

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

RECEIVED

AUG 28 2019

AL MARTINEZ GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000191

APPENDIX

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ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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1 gun. It look to be a tauris 9 or 380. That is how he
2 described it.

3 THE COURT: And Mr. Green was allegedly there?

4 MR. BARFIELD: Yes, sir. He has not been
5 convicted of anything but he is charged with burglary
6 first and armed robbery, I believe.

7 THE COURT: And was he to have been armed?

8 MR. BARFIELD: He was alleged to have been armed
9 and again as you know Mr. Green's nickname is Capone,
10 and Mr. Roseborough's statement indicates Capone had a
11 Mac 9 for sure. It had a long extended clip for it.
12 It looked like a machine gun pistol.

13 THE COURT: So that takes care of all the records
14 of Mr. Clinton and all the records of Mr. Green?

15 MR. BARFIELD: Yes, sir.

16 THE COURT: All right. Anything further,
17 solicitor?

18 MR. BARFIELD: Well, other than the victim
19 information or victim comments when you are ready for
20 that.

21 THE COURT: I will be glad to hear from anyone you
22 want me to hear from.

23 MR. BARFIELD: Whoever wants to talk step up to
24 that microphone. State your name and your relationship
25 to Jenika and say what you like to.

1 MS. STEVENSON: Your Honor, my name is Rachelle
2 Stevenson. I am the mother of Jenika Jones. It has
3 been a long two years and I know that what happened
4 today would not bring her back and there are no
5 winners in this, but I stand here asking for the
6 maximum sentence that you can give.

7 THE COURT: Thank you. Thank you very much.

8 THE COURT: Anybody else solicitor?

9 MR. BARFIELD: Anybody else want to speak. No,
10 sir.

11 THE COURT: That is all from the State.

12 THE COURT: Tell me solicitor the status of Miss
13 Jones's children?

14 MR. BARFIELD: Miss Jones's children, I believe are
15 being reared by Rachelle Stevenson and they are of
16 course two years older. They are probably three, four
17 and six now. Are you concerned -- you just want to
18 know where they are and whose taking care of them or
19 do you want to know how they are doing?

20 THE COURT: Well ---

21 MR. BARFIELD: Would you like to stand up and
22 address the judge about what effect this had had on
23 the children, I guess.

24 MS. STEVENSON: Your Honor the children are
25 somewhat doing good. They have had counseling

1 sessions. My granddaughter she is still having a hard
2 time. She is always crying for her mother. Wants to
3 know why this happened to her mother. Had even asked
4 to see pictures of the men who killed her mother, so
5 she understands that her mother is not here.

6 The oldest grandchild he at one time was having
7 real bad problems. He was having problems in school
8 with his -- he was emotional. Angry. Had one time
9 started acting out, but he seems to have come down of
10 that a little. My youngest grandson, he knows of his
11 mom, but, you know, he'll point to a picture. That's
12 Jenika. That's my momma, but hasn't shown no emotions
13 cause he was so small. Other than that they are doing
14 reasonably okay.

15 THE COURT: Thank you. Thank you, very much.
16 Anything further solicitor?

17 MR. BARFIELD: No, sir.

18 THE COURT: All right. Thank you. Mr. Frick.

19 MR. FRICK: That you, Your Honor.

20 Your Honor, Mr. Clinton is 26 years of age. As you
21 are aware he is currently serving a ten-year sentence
22 in South Carolina Department of Corrections for the
23 last charge the solicitor spoke of which came out of
24 two events. The one event, the assault charge and
25 then the burglary charge which is Mr. Roseborough's

1 situation. In that situation Mr. Clinton has accepted
2 his responsibility. He has fully admitted his guilt
3 and his role in that situation. It is my estimation
4 that is what immediately made him a suspect in this
5 situation, in the case presently.

6 Your Honor is aware, and I just want to put it on
7 the record for the point of mitigation, that there
8 were other suspects in this case. Mr. Rashad Johnson
9 was immediately suspect because that was a name by
10 nickname that came out of the mouth of the youngest --
11 oldest child who got the attention of someone who
12 called law enforcement. Law enforcement did follow up
13 on that. There was an alibi, however, as it goes on
14 further the alibi didn't necessarily check out. But
15 there was no further investigation on that. I am not
16 saying that to bash law enforcement's investigation.
17 I am simply saying that there was another suspect as
18 is clear from the DNA that someone else was at the
19 scene and we have no idea who it was.

20 Regarding Mr. Delrico McDow, I don't think you
21 heard testimony on this, but Mr. Blakeney's testimony
22 is Mr. McDow was in the vehicle with them when it
23 occurred. Mr. McDow is on a GPS tracking device
24 probation, pardon and parol. The information that
25 probation and parol has about that tracking device was

1 it never at any point got close to [REDACTED] at
2 any time during that evening. So, that does not
3 support the evidence that Mr. Blakeney presented here
4 today or during this trial.

5 Your Honor, I say all that in somewhat mitigation.
6 Obviously, we are not standing here and this is not a
7 situation where we are able to tell you that we are
8 sorry for what we did because we stand here before you
9 and maintain our innocence in this case. I have
10 talked to Mr. Clinton about this situation. I don't
11 think he is going to address Your Honor because I've
12 advised him that from this point of course give Notice
13 of Appeal and it goes on and I don't want him to say
14 anything that can be used against him. So I ask you
15 not to hold anything in that regard against him for
16 lack of remorse or what not because I advised him from
17 a legal standpoint that that is probably in his best
18 interest.

19 Your Honor, he has been incarcerated since really
20 before the warrant came on this charge. We plead. He
21 had this charge on him when we entered the plea on the
22 other matters for which he is in the Department of
23 Corrections. I would ask you to credit him back to
24 the time at which he was served the warrant in this
25 case. I think he is due that because if he had gotten

1 out on those other charges he would not have gone
2 home. He would have been in the detention center here
3 in Lancaster without bond. So I think the prevailing
4 case law would be he is entitled to that time. I
5 would ask you for that. I.

6 He does have family. I know his mother is present.
7 I don't know if she wants to address the court or not,
8 but I do want the Court to know he does have family
9 that loves him, has been no one contact with us about
10 him. His mother, grandmother, cousins, sister have
11 all been speaking with him. So he does have folks out
12 there for him. Understanding he does have some stuff
13 on his record. Your Honor and I both know it is not
14 the most egregious record that I have seen and it's
15 likely not the most egregious record that you have
16 seen, although it does have ABHAN and this burglary
17 situation.

18 Judge, I do want to say, and not just simply to
19 bash Mr. Roseborough, but to talk about that
20 situation. He of course as a said Mr. Clinton has
21 admitted to his role in that. Mr. Roseborough did not
22 contact law enforcement. As you heard his testimony
23 in the pretrial motion, he was involved in drug
24 activity and that's why he didn't report it. That's
25 what he told law enforcement in his statement. I

1 understand that does not excuse anything at all, but I
2 think the Court needs to be aware of that and what the
3 entire situation was when it takes into consideration
4 for sentencing. So, I ask you for what leniency you
5 can show for my client who has somewhat of a limited
6 record although having had some exposure in general
7 sessions court.

8 THE COURT: Thank you. Thank you, Mr. Frick. And
9 I will ask is there anything you want to say Mr.
10 Clinton.

11 DEFENDANT CLINTON: No, sir.

12 THE COURT: Thank you. Miss Raney.

13 MS. RANEY: Thank you, Your Honor. As Your Honor
14 has heard throughout the course of this trial, my
15 client is 20 years old. He has a young daughter with
16 Miss Tinsley who you saw testify before you and a 9th
17 grade education. I have also similar to Mr. Frick
18 advised my client since he does wish to appeal to not
19 say anything during the course of sentencing as well.

20 I will say Your Honor, I actually just got to
21 know Mr. Green back in November of last year. He was
22 previously represented by a different attorney in our
23 office, so given that we had a trial date set when I
24 took over the case, frankly the bulk of my time with
25 Mr. Green has been spent focusing on this murder trial

1 rather than the other pending charge that the
2 solicitor referenced.

3 I can tell you that in spending a lot of time with
4 Mr. Green preparing for trial he has always been
5 nothing but, you know, a model client for me to deal
6 with. I think this has been extremely difficult
7 situation not only for him but for his family. As
8 Your Honor learned during the course of the trial his
9 sister who he grew up with and all of Al's family
10 member including my conversations with Mr. Green
11 himself they viewed Miss Jones as family member. Even
12 though she was not biological so, he thought of her as
13 a sister. So this has been difficult on many levels
14 because of the personnel connection there.

15 Mr. Green's family has been here in support of him
16 all week. I looked back to his mother earlier before
17 we came up here. I think she is a little to upset to
18 address the Court but I did want to bring it to the
19 attention of the Court that he does have family
20 support. They have been in contact with me throughout
21 my representation of Mr. Green being supportive of
22 him. I would ask Your Honor to take all of that as
23 well as his young age and his minimal criminal record
24 and the bulk of the evidence pointing in this case to
25 him not being the shooter. I echo Mr. Frick's

1 previous statement that there were certainly several
2 triable issues in this case and you take that into
3 consideration as well and ask that you consider
4 showing him some leniency sentencing him in the range
5 of thirty years, Your Honor, and giving him credit for
6 the time he has been in jail which has been since he
7 has been arrested on this charge for about two years
8 now.

