like he was going to get up,

so Applicant took cover behind a countertop. (PCR Tr. 101, ll. 9-15). Kelly Pinnix was unresponsive, while Mildred Small calmly told Applicant "baby, he ain't moving no more." (PCR Tr. 101, ll. 15-18). All present then fled. (PCR Tr. 101, ll. 18-20). Applicant recalled his panicked flight, and testified he got lost because he did not know the area. (PCR Tr. 101-02). Applicant met Qwanda Caldwell-Brown at the home of Daisy Marthena Menendez; there he recovered a bag of unknown contents from Brown, placed it in the BMW, got in her car, and rode away. (PCR Tr. 102-03). Brown drove Applicant around, retracing steps, until they found Lanard Powell, who explained he had taken Green's truck at the behest of Kelly Pinnix. (PCR Tr. 103, ll. 1-16). Applicant testified Powell inquired about the bag, and when Applicant replied that he had placed it in his BMW, Powell gave him a funny look that gave Applicant concern. (PCR Tr. 103, ll. 16-19). Applicant asserted he "come to find out, what he had done was taken the deceased's gun and that was in the bag." (PCR Tr. 103, ll. 19-21). Applicant testified Powell told him he took the gun. (PCR Tr. 103-04). Applicant testified that after they sheltered in a hotel room, he directed Jacinda Wright to retrieve the bag; she did so, and Applicant found a chrome handgun. (PCR Tr. 104, ll. 6-13). Applicant testified he then obtained the rental car, and further directed Wright to call "Attorney Whetstone in Columbia" to let him know what was happening. (PCR Tr. 104, ll. 14-19). Applicant claimed that he was gathering "anything dealing with any firearms" to turn over to the police, but was apprehended at the hotel and was unable to "get the guns." (PCR Tr. 104, ll. 19-24). Applicant then testified he told Martin that Powell buried the guns, and that he worried that with every night that passed, any DNA evidence on the guns was more likely to be lost. (PCR Tr. 104-05). Applicant recalled he "kept trying to get Lanard out" in order to locate the gun and deliver "them" to it. (PCR Tr. 105, ll. 6-18). Applicant denied ever attempting to burn Green's truck, and opined that it would have been easy

to successfully burn a truck, but that it would not provide to cover up the crime. (PCR Tr. 105-06).

As to his statement to law enforcement, Applicant testified he was deliberately "beating around in circles trying to see exactly what they knew, because I already knew the situation was pretty bad." (PCR Tr. 106-07). Applicant admitted he told law enforcement he had heard "a jack move went wrong," but explained he was trying to elicit information from law enforcement, and that he had a bad prior history of law enforcement. (PCR Tr. 107-08). Applicant explained he did not tell law enforcement that he acted in self-defense, despite explicit invitation from investigators to do so, because "in the life that I live, you don't talk to the police, you talk to an attorney." (PCR Tr. 108-09). Applicant asserted that a "cop is just trying to make an arrest[,] and again recalled that his prior interaction with the police involved law enforcement beating him and his mother. (PCR Tr. 109, ll. 13-19).

Findings

The Court finds Applicant has failed to meet his burden of showing deficiency on the part of Counsels, nor that the deficiencies alleged prejudiced him under Strickland. As previously noted, the Court finds Counsels' testimony addressing this allegation to be credible and Applicant's testimony to be extremely self-serving and not credible.

As to deficiency, first, Applicant was afforded an opportunity to testify and declined to do so. The Court finds Applicant was fully aware of his right to testify, the advantages and disadvantages of doing so, and reasonably concluded that he should not do so at the time the trial court asked him. The trial record reflects that the trial court fully appraised him of the right, and Counsels testified to spending substantial time discussing the subject with Applicant.

Second, the Court finds Counsels reasonably and accurately informed Applicant the following morning after he asserted his desire to testify that it was too late to go back and try to reopen the record that had been closed the previous day. By the time Applicant told them that he wanted to testify, the record was closed, and the trial court had already initiated the conference on whether to charge self-defense and voluntary manslaughter, where it opined on what testimony would have been necessary to support the charges.