9 THE COURT: Thank you, Miss Raney. Anything you
10 like to say Mr. Green?

11 DEFENDANT GREEN: No, sir.

12 THE COURT: And Mr. Frick you are appointed?

13 MR. FRICK: Yes, sir.

14 THE COURT: And Miss Raney you are appointed?

15 MS. RANEY: Yes, Your Honor.

16 THE COURT: Thank you. Thank you both very much
17 for taking on this very important assignment.

18 I don't have my list, the number of murder cases I
19 have tried as judge, but I probably charged six in the
20 last eight or nine months. I probably handled
21 hundreds over the course of my career; pre-judge and
22 judge. Some things -- no murder case is less tragic
23 or more tragic, but many times there are certain facts
24 that come out during the course of a trial that you
25 can't turn a blind eye to.

1 I do take into account the young age of both of
2 these men, 26 and 20. Twenty?

3 MS. RANEY: Yes, Your Honor.

4 THE COURT: They both have a 9th grade education.
5 You are correct Mr. Frick and of course Miss Raney,
6 they do not have a lengthy criminal history. The bulk
7 of the direct and circumstantial evidence of course
8 would point to Mr. Clinton as the -- lack of a better
9 work the trigger man, and point to Mr. Green under the
10 theory of the hand of one, hand of all as present
11 aiding and abetting. Technically this case would have
12 perhaps qualified as a death penalty case because it
13 appeared it would be a burglary first having gone in
14 the residence with the intent to commit a crime
15 whether they had consent or not. If they held the
16 victim captive for any period of time even on just a
17 sofa, under the State versus Hall that would be
18 kidnapping.

19 There are certain places in the world that we
20 should feel safe, the first place is our home.
21 Whether it be a trailer, condominium, a two-bedroom
22 home, or a mansion. Here you have a young lady taking
23 care of three children, ages four and under, and the
24 testimony is such that three individuals get out of a
25 borrowed or perhaps rented white Cadillac to go to an

1 unarmed innocent mother of three with her babies there
2 and place a nine millimeter so close to the left side
3 of her cheek and jaw that there is a muzzle
4 impression. You look at woman some times and you see
5 a beauty mark, but they put a death mark on her; that
6 muzzle impression. And you see funerals passing, you
7 see family members riding in Cadillacs behind the
8 hearse. In this case the Cadillac that show up was
9 like a funeral car. Her fate was sealed on the 18th.
10 And then her children endured walking around in their
11 mother's blood; from there clothes, on there feet, on
12 there body. Some wounds never heal. Some stains can
13 never be removed. And then that young woman is
14 described as quote that bitch end quote.

15 2012-GS-29-616, Devatee Tymar Clinton, the jury
16 having convicted the defendant of the crime of murder,
17 the defendant is committed to the State Department of
18 Corrections for the term of life without parole.

19 2012-GS-29-636, Al Martinez Green, the jury having
20 convicted the defendant for the crime of murder, the
21 defendant is committed to a State Department of
22 Corrections for a term of life without parole. One
23 wouldn't have happened without the other.

24 Good luck to you Mr. Green. Good luck to you Mr.
25 Clinton. Sheriff. Thank you again, Mr. Frick and Ms.

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Raney for your service.

MS. RANEY: Thank you, Your Honor.

THE COURT: Anything further from the State?

MR. BARFIELD: No, sir.

THE COURT: From the defense?

MR. FRICK: Nothing.

MS. RANEY: No, sir.

THE COURT: Thank you. Thank you very much.
Court will be in recessed for the remainder of the
week.

(END OF TRANSCRIPT)

C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 14th day of March, 2014.

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

May 24, 2014

Aileen Butler

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Lancaster)
)
Al Green # 0559254)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

3016 CP 29 01199

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

FILED
 OFFICE OF CLERK
 OF COURT
 2016 SEP 16
 LANCASTER

1. Place of detention Broad River Correctional Inst 4460
2. Name and location of Court which imposed sentence Court of General Session (Lancaster County)
3. Name(s) of co-defendant(s) (if any)
Wayne Blackney JR, Davoteo Clinton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-08-29-636: Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 14th 2014 / Life w/o parole

- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (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. Court of Appeals, South Carolina
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. Affirmed conviction
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. May 11th 2016
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. P. 16 2016, SCACR, State v. Phillips op.
 - ii. NO. 27607
 - 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) SEE NEXT PAGE
- (c) _____

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

- (a) SEE NEXT PAGE
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

10(A) I was denied the right to effective Assistance of "Defense Counsel," guaranteed by the six and Fourteenth Amendments to the United States Constitution and the corresponding provision of the South Carolina Constitution - SEE Strickland vs. Washington 466 U.S. 668 (1984).

11(A) "Defense Counsel" failed to object to the Jury instruction concerning the "Head of one, Head of All theory."

(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. ~~NO~~ 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 two grounds in 10 was not presented to
- (b) any other Court, because I had to wait for
- (c) the Appeal Court final decision.

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES

- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Amy Raney (public Defender) Lancaster County
 - ii. Gene H. Morrill 410 main street
 - iii. Brownwood, SC 29646
- (b) the proceedings at which each such attorney represented you:
 - i. Trial Counsel
 - ii. Appellate Counsel
 - iii. _____

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

NEW Trial

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

NO

STATE OF SOUTH CAROLINA)
County of Lancaster)

VERIFICATION

I, Al M. Green #354254, 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.

Al M. Green #354254

SWORN to and subscribed before me this 6
day of Sept, 2016

Lisa Brown-Alston (L.S.)
Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

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

Al M. Green #359254

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

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

Al M. Green

Applicant

SWORN or affirmed to and subscribed before me this

6 day of Sept, 2016

Lisa Brown-Alston

Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

STATE OF SOUTH CAROLINA)
 COUNTY OF LANCASTER)
)
)
 Al Martinez Green, #359254,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2016-CP-29-1099

RETURN¹

Respondent, making its Return to the application for post-conviction relief (PCR) filed September 16, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted by the July 2012 term of the Lancaster County Grand Jury for murder (2012-GS-29-0636). William Frick, Esquire, and Amy Raney, Esquire represented Applicant. On March 10-14, 2014, Applicant proceeded to trial and was convicted as indicted. The Honorable R. Knox McMahon sentenced Applicant to imprisonment for life without parole.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence in an unpublished opinion. State v. Green, Op. No. 2016-UP-205 (S.C. Ct. App., filed May 11, 2016). The Remittitur was issued on May 27, 2016.

Attached herewith and incorporated herein are the records of the Lancaster County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina

¹ Respondent requests that counsel be appointed.

Department of Corrections, appellate records, and the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

The Applicant claims he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel

- a. "I was denied the right to effective assistance of "defense counsel" guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provision of the South Carolina Constitution. See Strickland v. Washington, 466 U.S. 668 (1984).
- b. Defense counsel failed to object to the jury instruction concerning the "hand of one, hand of all theory."

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not **specifically** laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

III.

Applicant has alleged ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

WHEREFORE, having made its Return, the State requests that counsel be appointed counsel and an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

23 Nov., 2016.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)
)
)
 AL MARTINEZ GREEN, 359254,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2016-CP-29-1099

AFFIDAVIT OF SERVICE BY MAIL

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

Al Martinez Green, #359254
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

DATED this 23rd day of November, 2016.



Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

AL MARTINEZ GREEN,)

APPLICANT,)

-VS-)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

2016-CP-29-01099

TRANSCRIPT OF RECORD

JULY 18, 2018
LANCASTER, SOUTH CAROLINA

BEFORE:

THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES:

ATTORNEY FOR APPLICANT:

NATHAN J. SHELDON, ESQ.

ATTORNEY FOR RESPONDENT:

DeSHAWN H. MITCHELL
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** Whenever you're ready.

2 **MR. MITCHELL:** May it please the Court, Your Honor?

3 This is 2016-CP-29-1099, Al Martinez Green versus the State
4 of South Carolina. The Applicant is presently confined in
5 the South Carolina Department of Corrections pursuant to
6 orders of commitment of the Lancaster County Clerk of Court.

7 The Applicant was indicted by the July 2012 term of the
8 grand jury for murder. Ms. Amy Raney represented the
9 Applicant. On March 10th through the 14th of 2014 the
10 Applicant proceeded to trial and was convicted as indicted.
11 The Honorable R. Knox McMahon sentenced the Applicant to
12 imprisonment for life without parole.

13 A timely notice of appeal was filed on the Applicant's
14 behalf. The South Carolina Court of Appeals confirmed the
15 Applicant's conviction and sentence in an unpublished
16 opinion. The remittitur was issued on May 27, 2016. The
17 Applicant filed a PCR application on September 16, 2016.
18 He's present in the courtroom today represented by Mr.
19 Sheldon.

20 **THE COURT:** All right. Mr. Sheldon.

21 **MR. SHELDON:** Thank you, Your Honor. May it please the
22 Court?

23 **THE COURT:** Certainly.

24 **MR. SHELDON:** Sitting here is Mr. Green. We are
25 prepared to go forward. I would call Al Martinez Green ---

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

5

1 THE COURT: All right.

2 MR. SHELDON: --- to the stand.

3 Al Green, being duly
4 sworn testified as follows;

5 MR. SHELDON: May it please the Court, Your Honor?

6 Direct Examination by Mr. Sheldon:

7 Q. Mr. Green, please, after you have a seat, state your
8 name for the record.

9 A. Al Martinez Green.

10 Q. And, Mr. Green, where are you currently incarcerated
11 at?

12 A. At Broad River Correction.

13 Q. And you are serving a life sentence, is that right?

14 A. Yes, sir.

15 Q. And that is for the conviction of a murder case that
16 we're here for today back in 2014, is that right?

17 A. Yes, sir.

18 Q. And you filed a direct appeal, and that direct appeal
19 was denied, and that's why we're here, is that right?

20 A. Yes, sir.

21 Q. Okay. You were represented at that trial by Ms. Amy
22 Raney, is that right?

23 A. Yes, sir.

24 Q. And this is actually a case -- this is about a thousand
25 page transcript, but that case was actually tried with a co-

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

1 defendant together, right?

2 A. Yes, sir.

3 Q. And Mr. Frick represented the co-defendant in that
4 case?

5 A. Yes, sir.

6 Q. You've got to speak up. I mean, ---

7 A. Yes, sir.

8 Q. --- I've got to be able to hear you, so does the Judge,
9 so does this -- the court reporter right here. So make sure
10 you speak into that microphone for us, okay?

11 A. All right.

12 Q. All right. So we're here today on a post conviction
13 relief. You've alleged that Ms. Raney was ineffective in
14 representing you, is that right?

15 A. Yes, sir.

16 Q. Let's start from the beginning. How -- the case
17 eventually ends up getting tried in March of 2014, right?

18 A. (Affirmative nod).

19 Q. But when does the crime actually get committed?

20 A. 2012.

21 Q. So there's a -- there's a pretty significant span
22 between the time of the crime and the time of the trial, is
23 that right?

24 A. Yes, sir.

25 Q. Was Ms. Raney your attorney the entire time?

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

7

1 A. No, sir.

2 Q. Who originally represented you?

3 A. Mark Grier.

4 Q. And how soon after -- the case is tried in March of
5 2014. When does Ms. Raney take over the representation?

6 A. I think it was a couple of months prior, but I ain't --
7 I ain't sure of like the exact date.

8 Q. Why did -- why did Ms. Raney take over for Mr. Grier?

9 A. Because I feel like Grier wasn't representing me.

10 Q. That was by your choice, that Mr. Grier got relieved
11 and Ms. Raney was put on the case?

12 A. Yes, sir.

13 Q. But you were represented by the public defender's
14 office the whole time?

15 A. Yes, sir.

16 Q. So you didn't like the way Mr. Grier was representing
17 you, so you wanted a new lawyer, and they appointed Ms.
18 Raney, is that right?

19 A. Yes, sir.

20 Q. Okay. And so prior to Ms. Raney being involved did you
21 and Mr. Grier have several conversations about the case?

22 A. Not really. He would barely come to see me.

23 Q. Okay. So that -- and that was one of your complaints

24 ---

25 A. One of my complaints.

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

8

1 Q. --- with Mr. Grier? Ultimately did you and Ms. Raney
2 -- ultimately you end up getting Ms. Raney a few months
3 prior to trial. Did she come see you about the case?

4 A. Yes.

5 Q. Was there any plea offers relayed to you?

6 A. Yeah.

7 Q. What was the original plea offer?

8 A. Thirty years for manslaughter.

9 Q. Thirty years for manslaughter?

10 A. Yes, sir.

11 Q. And you turned that down?

12 A. Yes, sir.

13 Q. And you understood that you were facing life if you
14 turned that down?

15 A. Yes, sir.

16 Q. But you told Ms. Raney that you wanted a trial, is that
17 right?

18 A. Well, they -- they said -- like I had went for a bond
19 hearing, but they said they were going to set a trial date.
20 Then the trial came up.

21 Q. So you had asked for a bond and in lieu of setting a
22 bond they decided to give you a trial date so you didn't
23 just linger in jail forever?

24 A. Yes, sir.

25 Q. Okay. And so we have -- it essentially was a five day

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

9

1 trial, right?

2 A. Yeah. Four -- yeah, four or five.

3 Q. Four or five. There's a day of motions and then a four
4 day trial.

5 A. Yes, sir.

6 Q. And so prior to -- prior to trial, let's talk about the
7 investigation that was done by the public defender's office
8 as a whole, but specifically Ms. Raney. What kinds of
9 things would you ask them to do for you?

10 A. Get my alibi witnesses' statements on my behalf.

11 Q. And who did you specifically say that to?

12 A. I said it to my -- Ms. Raney.

13 Q. And did she do that?

14 A. They said -- they said they tried to locate people.
15 They said they tried to get my people's statements, but the
16 timing, which it was two years prior from that statement
17 when I first got locked up to where I tried to get my
18 statements from my alibi witnesses.

19 Q. So you tried to get -- they tried to locate them, but
20 they weren't able to locate them?

21 A. Right.

22 Q. And was there an investigator that worked on your case
23 that you know of?

24 A. Yeah.

25 Q. Who was that?

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

1 A. Pete Skidmore.

2 Q. And did -- would he -- would Mr. Skidmore meet with
3 you?

4 A. Yeah.

5 Q. And what kinds of things did you and Mr. Skidmore
6 discuss?

7 A. Well, I was trying to locate my alibi witnesses,
8 basically.

9 Q. So for the most part you were trying to -- you were
10 trying to have an investigator in the public defender's
11 office locate an alibi witness?

12 A. Yeah.

13 Q. Which they were never able to locate?

14 A. Right.

15 Q. And did -- but do you agree or disagree that they tried
16 to locate that witness?

17 A. I ain't sure. I told him to get my parents' statements
18 too 'cause I said to get my statement -- my alibi statement,
19 said my parents could vouch for my whereabouts.

20 Q. Okay. And, but -- and clearly your parents were
21 around, is that right?

22 A. Yes, sir.

23 Q. Okay. So ultimately you end up going to trial. And
24 you're not the -- nobody believes you're the shooter, but
25 you're convicted under the Hand of One Hand of All Statute,

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

11

1 is that right?

2 A. Yes, sir.

3 Q. Prior to that did you go over all the discovery with
4 Ms. Raney?

5 A. No, sir.

6 Q. What kind of discovery issues do you believe you had
7 with this?

8 A. She really trying to say -- well, she was saying she
9 didn't know how to fight my defense at first because I
10 wasn't saying nothing. But I was just telling them like,
11 you know what I'm saying, my statements -- my statements,
12 you know what I'm saying, my whereabouts ---

13 Q. I don't -- and you need to enunciate. I'm having a
14 hard time understanding you. Let me move this microphone
15 for you because I -- I just can't hear you. So ...

16 A. I said basically we was trying to fight my defense by
17 saying my whereabouts, my alibi -- looking at my alibi.
18 Ain't never been an investigation of my statements. It was
19 never looked into.

20 Q. When you're -- you keep talking about your alibi, but
21 they did try to find an alibi witness, didn't they?

22 A. Right.

23 Q. So what -- what do you believe that Ms. Raney could
24 have done differently in terms of locating an alibi witness?

25 A. I feel like they could have looked at -- like could

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

12

1 have pushed for a continuance until we located them.

2 Q. Put a -- could have pushed for a continuance until you
3 located the alibi?

4 A. Yes.

5 Q. What other discovery issues did you have with Ms. Raney
6 or Mr. Grier prior to Ms. Raney?

7 A. That's all -- that's all there really was.

8 Q. Did you get -- were you able to go over all of the lack
9 of DNA in the case, ---

10 A. Yeah.

11 Q. --- and things like that?

12 A. Yeah, they did.

13 Q. Did you have any concerns with anything she was telling
14 you?

15 A. Well, like the little boy's statement, I was saying
16 like the little boy's statement, who shot your mother?

17 Q. We're going to get into that in a little bit, but
18 before we get into the actual trial I want to talk about the
19 pretrial stuff. Was there -- what other issues were there
20 regarding the discovery?

21 A. Discovery?

22 Q. Just in your conversations with Ms. Raney, do you have
23 any other concerns about her representation of you pretrial
24 in terms of getting you the information you need?

25 A. No.

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

13

1 Q. So other than the alibi issue, that she did -- she did
2 provide you with the -- your motion in the case?

3 A. Yeah, about the pretrial on the boy's statement,
4 though, on the pretrial, but they never brought it forward.

5 Q. You're talking about -- and we're -- we're going to get
6 to the child's statement. But were there any issues you had
7 -- well, let's just talk about that for a minute. So we get
8 -- just to fill the Judge in because it's a long transcript,
9 there's a -- this is a robbery/murder at a home, is that
10 right?

11 A. Yes, sir.

12 Q. Where a woman was shot one time in the head?

13 A. Yes, sir.

14 Q. And you're accused of going into the home with the
15 actual shooter?

16 A. Yes, sir.

17 Q. Is that right? And then there's allegedly a driver in
18 the car?

19 A. Yes, sir.

20 Q. Right? In the Cadillac. And then -- but -- and
21 there's three -- there's three very small children at the
22 home at the time of the murder?

23 A. Yes, sir.

24 Q. One of those children, the four-year-old child, the
25 oldest child in the home of the victim makes a statement to

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

1 a neighbor that someone shot his mom, is that right?

2 A. Yes, sir.

3 Q. And that someone is, I think he said, Shi's dad, is
4 that right?

5 A. Yes, sir.

6 Q. Which is a different individual than you and your co-
7 defendants altogether?

8 A. Right.

9 Q. So you receive the information about this statement in
10 discovery, is that right?

11 A. Yes, sir.

12 Q. And what conversations did you have with Ms. Raney
13 about this child's statement?

14 A. I was saying that I had lived with them prior to the
15 incident, he would have knew if it was me or not who was in
16 the home that night. I said -- I told them I want to put
17 him on the stand on my behalf, testify on my behalf, on my
18 defense.

19 Q. So you had lived with the child before or near the
20 child before?

21 A. We lived in the same home.

22 Q. And the victim's home is located in, I think, a trailer
23 park, right?

24 A. (No response).

25 Q. Is that right?

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

15

1 A. Yeah, but this is prior before she moved to the trailer
2 park.

3 Q. And was -- did you have a relative that also lived near
4 there? One of the -- not you, but the co-defendant had a
5 relative that backed up to the trailer park?