Third, the Court finds Counsels reasonably concluded Applicant did not wish to testify at the time they rested their case, based Applicant's statement to the trial court, the time spent in preparation and consultation, and based upon the nature of the agreed upon strategy to attack the credibility of the drug-addled witnesses, only one of whom could specifically identify Applicant as the shooter. The Court finds that self-defense was *not* the strategy Counsels employed at trial, even if they had considered it earlier in the course of the representation. The facts and evidence before Counsels more than justified making the strategic decision to not make self-defense their core strategy: no witness could credibly testify that Green was ever armed with anything, Green's broken finger substantially diminished the likelihood a jury would believe he was even capable of wielding a pistol, and any realistic self-defense strategy would all but require them to concede that Applicant was in fact the shooter when the identity of the perpetrator was the weakest element of the State's case. In light of those facts and Counsels strategic decisions, they would have had no reason to doubt Applicant's declination to testify during trial or at the time they rested their case.

As to prejudice, first, the Court finds that even if Counsels had immediately confronted the trial court with Applicant's newfound desire to testify, there is not a reasonable probability the outcome would have been different. As noted above, the trial court had already explained at

the end of the previous day what testimony would have been necessary to support instructions on voluntary manslaughter and/or self-defense, such that there is little to no possibility the trial court would have ruled differently had it been more promptly informed of Applicant's desire to testify on the following morning. Second, as noted above, the Court finds that Applicant's testimony would have been devastatingly harmful to his own case. The testimony Applicant offered at the evidentiary hearing (1) admitted Applicant was the shooter, (2) admitted to much of the sequence of events which followed after Applicant shot Green, (3) admitted his duplicitous and dishonest interactions with law enforcement, (4) was crucially based in part on hearsay from Powell that was inconsistent with Powell's trial testimony (that he took the gun), (5) lacked evidentiary support outside of his own testimony, and (6) broadly did not make any sense. This Court enjoyed the opportunity to closely observe and listen to Applicant during his testimony, and cannot conceive of how a reasonable jury could have credibly believed Applicant and thereupon conclude that he acted in self-defense in shooting Green, or that he shot Green without malice aforethought. Applicant's testimony would have only served to scuttle Counsel's very reasonable trial strategy and more surely secure his own conviction.

For all of these reasons, the Court finds that Applicant has failed to meet his burden of showing any deficiency on the part of Counsel, or that there is any reasonable probability that but for the deficiencies alleged, the outcome at trial would have been different. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.

3. Failure to Introduce, Confront Veronica Chandler with Prior Statements

Applicant alleges Counsel were ineffective for failing to introduce into evidence statements made by witness Veronica Chandler to law enforcement that she saw the victim had a gun. Rule 612(b) of the South Carolina Rules of Evidence provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence that the prior statement was made is inadmissible.

"A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-99, 673 S.E.2d 434, 438 (2009) (citing State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)).

"When the issue is whether the witness admitted making the prior inconsistent statement, the admission must be unequivocal." State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229 (Ct. App. 2010) (citing State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003)).

"Generally, where the witness has responded with anything less than an unequivocal admission, trial [courts] have been granted wide latitude to allow extrinsic evidence proving the statement." Id., 388 S.C. at 201, 694 S.E.2d at 229-230.

"As a preliminary matter, however, the court must be persuaded that the statements are indeed inconsistent." United States v. Hale, 422 U.S. 171, 176 (1975). If the party seeking to impeach a witness with a prior statement fails to establish a threshold inconsistency between the trial testimony and the prior statement, proof of the prior statement lacks any significant probative value and must therefore be excluded. Id. However, there is no requirement that the two statements be diametrically opposite. Firemen's Fund Ins. Co. v. Thien, 8 F.3d 1307, 1312 (8th Cir. 1993); see e.g. United States v. Tory, 52 F.3d 207, 210 (9th Cir. 1995) (where a witness told an investigator that the perpetrator was wearing sweatpants, trial testimony by the same witness "that she did not remember describing them in that particular way but did remember describing them 'as a white type of pant' was inconsistent).