6 A. Yes, sir.

7 Q. But prior to that you had a relationship with the
8 victim when she lived in a different home, is that right?

9 A. Yes, sir.

10 Q. With her children?

11 A. (No response).

12 Q. Is that right?

13 A. Yes, sir.

14 Q. Okay. And did you bring that to Ms. Raney's attention?

15 A. Yes, sir.

16 Q. And so you wanted her to call the four-year-old child,
17 is that right?

18 A. Right.

19 Q. Ultimately does she end up calling that child?

20 A. No, sir.

21 Q. Is it -- what was her reasons to you for not calling
22 that child to testify?

23 A. Well, at first she told me it might backfire and say
24 like I was there, say I was in the home. I'm like, I know
25 he wouldn't, he know me, he would have said he know me, you

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

16

1 know what I'm saying? He know my name and face. It would
2 have proved me with a reasonable doubt in the jury mind. It
3 would have been reasonable doubt.

4 Q. Was there any other reason why she said that it would
5 be a bad idea to call the child?

6 A. They was saying something about like the child can't --
7 believe in Christmas, didn't know real from wrong, know fake
8 from real and stuff like that. But the judge, like, how the
9 case was -- they said how the case was going to come out,
10 they'd bring forth ---

11 Q. You talking about there competency -- potential
12 competency issues with the child?

13 A. Right.

14 Q. Okay. And they had a pretrial hearing on that, right?

15 A. Right.

16 Q. Okay. But you -- so you -- this child knew who you
17 were?

18 A. Right.

19 Q. Was there any direct evidence linking you to this crime
20 whatsoever?

21 A. No, sir.

22 Q. What actually ends up linking you to the crime?

23 A. Wayne Blakeney said the words ---

24 Q. And just so the Judge knows, that is the third co-
25 defendant in the case, is that right?

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

17

1 A. Yes, sir.

2 Q. And that is a witness that cooperates for the State?

3 A. Yes, sir.

4 Q. And his testimony puts you there, doesn't it?

5 A. Yes, sir. And the fourth person.

6 Q. You, the shooter, and then a fourth person as well?

7 A. Yes, sir.

8 Q. So there's four of y'all, but it's Mr. Blakeney, the
9 driver, that ends up testifying that you're there the night
10 of the murder, ---

11 A. Yes, sir.

12 Q. --- is that right? Other than that was there any --
13 was there really anything to suggest that you had committed
14 this crime?

15 A. No, sir.

16 Q. Was there any -- did they find any DNA or any
17 fingerprints ---

18 A. No DNA.

19 Q. --- or anything? Did they -- they didn't recover your
20 -- the murder weapon at all in this case, did they?

21 A. No.

22 Q. They didn't find any evidence in the car or anything
23 like that that you were there?

24 A. No, sir.

25 Q. So the testimony of Mr. -- of the driver that night is

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

1 essentially what puts you there and really the only thing
2 that puts you there, isn't it?

3 A. Yes, sir. And inconsistent upon his statement, okay,
4 they got a statement saying a third person, but in the trial
5 he's saying fourth person.

6 Q. So when you say you wanted the child to testify, we're
7 talking -- that this child made a statement that said
8 somebody else committed the murder altogether, is that
9 right?

10 A. Yes.

11 Q. And you indicated to Ms. Raney that you wanted the
12 child to testify because the child would be able to know if
13 you were there or not because the child knew you?

14 A. Yes, sir.

15 Q. Is that correct?

16 A. Yes, sir.

17 Q. And ultimately the State's case had nothing that
18 directly put you there to begin with?

19 A. Yes, sir.

20 Q. Okay. What other concerns did you have with Ms.
21 Raney's representation before trial and during trial?

22 A. I feel like she should have objected to Jamal Twitty's
23 (ph.) statement and the Miranda -- Miranda warning on March
24 9th, 2012, statement of March 9th, 2012 because they said at
25 the time they said he was under the influence of drugs and

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

19

1 alcohol, they checked yes.

2 Q. But that's not your statement. Is that what you're
3 saying?

4 A. No, but they used it as saying I planned the day
5 before.

6 Q. But -- yeah, he testifies against you, right?

7 A. Saying we planned the murder the day before.

8 Q. Saying that you guys are all somewhere else and you're
9 talking about a lick, things like that, is that right?

10 A. Yes.

11 Q. And so you're saying that she should have objected to
12 that statement coming in?

13 A. Should have never went in.

14 Q. But he's not -- he's not one of the -- he's not a co-
15 defendant, he's just a witness?

16 A. Yes.

17 Q. Right? Okay. So you're saying that you think that
18 that should have been objected to by Ms. Raney?

19 A. Yes.

20 Q. Okay. What other concerns did you have with Ms.
21 Raney's representation?

22 A. About the unknown DNA -- DNA. I feel like ...

23 Q. So you're saying there was -- there was DNA evidence in
24 this case, all of it was pretty much touch DNA, right?

25 A. Yes, sir.

AL GREEN - DIRECT EXAMINATION BY MR. SHELDON

1 Q. And there were multiple individuals that when you're
2 dealing with touch DNA you're dealing with two or three
3 people or even more that ---

4 A. Yeah.

5 Q. --- whose DNA they're dealing with, extracting, right?

6 A. Yes, sir.

7 Q. Your DNA's not found anywhere inside the home, is it?

8 A. Nowhere.

9 Q. Was there -- so what were your issues with the DNA?

10 A. Like in my briefing -- had to do with -- countered by
11 my briefing, they said something about excluding, but that
12 they have a statement saying like that my DNA couldn't be
13 excluded from the storm door, touch DNA, but SLED analyzed
14 saying after -- I can't be excluded -- I can be excluded.

15 Q. Okay. So you're saying that she should have objected
16 to them even getting in that you could not be excluded?

17 A. Right.

18 Q. Even though there's nothing that indicated that you --
19 that you would be included. You're saying the fact that it
20 was excluded that you couldn't -- that testimony came in
21 that you couldn't be excluded was the problem, is that
22 right?

23 A. Yes, sir.

24 Q. Okay. What other issues with Ms. Raney did you have
25 during this trial?

AL GREEN - CROSS-EXAMINATION BY MR. MITCHELL

21

1 **MR. MITCHELL:** Judge, I'm going to object to additional
2 issues being raised at this point. I'm going to object to
3 any additional issues being raised at this point. He keeps
4 bringing up new issues that weren't pled in the actual
5 application. At this point we're just going to continue
6 more applications [sic] being raised that weren't originally
7 pled in the application.

8 **MR. SHELDON:** Judge, I think ultimately it's an
9 ineffective assistance claim. I mean, I think they all kind
10 of go to that. It's clearly a long trial. The initial
11 issues of the DNA and things, it's a generic ineffective
12 assistance claim. There's not any specific claim other than
13 as a totality it is what it is.

14 **THE COURT:** All right. I'll overrule the objection.
15 Go ahead.

16 Direct Examination by Mr. Sheldon Continued:

17 Q. Was there any other concerns that you had?

18 (Pause)

19 A. That's all. That's all.

20 **MR. SHELDON:** Thank you, Your Honor. I don't have
21 anymore questions for this witness at this time.

22 **THE COURT:** Cross-examination.

23 **MR. MITCHELL:** Thank you, Judge.

24 Cross-Examination by Mr. Mitchell:

25 Q. Good afternoon, Mr. Green. How are you?

AL GREEN - CROSS-EXAMINATION BY MR. MITCHELL

1 A. Doing all right.

2 Q. Good. So I just have a few questions for you. How
3 many times did you meet with Ms. Raney prior to going to
4 trial?

5 A. If I ain't mistaken, I'd say about four or five times.

6 Q. Four or five times? Okay. Now, during those meetings
7 did you guys discuss the evidence -- I think you testified,
8 so let me back up. Is it correct with me saying that you
9 guys discussed the discovery in your case in one of those
10 meetings?

11 A. A few things -- not the whole -- we didn't go through
12 the whole discovery.

13 Q. You guys didn't go over all the discovery?

14 A. No, not ---

15 Q. Okay.

16 A. Not to my knowledge.

17 Q. Okay. So tell me some of the things that you guys
18 talked about during your meeting.

19 A. About my -- really about my alibi witnesses, ---

20 Q. Yeah, okay.

21 A. --- what I was worried about, and the little boy's
22 statement.

23 Q. Okay. So you guys talked about that. Now during your
24 meeting did you guys talk about any type of strategy that
25 you had going forward to trial?

AL GREEN - CROSS-EXAMINATION BY MR. MITCHELL

23

1 A. They wanted me to -- they wanted me to plead, to say I
2 was there, but I wasn't there.

3 Q. Okay. So when you decided to go -- well, I guess, let
4 me back up. So the State offered you a plea deal, right?

5 A. Yes, sir.

6 Q. And so you rejected it?

7 A. Yes, sir.

8 Q. Okay. And so then it was your decision to go forward
9 to trial. Did Ms. Raney tell you what your defense would be
10 when you went to trial or did you guys develop one at all?

11 A. Just told me that I had zero chance of winning at the
12 trial.

13 Q. Okay. So she told you you had zero chance of winning?

14 A. (Affirmative nod).

15 Q. And so you still rejected a plea offer?

16 A. Yes, sir.

17 Q. So your decision to reject the plea offer no doubt,
18 though, right?

19 A. Yes, sir.

20 Q. Okay.

21 A. They said plead to manslaughter and testify. I was
22 like I don't know nothing.

23 Q. I'm -- say that again.

24 A. They wanted me to plead to manslaughter and also
25 testify on my co-defendant.

AL GREEN - CROSS-EXAMINATION BY MR. MITCHELL

1 Q. Okay. And you didn't want to do that?

2 A. Because I didn't know nothing.

3 Q. Okay. So you ---

4 A. Wasn't there.

5 Q. Okay. And so alibi witnesses, you wanted them to
6 contact alibi witnesses and they told you that they couldn't
7 locate them, right?

8 A. Yeah.

9 Q. Okay. Did you all discuss whether you wanted to
10 testify at your trial or not?

11 A. Yeah, she asked me, but I -- I just wanted my people to
12 testify on my behalf as to my whereabouts.

13 Q. I'm sorry?

14 A. She asked me if I -- asked me if I wanted to testify
15 about it, but I didn't.

16 Q. Okay. And in terms of you wanted her to call the child
17 to testify at trial, you had -- you all had discussions
18 about that, right?

19 A. Yes, sir.

20 Q. And so there were concerns about -- I think Mr. Sheldon
21 said the competency of the child and whether they could
22 adequately testify at a trial about what happened, right?

23 A. Yes, sir.

24 Q. Okay. And then issue with DNA evidence, did you guys
25 talk about that at all?

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

25

1 A. DNA evidence. No, I can't -- I can't remember, it's so
2 long.

3 Q. Okay.

4 **MR. MITCHELL:** Judge, I think that's all the questions
5 I have for the Applicant.

6 **THE COURT:** All right. Thank you, sir. Any redirect?

7 **MR. SHELDON:** I don't have any further questions, Your
8 Honor.

9 **THE COURT:** Thank you, sir. You may step down. Call
10 your next witness.

11 **MR. SHELDON:** Yes, Your Honor. We would call Amy Raney
12 to the stand.

13 **Amy Raney, being duly**
14 **sworn testified as follows;**

15 **MR. SHELDON:** May it please the Court, Judge?

16 **THE COURT:** Certainly.

17 **Direct Examination by Mr. Sheldon:**

18 Q. Please state your name for the record.

19 A. Amy Raney.

20 Q. That is a big file that you have. Is that all for this
21 case?

22 A. Yes, sir.

23 Q. Okay. Well, let's get started. You've heard some of
24 the things that Mr. Green testified to, right?

25 A. Yes.

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

1 Q. I want to begin by talking about this four-year-old
2 child who is present at the crime scene the night of the
3 murder, the victim's son. Obviously there is a pretrial
4 hearing on whether an excited utterance would come in,
5 there's a long back and forth between the prosecutor, you,
6 Mr. Frick and Judge McMahon about competency and how that
7 relates to excited utterances and things like that, right?

8 A. Yes.

9 Q. Okay. And have you had a chance to go back and review
10 that since the first time that you tried the case?

11 A. Yes.

12 Q. Tell the Court why you ultimately decide not to call
13 the four-year-old child to the -- at that time would have
14 been probably six or seven-years-old to testify.

15 A. At the time, from my recall, there was -- we were
16 hoping to set up through the witnesses that were in contact
17 with the child that night. There was a fair amount of law
18 enforcement and emergency personnel on-scene.

19 And if memory serves, Judge McMahon had said, well, if
20 you can -- I don't believe it was an excited utterance from
21 what I've heard and arguments from the attorneys pretrial,
22 but if you can establish the circumstances, which would show
23 it was an excited utterance, then I'll consider it. And
24 throughout the course of the trial, I don't remember the
25 names of which specific officers it was, but they were all

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

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1 like, oh, the kid was happy-go-lucky, he was fine, he wasn't
2 acting like he was under any stress or still under the
3 excitement of what had happened that evening.

4 And throughout the course of the trial and actually
5 before the trial I had just -- had had discussions with my
6 client about that as well, and about competency, and about
7 how the jury would perceive the four-year-old, and they'd be
8 very sympathetic to a four-year-old that had been --
9 witnesses his mother be murdered and that I couldn't cross
10 him as strongly as I would a witness that didn't have those
11 circumstances.

12 Q. Did you have any access to the child prior to trial?

13 A. No.

14 Q. None? And ---

15 A. No, I'd never spoke with the child before trial.

16 Q. Did you -- did you attempt to speak to the child prior
17 to trial?

18 A. No.

19 Q. Okay. Do you believe if you had tried to attempt to
20 speak to the child that you would have been able to?

21 A. No.

22 Q. And so basically pretrial what happens is you -- Judge
23 McMahon says I'm not concerned about the competency as much,
24 but rather you need to establish that this was an excited
25 utterance, is that right?

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

1 A. Yes.

2 Q. That regardless of whether the child were or were not
3 competent, that the statement would come in if it were an
4 excited utterance?

5 A. Yes.

6 Q. Okay. And so because the child wasn't going to be
7 there to testify, so no one would be able to gauge
8 competency to begin with, is that right?

9 A. Yes.

10 Q. At that point if it's coming in as an excited
11 utterance, the child's obviously not there. And so
12 ultimately the -- everybody testifies that it's not an
13 excited -- essentially you can't ever establish that it is,
14 is that right?

15 A. Correct.

16 Q. Despite the fact that the child was, you know, covered
17 in blood and had just, you know, seen his mom get shot and
18 runs over to the neighbor's house to tell the neighbors, is
19 that right?

20 A. That's correct.

21 Q. Do you believe that you could have challenged that a
22 little bit harder with Judge McMahon in terms of whether or
23 not -- that it -- under any circumstance do you believe that
24 someone is not in an excited state in that fact pattern?

25 A. I wasn't there, but I find that very hard to believe.

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

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1 Q. And do you believe that that could have been pursued a
2 little bit further with the trial judge?

3 A. I mean, I did the best that I could at the time with
4 it. I think the issue is, though, that my client was never
5 accused of being the shooter. And the statement that was
6 made by the child that we were going to argue was an excited
7 utterance was Shi's daddy had shot my mom, and my client was
8 never the one accused of being the shooter. So that
9 wouldn't really -- so I didn't think it was the end-all-be-
10 all for this case by any stretch of the imagination.

11 Q. But you do agree that Shi, you know, in air quotes, not
12 S-h-i's dad, ---

13 A. Right.

14 Q. --- was not on trial for murder at all? So the person
15 that the child says was the shooter was not actually -- it
16 turns out is not, in fact, the person being tried?

17 A. Sure.

18 Q. So it would have had, had you been able to establish
19 that the child said that, it would have -- it would have
20 benefitted all co-defendants in the case?

21 A. Yes.

22 Q. It's not as if the child said the shooter was the
23 shooter and didn't mention your guy, it was somebody
24 completely different?

25 A. Right.

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

1 Q. Okay. And so did you -- what conversations did you
2 have about the child testifying? Because Judge McMahon says
3 you can call the child, and we'll deal with it then, right?

4 A. Yes.

5 Q. The competency issue?

6 A. Yes.

7 Q. But nothing prevented you legally from calling the
8 child. There was no competency determination made prior to
9 trial that would have suggested the child was just
10 completely unable to be called, right?

11 A. Right. I had had discussions with my client and Mr.
12 Skidmore, which was the investigator in the case, and we had
13 had several conversations together. And a decision was made
14 based on those conversations that we were not going to put
15 the child on our witness list and was not going to call the
16 child independently at trial.

17 Q. You heard Mr. Green testify that you said that he had
18 no chance to win the case and he should plea, is that right?

19 A. I disagree with that. I have never told any client
20 that there's a hundred percent or zero percent chance of
21 anything.

22 Q. Do you -- what would -- what was your recollection of
23 the conversation in terms of whether to plead or go to
24 trial?

25 A. Well, he had indicated at one point that he was willing

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

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1 to plead. He said that he was only willing to plead to a
2 five year sentence, not only for this case, but other
3 charges that he had pending as well.

4 We had had a discussion about, well, if I'm able to get
5 it closer to like a number around 15 would you consider
6 that? And he said absolutely not. I wouldn't go any higher
7 than five.

8 Mr. Barfield did not agree to extend a five year offer.
9 And he said, he being my client, Mr. Green said, well, then
10 I want to go to trial, and if I lose, then I'm just going to
11 go ahead and appeal.

12 Q. Okay. Which he did. And that was denied as well,
13 right?

14 A. Yes.

15 Q. And so -- so you don't remember having a specific
16 conversation with him regarding his chances at trial versus
17 the evidence against him and how trial may or may not turn
18 out?

19 A. Oh, no, we had several conversations about that and
20 entertained several different defense strategies including
21 alibi as to which way we were going to go. Ultimately
22 decided based on my conversations with Mr. Green and his
23 wishes which defense we were going to proceed with.

24 Q. And what about the investigation of the alibi witness?
25 Did that -- who was the alibi that he presented and did

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

1 y'all try to track down an alibi?

2 A. There were several witnesses that he provided as an
3 alibi witness. I actually met with his mother, who was one
4 of the alibi witnesses that he wanted us to speak with.
5 Also his brother, Justin Green, his brother's girlfriend,
6 who was at the home with him allegedly at the time that this
7 all occurred, and also a gentleman named Gary my client had
8 given me information on.

9 Q. And ultimately why is no alibi witness called in the
10 case?

11 A. After -- I personally met with his mother and spoke
12 with his brother as did Mr. Skidmore, the investigator in
13 the case. The issue after speaking with my client's mother
14 was that she had gone to bed early. She did say that my
15 client did leave the house for a period of time and that
16 right around the time that he had left the house was around
17 the same time that the murder occurred. So it wasn't an
18 alibi that was going to be able to hold water.

19 His brother, Justin, did say that he saw Al the night
20 of the murder. But, again, his brother said around the time
21 of the murder his brother, Justin, and the girlfriend, I
22 can't remember her name off the top of my head, had gone
23 into the bedroom. And his brother told me they were having
24 sex for about one to two hours during the time of the
25 murders, so he couldn't put my client at the house. So we

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

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1 did investigate that, but it wasn't, in fact, an effective
2 alibi.