Trial

Chandler testified at trial that she was at Roy James Sinclair's house on April 30, 2012, to buy crack from "Caponé" (Powell). (Tr. 200-01). Chandler arrived at the house and learned from Sinclair that Powell had just left. (Tr. 201, ll. 11-16). Sinclair invited Chandler into the house, and so she entered and took a seat in the den "in the little La-Z-Boy right beside the T.V." (Tr. 201-02). Green arrived afterward, entered the house, and "made a statement because somebody opened the door and he was like that's how you got your house run. You got people opening your doors and what-not." (Tr. 202, ll. 12-23). Green spoke to everybody in the house in turn, reaching Chandler last because she was a known family friend. (Tr. 202-03). While Chandler spoke to Green, "[t]he guy in the kitchen said something, and [Green] say, yeah, yeah, yeah, and the next thing I know, all I heard was boom, boom, boom boom. It was no arguments, no fussing, or anything." (Tr. 203, ll. 5-9). Chandler was so close to Green when he was shot, that blood splattered on her clothes, which were later taken by law enforcement as evidence. (Tr. 206-07). Chandler never heard Green threaten the man in the kitchen in any way; Green had been talking to her when the man in the standing at the bar in the kitchen opened fire. (Tr. 203-05). Chandler saw the man in the kitchen, and the gun in his hand. (Tr. 205, ll. 2-5). Chandler testified she did not see any gun in Green's hand. (Tr. 205, ll. 6-7). Chandler fled the house, and saw Powell return as she left. (Tr. 205-06; Tr. 207-08).

On cross-examination, Martin asked Chandler about statements she made to law enforcement:

Q. And you gave a statement to the police after this occurred?

A. Yes sir, I did.

Q. And you told them at that time that J.J. reached to pull for what you thought was a gun?

A. I didn't see a gun.

Q. And that's what I want to ask you about.

A. Okay.

Q. Because when you gave a statement to the police -- do you remember giving a statement to the police?

A. Yes sir, I do.

Q. Okay. And do you -- and I've got the statement here and I can give it to you if that's necessary.

A. I know the whole complete statement. I gave it.

Q. All right. But you told the police at that time, you said I don't know if he had a gun or everything happened so fast, but he lift up his shirt?

A. Yes sir.

Q. Do you remember saying that?

A. Yes, I did say that.

Q. And that's true?

A. Yes sir, but he -- I did not see a gun present.

...

Q. And then they keep talking to you about that and you say I'm quite convinced I saw a gun.

A. I don't remember saying that.

....

Q. Again, you gave a statement, correct?

A. Okay, and like I said, I don't recall saying that.

Q. All right, but you don't recall saying that. You do recall saying that you thought he had a gun, as we talked about earlier, but you're not sure?

A. I mean, like I say, I don't recall saying that, so I'm not going to answer to that. If they got it in the paper, then I evidently say it, but I don't recall saying it.

...

Q. I just asked you about one statement that you made and you said that you did say that?

A. I saw when he did lift his shirt a little bit, but I did not see a gun present.

(Tr. 209-11) (emphasis added). Martin again attempted to confront Chandler with the statement "I'm convinced I saw a gun, but I don't know[.]" which elicited a sustained objection from the State. (Tr. 211, ll. 8-12). Martin again asked Chandler if she told the police she thought she saw a gun, to which she again replied she did not recall saying so. (Tr. 211, ll. 13-20). On redirect examination, Chandler asserted that she did not give a written statement, but a recorded oral statement, which she had reviewed and did not include the statement insisted upon by Martin. (Tr. 211-12).

Evidentiary Hearing

At the evidentiary hearing, Martin could not recall cross-examining her, and did not believe he had done so, but explained that he reviewed her statements to law enforcement prior to the hearing. (PCR Tr. 16-17). Martin explained that whether or not the victim had a gun was not the primary factor in their defense because the theory of the case was not self-defense. (PCR Tr. 17-18). Indeed, as previously noted, both Counsels testified that their theory of the case was *not* self-defense, but rather to attack the strength of the State's case as built on a foundation of witnesses who were all heavily inebriated at the time of the shooting. (PCR Tr. 13-15; PCR Tr. 17, ll. 24-25; PCR Tr. 18, ll. 23-24; PCR Tr. 21, ll. 19-20; PCR Tr. 36, ll. 5-6; PCR Tr. 57, ll. 3-13; PCR Tr. 58, ll. 3-10; PCR Tr. 62, ll. 14-24; PCR Tr. 68, ll. 13-15).

On cross-examination, Respondent moved a transcription of Chandler's statement into evidence and reviewed it with Martin. (PCR Tr. 42-46; State's Exhibit #1). In her statement, Chandler told law enforcement that there was an exchange between "the Dude in the kitchen" and Green, and then Green lifted his shirt. (PCR Tr. 43-44; State's Exhibit #1). Chandler told

law enforcement she was “quite convinced I saw a gun, but I don’t know” and persisted in her self-doubt and could not describe any gun. (PCR Tr. 44-45; State’s Exhibit #1). Martin agreed with the State’s assertion that Chandler’s statement “provides something less than she firmly saw a gun.” (PCR Tr. 45, ll. 3-8). Chandler’s statement continues by explaining that “when [Green] did that I remember [Green] turning around and that’s when I heard POW, POW, POW. . .” (State’s Exhibit #1).