3 We tried to track down the girlfriend. Justin, the
4 brother, gave me the information that he had because they
5 were no longer together at the time nor during the
6 investigation were never able to find her.

7 Myself and Mr. Skidmore also tried to track down Gary,
8 a gentleman that drove a gold car, which was the information
9 that my client had given me. And after spending a fair
10 amount of time trying to locate this person based on the
11 limited information we had, my client ultimately admitted to
12 Mr. Skidmore that he had sent us on a wild goose chase and
13 there was no Gary.

14 Q. So that came from your client?

15 A. Yes, my client.

16 Q. From Mr. Green?

17 A. Yes.

18 Q. Did -- what about the -- did you have any conversations
19 with Mr. Green about the DNA evidence in this case or
20 essentially what's kind of the lack thereof DNA evidence in
21 this case?

22 A. Yes.

23 Q. At any point in time did you feel the need that it
24 would be appropriate to hire an expert regarding the DNA in
25 this case?

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

1 A. No. I thought the DNA in this case helped us.

2 Q. And so -- and you agree that his DNA is really nowhere
3 to be found, is that right?

4 A. Exactly.

5 Q. What -- ultimately what -- would you agree, I mean,
6 it's solely a circumstantial case?

7 A. Yes.

8 Q. And so if it's solely a circumstantial case -- I guess,
9 I want to go back to the four-year-old just a minute. Why
10 would we not at least put that witness on the witness list?
11 Why -- obviously the -- you end up not presenting a case at
12 all. You guys get last argument, things like that, right?

13 A. Right.

14 Q. Why after knowing how thin the State's case, but the
15 directed verdict motion getting denied, would it not be --
16 did you at least discuss with your client after the evidence
17 was presented, hey, we may, you know, the testimony of the
18 co-defendant, the non-I-guess-tried-co-defendant, the
19 driver, Mr. Blakeney, ---

20 A. Yes.

21 Q. --- is really what's sinking you here. I don't know,
22 do you agree or disagree that that's basically the testimony
23 that convicted Mr. Green?

24 A. It was the most compelling co-defendant testimony I'd
25 ever seen in my entire legal career, yes.

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

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1 Q. And so why not even have the option of presenting the
2 child in your case in chief?

3 A. Because leading up to the trial before we had ever even
4 formulated the witness list, this was one of the things that
5 in met in my -- many conversations with my client that we
6 had discussed about whether or not we were going to do. And
7 the concern was because my client had lived with the victim
8 in this case, and her children, and his sister, they all
9 lived in the house together for a period of time in 2011.

10 I point blank asked my client, and I know my
11 investigator did, on -- or situations that I wasn't there as
12 well, are we absolutely a hundred percent certain if we put
13 **Minor**, who was the four-year-old at the time of the
14 murder, on the stand that he is absolutely going to say that
15 you weren't there? And I was never given -- my client was
16 like, well, no, I can't promise that.

17 And so I said, so you understand the risk is if the
18 child's found competent, he gets on the stand, he testifies,
19 that he could say you were there? And so we decided that
20 that was a risk that we were not willing to take.

21 Q. Did Mr. Skidmore attempt to interview the child? I
22 mean, did he ---

23 A. No. Not to my knowledge, no.

24 Q. Okay. But it was made pretty clear to you that that
25 wasn't going to happen ---

AMY RANEY - DIRECT EXAMINATION BY MR. SHELDON

1 A. That what wasn't ---

2 Q. --- from whoever the -- the interview of the child?

3 A. Made clear to me by who?

4 Q. By any, I mean, what -- why not even go out and try to
5 -- try to talk to the child?

6 A. I never tried to talk to the child. There was, I mean,
7 I remember -- I don't remember all the details of what I had
8 Mr. Skidmore do, but it became apparent that we were not
9 going to be provided access to the child. I don't ---

10 Q. And that's ---

11 A. --- remember how the details were and how that came to
12 be.

13 Q. And that was my question. It became apparent that you
14 were not going to be given access to the child, is that
15 right?

16 A. Yeah, but I don't remember the ---

17 Q. Okay.

18 A. --- specifics of it.

19 **MR. SHELDON:** Judge, I beg the Court's indulgence for
20 just a ---

21 **THE COURT:** All right, sir.

22 (Pause)

23 **MR. SHELDON:** Your Honor, I don't have anymore
24 questions for this witness.

25 **THE COURT:** Redirect [sic].

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

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1 MR. MITCHELL: May it please the Court?

2 Cross-Examination by Mr. Mitchell:

3 Q. Good afternoon, Ms. Raney, how are you?

4 A. Good.

5 THE COURT: Cross.

6 MR. MITCHELL: Yes, cross.

7 Q. How long have you practiced law here in South Carolina?

8 A. Ten years.

9 Q. Ten years? And how much of that time has been devoted
10 to criminal law?

11 A. My practice started in 2004. I actually retired from
12 the practice of law in 2014. So it would have been 2008.
13 But I started exclusively criminal law. I had done very
14 little criminal law before 2008.

15 Q. Okay. And your involvement in criminal law, were you a
16 private attorney, were you -- where did you work?

17 A. I started out at the Sixteenth Circuit Solicitor's
18 Office in York County. And after a couple of years
19 transitioned over to the public defender's side in York
20 County and then ultimately here in the public defender's
21 office in Lancaster County.

22 Q. Okay. So you've tried cases from both sides?

23 A. Yes.

24 Q. In this particular case you were at the public
25 defender's office, so you were retained -- appointed to

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

1 represent the Applicant in this case, right?

2 A. Yes.

3 Q. Okay. Could you just give me a brief summary of the
4 facts, just a little bit of the facts about how the
5 Applicant was charged, if you recall at all.

6 A. How he was charged?

7 Q. Yes, the facts of the case or the allegations ---

8 A. Oh, the allegations ---

9 Q. Yes.

10 A. --- that led to it? The allegations were essentially
11 that the day before the murder took place that several
12 people had -- had provided statements to the officers that
13 they overheard my client and the alleged shooter talking
14 about doing a lick, which they meant a robbery, of someone
15 that drove a black car. The victim in this case did have a
16 black vehicle.

17 Based on the statements they were able to get from the
18 co-defendant and a bunch of other circumstantial evidence,
19 the allegation was that the co-defendant in this case, Mr.
20 Clinton, I believe, he went by Tate, was the shooter, that
21 my client had agreed to participate in a robbery with Tate
22 and another gentleman, that William Blakeney had driven them
23 over in a white Cadillac to where the victim lives -- lived.
24 My client was present and had gone into the house with the
25 intention of committing a robbery, but ultimately she was

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

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1 shot by the co-defendant and killed.

2 Q. Okay. Now during the course of your representation can
3 you recall how many times you may have met with the
4 Applicant in this case?

5 A. I didn't recall off the top of my head, but I did get
6 the file from the public defender's office. And in going
7 over my notes I had at least notes of ten in-person meetings
8 with him. Some of my notes indicate some of those meetings
9 were at least two hours in length in addition to some
10 written correspondence between myself and Mr. Green
11 throughout the course of my representation of him.

12 Q. Okay. And is your standard practice during these
13 meetings to discuss possible sentences that he could face if
14 he was convicted of these charges?

15 A. Yes.

16 Q. The State's burden of proof?

17 A. Yes.

18 Q. And his constitutional rights?

19 A. Yes.

20 Q. Okay. And I think we've heard some testimony just now
21 on direct examination that you did a thorough investigation
22 into this case. Is it fair to say that?

23 A. Yes. And I actually started representing him in
24 November of 2013.

25 Q. Okay.

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

1 A. So it wasn't from the beginning.

2 Q. I got you.

3 A. Yeah.

4 Q. Okay. And you had a private investigator in this case,
5 correct?

6 A. Yes. I went and got an *ex parte* order from the court
7 to be able to spend five thousand dollars (\$5000.00) on a
8 private investigation on my client's behalf.

9 Q. Okay. And so you ran down his alibi witnesses. They
10 ultimately were not something that you wanted to use, right?

11 A. Yes. And that I did go back to my client and discussed
12 what we discovered through the course of the investigation
13 about what these potential alibi witnesses would say.

14 Q. Okay. And is it fair to say that it was strategy in
15 not essentially trying to call the child to the stand ---

16 A. Yes.

17 Q. --- to testify?

18 A. Ultimately the decision was made after speaking with
19 my client and what he wanted to do that we were essentially
20 going to go with the theory that the State had not met their
21 burden. And he had even hand written notes sent to me
22 regarding stuff he wanted me to hit on on cross to go to the
23 theory, which is the State had not met their burden in this
24 case.

25 Q. Okay. And the DNA evidence in this case didn't hurt

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

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1 the Applicant at all, did it?

2 A. Not at all.

3 Q. Okay. And in terms of -- did you guys discuss him
4 testifying at all?

5 A. Yes.

6 Q. Okay. And what was the substance of that conversation?

7 A. We discussed it more than once. My client indicated to
8 me that he felt that he would be too nervous to be able to
9 testify at trial. I offered to him that while we could
10 practice, not practice rehearse what he was going to say,
11 but practice in terms of -- so he could get a feel for what
12 it would be like.

13 And I would play the role of the prosecutor as well
14 before he ultimately made that decision as to whether or not
15 he testified. And he would not even go along with a
16 practice run. He declined that and was adamant that he did
17 not want to testify.

18 Q. Okay. And during the course of your conversations with
19 him over these meetings did you ever -- did he ever -- let
20 me rephrase that. Pardon me. Was there ever any indication
21 that he didn't comprehend anything you were saying to him at
22 all?

23 A. No.

24 Q. Okay. Now in terms of -- in terms of plea offers in
25 this case, you said the solicitor offered an offer of 30

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

1 years, is that right?

2 A. To a lesser charge, yes, manslaughter.

3 Q. Okay. And he rejected the plea offer?

4 A. Yes.

5 Q. Okay. He didn't want anything more than five years,
6 right?

7 A. That's correct.

8 Q. Okay. And in terms of the evidence in this case, one
9 of the co-defendants testified ultimately against the
10 Applicant, correct?

11 A. Yes.

12 Q. Okay. And I think your testimony was that the
13 testimony from him was compelling, correct?

14 A. Yes.

15 Q. Okay.

16 **MR. MITCHELL:** Judge, I think that's all the questions
17 I have for this witness.

18 **THE COURT:** Redirect?

19 **MR. SHELDON:** Nothing for this witness on redirect,
20 Your Honor.

21 **THE COURT:** All right. Thank you, ma'am. You may step
22 down.

23 A. Thank you.

24 **MR. SHELDON:** And, Your Honor, I don't think I have any
25 objection to this witness being excused for the day.

AMY RANEY - CROSS-EXAMINATION BY MR. MITCHELL

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1 **MR. MITCHELL:** I don't either, Judge.

2 **THE COURT:** You may be excused.

3 A. Thank you.

4 **MR. SHELDON:** Judge, we -- I -- we don't have anything
5 further at this time.

6 **MR. MITCHELL:** The State has no additional witnesses,
7 Your Honor.

8 **THE COURT:** All right. I'll be glad to hear arguments.

9 **MR. SHELDON:** Thank you, Your Honor. Judge, we would
10 argue that it was ineffective not to call the four-year-old
11 or not to attempt to call the four-year-old to trial. This
12 is a long transcript, but ultimately there is very little
13 evidence that suggests -- if you read the appellate briefs,
14 if you read the -- it was solely focused on the directed
15 verdict issue.

16 Essentially this is a circumstantial case as Ms. Raney
17 testified to. And we have a four-year-old who makes a
18 statement at -- essentially that witnessed the shooting or
19 at least was at the house at the time of the shooting that
20 goes over to the neighbor's house, says someone else that is
21 not on trial, none of the four co-defendants committed the
22 murder. There's pretrial on it.

23 Ultimately they determined that it can come in as an
24 excited utterance if they can show that it's an excited
25 utterance, something they aren't able to do, to not have

1 that witness available to testify is ineffective. We know
2 -- we don't know what the witness would have said on the
3 stand, but we do know what the witness' statement was to
4 other people. And there's no denying that.

5 At some point, regardless of whether he's -- the
6 witness says -- whether the four-year-old says that Shi's
7 dad did or didn't shoot my mom, he had made that statement
8 contemporaneous at the time of the shooting. To not have
9 that witness available is ineffective assistance of counsel.
10 To not call that witness, to not somehow get that statement
11 to the jury in a case that relies solely on circumstantial
12 evidence where you have a witness at the crime scene saying
13 someone else committed the crime is ineffective assistance
14 of counsel, Your Honor.

15 Based on, you know, the entirety of the transcript,
16 there's a lot going on in this trial, but not a lot going on
17 as it relates to Mr. Green. He's not -- he's not the
18 alleged shooter. He's -- there's a lot of other statements
19 regarding the other co-defendant in the case, but not Mr.
20 Green.

21 And, therefore, when you have -- when you have one --
22 one co-defendant who ends up -- at the time was out on bond,
23 he testifies for the State, he ends up getting a YOA or
24 suspended YOA from being charged with murder. His testimony
25 is what ends up sinking Mr. Green as you heard Ms. Raney

1 say.

2 We have another statement that never comes in. And
3 that statement not being presented to the jury, not somehow
4 getting to the jury, no matter how they tried, there would
5 have been one way to guarantee that that statement gets to
6 the jury, and that's call the child. And the fact that they
7 didn't do that is ineffective assistance.

8 And, therefore, Your Honor, based on that and
9 everything -- without losing for the purposes of this
10 appeal, the preservation of the other issues that Mr. Green
11 raised, we would, of course, ask the Court to consider those
12 as well, but when it comes to argument it comes down to
13 basically the statement of this four-year-old, this -- that
14 happened at trial. Thank you, Your Honor.

15 **THE COURT:** All right. Thank you, Mr. Sheldon. Mr.
16 Mitchell.

17 **MR. MITCHELL:** Thank you so much, Your Honor.
18 Obviously we know the standard for PCR's is two-pronged,
19 whether counsel was deficient and then whether that -- if
20 they are deficient, whether that deficiency has prejudiced
21 the applicant in some way.

22 Your Honor, I think based on the testimony that Ms.
23 Raney has offered here today, she's -- she's testified that
24 not calling the child was a child -- was a trial strategy in
25 this particular case. It ultimately could have backfired,

1 that the child could ultimately have placed the Applicant at
2 the scene. They had discussions and conversations about it
3 and ultimately they decided not to do so.

4 And I think when counsel articulates a valid trial
5 strategy, that should not be seen as deficient. So I don't
6 even think you make it to the next prong of prejudice, Your
7 Honor.

8 I think that Ms. Raney, based on her testimony, met
9 with the Applicant numerous times, developed a theory of the
10 case, developed a valid defense, Your Honor. Ultimately the
11 Applicant was convicted, but I see in no way, shape or form
12 ineffective assistance of counsel in this case, Your Honor.

13 Thank you.

14 (Pause)

15 **THE COURT:** Mr. Sheldon, Mr. Green, the Court agrees
16 with the argument and positions of the attorney general in
17 this case. I find the Applicant has failed to meet his
18 burden of proof, that the decision to not call the child was
19 clearly trial strategy. I fail to see prejudice suffered by
20 the Applicant. And, therefore, I'm compelled to deny
21 Applicant's application for post conviction relief. Mr.
22 Mitchell, if you'd please prepare me an order.

23 **MR. MITCHELL:** Absolutely, Judge. Thank you.

24 (Hearing Ended at 12:19 pm)

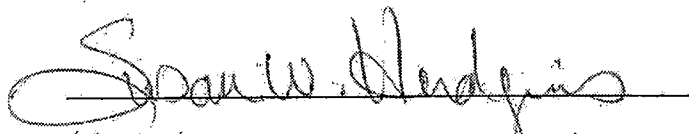
25 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Lancaster County, South Carolina, on the 18th day of July 2018.

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

March 23, 2019


Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF LANCASTER)
)
 Al Martinez Green, #359254,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2016-CP-29-1099

ORDER OF DISMISSAL

CLERK OF COURT
 LANCASTER, SC

2018 SEP -6 PM 2:32

FILED
 OFFICE CLERK
 OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed on September 16, 2016, by Al Martinez Green (Applicant). Respondent made its Return on or about November 23, 2016. An evidentiary hearing into the matter was convened on July 18, 2018, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present at the hearing and represented by Nathan J. Sheldon, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Amy S. Raney, Esquire, Esquire also testified. This Court had before it a copy of the records of the Lancaster County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted by the

July 2012 term of the Lancaster County Grand Jury for murder (2012-GS-29-0636). Amy Raney, Esquire, represented Applicant. On March 10-14, 2014, Applicant proceeded to trial before the Honorable R. Knox McMahon and a jury and was convicted as indicted. Judge McMahon sentenced Applicant to imprisonment for life without parole.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence in an unpublished opinion. State v. Green, Op. No. 2016-UP-205 (S.C. Ct. App., filed May 11, 2016). The Remittitur was issued on May 27, 2016.

FACTUAL HISTORY

In January 2012, Jenika Jones (the murder victim) lived in a Lancaster County trailer park with her three minor children, ages four, two and one. Tr. pp. 216; 218-19; 221-26; 264-65. On the night of January 19, 2012, officers with the Lancaster County Sheriff's Office, responding to a dispatch for a home invasion at Jenika's residence, found her dead from a single gunshot wound to the head. Her minor children were also still in the house. Applicant along with several co-defendants were ultimately arrested and charged with Ms. Jones' death.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. "I was denied the right to effective assistance of "defense counsel" guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provision of the South Carolina Constitution. See Strickland v. Washington, 466 U.S. 668 (1984).
 - b. Defense counsel failed to object to the jury instruction concerning the "hand of one, hand of all theory."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING



Applicant's Testimony

Applicant testified he was serving a life sentence in prison and his direct appeal had been denied by the South Carolina Court of Appeals. He testified the crime he was convicted of happened in 2012 and he went to trial for it in 2014 with his co-defendant. Applicant testified he was originally represented by Mark Grier, Esquire, but that he had Mr. Grier relieved because he did not think Mr. Grier was representing him properly. He testified after Mr. Grier was relieved, Trial Counsel took over his representation. Applicant testified Trial Counsel came to see him to let him know the State had extended a plea offer for thirty years for voluntary manslaughter which he turned down. He testified he wanted Trial Counsel to investigate his case and get alibi witnesses' statements for him. Applicant testified Trial Counsel attempted to locate witnesses to get statements but was unsuccessful in doing so. He testified Pete Skidmore was the investigator in his case and Mr. Skidmore met with him to discuss potential witnesses. Applicant testified Trial Counsel did not review the discovery in the case with him but provided it to him. He testified he wanted Trial Counsel to push for a continuance of his case until his alibi witnesses could be located. Applicant testified the victim was shot in her house while her three children were there. He testified he had lived in a residence where one of the three children had lived as well and he wanted Trial Counsel to call the child because they would have recognized him had he been present during the crime. Applicant testified he also got a statement the child made in his discovery. He testified Trial Counsel did not call the child to testify because the strategy potentially could have backfired. Applicant testified there was no direct evidence of him committing the crime other than his co-defendant testifying. He testified there was DNA evidence that was tested and came back unknown in his case that should have been objected to by Trial Counsel.