Findings

The Court finds Applicant has failed to meet his burden of showing Martin was ineffective. First, to the extent Applicant argues that Martin’s failure was such that he failed to elicit testimony from Chandler to show that it appeared Green was reaching for a gun, Applicant is simply incorrect. While Martin was unable to elicit testimony from Chandler that she saw a gun or previously believed (however tenuously) that she saw a gun, he did elicit testimony that Green had lifted his shirt and did not know if he had a gun. In that light, it was reasonable for Martin to simply accept what he was given by Chandler and move on without introducing the statement.

In any event, because the theory of defense was to deny Applicant committed the shooting, and because self-defense was affirmatively not the theory (and not a practical option absent Applicant’s testimony), litigating the motivations of the shooter were secondary. Because the defense theory of the case was not self-defense, the actual strategic value of introducing Chandler’s prior statements was limited, as Martin noted. To that end, Chandler never clearly indicates that she saw a gun, but rather describes her self-reflection and doubt that she had convinced herself of as much despite being unable to recall actually seeing one. Reading State’s

Exhibit #1 in its totality, Chandler's statements are not so clearly inconsistent as to lead this Court to conclude their introduction would have substantially impeached Chandler.

Furthermore, the statement as a whole does not present facts favorable to Applicant. Notwithstanding Chandler's refusal to admit to previously thinking she saw a gun on Green's person, the overwhelming majority of the statement corroborates her trial testimony and the testimony of the other witnesses. The State would have been within its right to require Applicant to introduce very substantial corroborative portions of the statement to clarify the inconsistent statement. See Rule 106, SCRE (rule of completeness); State v. Taylor, 333 S.C. 159, 171, 508 S.E.2d 870, 876 (1998) ("Only that portion of the remainder of a statement which explains or clarifies the previously admitted portion should be introduced."). It does not appear to this Court that the impeachment value of whether she saw a gun would outweigh the damaging corroborative value of the other admissible portions of the statement, especially in a case where Counsels' trial strategy depended upon the jury agreeing that the State's witnesses were all heavily inebriated and not to be believed. The Court cannot conclude that the introduction of Chandler's statement would have changed the outcome of trial.

For all of these reasons, the Court finds Applicant has failed to meet his burden of establishing deficient performance of counsel, or that he was prejudiced by the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

4. Failure to Prepare, Present Case in Mitigation

Applicant alleges Counsels were ineffective in failing to prepare and present an adequate case in mitigation for him after he was convicted.

At trial, Martin said very little in mitigation, but only offered that a sentence of thirty to thirty-five years, "would be sufficient to protect the community and to punish him for his

wrongs.” (Tr. 551, ll. 5-14). Brown offered without specificity that “perhaps there is some socially redeeming qualities that Mr. Wright possess.” (Tr. 551-52). Applicant, as previously noted, addressed the Court:

The family want to know what happened to him. They heard what happened. Maybe the jury didn't because you dismissed the witness, but the family heard what happened to him. It wasn't me.

(Tr. 552, ll. 10-13). The trial court sentenced Applicant to more than life in prison. (Tr. 552, ll. 14-21).

At the evidentiary hearing, Martin testified he did not have any mitigation prepared. (PCR Tr. 47, line 17). Martin explained that he “knew that if [Applicant] were convicted, what the sentence was going to be. I'm not sure what I could've had in mitigation in this particular case.” (PCR Tr. 47-48). Morgan continued that he was not aware of anything that could have mitigated the sentence, and that he had previously advised Applicant to take an offer to plead to a lesser-included offense for a sentence of 25 years because of his firm belief that any sentence imposed upon conviction would be long. (PCR Tr. 48, ll. 7-16).

The Court finds Applicant has failed to meet his burden. No evidence or additional arguments were offered at the evidentiary hearing in mitigation of Applicant's crime, only that he killed Green in self-defense, after denying that he had anything to do with the killing in mitigation at the original trial. Applicant cannot prevail by way of this allegation, and his request for relief is **DENIED**.

5. Failure to Object to Testimony, Qualification of Michelle Eichenmiller

Applicant alleges Counsels were ineffective in failing to object to the qualification and testimony of Michelle Eichenmiller as an expert in forensic testing of firearms and ammunition. “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,