On cross-examination, Applicant testified he met with Trial Counsel four or five times during her representation. He testified Trial Counsel went over the discovery in the case with him which included the child's statement. Applicant testified Trial Counsel wanted him to plead guilty but he rejected the plea offer because he wanted a trial. He testified Trial Counsel told him they had zero chance of winning at trial. Applicant testified he decided against testifying at his trial. He testified the competency of the child he wanted to testify at trial was an issue. Applicant testified he could not remember if Trial Counsel talked to him about the DNA evidence.

Trial Counsel's Testimony

Trial Counsel testified that the victim in the case had three small children who were present in the home when she was murdered. She testified the oldest of the children, a four year old, made a statement to the police about who shot his mother. Trial Counsel testified during pre-trial proceedings she attempted to show the child's statement was an excited utterance. She testified the trial judge ruled that if they could establish the statement was an excited utterance it could potentially come in but a proper foundation would have to be laid. Trial Counsel testified there was also an issue of competency in regards to the four year old potentially testifying. She testified she explained to Applicant that if the child did testify as a witness it would be hard to question the child vigorously if she needed to. Trial Counsel testified she also explained to Applicant that the statement by the four year old was not that favorable to him and since he had lived with the child for a period of time, the child could possibly get on the stand and not remember or implicate him. She testified she had discussions with Applicant and their private investigator about not calling the child as a witness. Trial Counsel testified ultimately the child's statements were not introduced.

Trial Counsel testified that Applicant was only willing to plead guilty if the State offered



a plea of five years or less. She testified Applicant wanted to go to trial and he told her if he lost he would just appeal. Trial Counsel testified there were several alibi witnesses who Applicant wanted her to locate and talk to but none of them turned out to be good alibi witnesses. She testified Applicant named his mother, brother and a man named Gary as his alibi witnesses. Trial Counsel testified she met with his mother who told her Applicant left her house that night and she went to bed early. She testified Applicant's brother told her he was having sex in his room and could not place Applicant at the house. Trial Counsel testified she tried to track down Gary with the help of her investigator but found out Gary did not actually exist. She testified she thought the DNA evidence used at trial was helpful to Applicant as it did not implicate Applicant. Trial Counsel testified one of Applicant's co-defendant's testimony at trial was extremely compelling and she believed his testimony was what helped convict Applicant given the case was heavy circumstantial evidence case. Trial Counsel testified Applicant could not say with certainty what the four year old would say if he testified at trial concerning identification of the shooter.

On cross-examination, Trial Counsel testified she had practiced law in South Carolina for ten years and had practiced criminal law exclusively since 2008. She testified she was appointed to represent Applicant. Trial Counsel testified the evidence to be presented at trial was that the day before the murder took place, Applicant and his co-defendants talked about doing a robbery. She testified the facts presented were that one of Applicant's co-defendants was the shooter and another was the driver with Applicant agreeing to participate. Trial Counsel further testified the evidence that was going to be presented at trial was that Applicant intended to do a robbery but his co-defendant shot the victim. She testified she met with Applicant ten times while he was in prison with the meetings averaging around two hours in length. Trial Counsel testified she



discussed with Applicant the charges he was facing, the possible sentences, his constitutional rights and the State's burden of proof. She testified she did a thorough investigation as she had an order from the court approving funds to hire a private investigator.

Trial Counsel testified it was strategy not to call the four year old as it was unclear what a young child could potentially say on the stand. She testified the DNA evidence did not hurt Applicant in that it did not come back as a match to him. Trial Counsel testified she discussed with Applicant about him testifying but he told her he would be too nervous to testify. She testified it never appeared to her that Applicant had any issues comprehending their conversations. Trial Counsel testified Applicant rejected the plea offer from the State.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range

of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Ineffective Assistance of Counsel

Failure to Investigate/Failure to call alibi witnesses

Applicant alleges Trial Counsel was ineffective for failing to investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have

discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Trial Counsel done more investigation. Even so, Trial Counsel testified credibly that she reviewed all of the discovery with Applicant and obtained a private investigator to investigate Applicant’s case. This court finds Trial Counsel and the private investigator met with Applicant a number of times to discuss his case and any potential leads. This Court finds Trial Counsel’s investigation was beyond reasonable. Therefore, Applicant has failed to meet his burden to prove Trial Counsel was ineffective. This allegation is denied and dismissed with prejudice.

Further, Applicant alleges Trial Counsel was ineffective for failing to call alibi witnesses at trial. Applicant testified he wanted Trial Counsel to investigate his case and get alibi witnesses’ statements for him. Applicant testified Trial Counsel attempted to locate witnesses to get statements but was unsuccessful in doing so. Trial Counsel testified there were several alibi witnesses who Applicant wanted her to locate and talk to but none of them turned out to be good alibi witnesses. She testified Applicant named his mother, brother and a man named Gary as his alibi witnesses. Trial Counsel testified she met with his mother who told her Applicant left her house that night and she went to bed early. She testified Applicant’s brother told her he was having sex in his room and could not place Applicant at the house. Trial Counsel testified she tried to track down Gary with the help of her investigator but found out Gary did not actually exist. This court finds Trial Counsel was not ineffective for not calling Applicant’s alibi witness



at trial. This court finds Trial Counsel tracked these witnesses down, talked to them and determined they could offer no actual alibi defense to Applicant. This Court finds Trial Counsel's actions were more than reasonable in locating and deciding not to call the witnesses Applicant provided. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Failure to Call a Witness

Applicant alleges Trial Counsel was ineffective for failing to call the four year old child of the victim as a witness. Applicant testified the victim was shot in her house while her three children were there. He testified he had lived in a residence where one of the three children had lived as well and he wanted Trial Counsel to call the child because the child would have recognized him had he been present during the crime. He testified Trial Counsel did not call the child to testify because the strategy potentially could have backfired. Trial Counsel testified the oldest of the children, a four year old, made a statement to the police about who shot his mother. Trial Counsel testified during pre-trial proceedings she attempted to show the child's statement was an excited utterance. She testified the trial judge ruled that if they could establish the statement was an excited utterance it could potentially come in but a proper foundation would have to be presented. Trial Counsel testified there was also an issue of competency in regard to the four year old potentially testifying. She testified she explained to Applicant that if the child



did testify as a witness it would be hard to question the child vigorously. Trial Counsel testified she also explained to Applicant that the statement by the four year old was not that favorable to him and since he had lived with the child for a period of time, the child could possibly get on the stand and not remember him or implicate him. She testified she had discussions with Applicant and their private investigator about not calling the child as a witness. Trial Counsel testified ultimately the child's statements were not introduced.

This court finds Trial Counsel was not ineffective for not calling the four year old as a witness as this decision was a strategic one. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Here, Trial Counsel explained the pros and cons of calling the child as a witness to the Applicant. Ultimately, Trial Counsel choose not to pursue this strategy considering the negative consequences of the child testifying. Therefore, this Court finds Applicant has failed to prove



the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Failure to object to DNA evidence

Applicant alleges Trial Counsel was ineffective for failing to object to the introduction of DNA evidence at trial. Applicant testified there was no direct evidence of him committing the crime other than his co-defendant testifying. He testified there was DNA evidence that was tested and came back unknown in his case that should have been objected to by Trial Counsel. Trial Counsel testified she thought the DNA evidence used at trial was helpful to Applicant as it did not implicate Applicant. She testified the DNA evidence did not hurt Applicant in that it did not come back as a match to him. This court finds Trial Counsel was not ineffective regarding this allegation. This court finds based on the evidence presented at the evidentiary hearing and a review of the record that no information presented to the jury concerning DNA evidence contained a match to Applicant's actual DNA. This court cannot think of any reason for Trial Counsel to object to the DNA evidence considering it did not harm Applicant in his case. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court



concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

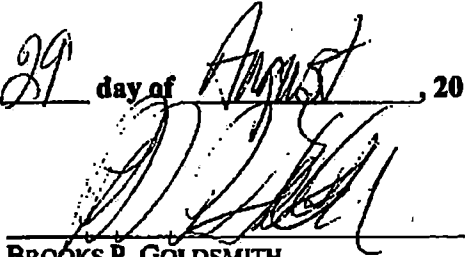
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC 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 THAT:

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 29 day of August, 2018.



 BROOKS P. GOLDSMITH
 Presiding Judge
 Sixth Judicial Circuit

_____, South Carolina

WITNESSES

Catalano - LCSO #12-02271

d. Camp

ARREST WARRANT NUMBER/DOA

M742582 (DOA-3-30-12)

ACTION OF GRAND JURY

TRUE BILL

Roger Nash
Foreperson of Grand Jury

JUN 7 2012

Date:

VERDICT

Foreperson of Petit Jury

Date:

1086

Criser

DOCKET NO. 2012-GS-29- *636*

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2012

THE STATE

vs.

Al Martinez Green

Wayne Blakeney, Jr. 607

DeVoree Clinton 616

CERTIFIED TO BE A TRUE COPY

Jeff Hammond

**JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.**

Indictment for

Murder

SC Code: §16-3-10

CDR Code: 0116

Class: Felony, EXM

2012 JUN -7 PM 12:24

LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

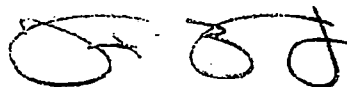
INDICTMENT

At a Court of General Sessions, convened on June 7, 2012, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Al Martinez Green did at [REDACTED], in Lancaster County on or about January 19, 2012, feloniously, willfully, and of his malice aforethought kill and murder Jenika Jaraya Jones by shooting the victim in the head with a firearm and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR