

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

RAPHAEL L. PONTOO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001217

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
RAPHAEL PONTOO,	)	CASE NO.: 2018-CP-32-04205
	)	
Applicant,	)	
	)	
v.	)	SECOND AMENDMENT TO
	)	APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

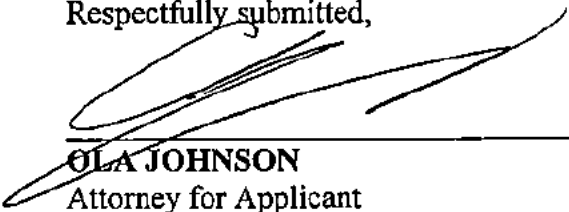
Applicant, Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief filed December 11, 2018. This amended complaint adopts and includes all grounds in the original application as well as the Amendment to Application for Post Conviction Relief filed on June 7, 2021. Applicant further alleges as additional grounds regarding these his claim of ineffective assistance of counsel as follows:

1. Trial Counsel David Mauldin failed to discuss applicants sentence with him following sentencing to discuss and explain a possible motion to reconsider sentence that applicant wanted to pursue.

2. Trial Counsel David Mauldin failed to cross examine witnesses regarding inconsistencies in the evidence including the defendant's height and a black shirt that had a portion removed.

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

Respectfully submitted,



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This 15 day of June, 2021.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

RAPHAEL PONTOO,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT**CASE NO.:** 2018-CP-32-04205**CERTIFICATE OF SERVICE**

I, Ola Johnson, hereby certify on that on June 15, 2021, I served a copy of the
SECOND AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on Lillian L.
Meadows, Assistant Attorney General by Email and U.S. Mail to the following address:

Lillian L. Meadows, Asst. Attorney General

SC Attorney General's Office

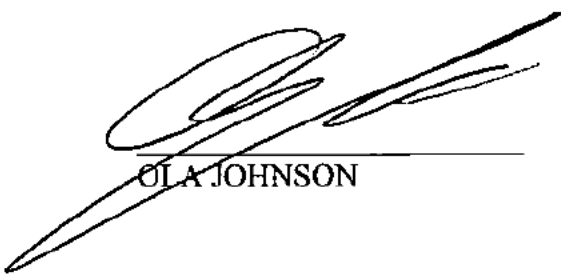
P.O. Box 11549

Columbia, S.C. 29211

FILED
2021 JUN 16 AM 10:36
LISA L. COOPER
CLERK OF COURT
LEXINGTON, SC

6-15-21

Date


OLA JOHNSON

State of South Carolina)
)
County of Lexington)

In the Court of Common Pleas
Lexington Judicial Circuit
2018-CP-32-04205

Raphael Pontoo,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

July 2, 2021
Hearing Conducted Remotely
Via Webex Videoconference

B E F O R E:

The Honorable Courtney Clyburn Pope, Judge

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

Ola Johnson, Esquire
Attorney for Applicant

Lillian L. Meadows, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter - Master

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:41 a.m.)

THE COURT: Mr. Pontoo, is that you, sir?

THE APPLICANT: Yes, ma'am.

THE COURT: All right. Good morning to you, Mr. Pontoo.

THE APPLICANT: Morning.

THE COURT: You're here -- your attorney, Mr. Johnson, is here. And we are here today for your PCR. I want to let you know that though your facility had some difficulty getting on, that is okay. We do not hold any of those things against you. Okay?

THE APPLICANT: Yes, ma'am.

THE COURT: All right.

All right. Ms. Meadows, are you -- are you ready to proceed, ma'am?

MS. MEADOWS: Yes, ma'am. Would you like me to call the case?

THE COURT: Yes, please.

MS. MEADOWS: All right. May it please the Court. This matter is *Raphael Pontoo v. the State of South Carolina*, Docket No. 2018-CP-32-4205. During its May 2014 term, the Lexington County Grand Jury indicted Mr. Pontoo for failure to stop for a blue light resulting in death under Indictment No. 2014-GS-32-1408, and armed robbery

1 under Indictment No. 2014-GS-32-1409.

2 And on January 26th, 2015, Mr. Pontoo proceeded to a
3 jury trial before the Honorable Thomas A. Russo. Assistant
4 Public Defender David Mauldin represented him. Deputy
5 Solicitor Shawn Graham and Assistant Solicitor Robert
6 McNair prosecuted the case.

7 The jury convicted Mr. Pontoo as indicted. And Judge
8 Russo sentenced him to consecutive terms of 20 years for
9 failure to stop for a blue light resulting in death and 10
10 years for armed robbery. And Mr. Pontoo's convictions were
11 affirmed on appeal.

12 And then on September 5th, 2018, Mr. Pontoo filed a
13 timely application for PCR. And he is present today and
14 represented by Mr. Johnson.

15 THE COURT: All right. All right. Mr. Johnson, good
16 morning.

17 MR. JOHNSON: Good morning, Judge. Can you hear me?

18 THE COURT: Yes, sir.

19 MR. JOHNSON: Thank you, Your Honor. Mr. Pontoo is
20 our only witness.

21 THE COURT: All right.

22 All right. Mr. Pontoo, can you raise your right hand,
23 sir. We'll -- we will swear you in.

24 Oh. You're muted. There you go.

25 RAPHAEL PONTOO, having been first duly sworn,

DIRECT EXAMINATION BY MR. JOHNSON - RAPHAEL PONTOO

6

1 testified as follows:

2 THE COURT: All right. Thank you, sir. Please put
3 your hand down.

4 THE WITNESS: (Complied.)

5 THE COURT: All right. Mr. Johnson?

6 MR. JOHNSON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Pontoo, who was the attorney that represented you
10 in the trial of this case?

11 A David Mauldin.

12 Q David Mauldin? Okay.

13 And when Mr. Mauldin represented you, tell me about --
14 what did he do as far as properly attempting to review
15 evidence with you in preparation for trial?

16 A No, sir. We never had a chance to really sit down and
17 go over a lot of things because me and Mr. Mauldin didn't
18 see eye to eye. I also wrote the head -- the -- the head
19 defender's office and explained to them that -- how we
20 wasn't seeing eye to eye; that me and him wasn't getting
21 along. So he never came back to see me.

22 So only person was coming to see me was his paralegal
23 because he stated that he didn't want to see me because we
24 didn't see eye to eye. So I didn't ---

25 Q Do you know ---

1 A --- Mr. Mauldin ---

2 Q --- how many times he came -- I'm sorry. Go ahead.
3 You know how many times he came to see you to review
4 evidence?

5 A Like, two -- two or three times at the beginning of my
6 -- at the beginning of my incarceration.

7 Q Okay. How long were you -- generally, do you remember
8 how long you were incarcerated?

9 A I was incarcerated for a year.

10 Q Okay. And did you have any private investigators from
11 that office help you?

12 A Not to my knowledge.

13 Q Okay. He didn't -- he ---

14 A Because ---

15 Q --- didn't supply that through the evidence? Okay.

16 And what about -- as you went through the -- the trial
17 of the case and you -- during the trial of the case and
18 they went through the evidence, did you see any problem as
19 far as raising the inconsistencies with physical
20 descriptions of you, as it relates to the evidence, or what
21 he failed to do? Can you tell me about that?

22 A Yes, sir. Like, he failed to amend that the shirt
23 that they brought upon the jury in the courts was a shirt
24 that was cut out in the front. Because the guy --
25 Johnathan Ruple also stated that shirt -- what the shirt

1 that I had on was not all black. Like -- like, you can
2 actually tell, like, it had a whole lot of designs on the
3 front so the whole lot of colors. So therefore, that
4 would've stood -- stand out a lot more.

5 So with that being said, they cut the whole inside of
6 the front of the shirt so as to look like a whole black
7 shirt, so the front of the shirt was never, like, presented
8 to the Court. So therefore, the Court actually looked at
9 it as being an all-black shirt.

10 Q Okay. What about descriptions of you, as far as
11 height and weight and physical descriptions of you?

12 A Okay. Physical description -- Mr. Ruple was given two
13 photo lineups and two separate occasions. And he stated on
14 both photo lineups that he didn't know who I was; that he
15 came to my bond hearing when I first entered Lexington
16 County to go to my bond hearing. While we was in there, he
17 asked the judge who was I. So he ---

18 Q But did ---

19 A --- didn't never ---

20 Q --- Mr. Mauldin ---

21 A --- recognize ---

22 Q Do you feel like Mr. -- anything that Mr. Mauldin did
23 or failed to do during the trial to address inconsistencies
24 in your physical description as it was presented in the
25 evidence?

1 A Yes, sir. I feel, if he would've, like, addressed
2 those issues and admitted them to the Court or -- or
3 objected to them, that my trial would've came out
4 differently. And I feel that everything in my case, far as
5 evidence and evidence that would've been presented, would
6 have been a different outcome.

7 Q Okay. And at the end of your trial, did you have a
8 request where you wanted to talk to him about a motion to
9 reconsider the sentence?

10 A Yes. I asked -- I asked. I -- me and my mother, we
11 asked why was it ran consecutive and can I do anything that
12 can eliminate me having to do a consecutive sentence. And
13 he never responded to me. He just looked at me and my
14 mother and walked out of the courtroom.

15 He never gave us the opportunity to fill out anything
16 or to go in front of the judge and ask for a
17 reconsideration. We were never afforded the opportunity.

18 Q Okay. So you had that conversation with him in the
19 courtroom?

20 A Yes, sir.

21 Q Okay. And what were the issues regarding *Miranda* you
22 -- that you put in your original application that you'd
23 like to testify about?

24 A You said what issues?

25 Q Yeah. You put that issues regarding *Miranda*.

DIRECT EXAMINATION BY MR. JOHNSON - RAPHAEL PONTOO 10

1 A Oh. Yes, sir. I was never read -- you said my
2 *Miranda* rights, right?

3 Q Did -- what -- have you put -- you put that as an
4 issue. Is that something Mr. Mauldin failed to address?

5 A Yes. I feel -- (audio interference) -- to address
6 because I was never read my *Miranda* rights in this whole
7 situation. And then, when Detective Todd Garrick did enter
8 the stand and stated he think he read me my *Miranda* rights,
9 so saying he wasn't sure, I feel like he didn't object to
10 that to the point where if the detective understood that he
11 never read me -- read me my *Miranda* rights and he said he
12 doesn't know; he wasn't aware of the situation of reading
13 me my *Miranda* rights, I feel like he should've objected.
14 And I feel like that could've been a better outcome also at
15 my trial.

16 Q Did Mr. Mauldin make any effort to call Iquawn Jones
17 as a witness?

18 A No, sir.

19 Q Okay. And you -- what do you feel about that? Do you
20 feel that was important?

21 A I feel that the reason why Iquawn -- he didn't get
22 Iquawn to testify on my behalf or come and get involved in
23 the court -- which he was there. He was subpoenaed to come
24 there. But when I kept asking for Mr. Iquawn to come in to
25 take the stand, Mr. Mauldin wasn't fully cooperating with

1 me because he was stating that, "Okay. Why would you want
2 him in here?"

3 I was, like, "So he can come in here and tell the
4 truth."

5 And he wouldn't allow me to let him enter the
6 courtroom on my behalf also to speak the truth on what
7 happened that night. And Mr. Mauldin just kept refusing
8 me, saying that why would I want him in there; why would I
9 want him in there; it doesn't matter if he's here; it
10 doesn't matter if he's here.

11 But that's something I kept asking and requiring of
12 him to do.

13 Q Okay. And do you have anything else, as far as the --
14 what he did or what he failed to do that you'd like to
15 bring up?

16 A Yes, sir. I have issues pertaining the location of
17 the death. He failed to go through this proper chains of
18 command, like, far as he never entered the Court to ask for
19 the victim's death. Because his death certificate was
20 signed in Orangeburg County, saying that's where he died,
21 the valid -- the validity [sic] of his death. And also,
22 he failed to even inquire to get the death certificate or
23 even see where the crime -- where the death really took
24 place.

25 And also, I feel he failed to object on a multi-crime

CROSS-EXAMINATION BY MS. MEADOWS - RAPHAEL PONTOO 12

1 significance. That's a law with multi-crime significance
2 if you have run from one county to another, that you are to
3 have a statewide jury. You are not to have a one-county
4 jury because you have one -- you have went from one county
5 to another.

6 So therefore, I was never given the chance to be
7 presented with a statewide jury to the point where I
8 could've been held differently; courts could've went
9 different. I might not would've had the time I have now.
10 Lot of things could've went different.

11 MR. JOHNSON: That's all I have, Your Honor.

12 Q Please answer any questions the attorney general may
13 have.

14 THE COURT: Cross?

15 MR. JOHNSON: Sorry. Just briefly.

16 CROSS-EXAMINATION

17 BY MS. MEADOWS:

18 Q Sorry. Mr. Pontoo, you testified that Mr. Mauldin met
19 with you twice before your trial?

20 A He -- no. He -- he met with me, like, three times.

21 Q Twice or three times. Okay.

22 And then, at some point he told you he didn't want to
23 see you anymore? Is that what you said?

24 A Yes. He keep (audio loss) ---

25 Q Okay.

1 A Yes, ma'am. He kept -- (audio loss) ---

2 Q Do you know what he said about how close you were to
3 your trial? I'm sorry.

4 THE COURT: All right. Mr. Johnson [sic], go back and
5 answer that question. I -- you were saying, but we're
6 lagging in the video.

7 All right. Madam Solicitor, ask your question one
8 more time. And give him a minute. I think he's got a
9 three- or four-second lag behind us.

10 MS. MEADOWS: Yes, ma'am.

11 Q And -- and Mr. Mauldin told you at some point that he
12 didn't want to come see you anymore, correct?

13 A Yes, ma'am. Because he said that we couldn't see eye
14 to eye.

15 Q Okay. And do you know how close that was to your
16 trial?

17 A That was probably six or seven months off from my
18 trial.

19 Q Okay. And as far as the issue with your shirt, are
20 you referring to the EMT cutting it off in the ambulance?
21 Or what are -- what are you referring to as far as ---

22 A That's ---

23 Q --- the shirt being cut?

24 A See, like, with the EMS being involved with the shirt
25 being cut, now, the officers and the EMS state on court

1 files and on record that when they extract someone from a
2 car, that they cut all their belongings off. Indeed but as
3 you can see -- and when they testified that when they cut
4 your clothes off, they posed to look for any internal
5 bleeding. And when they did cut clothes off, they --
6 (audio loss) -- stated that they did cut Mr. Clemons'
7 clothes off and they found a weapon. So therefore, that --
8 that -- that's what they did also.

9 So when they got me also to the point where saying
10 that they cut my clothes off, if they cut my clothes off, I
11 feel like it wouldn't have been a issue about the
12 representation of a handgun being presented -- me in the
13 hospital. Because I would've never made it that far with
14 that if all my clothes cut off properly the same way they
15 did Mr. Clemons.

16 Q Okay. But they also found a gun on you, correct, at
17 the hospital?

18 A That's what they stated.

19 Q Okay. All right. And then, do you recall discussing
20 your right to testify or your right to remain silent with
21 Mr. Mauldin or Judge Russo?

22 A Yes, ma'am.

23 Q Okay. And was that your decision to testify? Is that
24 something you wanted to do?

25 A It's something that Mr. Mauldin advised me -- he was

1 saying that -- his words were, "Well, only person can help
2 you right now is you. Only person can help you right now
3 is you."

4 Because his paralegal left because she felt like Mr.
5 Mauldin wasn't -- he wasn't really going out to bat for me.
6 Like, he wasn't really -- can ---

7 Q Okay.

8 A --- you hear me? Oh. Because the -- the screen ---

9 Q Yeah, we can hear you.

10 A Okay.

11 Q I can.

12 A Well, he -- he actually said -- she actually gave out
13 because she said that she didn't feel he was representing
14 me to his best ability, so therefore she also left my trial
15 and never came back also.

16 Q Okay. Who -- and who did that? Who left your trial?

17 A His paralegal Ms. Shaniqua Wilson.

18 Q His paralegal? Okay.

19 A Can you give (audio loss) ---

20 Q And then ---

21 A --- one second so I can have them get me back on
22 screen?

23 THE COURT: You're on screen.

24 THE WITNESS: Oh.

25 THE COURT: We -- we can see you.

CROSS-EXAMINATION BY MS. MEADOWS - RAPHAEL PONTOO 16

1 THE WITNESS: Oh. Because I ---

2 THE COURT: You can't ---

3 THE WITNESS: --- can't ---

4 THE COURT: --- see you? Can you see us?

5 THE WITNESS: No, ma'am. That's why I was going to
6 get them to cut it back on where I'll be able to ---

7 THE COURT: All right.

8 THE WITNESS: --- see you.

9 THE COURT: Well, let's -- let's continue. I don't
10 want to break in your hearing. But we can hear you, and we
11 can see you just fine. Okay? Can you hear me?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Okay. All right. Are they behind --
14 where are they, in a separate office?

15 THE WITNESS: Oh, they're right -- they -- they're
16 right behind me through this door. They're right here.

17 THE COURT: Okay. Let's continue with this. And when
18 we call a witness, we'll -- we'll let you do that, okay?

19 THE WITNESS: Yes, ma'am.

20 MS. MEADOWS: Okay.

21 THE COURT: All right.

22 MS. MEADOWS: I'm almost ---

23 THE COURT: Yes, sir.

24 MS. MEADOWS: --- done.

25 THE COURT: Go ahead.

1 MS. MEADOWS: I'm almost done, Judge.

2 Q And then, one of your allegations is that Mr. Mauldin
3 failed to review the evidence with you, correct?

4 A Yes, ma'am.

5 Q Okay. Was there any specific piece of evidence that
6 you wanted to review that you weren't able to?

7 A Yes. The evidence that I wanted to review was the
8 evidence from the bar and the plaza that we was at that
9 night that initiated the whole -- our night and the whole
10 involvement of everything. Because the -- the video that I
11 was asking for from a plaza were several cameras and a bar
12 that had several cameras.

13 I was never able -- chance to present that video
14 because Mr. Mauldin was saying it doesn't mean anything
15 about the video; it doesn't mean anything about the video.
16 But the video also would've showed and stated that -- that
17 I wasn't the aggressor and that Mr. Ruple was also the
18 perp; that he also ---

19 Q Okay.

20 A --- was the -- the -- presented ---

21 Q Okay.

22 A --- a weapon ---

23 Q Okay. And then, so you wanted to get the -- the tape
24 from the bar, right -- correct?

25 A Yes, ma'am. That was one ---

CROSS-EXAMINATION BY MS. MEADOWS - RAPHAEL PONTTOO

18

1 Q Okay.

2 A --- issue.

3 MS. MEADOWS: All right. Nothing further, Judge.

4 THE COURT: Thank you.

5 Any redirect, Mr. Johnson?

6 MR. JOHNSON: No, Your Honor. I don't have anything
7 further.

8 THE COURT: All right.

9 All right, Mr. Pontoo. Thank you for your testimony.
10 If you want to be able to -- if -- if you want to knock on
11 that door and get them, do so right now, okay?

12 (Off the record briefly.)

13 THE COURT: Okay. Can you see us?

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: Okay. All right.

16 Mr. Johnson, do you have any further witnesses, sir?

17 MR. JOHNSON: No, ma'am.

18 THE COURT: All right.

19 All right, Ms. Meadows.

20 MS. MEADOWS: Okay. So is the applicant resting?

21 THE APPLICANT: Pontoo.

22 THE COURT: Are you resting, Mr. Johnson?

23 MR. JOHNSON: Well, we've got -- it's my understanding
24 that we've got a certificate -- as far as the death
25 certificate that was mentioned, some things that I would

1 bring up to Mr. Mauldin. And the attorney general
2 indicated they did not have a problem with that going into
3 the record.

4 Is that my understanding?

5 MS. MEADOWS: Yeah. That -- I don't have a problem
6 with that.

7 MR. JOHNSON: Okay. Then, we have no other witnesses.
8 We're resting, Your Honor.

9 THE COURT: All right. All right.

10 MS. MEADOWS: All right. And then, the state calls
11 David Mauldin.

12 THE COURT: Mr. Mauldin?

13 MS. MEADOWS: There he is.

14 THE COURT: All right. There we go. All right.

15 Mr. Mauldin, you are an officer of the Court, but for
16 the purposes of this hearing, I am going to ask that you be
17 sworn in. Please raise your right hand.

18 All right. One more time, Ms. Krystle. You were
19 muted.

20 DEPUTY CLERK OF COURT: I'm sorry.

21 DAVID MAULDIN, having been first duly sworn,
22 testified as follows:

23 DEPUTY CLERK OF COURT: Thank you.

24 THE COURT: All right. Ms. Meadows?

25 MS. MEADOWS: All right, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. MEADOWS:

3 Q Good morning, Mr. Mauldin.

4 A Morning.

5 Q So how long have you been practicing law?

6 A I was admitted to the bar in '97.

7 Q Okay. And how much of that has been in criminal?

8 A Since spring of '99.

9 Q Okay.

10 A Over 20 years.

11 Q All right. And you currently work for the Eleventh
12 Circuit Public Defender's Office, correct?

13 A That's correct.

14 Q Okay. And then, how did you become involved in Mr.
15 Pontoo's case?16 A I think the incident was in late January. He was in a
17 hospital for a little bit. And then when he made it
18 through the jail to be booked and brought before a
19 magistrate who appointed our office, then the case was
20 assigned to me.21 Q Okay. And -- and do you know roughly how long that
22 was before his trial?23 A Let's see. His trial, I think, was in late January of
24 '15. So our office was -- roughly a year, less than a
25 year.

1 Q Okay. And then, would you mind just kind of giving
2 the Court a brief explanation of Mr. Pontoo's charges and
3 how those charge arose?

4 A Apparently, he and a group of fellas were at a bar.
5 And it was alleged that he had robbed somebody at the bar
6 -- armed-robbed somebody at the bar. They left the bar.

7 When the cops investigated the bar, the fella had
8 written down the license plate. Eventually, the police
9 were able to catch up with the car with the license plate.
10 They stopped the vehicle, at which a point in time, some
11 people got out.

12 And then -- it was alleged that Mr. Pontoo took off as
13 the driver of the vehicle with a passenger -- it was one of
14 the other fellas. There was a fail-to-stop chase that
15 ensued. The car ended up wrecking, and the passenger died
16 while Mr. Pontoo survived.

17 Q Okay. All right. And so he was charged with failure
18 to stop for blue light resulting in death and armed
19 robbery. Were these his only charges?

20 A No. He was also charged with murder, kidnapping, and
21 grand larceny ---

22 Q Okay.

23 A --- originally. The ---

24 Q Okay.

25 A --- state only proceeded to trial on those two

1 charges.

2 Q Okay. All right. So how many times did you meet with
3 Mr. Pontoo over the course of your representation?

4 A Count -- let's see. Well, I met with him initially on
5 February 21 of '14 to go over the charges and his rights
6 and to discuss some of his side of the story. On March
7 12th of '14, we had a bond hearing. On April 11th of '14,
8 we had a preliminary hearing.

9 On May 30th of '14, we had a meeting where I discussed
10 the evidence I had received and the police reports I'd seen
11 so far. The state had made some kind of offer where they
12 wouldn't -- if I -- I had talked with the solicitor, and we
13 went a little round and round about whether or not it was a
14 murder. And I had done some research on depraved heart and
15 recklessness and things like that.

16 Q All right.

17 A And he was willing to go forward with a plea on just
18 the -- the two charges that they tried. Eventually, as far
19 as the sentence, I think the -- the range was a negotiated
20 20 to 30 years, which Mr. Pontoo was not interested in. So
21 we discussed a plea offer and the evidence then.

22 On July 9th that -- and then on the 25th, I went back
23 to review things again with him. I talked with him on the
24 phone on September 30th. I met with him on August 2nd or
25 3rd. It was hard to read the number in my notes.

1 On October 6th we had a second bond hearing, because
2 his bond was denied initially. On January 8th I went to
3 visit him to let him know that they told me that they would
4 be probably trying him by the end of the month. And I met
5 with him again on January 16th of '15, January 22nd of '15,
6 and January 23rd of '15 to review the evidence and his
7 testimony at trial.

8 Q Okay.

9 A And then ---

10 Q So at least ---

11 A --- of course, every day during the trial, I was with
12 him.

13 Q Right. So at least ten to twelve times before trial?

14 A Around that area.

15 Q Okay. And do you know what the maximum sentence he
16 could've received, just on these two charges?

17 A Fifty-five years.

18 Q Okay. All right. And do you feel like you had enough
19 time to meet with Mr. Pontoo before trial?

20 A I do.

21 Q Okay. All right. And did you discuss his
22 constitutional rights with him, including the state's
23 burden of proof?

24 A Yes.

25 Q Okay. And I guess my next question is what type of

1 investigation did you do in this case?

2 A I hired a guy named Kyle. His last name -- Kyle
3 Taylor. He's with Southern Investigative Services. And he
4 talked with various witnesses in the case and went to the
5 scene of the crime and inquired with them and with the -- I
6 think there was an ATM across the street -- about whether
7 or not there was any video footage.

8 Q Okay. And then, did you try to obtain the video from
9 the bar? I think -- is it the Mile High Club?

10 A I think he inquired about it. But they were unsure if
11 they still had the footage. I think he went -- started --
12 he went in April.

13 Q Okay.

14 A And I think that they and the ATM were unsure whether
15 or not footage still existed.

16 Q Okay. And then, as far as the state's evidence
17 against Mr. Pontoo -- let's see -- was there anything
18 specific that you felt was most harmful to his case?

19 A Could you rephrase that or -- what ---

20 Q Yeah. I don't know what I'm trying to say here. So I
21 guess in other words, what did you think that the
22 weaknesses were in his case -- or I guess the strengths and
23 weaknesses.

24 A Basically, I mean, the -- there was the description
25 with the long hair; the fact that he took off in the car.

1 I -- obviously, I argued during closing that, you know,
2 nobody could testify as to what happened in the car, except
3 for him and the deceased person. But I guess the jury
4 circumstantially decided to infer that he was not a -- put
5 under duress or coercion by the deceased individual in
6 order to drive away.

7 Q Okay.

8 A And again, the fact that the death occurred, I think
9 -- yeah. The -- it -- I think that colored their -- the
10 view of the whole thing. And -- and -- and it make it more
11 likely they'd convict him of the armed robbery.

12 Q Okay.

13 A As far as that shirt was concerned -- yeah -- I think
14 I argued during the closing that the -- the victim had
15 mentioned a green puffy jacket that they guy had robbed him
16 was wearing and a Rastafarian hat. They didn't find a
17 green puffy jacket; they found a green jacket that belonged
18 to one of the other people in the car and a puffy jacket of
19 a different color that belonged to another person in the
20 car. And ---

21 Q Okay.

22 A --- they didn't find the Rastafarian hat, and they
23 didn't find the money that the guy alleged was stolen
24 either.

25 Q Okay. And did you review the discovery with Mr.

1 Pontoo?

2 A Yes, I did.

3 Q Okay. Let's see. So one of Mr. Pontoo's allegations
4 is that you failed to properly investigate and interview
5 the other passengers. I think it's Carlisle Jones, Patrick
6 Johnson, and Iquawn Jones. And -- let's see. Carlisle and
7 Patrick testified for the state, correct?

8 A Yes.

9 Q Okay. And were you ever able to interview any of
10 these -- or -- you or your investigator able to interview
11 any -- any of them?

12 A My investigator interviewed all three of them, and he
13 interviewed the victim. And he also talked with the
14 defendant's family from time to time here and there.

15 Q Okay. Did you find any -- any, I guess, statements
16 from their interviews to be helpful to Mr. Pontoo?

17 A No. Much like Mr. Pontoo, they -- except for Mr.
18 Jones, who said Mr. Pontoo robbed the victim, the other two
19 in their statements kind of were sleepy fellas and they
20 were asleep all the time and didn't really know ---

21 Q Okay.

22 A --- what was going on. Also, the -- neither one of
23 them knew that an armed robbery had happened and that they
24 had no idea about how that bag got in the car.

25 Q Okay. So you didn't think any of that was

1 particularly helpful?

2 A No, it was not.

3 Q Okay. And I think you briefly went over it. But what
4 was your overall theory and kind of trial strategy Mr. ---

5 A Well, Mr. Pontoo, he didn't rat anybody out saying --
6 but he inferred that somebody else must've done the
7 robbery.

8 Q Okay.

9 A He alleged that the bag that was stolen from the
10 victim came into the car after a -- a couple of the other
11 guys got in; that he had been sitting in the car with
12 Carlisle, watching a movie on the dashboard or something
13 and that the other guys got in and the bag somehow appeared
14 when they got in the car, so he didn't do the armed robbery
15 at all; and that once the police was stopped, the deceased
16 had pulled out a gun and threatened him and told him to
17 drive away and that's why he drove away and failed to stop.

18 Q Okay. Okay. And -- let's see. And duress is an
19 affirmative defense, correct?

20 A Yes.

21 Q Okay. So what's the difference in asserting an
22 affirmative defense like duress versus, you know, alibi or
23 regular defense, I guess?

24 A Well, I mean, absent him testifying, we would not have
25 been able to present that defense to the jury at all and

1 probably would not have gotten a charge on it.

2 Q Okay. That's what I was getting at. All right.

3 Let's see. Did you discuss with Mr. Pontoo, you know,
4 his potential testimony and any issues that may arise on
5 cross-examination?

6 A Well, what -- what issues are you referring to?

7 Q I'm sorry. As ---

8 A I mean ---

9 Q --- far as ---

10 A --- obviously, he would be cross-examined; he would --
11 he would be impeached by certain crimes if the judge ruled
12 that they were impeachable. I mean, I did ---

13 Q Okay.

14 A --- review that.

15 Q Okay. And then, I believe he was impeached with and
16 ABHAN conviction from 2007, correct? I think ---

17 A I ---

18 Q --- it was ---

19 A --- believe ---

20 Q --- in ---

21 A I believe so.

22 Q Okay. All right. And then, I think eleven of Mr.
23 Pontoo's allegations are based on failure to object. So do
24 you know roughly how many cases you've tried over the
25 course of your career?

1 A It's hard to say. I stopped keeping count about ten
2 years ago. I was ---

3 Q Okay.

4 A --- up to ---

5 Q So ---

6 A --- around about 30 or so by then. And don't try as
7 many here in Lexington as I did in Aiken. I was in Aiken
8 for about nine years. And I had a lot of simple possession
9 of drugs that they could jerk up and try. So I ended up
10 trying a lot ---

11 Q Right.

12 A --- more, like, smaller-type cases. But here, I try
13 maybe one or two a year, sometimes three.

14 Q Okay. And, I mean, of course, it varies by case. But
15 generally, how do you, I guess, decide what to object to
16 and not to object to, as far as witness testimony?

17 A It depends on the case.

18 Q Okay.

19 A Sometimes I -- if things are minor and they don't help
20 the strategy, I can let -- I can let things go.

21 Q Okay.

22 A Sometimes I'll -- I'll just object to everything and
23 try to get the solicitor off guard. It just ---

24 Q Okay.

25 A --- depends on -- on -- on the facts and

1 circumstances. Sometimes they'll just -- they'll establish
2 something, and then they just ask the question again and I
3 just let it go.

4 Q Right.

5 A Often, you know, during trial, the solicitor's asking
6 a lot of questions. And once or twice, they're bound to
7 ask a leading question in there.

8 Q Right.

9 A And it just depends on the magnitude, I guess, of it
10 -- (audio loss) -- whether or not -- (audio loss) --
11 object.

12 Q Okay. And I think the first allegation is on page 139
13 of the transcript. And that's Trooper Brandon Lee's
14 testimony.

15 A Uh-huh.

16 Q And -- let's see. I believe starting at the end of
17 page 139, and as he's ask -- he's asking if Mr. Clemons was
18 sitting in the middle, towards the rear, etc. Did you
19 think that was really leading or did you see any potential
20 issue?

21 A Let's see. I didn't -- I didn't see as -- as
22 significant.

23 Q Okay. Okay. And then, on page 132 I believe Trooper
24 Lee is kind of describing where everyone was sitting
25 already, correct? Sorry. End of page 132 to the top of

1 page 133.

2 A Right. And this ---

3 Q Okay.

4 A --- is where the -- the car was initially stopped by
5 the police before it took off. And -- and so I -- I didn't
6 really attribute any significance to where people were
7 sitting at that point.

8 Q Right.

9 A I mean, and obviously, even after the crash, the
10 defendant admitted he was driving and that the passengers -
11 - (audio loss) -- so where they were located in the car
12 didn't really ---

13 Q Okay.

14 A --- even -- (audio loss) -- and the issue of -- you
15 know, of controversy, there's -- (audio loss) ---

16 Q Right.

17 THE APPLICANT: (Gestured.)

18 THE COURT: Can we pause -- let's pause for one
19 moment.

20 Mr. Pontoo, can you hear us?

21 THE APPLICANT: Yes, ma'am. Yes, ma'am.

22 THE COURT: Okay. You're not having a technical
23 issue, are you? Can you ---

24 THE APPLICANT: No, I'm ---

25 THE COURT: --- see us?

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1 THE APPLICANT: --- not. I was just asking her if she
2 could ---

3 THE COURT: Okay. Okay. I just -- I just wanted to
4 make sure that you -- I didn't know if you could hear and
5 see us. As long -- you can hear us and see us; is that
6 correct?

7 THE APPLICANT: (Gestured.)

8 THE COURT: Okay. All right. All right.

9 THE WITNESS: Judge, did he say he needed to talk with
10 Mr. Johnson? Is that what he said?

11 THE COURT: No. He -- I -- he was -- I noticed some
12 movement. And -- and I ---

13 THE APPLICANT: (Audio loss) -- I said -- (audio loss)
14 ---

15 THE COURT: And prior to that, we were having some
16 technical issues. And I wanted to make sure that he was
17 able to hear his proceeding.

18 THE APPLICANT: Oh. Yes, ma'am, I did state I wanted
19 -- I was trying to call Mr. Johnson to speak to him while
20 this right here was muted, if that was possible.

21 THE COURT: Oh, okay. Okay. All right.

22 You heard that, Mr. Johnson?

23 MR. JOHNSON: Yes, ma'am.

24 THE COURT: Okay.

25 MR. JOHNSON: Can we -- are we able to do that, have a

1 private conversation?

2 THE COURT: We can pause for about ten minutes, okay,
3 so that you can contact ---

4 MR. JOHNSON: Okay.

5 THE COURT: --- that facility. Because normally, you
6 would be able to -- to speak in court. All right.

7 MS. MEADOWS: Is there -- well, maybe -- I thought
8 there was some feature where you could put them in a
9 private room, but I'm not sure.

10 (Off the record briefly.)

11 THE COURT: I have not heard of that, Ms. Meadows.
12 And I don't know how to do it. And I am without a law
13 clerk for this summer.

14 MS. MEADOWS: Oh, no.

15 THE COURT: So -- so let's -- let's -- let's stand
16 down for ten minutes and ---

17 MS. MEADOWS: Yes, ma'am.

18 THE COURT: --- give him an opportunity -- and we will
19 pick up exactly where we left off with questioning Mr.
20 Mauldin.

21 MS. MEADOWS: Yes, ma'am.

22 THE COURT: Because normally, in court they would have
23 a chance to confer. And we're just ---

24 MS. MEADOWS: Right.

25 THE COURT: --- in an ---

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1 MS. MEADOWS: Right.

2 THE COURT: --- odd situation. Okay?

3 MR. JOHNSON: Yes, ma'am. Thank you. I'll -- I'll
4 call -- I'll call Mississippi.

5 THE COURT: All right.

6 (Off the record from 11:17 a.m. until 11:29 a.m.)

7 THE COURT: All right. Okay.

8 MR. JOHNSON: Here you go, Judge.

9 THE COURT: Very good. All right.

10 All right. Ms. Meadows, at this time we'll come back
11 on the record and allow you to continue your questioning.

12 MS. MEADOWS: Yes, ma'am.

13 DIRECT EXAMINATION BY MS. MEADOWS CONTINUED

14 Q Okay. Let's see. All right, Mr. Mauldin. I believe
15 Mr. Pontoo claims you failed to object to Trooper Snyder's
16 testimony that the driver had long hair and then the EMS --
17 or the paramedic identifying Mr. Clemons as the individual
18 in the backseat. Now, was there any dispute regarding who
19 was driving, Mr. Clemons or Mr. Pontoo, or did everyone
20 agree that Mr. Pontoo was driving?

21 A I believe that even with our defense, we agree that
22 Mr. Pontoo was driving.

23 Q Right. Okay. And then, as far as the description of
24 the driver having long hair, I believe, on page 160, you
25 cross-examined Mr. -- Trooper Snyder about his failure to

1 include that in his report, correct? The end of page 160.

2 A Yes, I did.

3 Q Okay. And he admitted that he did not include that in
4 his report, right?

5 A That's correct.

6 Q Okay. And I believe, on page 184, you did this same
7 thing with the paramedic, Amanda Sucher, asked her if she
8 put it in her report?

9 A That's correct.

10 Q Okay. All right. Now, as far as the allegation of
11 failure to object to Trooper Snyder -- or I guess the
12 leading question about the police vehicle getting up to 128
13 miles per hour, did you see any reason to object at that
14 point?

15 A No. The speed of the vehicles wasn't pertinent to our
16 defense.

17 Q Okay. And I believe Mr. Snyder had already testified
18 to that earlier, correct?

19 A Yes.

20 Q Okay. All right. And then, as far as the failure to
21 the object to the hearsay testimony of Mr. Clemons' blood
22 pressure and other readings from her notes, do you believe
23 that was in any way prejudicial to Mr. Pontoo?

24 A No, I don't.

25 Q Okay. Then, as far as the photo that he -- on page

1 218 that Mr. Pontoo alleges you failed to object to the
2 leading question, do you remember what that photo was of?
3 I can't tell from the record, but ---

4 A No. If I recollect, the allegation was when the --
5 Mr. Graham asked: "Looking at State's 47, that's a
6 photograph you were able to take off a media card of one of
7 the phones, correct?"

8 Q Right.

9 A A couple lines earlier, at line 10 -- let's see. It's
10 the same -- same thing. I ---

11 Q Right.

12 A --- he would've testified that he got it off the
13 phone. I don't think that the leading question -- like, he
14 was unable to remember that he had gotten that picture off
15 the phone and that the --

16 Q Right.

17 A --- the state -- (audio loss) -- basically fed that
18 information to him. I didn't think that was the
19 circumstance.

20 Q Okay. And then, two of the allegations are about --
21 on page 241, about I believe Todd Garrick was the security
22 officer from the hotel -- or from the hospital. And he
23 testified about the pants he received that were Mr.
24 Pontoo's and then also the pants he received that were Mr.
25 Clemons.' Did you see any reason to object to that, or did

1 you think that was at all relevant to ---

2 A I don't recollect any significance attached to it,
3 that I would need to object. I think they had spent quite
4 a while establishing the facts that those were the pants
5 taken out of his room.

6 Q Okay. All right. And then, going back to Mr.
7 Pontoo's testimony, do you believe that it helped or hurt
8 his case overall?

9 A Well, it was the only way were able to present a
10 defense as to the fail to stop. So, I mean ---

11 Q Right.

12 A --- I mean, it ---

13 Q Necessary ---

14 A In the long run, it didn't help because the jury
15 convicted him. But it was the only way we could present
16 the defense.

17 Q Right. All right. And then, also on page 418 Mr.
18 Pontoo alleges that you should've objected to the
19 solicitor, I guess, misstating the evidence -- yeah --
20 misstating evidence by stating to the Court that the
21 defendant had identified himself in State's Exhibit 63,
22 which was a photo. Do you believe that the solicitor was
23 misstating the evidence at that time?

24 A Well, on page 417 the solicitor showed him the picture
25 and said if you recognized it as being taken while he was

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1 wearing a collar brace a day or two after the incident, and
2 the defendant's answer was: "Yes, sir."

3 Q Okay. Okay. All right. And then, Dr. Janice Ross
4 performed the autopsy on Mr. Clemons, correct?

5 A Yes.

6 Q Okay. Did you believe a -- a jury instruction on
7 expert testimony was necessary, just based on her
8 testimony?

9 A I mean, I probably should've done it because an expert
10 did testify. But I don't think it was a dispute that the
11 individual died or the manner of death. I don't think
12 there was any dispute as to that, as far as ---

13 Q Okay.

14 A --- his defense.

15 Q Okay. And then, Allegation 14, Mr. Pontoo alleges you
16 failed to object to the jury instruction for failure to
17 stop for a blue light resulting in death because it did not
18 include, quote, in the absence of mitigating circumstances.
19 What was your discussion with the judge and the solicitor
20 as far as the jury charge on duress?

21 A Well, I -- I asked for the duress charge and it was
22 given. I did miss that. I mean, I'll -- I'll admit that
23 -- that he could've said that. But when -- I think, all in
24 all, when you take it with the context that a duress charge
25 was given as a defense, that ---

1 Q Okay.

2 A --- that -- that that kind of would've been covered.

3 But, you know, I did -- I did miss that particular
4 phraseology. That -- that ---

5 Q Okay.

6 A --- that is my -- (audio loss) ---

7 Q But you don't believe that the absence of that
8 language in the jury instructure was -- instruction was
9 prejudicial in light of your duress defense, correct?

10 A Well, I have no clue what the jury talked about in the
11 back. So, I mean ---

12 Q That's true. Okay. And then, I do have some
13 questions about the location of the victim's death, but I
14 guess I'll wait till Ola enters the death certificate in on
15 cross and then ask you about that.

16 As far as the indictment, did -- did you see any basis
17 to challenge the indictment based on the victim's death
18 occurring in, I think, Richland County?

19 A I think they alleged Orangeburg. But ---

20 Q Oh, okay.

21 A Well, at least on the death certificate, but ---

22 Q Okay.

23 A --- as my understanding of the law, it's a continuing
24 course of conduct from one county when the other could be
25 prosecuted by either county.

1 Q Okay. And certainly, most of the conduct here did
2 occur in Lexington, right?

3 A That is correct.

4 Q Okay. All right. And then, last, Mr. Pontoo alleges
5 you failed to discuss sentence with him and failed to
6 explain a motion to reconsider that he wanted you to
7 pursue. Did you speak with Mr. Pontoo after sentencing?

8 A Yes, I did. I explained to him what the sentence
9 meant: that it was 30 years at 85 percent.

10 Q Okay.

11 A And we discussed the appeal and that I would be filing
12 the appeal and that he would be dealing with appellate
13 defense up in Columbia regarding that. And ---

14 Q Okay.

15 A --- I do not recall any kind of a motion to reconsider
16 sentence being asked for.

17 Q Okay. Okay. All right.

18 MS. MEADOWS: I think that's all I have, Judge.

19 THE COURT: All right, Mr. Johnson. Cross?

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q The leading question on 145 that's mentioned here --
23 well, starting with location of passengers in the car, page
24 139 in the transcript, would that be relevant as far as a
25 position of people in the vehicle and -- and the ultimate

1 evidence that was located in the vehicle?

2 A You have to refresh me a little bit there, Ola.

3 Q Well ---

4 A Where were ---

5 Q I mean, just it -- in general, when the question on
6 page 139 -- (audio loss) -- line 25, it says -- they're
7 talking about where was the passenger located in the
8 vehicle. This was the direct of -- this -- (audio loss) --
9 this is Brandon Lee, direct by solicitor.

10 A Uh-huh.

11 Q And -- and is there any value in stopping a solicitor
12 from adding -- asking a leading question during their
13 direct examination? Isn't there some value to preventing
14 that and -- when you hear that from a solicitor?

15 A I know ---

16 (Indistinguishable cross-talk.)

17 A --- the bag was in the car. I don't remember where
18 the bag was in the car. But I do know there were five guys
19 packed into it.

20 Q Right. But I'm just saying in general, if it's a --
21 if it's a solicitor and he's conducting his direct and --
22 (audio loss) -- just -- I'm just starting out on No. 1 here
23 with this amended application, where it says (as read):
24 "Failed to object to leading question regarding location of
25 passengers."

1 So there at trial, isn't it -- there value in
2 objecting -- if you have a leading question from the
3 solicitor, isn't there some value in stopping the solicitor
4 when he goes down that road and limiting their -- their
5 ability to question the -- a witness when they're on
6 direct?

7 A It would depend on the circumstance of whether or not
8 they've already testified to it before and -- or if he
9 didn't remember and the solicitor was feeding it to him. I
10 mean, that depends on the context.

11 Q Well, on the second one ---

12 A If he said he didn't remember and then the solicitor
13 just said, "Oh, he was sitting here, wasn't he," that would
14 be a -- a different circumstance than if he had testified
15 before or anything like that. And, you know, I -- I have
16 not memorized the transcript, so ---

17 Q Right.

18 (Indistinguishable cross-talk.)

19 Q I'm sorry.

20 A I do ---

21 (Indistinguishable cross-talk.)

22 Q --- transcript with you?

23 A Yes, I do.

24 Q Do you have -- you -- you -- you do? Okay. I'm
25 sorry. I didn't know if you had a transcript.

1 MR. JOHNSON: Judge ---

2 A Well, I ---

3 (Indistinguishable cross-talk.)

4 A --- context of the question is what -- what I'm
5 saying. I haven't memorized entirely the context around
6 the question.

7 Q Okay. I don't meant to cut you off, Dave.

8 MR. JOHNSON: Judge, the -- or applicant was pointing.
9 I don't know if he's having trouble listening -- (audio
10 loss) --

11 THE COURT: Mr. Pontoo? Can you -- you having some
12 issue?

13 THE APPLICANT: Well, I -- I -- I have it now.

14 THE COURT: Okay. All right.

15 MR. JOHNSON: All right.

16 THE COURT: Very good.

17 MR. JOHNSON: All right. Sorry to interrupt.

18 THE COURT: That's -- (audio loss) ---

19 Q The -- I guess my point is: When there's a leading
20 question from the solicitor, if you object -- (audio loss)
21 -- stop -- (audio loss) -- question from solicitor, it
22 forces him to ask a question where the witness is left to
23 provide the answer. So ---

24 A Oh, that -- that -- that is true. If you do object,
25 then -- then -- then -- and if the judge sustains your

1 objection and just doesn't say "move along" or -- or
2 something along like ---

3 Q Right.

4 A --- those lines or -- or "I'm allowing it." It -- the
5 -- the judge usually instructs the solicitor to rephrase
6 the question.

7 Q Right. And, of course, we're -- what you're trying to
8 do is, when you object to leading questions, you're trying
9 to prevent the solicitor from feeding the answer to the
10 witness ---

11 A That is correct.

12 Q --- in his -- on his direct examination. Okay.

13 And on the other questions cited for failure to object
14 leading question, driving having long hair, on page 145,
15 that was a leading question, correct, line 15, 16, 17.

16 A Hold on. Hold on. Well, the -- it's -- it's only
17 testified that the person driving had dreadlocks before
18 that, I guess, so I don't think the solicitor was feeding
19 him the information about long hair.

20 Q Okay. And the next one would be No. 3 (as read):
21 "Failure to object to leading question regarding police
22 vehicle getting up to 128 miles per hour." On page 153
23 what -- do you consider that a leading question?

24 A Yes, I do.

25 Q Okay. And on the EMS-worker questions where they

1 supplied information to the EMS worker, page 176, that
2 would be a leading question.

3 A Well, let me take a look at it first, Ola. 176, you
4 say?

5 Q Yes, sir. 176, 24 and 25.

6 A That the individual in the backseat was -- yes. That
7 is a leading question that the deceased was found in the
8 backseat.

9 Q Okay. And this would also be classified as hearsay
10 testimony that's providing those readings from blood
11 pressure, respiration -- that would be hearsay ---

12 A Well, at this point in time, I don't -- I don't
13 remember if she was reading from her own report or readings
14 that another EMT took.

15 Q Okay.

16 THE COURT: Mr. Mauldin, just very briefly, I want you
17 to make sure you wait until Mr. Johnson's done with his
18 question so that the court reporter can get them both down.
19 Okay?

20 THE WITNESS: Yes, Your Honor.

21 Q And the question regarding photograph on page 218,
22 lines 10 and 12, that was a leading question.

23 A 218 -- yes, it was.

24 Q Okay. The question on page 241, lines 6 and 7,
25 talking about the pants, was there a -- not a pistol seized

1 from there?

2 A Yes, it was.

3 Q Okay. So the -- that'd be the significance of the
4 pants.

5 A Yes.

6 Q Okay. So on page 241 you failed to object to that,
7 and that was a leading question, where he asked the
8 question: "These were the pants removed from Mr. Pontoo in
9 the hospital." That was the actual question. That's a
10 leading question.

11 A Yes, it is a leading question.

12 Q Okay. And also on 241, another question where --
13 question was: "Is that the clothing you obtained from the
14 hospital belonging to Mr. Clemons?" That would be a
15 leading question that you did object to?

16 A Yes.

17 Q Did you ever attempt to interview Carlisle Jones,
18 Patrick Johnson, Iquawn Jones?

19 A I did not personally interview them. But I did have
20 an investigator talk to Carlisle Jones, Iquawn Jones, and
21 Patrick Johnson.

22 Q Okay. And you indicated you did fail to address the
23 issue where there was no actual jury charge regarding
24 expert testimony, since that was offered by Dr. Ross, and
25 that's something that should be done in this case, since

1 jury has to be made aware of the special nature of expert
2 testimony?

3 A Yes. I did not object that that was not included.

4 Q Okay. And -- and on the jury instruction -- charge of
5 -- or on the jury instruction, charge of failure to stop
6 for blue lights regarding language -- (audio loss) --
7 element -- in the absence of mitigating circumstances,
8 that's something where it was not preserved for appellate
9 review because you failed to bring that up?

10 A That is correct. I did say that on my direct.

11 Q And the issue of victim's death as recorded in the
12 death certificate, do you have the actual certificate which
13 was shown -- listed as page 3 of 40 under the law
14 enforcement number they put on the incident report -- do
15 you have a copy of that?

16 A Let's see. Hold on a second. Three of 40. I
17 apologize, Ola. I had separated the discovery when I was
18 doing the trial, so I don't have things quite in order
19 here.

20 THE WITNESS: And I apologize to the Court.

21 A So the -- the -- that packet is 1 through 40, Ola --
22 Mr. Johnson?

23 Q It says -- it says -- it says that. It says of 40.
24 Yes. And this is 3 of 40.

25 A Let's see. That's 1 through 67. This is 1 through 81

1 -- (audio loss) -- Ola. 1 -- 1 through 17 ---

2 MS. MEADOWS: I have it pulled up, David, if you want
3 me to just e-mail it to you.

4 A 1 through 4; 1 through 4.

5 THE WITNESS: That's ---

6 MR. JOHNSON: I can ---

7 THE WITNESS: --- fine.

8 MR. JOHNSON: --- forward it -- yeah, I can forward it
9 as well.

10 A This is 1 to 39.

11 MS. MEADOWS: I just sent it, Ola.

12 THE WITNESS: Okay.

13 MR. JOHNSON: Thank you.

14 A There's lots of little packets here.

15 Q Right.

16 A I think somebody did get my file from the box to
17 prepare for this PCR.

18 Q I'm sorry, Mr. Mauldin. I probably caused you a
19 headache there. All right. You -- you -- have you got it?

20 A All right. Yes. I see it.

21 Q Okay. And on the certificate of death, where -- at
22 the very top there, it says the actual -- if death occurred
23 in hospital, inpatient, and it gives location facility. It
24 lists that as Palmetto Health Richland in Columbia, South
25 Carolina ---

1 A Oh, it ---

2 Q --- Richland ---

3 A --- does ---

4 Q --- County.

5 A --- yeah.

6 Q Okay. And ---

7 MR. JOHNSON: Your Honor, would you allow if I had --
8 if I wanted to -- at this point I've never done this
9 through internet to send this over or have this marked as
10 part of the record.

11 THE COURT: Yes. And so normally, you would -- you
12 would mail those to the court reporter.

13 MR. JOHNSON: All right. This is a one-page document.
14 So I will -- I will mail that to the court reporter, the
15 physical copy. Do I also need to e-mail that, Judge?

16 (Off the record briefly.)

17 THE COURT: All right. So if you'll just mail those
18 on, you -- I don't think it would hurt to send an
19 electronic copy, Mr. Johnson ---

20 MR. JOHNSON: Yes, ma'am.

21 THE COURT: --- (audio loss) -- the original to mark.

22 MR. JOHNSON: Yes, ma'am.

23 Q Just as far as review of evidence, how many times did
24 you go to the jail, did you say, to review evidence with
25 Mr. Pontoo?

1 A Let's see. Well, the initial meeting -- I wouldn't
2 have had it at the bond; I wouldn't have had it prelim. I
3 wouldn't had it -- probably May 30th -- July 9th -- July
4 25th -- and, of course, evidence is continually coming in.
5 July 25th, we talked on the phone. So let's see. Eight
6 times -- (audio loss) -- visits at the jail -- -- (audio
7 loss) -- my points of contact with him.

8 Q Okay. And the original point raised by Mr. Pontoo
9 regarding *Miranda*, was the nature of that pretrial hearing
10 you had regarding *Miranda*, that *Denno* hearing?

11 A Well, when somebody testifies, statements they make in
12 violation of that -- of *Miranda* can be used against them,
13 so -- unless it was involuntary, which I don't think the
14 allegation was. It was just that he wasn't read *Miranda*
15 properly. But if you testify, you can be impeached by
16 those statements.

17 Q But ---

18 A So ---

19 (Indistinguishable cross-talk.)

20 A --- kind of -- it's kind of neither here nor there,
21 because I knew he was going to testify.

22 Q Right. Right. Okay. And addressing the issue of --
23 well, just briefly, I don't want to cause you another
24 headache by referring to this. This is -- but this is the
25 only other time I'm referring to a page number. The --

1 there's actually -- (audio loss) -- evidence in -- in here
2 that shows different heights and weights for Mr. Pontoo.
3 And the -- what I'm about to reference, it shows 81; it's 1
4 through 81. I'm going to reference two page numbers there.

5 A Okay.

6 MS. MEADOWS: Judge, I object. I don't think any of
7 this was raised in the -- any of the applications.

8 MR. JOHNSON: This -- this does pertain to the
9 allegation about height, the physical description that's in
10 the application. That's all I'm asking about.

11 MS. MEADOWS: Okay.

12 THE COURT: Okay. Well, I'll allow it.

13 A What page is it, Ola?

14 Q It's -- well, I'm just trying to confirm that there
15 were different height and weights reported ---

16 A Well ---

17 Q --- and this ---

18 A Well, I saw ---

19 Q --- is page -- page 30 and page 66.

20 A I'm just reading, Ola.

21 MS. MEADOWS: And, Judge, I object again. I don't see
22 this in any allegations. The only thing I see ---

23 MR. JOHNSON: It's ---

24 MS. MEADOWS: --- about is -- the description ---

25 MR. JOHNSON: I'm sorry ---

CROSS-EXAMINATION BY MR. JOHNSON - DAVID MAULDIN

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1 MS. MEADOWS: --- is ---

2 MR. JOHNSON: --- Judge.

3 MS. MEADOWS: --- the ---

4 MR. JOHNSON: I'll -- I'll get more specific, Judge.

5 MS. MEADOWS: --- length of his hair.

6 MR. JOHNSON: It's -- it's listed on -- on the amended
7 application. It's just where it talks about ---

8 MS. MEADOWS: Oh, wait. Now I see it. I'm sorry. In
9 your second ---

10 MR. JOHNSON: I'm sorry.

11 MS. MEADOWS: --- application ---

12 MR. JOHNSON: It's the second ---

13 MS. MEADOWS: --- application ---

14 MR. JOHNSON: --- amended to application.

15 THE COURT: All right.

16 MS. MEADOWS: --- about his height.

17 MR. JOHNSON: About height. And ---

18 THE COURT: Okay.

19 THE WITNESS: Are you talking ---

20 (Indistinguishable cross-talk.)

21 THE COURT: We'll allow it.

22 THE WITNESS: Oh. I'm sorry.

23 A Page 30, are you -- you're referring to a Lexington
24 County Sheriff Department worksheet?

25 Q There's a worksheet. And it says -- it puts Mr.

1 Pontoo in there at five-ten, correct?

2 A Yes. And that -- Investigator Garrick filled out that
3 -- that sheet.

4 Q Okay. And then -- and then, the page 66, it's a
5 report and it puts him at five-foot-eight. And it changes
6 the physical description a little bit there with the
7 weight. But I was just pointing those out to confirm to
8 you that you could -- that so that you could confirm that
9 there were different heights reported in the physical
10 description of Mr. Pontoo.

11 A I noted that in your application there. And I went to
12 the transcript on page 88 and 89, where I was cross-
13 examining the victim of the armed robbery, Mr. Ruple. And
14 I did cross-examine Mr. Ruple that he told the police that
15 the robber was five-five and 180 pounds; and then another
16 time, he told somebody he was five-eight and 180 pounds.

17 Q Right.

18 A And so I did cross-examine him -- him about some of
19 the discrepancies he gave in the description.

20 Q Okay. Okay. And ---

21 A And I also cross-examined him about whether not he had
22 attended bond hearings prior for the defendant, which I
23 believe he denied.

24 Q Okay.

25 MR. JOHNSON: That's my only question about -- about

1 that issue, Judge.

2 THE COURT: Okay.

3 Q Did you -- Mr. Mauldin, did you do anything to confirm
4 cell phone records with Mr. Clemons -- (audio loss) --
5 ownership of the phones that were seized as far as
6 reviewing evidence with Mr. Pontoo?

7 A I don't think cell phones were a big issue in this
8 case. So I -- I can't recall. I really can't.

9 Q Okay. And did you ever review the evidence and ask
10 questions about how the gun got out of the bag, as far as
11 the gun placement, I guess? Because -- because it was in a
12 bag at one point, and it was out of the bag at one point?

13 A Well, I know Mr. Pontoo had testified that one of the
14 individuals in the back -- right -- in the backseat had
15 taken the gun out of the bag and was showing it to
16 everybody.

17 Q Did -- okay. Do you -- you recall doing any of the
18 cross-examination of officers or anything in relation to
19 that?

20 A No, no. I -- I mean, I -- I don't recall. I'd have
21 to be ---

22 Q Okay.

23 A --- refreshed and have my memory refreshed by the
24 transcript of those ---

25 Q Okay. The issue with -- Patrick Johnson gave

1 testimony -- and I'm just referring to the transcript where
2 it goes into Patrick Johnson's testimony. Basically, you
3 had testified earlier about individuals who testified. And
4 they -- they basically said they were asleep and they don't
5 remember anything because they were asleep when you were
6 testifying earlier. Is that one of the people that you
7 were referring to?

8 A Patrick Johnson? I can read his statement if you want
9 me to.

10 Q I'm just saying, earlier when you testified, you said
11 you talked about people were sleeping and basically they
12 just said they were asleep. And when you -- I guess when
13 you were trying to ---

14 A Say ---

15 Q --- investigate and -- and talk to them. And ---

16 A Right. That they -- they didn't know a lot about how
17 the bag got in the car and, you know, they were tired from
18 being up all night, that kind of ---

19 Q Okay. But when Patrick Johnson testified, is he one
20 of the people that related to you that he felt like he was
21 asleep, so he didn't really know anything?

22 A Well, let's see. But he did testify, didn't he?

23 Q Yeah. That's starting on page 320 -- page 327.

24 A Okay. He -- and what's your question?

25 Q Did ---

1 A Sorry.

2 Q --- he was one -- (audio loss) -- people -- was he one
3 of the people you were referencing earlier when you
4 testified that you tried to talk to these folks and they
5 were indicating they were kind of sleepy and that ---

6 (Indistinguishable cross-talk.)

7 A Hold on.

8 MR. JOHNSON: Beg the Court's indulgence. I have a
9 lot of papers involved with this case. I was looking at it
10 earlier and moved it to get to some other papers.

11 A Let's see. I think he indicated that he was sleeping
12 on the way to the bar. Saw some people playing pool at the
13 bar; that everybody got into the car together, which is
14 contrary to what Mr. Pontoo says. And he went to sleep
15 again before they even pulled out of the parking lot. And
16 then he woke up when they were going to get food at some
17 point in time.

18 Q Okay. So when you were investigating it and -- (audio
19 loss) -- trying to have him interviewed, he -- he didn't
20 say, "Well, I was asleep the whole time; I didn't -- I
21 don't know nothing"?

22 A It was like here and there he was falling asleep like
23 ---

24 Q Okay.

25 A --- you know, it was not real particular about ---

1 Q Was this consistent with what he told your
2 investigator?

3 A Let's see. What part of the transcript are you
4 referring to?

5 Q Just his testimony about when he's awake, because you
6 indicated before that they said they were asleep. I'm just
7 trying to make sure. Is -- is that something that he said
8 to your investigator: that he doesn't remember anything;
9 he was asleep the whole time? Or is that not accurate?

10 A He said that he slept in the car on the way to the
11 bar. I think at the bar, he didn't get involved too much in
12 things and was kind of off to himself a little bit, and
13 that when they all went together to leave, he fell asleep
14 in the car on the way out of the parking lot.

15 Q Okay. Did he provide all -- this detail that he gave
16 in testimony, did he provide that to your investigator?

17 A Let's see. What details are you referring to, Mr.
18 Johnson?

19 Q Well, when they talk about who was wearing what ---
20 (Indistinguishable cross-talk.)

21 A I don't know if my investigator asked about who was
22 wearing what and -- and that ---

23 (Indistinguishable cross-talk.)

24 Q --- physical descriptions -- yeah, it was ---
25 (Indistinguishable cross-talk.)

1 Q I'm sorry. Go ahead.

2 (Off the record briefly.)

3 THE COURT: All right. Proceed.

4 A Oh. I -- I think my investigator was more interested
5 in -- in the big-picture things about what happened and who
6 might've done the robbery or who might not have done the
7 robbery than about what people were wearing. And it was to
8 those -- those things that he was vague about and -- and --
9 and said he didn't know because he was ---

10 Q Okay.

11 A --- sleeping.

12 Q Do -- do you feel like ---

13 (Indistinguishable cross-talk.)

14 A I don't think my investigator asked him what kind of
15 clothes people were wearing or anything like that. It was
16 -- it was general about what happened, not ---

17 Q Okay. Okay. I'll move on.

18 The -- did you ever have a conversation about
19 posttrial motions with Mr. Pontoo?

20 A If you're referring to a motion to reconsider, I do
21 not recollect any kind of conversation.

22 Q Okay. So would he have any idea that that was
23 something that he could do -- I mean, basically, what I'm
24 saying is you've never -- he never had that information
25 given to him, that that was an option?

1 A I don't think so. Usually, if I -- and like I said, I
2 don't remember if I discussed it or he asked or anything
3 like that. But typically, when I think about a motion to
4 reconsider, it's based on factors or facts or things that
5 the judge hasn't heard during the original sentencing.

6 That's usually when I find it appropriate to file a
7 motion to reconsider, not just to file on and -- and say:
8 "Come on, Judge, give him less" -- you know, with -- with
9 -- without a -- some kind of factual basis. I like to go
10 in there and say, "Hey, Judge, you didn't hear about this,
11 or maybe, "I told you what this person said, but I think
12 it's more appropriate for them to tell you in person," just
13 something different than -- than they heard during the
14 original sentencing.

15 Q All right.

16 MR. JOHNSON: I have no more questions, Your Honor.

17 THE COURT: All right. Ms. -- Ms. Meadows, do you
18 have any redirect?

19 MS. MEADOWS: Just briefly, Judge.

20 REDIRECT EXAMINATION

21 BY MS. MEADOWS:

22 Q And I'm not going to beat this to death by going
23 through all of the pages in the transcript. But on -- as
24 far as I -- I believe it was Trooper Lee. The -- let's
25 see. I -- I guess it was the -- the leading question

REDIRECT EXAMINATION BY MS. MEADOWS - DAVID MAULDIN 60

1 regarding the location of the passengers in the car. Now,
2 on page 132 through 133, did Trooper Lee not kind of
3 describe where everyone was seated at that time?

4 A Okay. Well, he talked about ordering the driver out
5 first.

6 Q I think he talks about numbering, how they number the
7 ---

8 A Yeah. The ---

9 Q --- seats.

10 A --- the number.

11 Q Okay.

12 A Talks about the driver; he handcuffs the driver.

13 Let's see. Passenger seat's No. 3, according to him, and
14 that would be the next person he got out. The next
15 occupant was Passenger 6 behind the passenger-rear door.

16 Q And that was the victim, I believe, correct?

17 A I -- I don't recall.

18 Q Okay. But basically, what I'm getting at, did you
19 think that had already been established when the solicitor
20 asked, you know, where the victim was located?

21 A Let's see.

22 MR. JOHNSON: Judge, I don't mean to interrupt. I
23 think Mr. Pontoo is trying to make contact. I don't know
24 if we need to -- is he -- is he asking for ---

25 THE COURT: Mr. Pontoo?

1 MR. JOHNSON: --- me to have a conversation?

2 THE COURT: Mr. Pontoo?

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: Did you need -- did you need the Court,
5 sir?

6 THE APPLICANT: Yes, ma'am. I just wanted to ask -- I
7 -- I -- I wanted to ask Mr. Johnson a question about his
8 cross-examination ---

9 THE COURT: Okay. Hold old. Hold on. We don't want
10 you to ask it on camera. Is it about your case now?

11 THE APPLICANT: Yes, ma'am.

12 THE COURT: Okay. All right. Let -- let me finish
13 with this -- this witness -- is it pertaining to this
14 witness -- is it about this -- okay.

15 THE APPLICANT: Yes, ma'am.

16 THE COURT: All right. Mr. Johnson ---

17 THE APPLICANT: That's why I was asking if I could
18 mute it here and he mute his way; y'all were -- weren't
19 able to hear us and do it like that, if that was---

20 THE COURT: It doesn't work that -- it doesn't work
21 that way.

22 Can you call the facility, Mr. Johnson?

23 MR. JOHNSON: (No audible response.)

24 THE COURT: Okay. He's calling the facility right
25 now. And when -- when -- all right. We'll -- we'll stand

REDIRECT EXAMINATION BY MS. MEADOWS - DAVID MAULDIN 62

1 down for about seven minutes, okay?

2 MS. MEADOWS: And, Judge, I believe Taylor just logged
3 on. I think he wanted to speak with you about Mr. Michaux.
4 So we can ---

5 THE COURT: Okay. We'll handle that. All right.
6 We'll -- we'll stand down for about seven minutes. Let me
7 mute Mr. Pontoo.

8 (Off the record from 12:10 p.m. until 12:17 p.m.)

9 THE COURT: Okay. All right. Let's proceed.

10 REDIRECT EXAMINATION BY MS. MEADOWS CONTINUED

11 Q Okay. All right. And then, as far as a leading
12 question regarding the -- Trooper Snyder getting up to 120
13 -- or 128 miles an hour, on page 144, the solicitor asks
14 him how fast they got to, correct?

15 A Let me see. I have to get there.

16 Q It's at the top.

17 A Let's see. The question was on page 143 (As read):
18 "Did that vehicle slow down?"

19 And then, on page 144, line 1, his answer is: "No,
20 sir. He -- as a matter of fact, he wound up passing two
21 cars over a double-yellow, proceeding on down Highway 3.
22 At that time I was in pursuit and in speeds in excess of
23 100 miles an hour."

24 And the question was: "I was going to ask you how
25 fast did y'all get up to?"

1 And the answer is: "I don't recall the exact speed --
2 maximum speed. I know it was around 120 to catch up. And
3 once I got in behind him, we leveled off at about 108/110
4 miles an hour."

5 And that is the page prior to the -- that's the one
6 about the long hair. But ---

7 Q Okay. So that established already sort of by the time
8 it was ---

9 A Where -- let's see ---

10 (Indistinguishable cross-talk.)

11 Q I'm sorry. 153.

12 A Three -- yes. Still the direct by Mr. McNair of Jason
13 Snyder.

14 Q Okay. And then, just briefly, on page 240, this is
15 about the -- Mr. Pontoo's clothing that was taken from the
16 hospital. I believe you did object based on hearsay,
17 correct?

18 A Let's see. Let's see. Yes, I did.

19 Q Okay. The judge sustained your objection. Okay.

20 And then, do you recall where the stolen 9-millimeter
21 was found in the car?

22 A No, I do not.

23 Q Okay. All right.

24 MS. MEADOWS: I think that's all I have, Judge.

25 THE COURT: All right.

RECROSS-EXAMINATION BY MR. JOHNSON - DAVID MAULDIN

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1 Mr. Johnson, any recross?

2 MR. JOHNSON: (No audible response.)

3 THE COURT: Oh. Mr. Johnson, any recross?

4 MR. JOHNSON: (No audible response.)

5 THE COURT: Ola, can you hear me?

6 MR. JOHNSON: (No audible response.)

7 THE COURT: Uh-oh. Mr. -- can one of you all text
8 him? I don't think he can hear us.

9 Mr. Johnson?

10 MS. MEADOWS: I'll text him.

11 THE COURT: Okay.

12 (Off the record briefly.)

13 THE COURT: Okay. All right. Mr. Johnson, I was
14 asking if you had anything on recross.

15 MR. JOHNSON: I'm sorry. Thank you.

16 RECROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q I just wanted to ask real briefly: Mr. Mauldin, do
19 you have any recollection of photographs/evidence of dark-
20 colored pants that were assigned to Mr. Pontoo in the
21 evidence?

22 A No. I -- I don't remember. This was six years ago,
23 Mr. Johnson.

24 Q Okay.

25 A You would have to -- and they -- they don't give me

1 copies of the exhibits. So ---

2 Q Okay. And the overall description of green puffy
3 jacket was something that -- did you bring that up on
4 cross-examination, as far as inconsistencies with what they
5 actually found?

6 A Well, I went through -- I -- I remember that I did
7 argue that in the closing and that -- that and the Rasta
8 had with the red, green, and yellow.

9 Q Okay. All right.

10 MR. JOHNSON: I have no more questions, Your Honor.

11 THE COURT: Thank you, sir.

12 All right. Ms. Meadows, do you need Mr. Mauldin
13 further?

14 MS. MEADOWS: I don't.

15 THE COURT: All right. The witness may be excused at
16 this time.

17 Ms. Meadows, you have another witness?

18 MS. MEADOWS: Yes, ma'am. The state calls Don McCune.
19 There he is.

20 THE COURT: All right. All right. Mr. -- is it Mr.
21 McCann?

22 THE WITNESS: It's McCune, Your Honor.

23 THE COURT: All right. All right. Mr. McCune, Good
24 afternoon, sir. You are an officer of the Court. But for
25 the purposes of this PCR, we will swear you in today. All

DIRECT EXAMINATION BY MS. MEADOWS - DONALD MCCUNE, JR. 66

1 right?

2 THE WITNESS: Okay.

3 DONALD MCCUNE, JR., having been first duly sworn,
4 testified as follows:

5 THE COURT: All right. Ms. Meadows?

6 DIRECT EXAMINATION

7 BY MS. MEADOWS:

8 Q All right. Good afternoon, Mr. McCune.

9 A Good afternoon.

10 Q About how long have you been practicing?

11 A I was admitted to the bar in 2000. I'm a second-
12 career attorney. And my first full-time legal job began in
13 2005.

14 Q Okay. All right. And how did you become involved in
15 Mr. Pontoo's case?

16 A I volunteered for the South Carolina Bar's appellate-
17 practice project that was started by Judge Few. And this
18 is a -- a -- a project where attorneys who would like to
19 assist in some *pro bono* work attend training that's given
20 by the appellate-defense office and are assigned cases. So
21 I signed up for that and was assigned Mr. Pontoo's case.

22 Q Yes, sir. Okay. And you worked with Mr. Dudek,
23 correct, from appellate defense?

24 A That's correct.

25 Q Okay. All right. Could you kind of briefly discuss

DIRECT EXAMINATION BY MS. MEADOWS - DONALD MCCUNE, JR. 67

1 your practice or procedure you went through when you were
2 first assigned Mr. Pontoo's case and given his file and
3 everything?

4 A Yes. So I went through the training that they
5 provided from the Office of Appellate Defense. I then was
6 assigned the transcript. I read the transcript over
7 several times to get familiarity with the facts and the
8 players and then read the transcript with an eye towards
9 what happened as far as objections that were raised and
10 considered.

11 I looked at all of those. And I -- I sort of triaged
12 what I thought would be important to raise in the appeal
13 and then began drafting the appeal. I also did, at one
14 point, talk to Mr. Mauldin to see if there was anything
15 that stuck out in his mind about how the -- how the trial
16 proceeded, and there was not.

17 Q Okay. And you ultimately ended up raising three
18 issues, right?

19 A That's correct.

20 Q Okay. What were those issues, and could you just
21 briefly explain what your argument was for each of those?

22 A Very briefly, I raised the -- the lack of a -- the --
23 the duress instruction, based on the addition of -- of a
24 phrase to the failure to stop for a blue light, which is
25 "in the absence of mitigating circumstances." And I raised

DIRECT EXAMINATION BY MS. MEADOWS - DONALD MCCUNE, JR. 68

1 that as being an exception to the rule *Dixon v. U.S.*, where
2 the burden it actually on the state to disprove that. It
3 was unclear from the transcript whether Mr. Mauldin had --
4 had -- had clearly raised that.

5 But he -- he clearly raised the fact that it was that
6 this -- the burden should not be on the defendant in any
7 case. So -- so that was one of the issues.

8 One of the issues I raised was on the -- I -- I
9 thought that the photo lineup was unduly prejudicial to Mr.
10 Pontoo. And I -- I raised that issue.

11 And then, the final issue I raised was -- pardon me
12 just one moment.

13 (Off the record briefly.)

14 A The -- I'm sorry. It would be a post-*Miranda* silence.
15 I -- I argued that post-*Miranda* silence should have been
16 respected in this case. There was some different
17 testimony. Mr. Mauldin objected to the cross-examination
18 of Mr. Pontoo. My argument was that his -- that either he
19 had been read his *Miranda* rights and they did not respect
20 that; or alternatively, even if he wasn't read his *Miranda*
21 rights, he was in custody. And then, those statements, the
22 fact that he told them he didn't want to speak with them
23 was later used against him.

24 Q Okay. All right. And then -- let's see. Mr. Pontoo
25 alleges you should've raised the issue of the trial court's

DIRECT EXAMINATION BY MS. MEADOWS - DONALD MCCUNE, JR. 69

1 admission of the pistol -- I think it was the .22 -- that
2 was found on Mr. Pontoo. This was on page 226 of the
3 transcript where, I think, David had objected based on lack
4 of foundation -- or lack of foundation and hearsay.

5 Did you consider raising this issue, or what were your
6 thoughts?

7 A Yes. Yes, I did. Pardon me. Yes, I did. I
8 considered raising it. The circumstance was there was an
9 individual who was in the room when the clothes were cut
10 off Mr. Pontoo. There -- a firearm fell out when the
11 clothes were being cut off. The individual in question
12 could not identify Mr. Pontoo at the time, but identified
13 him through hospital records.

14 And it was my feeling that this would not raise a -- a
15 -- a -- effect a substantial right of the party. I think
16 it could've been easily cured with a custodian of records'
17 testimony, and I didn't think it would rise to the --
18 having the verdict overturned.

19 Q Yes, sir. Okay. And then, the other allegation is
20 the trial court's admission of Mr. Clemons' clothing. And
21 that was on page -- let's see -- 242. All right. And then
22 -- do you see where I am?

23 A Yes, I do.

24 Q Okay. And did you consider raising that issue as
25 well, or what -- what were your thoughts on that one?

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1 A Yes. I -- I did consider raising that. I tried to
2 consider each objection that was made and overruled. But I
3 found this circumstance to be somewhat like the previous
4 circumstance in that there would be adequate records to
5 establish that the clothing belonged to Mr. Clemons. And I
6 thought, as a result, this wouldn't affect a substantial
7 right of his and, therefore, if -- if it was found to be
8 error, the error would be harmless. And it was my goal to
9 try to get Mr. Pontoo's conviction overturned.

10 Q Okay. All right. And then, did you have an oral
11 argument in this case?

12 A I did.

13 Q Okay. And I believe the Court of Appeals ultimately
14 affirmed Mr. Pontoo's convictions, correct?

15 A Yes, they did.

16 Q Okay. And just one question specifically about the
17 *Miranda* warnings. The -- the Court said that the -- the --
18 the trial court properly permitted the state to impeach Mr.
19 Pontoo with his inconsistent statement and prearrest
20 silence because he was not in custody, correct?

21 A That's correct.

22 Q Okay. All right. I think that's all I have.

23 THE COURT: Cross?

24 MR. JOHNSON: Your Honor, can -- everybody can hear
25 me?

CROSS-EXAMINATION BY MR. JOHNSON - DONALD MCCUNE, JR. 71

1 THE COURT: Yes.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q I just wanted to ask briefly about the issue that was
5 not preserved. This was something that you cannot address
6 regarding the -- in the absence of mitigating
7 circumstances, the element from the "failure to stop for
8 blue light" charge. Indication is that that was not
9 preserved for you, so that was not something you could
10 address on appeal, correct?

11 A Well, I -- Mr. Johnson, it was unclear to me from the
12 transcript whether this was -- was preserved or not. In
13 abundance of caution, I thought it would be proper to raise
14 it because clearly, Mr. Mauldin was trying to express to
15 the trial judge, Judge Russo, that the burden should not be
16 on the defendant in this case. So it was unclear to me.
17 And in an abundance of caution, I did include it. The --
18 the Court of Appeals disagreed with me.

19 Q Okay. And their -- their disagreement was based on
20 the fact that it was basically not preserved for them?

21 A That's correct.

22 Q Okay. So that's something that could've been cured,
23 but would've had to have been preserved at trial by Mr.
24 Mauldin?

25 A Yes. At -- but as I told you, I -- from my reading of

CROSS-EXAMINATION BY MR. JOHNSON - DONALD MCCUNE, JR. 72

1 the transcript, it could be -- I understand that the -- the
2 judges in -- in South Carolina have a lot on their plates
3 and the issue-preservation rules are pretty specific. So
4 as I said, I -- I thought that Mr. Mauldin had -- had
5 attempted to preserve it, but they did disagree with that.

6 Q Okay.

7 MR. JOHNSON: Those are all the questions I had,
8 Judge.

9 THE COURT: Any redirect?

10 MS. MEADOWS: No, ma'am.

11 THE COURT: All right. All right. May this witness
12 be excused?

13 MS. MEADOWS: Yes, ma'am.

14 THE COURT: Okay.

15 MS. MEADOWS: Thank you, Mr. McCune.

16 THE COURT: All right. Thank you, Mr. McCune. You're
17 -- this witness is excused.

18 THE WITNESS: Thank you.

19 THE COURT: All right.

20 All right. Any more witnesses from the state?

21 MS. MEADOWS: No, ma'am. The state would rest at this
22 time.

23 THE COURT: All right.

24 All right, Mr. Johnson. The state has rested. Are
25 there any motions before we go into closing arguments?

1 MR. JOHNSON: No, Your Honor. I'm just going to
2 confirm that I'll be mailing this to the court reporter ---

3 THE COURT: Okay.

4 MR. JOHNSON: --- Ms. Nevers.

5 THE COURT: All right. All right, Mr. Johnson. We'll
6 go directly into -- oh, any -- any motions from the state?

7 MS. MEADOWS: No, ma'am.

8 THE COURT: All right. Well, we will go directly into
9 our closing arguments.

10 MR. JOHNSON: Your Honor, I would just state, based on
11 all of the admissions -- focusing admissions by Mr. Mauldin
12 regarding his conduct of the trial in not objecting to
13 leading questions is that -- (audio loss) -- something that
14 could be viewed as cumulative, brought together as a
15 potential ineffective assistance of counsel. I would point
16 to that as being something the Court should consider for
17 finding ineffective assistance of counsel, since the
18 process is -- where the solicitor is feeding the answer to
19 the witnesses. And that did happen in several occasions
20 where Mr. Mauldin did not object to it.

21 And in addition to the failure to preserve this
22 appellate issue -- (audio loss) -- point that out, as well
23 as my client's testimony regarding not being able to review
24 or not feeling a sufficient review of evidence or work by a
25 private investigator to really investigate the matter and

1 look in the evidence; also, the inconsistencies, as far as
2 the -- like physical descriptions, something that Mr.
3 Pontoo talked about as well, feeling like Mr. Mauldin
4 could've done more to highlight that or to highlight some
5 of the inconsistencies with the testimony of victim or
6 witnesses.

7 That's all we have, Judge, at this time.

8 THE COURT: Thank you, Mr. Johnson.

9 All right. Ms. Meadows?

10 MS. MEADOWS: Yes, Your Honor. I would just rely
11 mainly on the testimony, as far as closing. But I would
12 also point out that the -- that South Carolina does not
13 recognize cumulative error and that each issue must be
14 considered individually. And I believe that case is *Green*
15 *v. State*.

16 And -- let's see. And, you know, ---

17 (Indistinguishable cross-talk.)

18 THE COURT: --- citation on that, that case ---

19 MS. MEADOWS: It is ---

20 THE COURT: --- by any chance?

21 MS. MEADOWS: --- 351 S.C. 184.

22 THE COURT: Thank you.

23 MS. MEADOWS: And just overall, I would argue that,
24 you know, none of these leading questions were particularly
25 prejudicial. And for Mr. Mauldin's testimony, I believe he

1 met with Mr. Pontoo multiple times and reviewed the
2 evidence with him. And the last . . .

3 THE COURT: All right. All right.

4 All right, Ms. Meadows, Mr. Johnson, thank you very
5 much. At this time I'm going to review my notes and review
6 the documents that I have been given for my consideration.
7 And I will let you all know, as soon as I have completed
8 that, what my ruling is.

9 MR. JOHNSON: Thank you, Judge.

10 THE COURT: All right.

11 MS. MEADOWS: Thank you, Judge.

12 THE COURT: All right. Hold on. Mr. -- Mr. Pontoo
13 has a question. Let me -- let me get this on the record.

14 Mr. Pontoo?

15 THE APPLICANT: Another thing that I wanted to ask was
16 when Mr. Mauldin say he had saw me ten times, can we have
17 recollection of that? Because ---

18 MS. MEADOWS: Judge, I object ---

19 THE COURT: All right.

20 MS. MEADOWS: --- to this ---

21 THE COURT: Hold on. All right. Hold on.

22 Mr. Pontoo, I can't -- I can't hear any further
23 argument. And that would be a part of the argument. And
24 so, you know, both -- both sides of the testimony will be
25 taken into consideration, okay?

1 THE APPLICANT: Yes, ma'am.

2 THE COURT: All right. Thank you, Mr. Pontoo.

3 All right. If there is -- yes, sir. If there's -- if
4 there's nothing further, we'll -- we'll adjourn. The --
5 the -- well, we'll adjourn for the day because our second
6 one has been continued. And so thank -- thank you,
7 everyone, for your patience and for your assistance during
8 this hearing. All right.

9 MS. MEADOWS: Thank you, Judge.

10 THE COURT: All right. Have a good weekend.

11 THE APPLICANT: Yes, ma'am. Thank you.

12 THE COURT: Yes, sir.

13 MR. JOHNSON: Thank you, Your Honor.

14 (Whereupon, the proceeding was concluded at 12:39 p.m.)

15 (Whereupon, Applicant's Exhibit 1 was provided to the
16 court reporter after conclusion of the hearing.)

17 (Whereupon, Applicant's Exhibit 1 was marked and
18 entered into evidence.)

19 --- END OF TRANSCRIPT OF RECORD ---

20

21

22

23

24

25

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 2nd day of July, 2021.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

West Columbia, South Carolina
August 31, 2021

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number _____ State File Number 14 003907

NAME OF DECEDENT
For use by physician or institution

Items 1-23c To Be Completed By: FUNERAL DIRECTOR

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last) Alexander Kajuan Clemons				2. SEX Male		3. SOCIAL SECURITY [REDACTED]	
4a. AGE-Last Birthday (Years) 24		4b. UNDER 1 YEAR Months _____ Days _____		4c. UNDER 1 DAY Hours _____ Minutes _____		5. DATE OF BIRTH (MM/DD/YYYY) [REDACTED]	
6. BIRTHPLACE (City and State or Foreign Country) Orangeburg, SC							
7a. RESIDENCE-STATE South Carolina		7b. COUNTY Orangeburg		7c. CITY OR TOWN North			
7d. STREET AND NUMBER 3208 Whelstone Road		7e. APT. NO. [REDACTED]		7f. ZIP CODE 29112		7g. INSIDE CITY LIMITS? ☐ Yes ☒ No	
8. EVER IN US ARMED FORCES? ☐ Yes ☒ No		9. MARITAL STATUS AT TIME OF DEATH ☐ Married ☐ Married, but separated ☐ Widowed ☒ Divorced ☐ Never Married ☐ Unknown		10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage) [REDACTED]			
11. FATHER'S NAME (First, Middle, Last) Charles Wilson Rogers				12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last) Cindy Clemons			
13a. INFORMANT'S NAME Cindy Clemons		13b. RELATIONSHIP TO DECEDENT Mother		13c. MAILING ADDRESS (Street and Number, City, State, Zip Code) [REDACTED] 29112			
14. PLACE OF DEATH (Check only one; see instructions) 29112							
15. FACILITY NAME (If not institution, give street and number) Palmetto Health Richland							
16. CITY OR TOWN, STATE AND ZIP CODE Columbia, South Carolina 29203							
17. COUNTY OF DEATH Richland							
18. METHOD OF DISPOSITION ☐ Donation ☐ Entombment ☒ Burial ☐ Cremation ☐ Removal from state							
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place) Flora Branch Baptist Church Cemetery							
20. LOCATION-CITY, TOWN AND STATE North, South Carolina							
21. NAME AND ADDRESS OF FUNERAL FACILITY W. B. Crumel Funeral Home							
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT Wallace B Crumel (Electronically Verified)				23. LICENSE NUMBER (Of Licensee) 1439			
23a. EMBALMER (signature) Wallette R Crumel-Hudson				23b. EMBALMER LICENSE NUMBER 2782			
23c. LICENSE NUMBER (Of Facility) 272							
24. DATE PRONOUNCED DEAD (MM/DD/YYYY) 01/26/2014				25. TIME PRONOUNCED DEAD 19:00 PM			
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable) [REDACTED]				27. LICENSE NUMBER [REDACTED]			
28. DATE SIGNED (mm/dd/yyyy) [REDACTED]							
29. ACTUAL OR PRESUMED DATE OF DEATH (Specify Month) January 26, 2014				30. ACTUAL OR PRESUMED TIME OF DEATH 19:00 PM			
31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☒ Yes ☐ No							
32. PART I. Enter the chain of events - disease, injuries, or complications - that directly caused the death. DO NOT enter terms that merely describe arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (Final disease or condition resulting in death) a. Closed head injury Due to (or as a consequence of) _____ Days _____ b. Blunt head trauma Due to (or as a consequence of) _____ Days _____ c. Motor vehicle collision Due to (or as a consequence of) _____ Days _____ d. _____ Due to (or as a consequence of) _____ Days _____ Sequitarily list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST PART II. Enter other: specific conditions contributing to death ☒ not resulting in the underlying cause given in PART I ☐							
33. WAS AN AUTOPSY PERFORMED? ☒ Yes ☐ No							
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☒ Yes ☐ No							
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☒ No ☐ Unknown				36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year			
37. MANNER OF DEATH ☐ Natural ☐ Homicide ☐ Accident ☐ Pending investigation ☐ Suicide ☐ Could not be determined				41. INJURY AT WORK? ☐ Yes ☒ No			
38. DATE OF INJURY (Specify Month) January 24, 2014		39. TIME OF INJURY 04:43 AM		40. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, workplace, etc.) Roadway		41. INJURY AT WORK? ☐ Yes ☒ No	
42. LOCATION OF INJURY. State: South Carolina City or Town: Swansea County: Lexington				43. DEBORBE HOW INJURY OCCURRED: One-vehicle accident			
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Other (Specify)							
45. CERTIFIER (Check only one) ☐ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated. ☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated. ☒ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. Signature of certifier: Randy A. Martin (Electronically Certified)							
46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32) Randy A. Martin, 117 Duffie Drive Lexington South Carolina 29072				47a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER [REDACTED]			
47. TITLE OF CERTIFIER Deputy Coroner		48. LICENSE NUMBER [REDACTED]		49. DATE CERTIFIED (MM/DD/YYYY) 3/20/2014		50. FOR REGISTRAR ONLY- DATE FILED (MM/DD/YYYY) 3/20/2014	
51. DECEDENT'S EDUCATION-Check the box that best describes the highest degree or level of school completed at the time of death. ☐ 8th grade or less ☐ 9th-12th grade; no diploma ☒ High school graduate or GED completed ☐ Some college credit, but no degree ☐ Associate degree (e.g., AA, AS) ☐ Bachelor's degree (e.g., BA, BS) ☐ Master's degree (e.g., MA, MS, MEd, MEd, MEd, MEd) ☐ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)				52. DECEDENT OF HISPANIC ORIGIN-Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina. ☒ No, not Spanish/Hispanic/Latino/Latina ☐ Yes, Mexican, Mexican American, Chicano/Chicana ☐ Yes, Puerto Rican ☐ Yes, Cuban ☐ Yes, other Spanish/Hispanic/Latino/Latina (Specify) _____			
53. DECEDENT'S RACE-Check one or more races to indicate what the decedent considered himself or herself to be. ☒ White ☐ Black or African American ☐ American Indian or Alaska Native ☐ (Name of the enrolled or principal race) ☐ Asian Indian ☐ Chinese ☐ Filipino ☐ Japanese ☐ Korean ☐ Vietnamese ☐ Other Asian (Specify) ☐ Native Hawaiian ☐ Guamanian or Chamorro ☐ Samoan ☐ Other Pacific Islander (Specify) ☐ Other (Specify)							
54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED") Warehouse Worker							
55. KIND OF BUSINESS/INDUSTRY Pills Distributor Company							

Amendment Code

Amendment Number

Date

User ID

BRTP NO.

125474

DHCC 870

Rev. 2004

Items 51-55 To Be Completed By: Funeral Director

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2021 OCT 11 AM 9:38

Raphael L. Pontoo, SCDC #362840,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2018-CP-32-4205

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Raphael L. Pontoo (Applicant) on December 11, 2018. The State requested an evidentiary hearing through its return on March 22, 2019. Applicant filed an amended application on June 7, 2021, and a second amended application on June 16, 2021.

A hearing into the matter convened before the undersigned July 2, 2021, via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020.¹ Applicant was present at the hearing and represented by Ola A. Johnson, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing. The State presented testimony from Applicant's trial counsel, David M. Mauldin, Esquire, and appellate counsel, Donald L. McCune, Jr., Esquire.

¹ See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.").

In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of trials and appellate counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections² pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on January 30, 2014, following an investigation into an armed robbery and subsequent high-speed vehicle chase that ended in a fatal crash. During its June 2014 term, the Lexington County Grand Jury indicted Applicant for failure to stop for a blue light resulting in death (FTSFBL) (2014-GS-32-1408) and armed robbery (2014-GS-32-1409).

On January 26, 2015, Applicant proceeded to a jury trial before the Honorable Thomas A. Russo. Assistant Appellate Defender David M. Mauldin Esquire (Trial Counsel) represented Applicant. Deputy Solicitor D. Shawn Graham and Assistant Solicitor Robert E. McNair, III, prosecuted the case.

A. Summary of Evidence Adduced at Trial

In the early morning hours of January 24, 2014, Jonathan Ruple was hanging out with a

² Applicant is in SCDC custody although he is currently housed at CoreCivic, a private prison located in Mississippi.

friend at the Mile High Club, a bar located in West Columbia, South Carolina, when he decided to show his friend his new Hi-Point nine-millimeter pistol. (Trial Tr. 71, 73, 253–54; R. 36, 38, 218–19). The two then headed out to the bar’s parking lot, and Ruple retrieved the pistol from a book bag stowed in the trunk of his car. (Trial Tr. 73, 254–55; R. 38, 219–220). At that point, two men, including one who had dreadlocks and was wearing a black t-shirt, light-colored jeans, and a green puffy jacket, approached Ruple and his friend, and the man with dreadlocks introduced himself as “Los” before striking up a conversation with the pair. (Trial Tr. 72, 75–76, 255–56, 259; R. 37, 40–41, 220–21, 224). During the conversation, Ruple and the others discussed a wide variety of topics, and Ruple showed the men his gun. (Trial Tr. 74, 256; R. 39, 221). In return, “Los” showed Ruple a .22-caliber revolver he indicated he had obtained earlier that day, and his companion showed Ruple a chrome-plated .25-caliber pistol. (Trial Tr. 74, 256–57, 263; R. 39, 221–22, 228). The men then continued to converse with one another for roughly ten to fifteen minutes before Ruple put his pistol back into his book bag, secured the bag on the front passenger’s seat of his vehicle, and re-entered the bar with his friend. (Trial Tr. 75, 257–58, 260–61; R. 40, 222–23, 225–26).

Over the course of the next hour or two, Ruple socialized and drank with his friend inside the bar while “Los” and four of his companions hung out by themselves nearby. (Trial Tr. 78, 260–61, 273; R. 43, 225–26, 238). As the night wound down, Ruple decided to head home, and, as he walked towards the exit, “Los” stopped him and asked him where he was going. (Trial Tr. 80, 262; R. 45, 227). In response, Ruple told “Los” he was going home and then exited the bar, chatted outside with his friend for a few minutes, and got into his car to leave. (Trial Tr. 80, 262; R. 45, 227). At that moment, “Los” approached Ruple’s car from the passenger’s side, knocked on the window, and chatted with Ruple for a few moments about a set of vehicle rims. (Trial Tr. 81, 262–

63; R. 46, 227–28). Then, “Los” suddenly stuck his hand into Ruple’s vehicle, grabbed the book bag that contained Ruple’s gun, and took off running. (Trial Tr. 81, 263; 228).

In response, Ruple speedily chased after “Los” and caught him as he tried to get into a vehicle parked nearby. (Trial Tr. 81–82, 263; R. 46–47, 228). The two then fought over the book bag for a few moments before “Los” pulled out his revolver and pointed it at Ruple’s face. (Trial Tr. 82, 263; R. 48, 228). At that point, Ruple immediately threw up his hands in surrender, and “Los” got into the nearby vehicle and sped away from the area with Ruple’s bag. (Trial Tr. 83, 264–65; R. 48, 229–30). However, as “Los” fled, Ruple took down the license tag number of the getaway vehicle, and he quickly reported the robbery to the authorities along with a description of the getaway vehicle. (Trial Tr. 83, 125–26, 142, 163, 264; R. 48, 90–91, 107, 128, 229).

Shortly thereafter, Trooper Brandon Lee of the South Carolina Highway Patrol spotted a vehicle matching the description and license tag number of the vehicle involved in the armed robbery, and he pulled the vehicle over to the side of the road after it abruptly slowed down upon encountering him. (Trial Tr. 125–28; 130–31; R. 90–93, 95–96). He then drew his weapon, requested back-up from his fellow officers, and began ordering the occupants out of the vehicle one at a time starting with the driver. (Trial Tr. 128, 132; R. 93, 97). While he while doing so, an individual seated in the rear of the vehicle on the driver’s side repeatedly opened his door and had to be commanded to remain in the vehicle. (Trial Tr. 133–34; R. 98–99). That individual then remained in the vehicle while the driver, Carlisle Jones (“Carlisle”), and two of the other passengers, Iquawn Jones (“Iquawn”) and Patrick Johnson, exited the vehicle and were secured.³ (Trial Tr. 132–34, 282–83, 289, 313, 316–18, 347–48, 371; R. 97–99, 247–48, 254, 276, 279–81,

³ Neither Carlisle, Iquawn, nor Johnson had dreadlocks at that time. (Trial Tr. 283, 304, 374–77; R/ 248. 267. 337–40).

310–11, 334). At that point, one of the individuals remaining in the vehicle suddenly jumped into the driver's seat and sped off in the vehicle, and several officers at the scene quickly pursued. (Trial Tr. 134–35, 142–43, 283; R. 99–100, 107–08, 248).

Over the course of the next few minutes, the driver of the vehicle led officers on a high-speed chase that reached speeds in excess of one-hundred miles per hour. (Trial Tr. 143–44, 160; R. 108–09, 125). The chase continued until the driver, who had dreadlocks that were visible to the pursuing officers, lost control of the vehicle as he approached the intersection of two separate highways, and the vehicle went off the road before crashing into a nearby wooded area. (Trial Tr. 136, 145–46, 152–53, 163–64; R. 101, 110–11, 117–18, 128–29). The pursuing officers then quickly exited their vehicles and ran to the crashed vehicle. (Tr. 137, 166; R. 102, 131). When they reached it, they found Applicant Raphael Lamarr Pontoo pinned into the driver's seat by a tree branch that went through the vehicle's windshield along with another individual, Alexander Clemmons, unconscious and severely injured in a rear seat.⁴ (Trial Tr. 137–39, 147–49, 171, 176–77; R. 102–04, 112–14, 136, 141–42). Additionally, the officers observed a black Hi-Point nine-millimeter pistol resting on the front passenger's seat in close proximity to Applicant's outstretched hand, and that weapon was quickly secured.⁵ (Trial Tr. 149, 167, 169; R. 114, 132, 134).

In the ensuing minutes, emergency medical personnel responded to the scene of the crash, and they rapidly transported Clemmons, who was unconscious and unresponsive, to a landing zone so he could be taken to a hospital by helicopter. (Trial Tr. 175–78, 190–92, 194–95; R. 140–43, 155–57 159–60). As they waited for the helicopter, Clemmons's condition began to deteriorate,

⁴ At that time, Applicant had dreadlocks and Clemmons had short, frizzy hair. (Trial Tr. 139, 145, 166, 191, 194–95, 200–01, 233; R. 104, 110, 131, 156, 159–60, 165–66, 198).

⁵ Later on, a book bag, a phone, and several winter coats were located at the scene of the crash, and each of the items was collected as evidence. (Trial Tr. 204–05, 215, 220; R. 169–70, 180, 185).

and paramedic Amanda Sucher from Lexington County Emergency Medical Services removed his clothing, which included an orange jacket and dark jeans, to aid in the provision of medical treatment. (Trial Tr. 173, 179–181; R. 138, 144–46). Upon doing so, she discovered a handgun hidden behind Clemmons's left knee. (Trial Tr. 181–82, 192; R. 146–47, 157). Clemmons was then transported to the hospital by helicopter. (Trial Tr. 232; R. 197).

Meanwhile, firefighters cut into the crashed vehicle to enable Applicant's removal, and Applicant was rapidly transported to the hospital once he was extricated from it. (Trial Tr. 193, 197; R. 158, 162). While Applicant received treatment at the hospital, a .22-caliber pistol fell out of his clothing. (Trial Tr. 222–23, 229; R. 187–88, 194). That gun was then secured and subsequently turned over to the Lexington County Sheriff's Office. (Trial Tr. 223; R. 188). Likewise, officers also obtained Applicant's clothing from the hospital, which included a black t-shirt and light-colored jeans. (Trial Tr. 239–40; R. 204–05).

Thereafter, on January 27, 2014, Clemmons succumbed to the traumatic head injuries he sustained in the crash and died. (Trial Tr. 232, 234–35; R. 197, 199–200). A few days later, Applicant was released from the hospital, and he was placed under arrest as he left the hospital for his involvement in the armed robbery and Clemmons's death. (Trial Tr. 249; R. 214). Subsequently, Applicant was indicted for armed robbery and failure to stop for a blue light resulting in a death, and he elected to proceed forward to trial. (Trial Tr. 11; Indictments; R. 2, 436–37, 439–40).

At the outset of trial, the trial judge conducted an *in camera* hearing at defense counsel's request in regard to the admissibility of statements attributed to Applicant subsequent to the fatal crash. (Trial Tr. 46; R. 11). During the hearing, Detective Garrick testified he and another officer met with Applicant at the hospital on the date of the incident, informed Applicant of his rights, and spoke with Applicant about what had occurred. (Trial Tr. 51–53, 56–57; R. 16–18, 21–22). As they

spoke, the detective stated Applicant became “very argumentative” and repeatedly insisted he did not know anything and did not remember anything before terminating the conversation with the officers. (Trial Tr. 53, 57–59; R. 18, 22–24). Detective Garrick further indicated Applicant was not under arrest and was free to leave at that time, but he acknowledged he asked hospital staff to notify him before Applicant was released from the hospital. (Trial Tr. 51–53, 56; R. 16–18, 21). Additionally, Detective Garrick stated he later drove Applicant to the detention center when he was discharged from the hospital, he believed he informed Applicant of his rights at that time but was not certain, he did not ask Applicant any questions, and Applicant stated no one would believe him if the officers hit him. (Trial Tr. 54–55; R. 19–20). Following the presentation of that testimony, Applicant took the witness stand, denied saying anything to Detective Garrick other than stating he did not want to talk to him, and insisted the detective did not inform him of his rights, did not tell him he had a right to remain silent, and did not tell him anything he said could be used against him. (Trial Tr. 60–63; R. 25–28). Applicant further stated he was informed he could not leave, but he admitted hospital personnel told him that as opposed to the officers based on his medical condition. (Trial Tr. 65; R. 30).

At the conclusion of the hearing, defense counsel challenged the admission of Applicant’s alleged statements at the hospital on the grounds Applicant was in custody at the time of the questioning but was not informed of his rights. (Trial Tr. 66; R. 31). Similarly, defense counsel argued Applicant’s alleged statements on the way to the detention center were irrelevant, overly prejudicial, were made while Applicant was in custody, and were made without him being informed of his rights. (Trial Tr. 65–66; R. 30–31). In rebuttal, the solicitor asserted Applicant’s statements from the hospital were admissible because Applicant was not in custody at that time and was informed of his rights prior to any questioning. (Trial Tr. 67–68; R. 32–33). The solicitor

further asserted the admissibility of Applicant's statements on the way to the detention center was dependent on the defense presented during trial. (Trial Tr. 67; R. 32). After considering the arguments of counsel, the trial judge found Applicant was not in custody at the time he made the statements in the hospital and, based on that ruling, made no ruling in regard to whether Applicant had been informed of his rights at that time. (Trial Tr. 69; R. 34). Likewise, the trial judge ruled Applicant's statements on the way to the detention center were potentially admissible as they were not made in response to any interrogation, but he declined to fully rule on those statements at that time due to the potential issues related to relevancy. (Trial Tr. 69; 34).

Thereafter, the trial judge conducted another *in camera* hearing at defense counsel's request in regard to the admissibility of identification evidence related to the armed robbery. (Trial Tr. 45, 70; R. 10, 35). During the hearing, Ruple testified about the armed robbery, indicated he had a good opportunity to view the robber's face prior to the robbery, and noted he was only two feet away from the robber when they conversed for ten to fifteen minutes before the crime occurred. (Trial Tr. 74-75, 81; R. 39-40, 46). Ruple further noted the area where he spoke with the robbery was lit by a street light located only a few feet away. (Trial Tr. 75; R. 40). Regarding the appearance of the robber, Ruple indicated "Los" had dreadlocks, was roughly 5'9" to 5'10" tall, weighed approximately 180 pounds, and was wearing a green puffy jacket, a black t-shirt, and "silver grayish" jeans. (Trial Tr. 75-77; R. 40-42). Ruple further indicated he got a good look at the robber inside the bar over the next few hours and saw him again when "Los" pointed a gun at him during the course of the armed robbery. (Trial Tr. 78-79, 82; R. 10, 35). After that, Ruple indicated he was shown two identical black-and-white photographic lineups subsequent to the robbery by Detective Garrick, was provided with no hints or suggestions, and was able to narrow down the

robber to the second and fourth individuals depicted in the lineups with complete certainty.⁶ (Trial Tr. 83–85; R. 48–50). However, Ruple indicated he was not able to choose between the two with certainty because of the absence of color photographs and ultimately selected the second individual while writing he was only fifty percent certain on the lineup sheets. (Trial Tr. 84–86; R. 49–51). Furthermore, Ruple indicated he was completely certain Applicant was the armed robber, was experiencing recurring nightmares of Applicant's face, and would select the fourth individual depicted in the photographic lineups if he could repeat the process again. (Trial Tr. 86–87; R. 51–52).

In addition to Ruple's testimony, Detective Garrick testified during the hearing and recounted the circumstances of the photographic lineup procedure. (Trial Tr. 90; R. 55). Specifically, the officer indicated he met with Ruple three days after the armed robbery and obtained a description of the suspect from Ruple, which was consistent with Applicant's physical appearance and the clothing Applicant was wearing on the date of the incident. (Trial Tr. 90–92; R. 55–57). Detective Garrick testified he then showed two identical black-and-white photographic lineups to Ruple that contained Applicant's photograph as the fourth individual depicted.⁷ (Trial Tr. 93–95, 97; R. 58–60, 62). After that, he stated Ruple narrowed the robber down to the second and fourth individuals depicted in the lineup while ultimately selecting the second individual with only fifty percent certainty. (Trial Tr. 94–95; R. 59–60). The detective further indicated he never showed Ruple any pictures other than the ones contained in the photographic lineups and did not advise Ruple he selected the wrong individual. (Trial Tr. 95; R. 60).

⁶ Applicant was the fourth individual depicted in the photographic lineups. (Trial Tr. 95, 246; R. 60, 211).

⁷ Regarding the two identical photographic lineups, Detective Garrick indicated he prepared a second lineup so he would have one to retain in his file. (Trial Tr. 94, 97–98; R. 59, 62–63).

At the conclusion of the hearing, defense counsel generally argued the presentation of two separate photographic lineups was somehow unduly suggestive while also contending the “lineup showing demonstration” was suggestive.⁸ (Trial Tr. 99; R. 64). For those reasons, defense counsel contended both the out-of-court and in-court identifications of Applicant should be excluded. (Trial Tr. 99; R. 64). In response, the solicitor argued the identification procedure used was not suggestive and asserted it did not become so simply because two identical copies of the same photographic lineup were shown to Ruple. (Trial Tr. 99–100; R. 64–65). After considering the arguments of counsel, the trial judge ruled the identification evidence was admissible after finding no evidence was presented suggesting the lineups were prepared in a suggestive manner or shown to Ruple in a suggestive fashion. (Trial Tr. 100–01; 65–66).

Subsequently, during trial, the law enforcement officers who responded to the report of the armed robbery testified about the details of the stop of the vehicle involved in that crime, the subsequent high-speed chase that followed the stop, and their discovery of Applicant in the driver’s seat of the robber’s vehicle after it crashed into a heavily wooded area. (Trial Tr. 125–139, 142–53, 163–69, 281–85, 288–90; R. 90–104, 107–18, 128–34, 246–50, 253–55). Similarly, the medical personnel and other emergency responders involved in the case testified about their responses to the crash and the fatal injuries sustained by Clemmons through that incident. (Trial Tr. 173–83, 187–201, 231–35; R. 138–48, 152–66, 196–200). Furthermore, testimony was

⁸ Specifically, Trial Counsel argued: “It’s our position that the showing of the two separate lineups and both as far as the face lineup and the gun lineup that that is a suggestive process and we believe that they should be excluded under [Applicant]’s due process rights and the Fifth and Fourth Amendments and Article 1, Section 3 of the South Carolina Constitution, his right to a fair trial under the Sixth Amendment of the U.S. and Article 1, Section 14 of the South Carolina Constitution. Your Honor, we believe the lineup showing demonstration was suggestive and it does not meet the standard and therefore they should be excluded any in court identification of [Applicant] and/or the gun should be excluded. Thank you.” (Trial Tr. 99; R. 64).

presented establishing a book bag and a Hi-Point nine-millimeter pistol were recovered from the scene of the crash while a .22-caliber revolver was recovered from the hospital after it fell out of Applicant's clothing there.⁹ (Trial Tr. 149, 167, 169, 204–05, 222–23, 229; R. 114, 132, 134, 169–170, 187–88, 194).

In addition to the presentation of that testimony, Detective Garrick testified about his investigation into the crash and subsequent arrest of Applicant for his role in the crimes. (Trial Tr. 236, 249; R. 201, 214). During his testimony, the officer further testified over objection about the photographic lineups he showed to Ruple after the incident, and he noted Ruple selected the second photograph contained in the lineups with an expressed certainty level of fifty percent despite the fact Applicant's photograph was the fourth one depicted in those lineups. (Trial Tr. 243–48; R. 208–13). Likewise, Ruple testified about the details of the armed robbery that preceded the fatal crash before also discussing the photographic lineups presented to him after the robbery. (Trial Tr. 253–68; R. 218–33). In discussing the lineups, Ruple acknowledged he incorrectly identified the second person depicted, explained he was unable to properly distinguish between the pictures due to their lack of color, and stated he believed at the time of trial the fourth person depicted in the lineups was the robber. (Trial Tr. 266–68; R. 231–33). Moreover, without objection, he identified Applicant in the courtroom as the robber and expressed absolute certainty in his in-court identification. (Trial Tr. 269; R. 234).

Furthermore, Carlisle and Johnson, two of the Applicant's associates who were present on the night of the armed robbery and fatal crash, recounted their experiences on the night of the incident. (Trial Tr. 299, 331; R. 262, 294). Specifically, regarding that night, they both stated they

⁹ Later during trial, Ruple identified the gun recovered from the scene of the crash as the one stolen from him on the night of the incident and confirmed the serial numbers of the recovered gun matched the serial numbers of his gun. (Trial Tr. 271; R. 236).

went to a bar with Applicant, Iquawn, and Clemmons, and each of the men confirmed Applicant was the only one in their group with dreadlocks. (Trial Tr. 303–06, 333–35; R. 266–69, 296–98). Furthermore, Carlisle stated he observed Applicant snatch a bag out of another person’s car when they were all getting ready to leave the bar for the evening, Applicant began “tussling” with a man, Applicant pulled out a gun, and the other man threw up his hands in response. (Trail Tr. 310–12; R. 273–75). After that, Carlisle testified Applicant jumped into their car, he chastised Applicant for what he had done while receiving no response, they were subsequently stopped by a trooper after they went to get something to eat, and someone took off in his car during the course of the stop after he, Iquawn, and Johnson exited the vehicle. (Trial Tr. 313–19; R. 276–82). Similarly, Johnson recounted he was in the car waiting to head home from the bar when he observed Applicant, who he had seen with a black revolver earlier that evening, “tussling” with another man until that man put up his hands. (Trial Tr. 331–32, 342–43; R. 294–95, 305–06). Then, Johnson stated Applicant got into the car with a bag and appeared to put something into his pants. (Trial Tr. 342, 344; R. 305, 307). After that, Johnson indicated they went to get something to eat, they were subsequently stopped by a trooper, he was ordered out of the car along with Iquawn and Carlisle, and the car then sped off with Applicant and Clemmons still inside. (Trial Tr. 345–49; R. 308–12).

Thereafter, the State rested its case, and Applicant elected to testify in his own defense. (Trial Tr. 363–64; R. 326–27). During his testimony, Applicant acknowledged he went to the bar with Clemmons and the others on the night of the incident and claimed he observed a man attempt to trade his gun to Clemmons for Johnson’s .25-caliber pistol, which he asserted was in Clemmons’s possession. (Trial Tr. 364–68; R. 327–31). Subsequent to that, Applicant asserted he got into Carlisle’s car to go home and began watching a movie in the car. (Trial Tr. 368–69; 331–32). A few minutes later, Applicant claimed Iquawn, Clemmons, and Johnson returned to the car

with Johnson in possession of the nine-millimeter pistol that belonged to the man he encountered earlier at the bar. (Trial Tr. 369–70; R. 332–33). After that, Applicant asserted they all went to get food together, he remained in the car while the others did so, they all left the restaurant, they were subsequently stopped by a trooper, and everyone but him and Clemmons was ordered from the vehicle. (Trial Tr. 371; R. 334). At that point, Applicant claimed Clemmons stated he was not going to jail, grabbed the stolen nine-millimeter pistol, cocked it, pointed it at him, and forced him to drive away from the stop at gunpoint. (Trial Tr. 372; R. 335). Applicant insisted he then continued to drive until Clemmons grabbed the wheel, and he asserted he could not remember anything after that. (Trial Tr. 372–73; R. 335–36).

Subsequently, during cross-examination, the solicitor questioned Applicant about the firearm he was alleged to have possessed on the night of the incident, and Applicant admitted he was in possession of a .22-caliber revolver that night, asserted he carried the gun into the bar for “the protection of society,” claimed he gave it to Clemmons while inside the bar, and insisted he never got his revolver back. (Trial Tr. 384–87, 396; R. 347–50, 359). As the cross-examination continued, the solicitor asked Applicant if he remembered speaking with Detective Garrick at the hospital following the incident, and Applicant – consistent with his earlier *in camera* testimony – claimed the officer came into the hospital room and he told him he did not want to talk to him. (Trial Tr. 60–63, 411; R. 25–28; 374). The solicitor then asked Applicant whether he told the detective at the hospital he did not know anything and did not remember anything about the incident, and Applicant denied that he did while claiming he simply told the officer he did not want to speak with him. (Trial Tr. 411; R. 374). After that, the solicitor asked Applicant if he admitted to having had an opportunity to tell the detective the story he testified to during trial, and defense counsel objected while simply stating “Fifth Amendment.” (Trial Tr. 412; R. 375). The trial judge

then asked for the question to be repeated and, upon hearing the question, ruled Applicant could answer it. (Trial Tr. 412; R. 375). At that point, Applicant responded he could have told the officer his story that day but did not want to talk to him. (Trial Tr. 412, R. 375).

Thereafter, the defense rested, and Detective Garrick was called to the witness stand in reply to testify about his meeting with Applicant at the hospital. (Trial Tr. 420, 423; R. 383, 386). During his reply testimony, the detective indicated he informed Applicant of his rights when he met with him at the hospital on the date of the incident. (Trial Tr. 423; R. 386). At that point, defense counsel renewed his objection from the *in camera* hearing, and the trial judge overruled the objection. (Trial Tr. 424; R. 387). Detective Garrick then recounted he asked Applicant to tell him what happened and Applicant responded by repeatedly stating he did not know what happened and did not remember what happened. (Trial Tr. 425; R. 388).

Following the presentation of that testimony, the State again rested its case, and the trial judge conducted a charge conference to discuss his intended jury instructions with the parties. (Trial Tr. 425–26; R. 388–89). During the charge conference, the solicitor noted duress was an affirmative defense that the defendant was required to prove by a preponderance of the evidence, and the trial judge confirmed his proposed instruction included such language. (Trial Tr. 427–28; R. 390–91). The trial judge then asked defense counsel if he had any issues with the proposed instruction while noting a duress instruction suggested by defense counsel during an off-the-record discussion was covered by his proposed instruction. (Trial Tr. 428; R. 391). In response, defense counsel conceded he believed the trial judge’s proposed instruction to be a correct statement of South Carolina law while asserting he objected to that statement as burden shifting based on his belief a defendant should not “have to prove anything.” (Trial Tr. 428; R. 391). The trial judge then noted defense counsel’s objection for the record. (Trial Tr. 429; R. 392).

As the trial proceeded forward, the parties presented their closing arguments to the jury. (Trial Tr. 431–46; R. 394–409). During his closing argument, defense counsel focused the jury’s attention on the fact the State allegedly failed to present any evidence about what occurred in the car prior to the crash and called the jurors’ attention to perceived weaknesses and inconsistencies in the evidence presented. (Trial Tr. 431–35; R. 394–98). Thereafter, the solicitor used his closing argument to point out the lack of credibility in Applicant’s testimony and discuss the strength of the evidence of Applicant’s guilt. (Trial Tr. 436–46; R. 399–409). However, the solicitor made no reference whatsoever to Applicant’s failure to provide his allegedly exculpatory story to Detective Garrick prior to trial. (Trial Tr. 436–46; R. 399–409).

At the conclusion of the closing arguments, the trial judge instructed the jury on the relevant and applicable law. (Trial Tr. 447–57; R. 410–20). During his jury instructions, the trial judge explained to the jury the burden of proof was on the State, the defendant was presumed to be innocent, and the defendant was not required to prove his innocence to the jury. (Trial Tr. 448–49; R. 411–12). Additionally, the trial judge instructed the jury in regard to the elements of the indicted offenses. (Trial Tr. 452–55; R. 415–18). Specifically, in instructing the jury on the offense of failure to stop for a blue light resulting in a death, the trial judge stated:

Now, he’s charged in this case with failure to stop for a blue light resulting in death. In order to prove this crime the State must prove beyond a reasonable doubt that the defendant was driving the motor vehicle on a road, street or highway of this state; that the defendant was signaled to stop by a law enforcement vehicle by means of a siren and/or flashing light, and that the defendant did not stop. An official signal requiring a motorist to stop may be a siren or flashing lights, but both are not required. An attempt to increase speed of a vehicle or in some other manner to avoid the pursuing law enforcement vehicle when signaled by a siren and/or flashing light may be considered as evidence of failure to stop for a blue light. However, it is merely an evidentiary fact to be taken into consideration by you along with the other evidence in this case and is to be given whatever weight that you think it should receive. If

you find that the State has proved beyond a reasonable doubt that the defendant failed to stop for a blue light and his actions resulted in the death of another, that would satisfy the elements of the offense of failing to stop for a blue light resulting in death.

(Trial Tr. 452–53; R. 415–16). Furthermore, the trial judge explained to the jury duress or coercion had been raised as a defense in Applicant’s case and indicated such a defense had to be proven by a preponderance of the evidence. (Trial Tr. 455; R. 418).

Following the presentation of those instructions, the trial judge inquired of the parties if they had any objections to his jury instructions aside from defense counsel’s earlier objection to the duress instruction. (Trial Tr. 457–58; R. 420–21). In response, both defense counsel and the solicitor stated they did not have any additional objections. (Trial Tr. 457–58; R. 420–21). The jurors then began their deliberations. (Trial Tr. 458; R. 421, 425).

B. Verdict & Subsequent Proceedings

On January 28, 2015, the jury convicted Applicant as indicted. Judge Russo sentenced Applicant to consecutive terms of twenty years’ imprisonment for failure to stop for a blue light resulting in death and ten years for armed robbery.

Applicant filed a timely notice of appeal. Donald L. McCune, Jr., Esquire,¹⁰ perfected Applicant’s appeal by filing a brief with the Court of Appeals on the following issues:

- I. The Trial Judge’s Jury Instructions Improperly Placed the Burden of Proof for the Duress Defense on the [Applicant]
- II. The Trial Judge Erroneously Allowed the State to Impeach the [Applicant] with Post Miranda Silence
- III. The In-Court Identification of Pontoo was Unduly Suggestive

¹⁰ The South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Applicant on appeal. Pursuant to the terms of the 2015 Appellate Practice Project, Chief Appellate Defender Robert M. Dudek moved to appoint Mr. McCune as co-counsel for the purpose of preparing the briefs and record and arguing the case before the Court of Appeals. The Court granted the motion on October 23, 2015.

Following briefing and oral argument, the Court affirmed Applicant's convictions and sentences in an unpublished per curiam opinion. *State v. Pontoo*, 2017-UP-467 (S.C. Ct. App. filed Dec. 28, 2017). The case was remitted back to the circuit court on January 16, 2018.

III. ISSUES BEFORE THIS COURT

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

1. Ineffective assistance of trial counsel
 - a. "Trial Counsel was ineffective and failed to raise all issues"
 - b. Trial counsel "[f]ailed to properly raise and present a Miranda Rights violation"
2. Ineffective assistance of appellate counsel
3. Lack of subject matter and person jurisdiction
4. Insufficient evidence
 - a. "Victim's Death Certificate doesn't state the correct location of death"

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Trial Counsel David Mauldin failed to object to leading question regarding the location of passengers in the car (page 139 line 25 to page 140 line 5).
2. Trial Counsel David Mauldin failed to object to leading question regarding the driver having long hair (p. 145 lines 15 and 16 and 17).
3. Trial Counsel David Mauldin failed to object to a leading question regarding police vehicle getting up to 128 mph (page 153 lines 1-2).
4. Trial Counsel David Mauldin failed [ob]ject to leading question to EMS worker regarding identity of the individual in the backseat as Alexander Clemens (page 176 lines 24, 25).
5. Trial Counsel David Mauldin failed to object to hearsay and testimony regarding items not in evidence from EMS witness Amanda Sucher reading blood pressure and respiration readings from their record (page 178 line 25 to 179 line 11 and Page 179 line 5 to 8, line 20 to 22).
6. Trial Counsel David Mauldin failed to [o]bject to leading question to Michael Phi[pps] regarding "photograph you're

able to retrieve off of a media card on one of those phones” (page 218 lines 10 to 12).

7. Appellate counsel Donald McCune Jr. and Robert M. Dudek, failed to appeal judge’s decision to overrule trial counsel’s objection to admission of a pistol, States Exhibit 48, into evidence based on a lack of foundation and hearsay testimony (p.226 Lines 24-25 to p. 227 Lines 1-8).
8. Trial Counsel David Mauldin failed to object to leading question regarding “these were the pants removed from Mr. Pontoo in the hospital” (page 24 lines 6-7).
9. Trial Counsel David Mauldin failed to object to leading question regarding is that the clothing you obtained from the hospital belonging to Mr. Clemmons p. 241, line 24 and 25.
10. Appellate counsel Donald McCune Jr and Robert M. Dudek failed to appeal judge’s decision to overrule trial counsel objection to hearsay regarding statement by somebody at the hospital that clothing belonged to Mr. Clemens page 242 lines 17 to 21.
11. Trial Counsel David Mauldin failed to properly investigate an interview witnesses including Carlisle Jones, Patrick Johnson and Iquawn Jones and others.
12. Trial Counsel David Mauldin failed to object to solicitor misstating evidence by stating to the court that the defendant had identified himself in states Exhibit No. 63 (photograph), (page 418 line 5 to 8).
13. Trial counsel David Mauldin failed to [o]bject to the jury instruction that failed to include instructions regarding expert testimony due to the testimony of Dr. Janice Ross.
14. Trial counsel David Mauldin failed to [o]bject to the jury instruction for the charge of Failure to Stop for Blue Light Resulting in Death in S.C. Code Ann. Sec. 56-5-750 that failed to include the element of “in the absence of mitigating circumstances” and as a result this issue was not preserved for appellate review.
15. Trial counsel David Mauldin failed to raise the issue of the location of the victim’s death and the recording of the victim’s death in another county on the death certificate to challenge the validity of the indictment for Failure to Stop for Blue Lights Resulting in Death (2014-GS-32-01408) or to challenge the jurisdiction of the court.
16. Applicant’s trial counsel, David Mauldin, failed to properly review the evidence with applicant to prepare for trial.
17. Trial Counsel David Mauldin failed to discuss applicants sentence with him following sentencing to discuss and explain a possible motion to reconsider sentence that applicant wanted to pursue.

18. Trial Counsel David Mauldin failed to cross examine witnesses regarding inconsistencies in the evidence including the defendant's height and a black shirt that had a portion removed.

IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985);

Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410

(2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen.*” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. 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*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among

‘countless’ strategic options.” *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally

unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. 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). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in

this action incorporated by way of the State's return, this Court proceeds to the claims raised in the amended applications and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Challenge Indictments and Jurisdiction of the Court¹¹

Applicant contends Counsel Mauldin was ineffective for failing to challenge the validity of the indictment for FTSFBL and jurisdiction of the trial court because the victim's death certificate¹² shows he died in Richland County. Specifically, Applicant testified Counsel Mauldin "failed to object on a multi-crime significance" and that he was "never given the chance to be presented with a statewide grand jury." (PCR Tr. 11–12). He stated that his case could have gone differently had it been presented to a state grand jury. (PCR Tr. 12).

Counsel Mauldin testified that, based on his understanding of the law, where there is a continuing course of conduct from one county to the other, the defendant could be prosecuted in either county. (PCR Tr. 39–40). Counsel Mauldin further testified that most of the conduct giving rise to Applicant's charges occurred in Lexington County. (PCR Tr. 40).

This Court agrees with Counsel Mauldin's assessment regarding the jurisdiction of the Lexington County Court of General Sessions.¹³ While "an accused has a right to be tried in the county in which the offense allegedly was committed," our Supreme Court has held that, "[w]here some acts material to the offense, and requisite to its consummation, occur in one county, and some in another, venue is proper in either county." *State v. Perez*, 311 S.C. 542, 545, 430 S.E.2d 503,

¹¹ Claim 15

¹² The death certificate was admitted into evidence as Applicant's Exhibit #1.

¹³ This Court would note that the subject matter jurisdiction of the state grand jury extends only to certain crimes enumerated in S.C. Code Ann. § 14-7-1630(A).

504 (1993). Accordingly, Applicant's claims pertaining to Trial Counsel's failure to challenge the indictment or jurisdiction of the trial court based on the victim's place of death are **DENIED**.

B. Failure to Investigate, Interview Witnesses, and Review Evidence¹⁴

Applicant makes a series of claims alleging Trial Counsel was ineffective for failing to sufficiently investigate the circumstances of the case, interview certain witnesses, and review evidence with him. Specifically, Applicant alleges Trial Counsel was ineffective for failing to interview certain witnesses, including Carlisle Jones (Carlisle), Patrick Johnson (Patrick), and Iquawn Jones (Iquawn). This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating how a more thorough investigation, further preparation, or alternate strategy Counsel should have explored which would have helped Applicant's case. This Court finds credible and persuasive the testimony of Trial Counsel, who presented well-recalled testimony of the events leading up to Applicant's trial.

At the PCR hearing, Applicant testified Counsel Mauldin only came to see him at the jail two or three times before trial. (PCR Tr. 6–7, 12–13). According to Applicant, approximately six or seven months before trial, Counsel Mauldin told Applicant he did not want to see him anymore because they “did not see eye-to-eye.” (PCR Tr. 6–7, 13). After that, Applicant testified that Counsel Mauldin's paralegal was the only one who came to see him. (PCR Tr. 6). Applicant also testified on cross-examination that Counsel Mauldin told him that his paralegal left Applicant's trial because she felt Counsel Mauldin was not representing Applicant to his best ability. (PCR Tr. 14–15).

Applicant stated he does not think Counsel Mauldin ever hired or used a private investigator in his case. (PCR Tr. 7). Although Iquawn (Iquawn) Jones was subpoenaed, he did not

¹⁴ Claims 11 and 16

testify. (PCR Tr. 10). Applicant testified he asked Counsel Mauldin to call Iquawn to the stand, but Counsel Mauldin refused. (PCR Tr. 10–11). He further testified that Counsel Mauldin never reviewed the evidence with him and that Counsel Mauldin refused to get the video surveillance footage from the bar and plaza on the night of the incident. (PCR Tr. 17). Applicant stated that the video would have shown that Mr. Ruple was the aggressor in the armed robbery. (PCR Tr. 17).

Counsel Mauldin testified he is currently an Assistant Public Defender for the Eleventh Judicial Circuit. (PCR Tr. 20). He was appointed to represent Applicant approximately a year before his trial. (PCR Tr. 20). Counsel Mauldin testified Applicant was originally charged with murder, kidnapping, and grand larceny in addition to FTSFBL and armed robbery. (PCR Tr. 21). According to his notes, Counsel Mauldin met with Applicant on February 21, 2014 to discuss the charges and his rights; on March 12, 2014, for a bond hearing; on April 11, 2014, for a preliminary hearing; and on May 30, 2014, to review the evidence and discuss plea offers. (PCR Tr. 22). Counsel Mauldin testified the plea offer was a negotiated range of twenty to thirty years, which Applicant was not interested in. (PCR Tr. 22).

Counsel Mauldin's notes further indicate he met with Applicant on July 9, 2014, and July 25, 2014. (PCR Tr. 22). He had a phone call with Applicant on September 30, 2014. (PCR Tr. 22). He then met with Applicant on either August 2 or August 3, 2014. (PCR Tr. 22). On October 6, 2014, they had a second bond hearing. (PCR Tr. 23). On January 8, 2014, Counsel Mauldin went to visit Applicant to advise that his trial would likely be held by the end of the month. (PCR Tr. 23). He met with Applicant again on January 16, 2015, January 22, 2015, and January 23, 2015, to review evidence and other trial matters. (PCR Tr. 23). The two also met every day of the trial. Counsel Mauldin testified he felt he had enough time to meet with Applicant, review the discovery with him, and prepare for trial. (PCR Tr. 23, 25–26).

Regarding the investigation, Counsel Mauldin testified he hired a private investigator named Kyle Taylor with Southern Investigative Services. (PCR Tr. 24). Taylor spoke with various witnesses and visited the scene of the crime. (PCR Tr. 24). He also inquired about surveillance footage from the Mile High Club and from the ATM across the street from the club on the night in question. (PCR Tr. 24). He was told that it was unclear whether the surveillance footage still existed. (PCR Tr. 24).

Regarding the witnesses Applicant apparently wanted to call, Counsel Mauldin testified Taylor interviewed Iquawn, Carlisle, and Patrick. (PCR Tr. 26, 46). Carlisle and Patrick both testified for the prosecution. (PCR Tr. 26). Counsel Mauldin testified that, based on their interviews, none of these witnesses were helpful to Applicant's case or trial strategy. (PCR Tr. 26). In fact, Carlisle testified Applicant robbed the victim. (PCR Tr. 26). The other two stated they did not know an armed robbery occurred, that they had no idea how the victim's bag got in the car, and that they were tired from being up all night. (PCR Tr. 26, 55–57).

Regarding trial strategy, Counsel Mauldin testified that Applicant told him someone else must have committed the armed robbery because he was sitting in the car with Carlisle watching a movie when the other two men jumped into the car with the stolen bag. (PCR Tr. 27). Applicant further told Counsel Mauldin that he did not stop for law enforcement because Andrew Clemmons, the deceased victim, pulled a gun on Applicant during the intimal stop and told him to drive. (PCR Tr. 27). Counsel Mauldin therefore pursued a trial strategy based on the affirmative defense of duress. (PCR Tr. 27). Counsel Mauldin explained that an affirmative defense requires the defense to offer proof at trial supporting the defense. (PCR Tr. 27). Absent Applicant's testimony, Counsel Mauldin explained, he would not have been able to present the defense to the jury at all and likely would not have received a jury charge on duress. (PCR Tr. 27). However, Counsel Maudlin advised

Applicant that he would be cross-examined and possible impeached based on previous convictions. (PCR Tr. 28). Counsel Mauldin confirmed that Applicant was impeached with an assault and battery of a high and aggravated nature conviction from 2007. (PCR Tr. 28).

This Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional

judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690–91; *see id.* (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Regarding Trial Counsel’s alleged failure to investigate and interview witnesses, our Supreme Court has held that a PCR applicant must “produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence” to prevail on this type of claim. *Glover*, 318 S.C. at 498–99, 458 S.E.2d at 540 (citing *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992)); *see also Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (pure conjecture as to what a witness’s testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different). Applicant did not introduce

such testimony at the PCR hearing. Trial Counsel nonetheless testified the private investigator interviewed Iquawn, Carlisle, and Patrick, and that their testimony was not helpful to Applicant's case. Moreover, Trial Counsel was able to question Carlisle and Patrick on cross-examination.

As to Applicant's claim Trial Counsel was ineffective for failing to call Iquawn as a defense witness, Applicant cannot meet his burden where he failed to present testimony from Iquawn at the PCR hearing. Mere speculation as to what Iquawn's testimony might have been is insufficient to satisfy the Applicant's burden of showing prejudice. In a post-conviction relief action, the Applicant "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective." *Simpson v. Moore*, 367 S.C. 587, 598, 627 S.E.2d 701, 707 (2006), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Here, Applicant did not even speculate as to what Iquawn would have testified to or how it would have helped his case. *See Goodson v. United States*, 564 F.2d 1071, 1072 (4th Cir. 1977) (citations omitted) ("Absent a showing that the tactical decision of counsel was so unreasonable in light of the need for the testimony that it amounted to a deprivation of an attorney who acted within 'the range of competence demanded of attorneys in criminal cases,' " reviewing courts will not second-guess the tactics of trial lawyers). Thus, this Court finds Applicant's allegation pertaining to Trial Counsel's failure to call Iquawn as a witness is meritless.

Trial Counsel credibly testified he met with Applicant on multiple occasions prior to trial, reviewed the discovery with him, and discussed his case with him at length. This Court does not find credible Applicant's claim that Trial Counsel never reviewed the discovery with him. Applicant further failed to specify what, if anything, could have been achieved had Trial Counsel spent more time with him in consultation regarding the contents of his discovery. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must

present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief).

Accordingly, Applicant's claims pertaining to Trial Counsel's failure to sufficiently investigate the circumstances of the case, interview certain witnesses, and review evidence with him are **DENIED**.

C. Failure to Object¹⁵

Applicant next makes a series of claims alleging Trial Counsel was ineffective for failing to object to instances of leading questions from the solicitor, hearsay testimony, and the solicitor misstating evidence. This Court disagrees, and finds Applicant failed to show Trial Counsel's performance fell below an objective standard of reasonableness based on any of the allegedly objectionable instances identified by Applicant. Given the deference owed to real-time, tactically significant decisions about objections made by trial counsel, Applicant ultimately failed to demonstrate that, had Trial Counsel objected to these matters, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 689, 694.

At the PCR hearing, Counsel Mauldin testified he has been practicing criminal law since 1999, and has tried dozens of cases throughout his career. (PCR Tr. 28–29). When asked about how he generally handles objectionable questions or testimony, Counsel Mauldin explained that it depends on the case and strategy he is pursuing. (PCR Tr. 28–29). Sometimes he objects to everything he finds objectionable in order to catch the solicitor off guard; however, there are strategic decisions to consider. (PCR Tr. 29–30). For example, Counsel Mauldin explained that

¹⁵ Claims 1–6, 8–9, and 12–14.

making too many objections can run the risk of irritating the jury or making the jury believe he is trying to hide things from them.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation.” *United States v. Nguyen*, 379 F. App’x 177, 181 (3d Cir. 2010); *see Humphries v. Ozmint*, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under *Strickland*.”); *cf. Bergmann v. McCaughtry*, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel’s performance, the reviewing court will “strong[ly] presume[e] that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. *Yarborough*, 540 U.S. at 8 (internal quotation marks omitted); *cf. Higgs v. United States*, 711 F. Supp. 2d 479, 515 (D. Md. 2010) (“Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.” (citing *Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir. 2003))); *Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978) (*Strickland* standard was not developed “to promote judicial second-guessing on questions of strategy as basic as the handling of a witness”).

Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *see Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (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).

i. Leading Questions

Seven of Applicant's allegations of ineffective assistance of trial counsel are based on counsel's failure to object to instances of the solicitor asking leading questions.¹⁶ Applicant first contends Counsel Mauldin failed to object to the following exchange between the solicitor and Trooper Lee on direct examination regarding the location of the passenger in the car following the collision:

- Q. Okay. Did you mention where the passenger was located in the vehicle?
- A. The passenger was in the seat directly, it would be the number 6 and 5 seat kind of slouched over.
- Q. **So that, would be, I guess, the middle towards --**
- A. **The middle.**
- Q. **-- towards the -rear driver's side?**
- A. **Towards the middle towards the rear. More towards the middle of the car.**
- Q. **In the back seat, right?**
- A. Yes. He was in the back seat.

(Trial Tr. 139–40; R. 104–05).¹⁷

The passenger Trooper Lee and the solicitor are referring to is the victim, Andrew Clemmons. At the PCR hearing, Counsel Mauldin testified he did not think the question or testimony was particularly significant. (Plea Tr. 30–31). He further noted that Trooper Lee previously described where the drivers and passengers were seated during his initial stop. (PCR Tr. 30–31, 59–60) (Trial Tr. 132–33; R. 97–98). Counsel Mauldin testified he did not attribute any significance to where everyone was sitting at that point, particularly given his defense strategy

¹⁶ A leading question is one “which suggests to the witness the desired answer.” *State v. Tyner*, 273 S.C. 646, 653, 258 S.E.2d 559, 563 (1979).

¹⁷ The bolded portions of the testimony were specifically cited in the application.

based on duress. (PCR Tr. 31). In other words, no one was disputing the identity of the driver. Applicant later admitted during his testimony that he was driving the vehicle, which was part of Counsel Mauldin's trial strategy. (PCR Tr. 31) (Trial Tr. 371-73; R. 334-36).

On cross-examination, Counsel Mauldin was asked whether there is value in stopping the solicitor from asking leading questions on direct. (PCR Tr. 41-42). Counsel Mauldin stated that it depends on the circumstances and context of the testimony. (PCR Tr. 42). In this particular context, Counsel Mauldin explained, the solicitor was not "feeding" the testimony to the witness because he had already elicited about the location of the passengers. (PCR Tr. 42). Counsel Mauldin further testified that in his experience, objecting to leading questions is not particularly helpful because most of the time the judge will merely instruct the solicitor to rephrase the question. (PCR Tr. 44).

Applicant next contends Counsel Mauldin failed to object to the following exchange between the solicitor and Trooper Snider on direct examination regarding the driver of the vehicle having long hair:

- Q. Could you see the profile of the individuals inside the vehicle?
- A. Yes, sir. I could tell whoever was driving the vehicle had dreadlocks, not a shaved head. There's a silhouette of that. I didn't know at the time if it was a female or a male.
- Q. **Right. But you could tell the driver had long hair?**
- A. **Long hair. Yes, sir.**

(Trial Tr. 145; R. 110). Applicant similarly contends Counsel Mauldin failed to object to the following exchange between the solicitor and EMS worker, Amanda Sucher, regarding the identity of the passenger in the back of the vehicle as Andrew Clemmons:

- Q. What do you remember about the hair style of the individual in the back seat?
- A. All I remember is that it was short, kind of fuzzy. That's about it.

Q. And the individual in the back seat from your report that's Alexander Clemmons; isn't that correct?

A. Yes sir.

(Trial Tr. 176–77; R. 141–42).

At the PCR hearing, Counsel Mauldin again testified that their trial strategy was not based on misidentification of Applicant as the driver, but rather was that the victim forced Applicant to drive by holding a gun to his head. (PCR Tr. 34). Counsel Mauldin also cross-examined both Trooper Snider and Amanda Sucher about their failure to include in their respective reports that the driver of the vehicle had long hair. (Trial Tr. 160, 184; R. 125, 149). Additionally, their testimony was cumulative to multiple other witnesses who testified that the driver had long dreadlocks and the passenger had short hair. (Trial Tr. 139, 166, 191, 194–95, 200–01, 233; R. 104, 110, 156, 159–60, 165–66, 198). Neither Carlisle, Iquawn, nor Johnson had dreadlocks at that time. (Trial Tr. 283, 304, 374–77; R. 248, 267, 337–40).

Applicant next contends Counsel Mauldin failed to object to the following exchange between the solicitor and Trooper Snider regarding his patrol car reaching up to 182 miles per hour during the police chase:

Q. So based on that video it appeared -- You at one point got up to 128 miles per hour?

A. Yes sir.

(Trial Tr. 153; R. 118).

At the PCR hearing, Counsel Mauldin agreed that this was a leading question but testified that the speed of the vehicles during the police chase was not pertinent to Applicant's defense. (PCR Tr. 35, 44). Moreover, the solicitor was referring to the speed shown in the video taken from Trooper Snider's in-car recording system, which had just been played for the jury moments prior. (Trial Tr. 149–52; R. 114–17).

Applicant next contends Counsel Mauldin was ineffective for failing object to the following exchange between the solicitor and Michael Phipps, a member of the crime scene unit, who specializes in computer and digital forensics:

Q. Is that a photograph that you were able to retrieve off of a media card on one of those phones?

A. Yes, sir.

(Trial Tr. 218, R. 183). At the PCR hearing, Counsel Mauldin testified technically this was a leading question, but that this was not a situation where the solicitor was attempting to feed a witness information. (PCR Tr. 36, 45).

Applicant next contends Counsel Mauldin was ineffective for failing object to the following exchange between the solicitor and Detective Garrick:

Q. These were the pants that were removed from Mr. Pontoo in the hospital?

A. Correct.

(Trial Tr. 141, R. 206). Applicant additionally contends Counsel Mauldin was ineffective for failing object to the following exchange between the solicitor and Detective Garrick:

Q. Is that the clothing you obtained from the hospital belonging to Mr. Clemmons?

A. It is.

(Trial Tr. 141–42, R. 206–07). At the PCR hearing, Counsel Mauldin agreed that both of these exchanges contained leading questions, but he not recall any particular significance about either that would require him to object. (PCR Tr. 36–37). Additionally, he recalled the solicitor spending a significant amount of time laying the foundation to admit the clothing into evidence. (PCR Tr. 37). The record additionally reflects that Counsel Mauldin previously objected to the admission of Applicant's pants based on lack of foundation and hearsay. (Trial Tr. 239–40, R. 204–05).

Rule 611(c) of the South Carolina Rules of Evidence provides that “[l]eading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony.” However, “[t]he law gives the trial judge wide discretion when ruling on an objection to a question on the ground that it is leading.” *State v. Hale*, 284 S.C. 348, 351, 326 S.E.2d 418, 420 (Ct. App. 1985). A “case will rarely be reversed on the ground that the trial judge permitted leading questions, and then only if there has been a clear abuse of discretion resulting in prejudice to the objecting party.” *Id.*

This Court finds Trial Counsel’s failure to object to questions characterized by Applicant as leading does not constitute behavior falling below an objective standard of reasonableness. As Counsel Mauldin pointed out, had he objected to any of the aforementioned lines of questioning, such an objection likely would not have been sustained or the State would have rephrased its questions and elicited the same testimony. Many of the leading questions Applicant alleges were improper were introductory in nature and used for the purpose of developing the subject testimony on often immaterial facts unlikely to influence the jury’s decision such that they fall within the scope of Rule 611(c), SCRE. *Cf.* 1 McCormick on Evid. § 76(b) (8th ed. Jan. 2020 update) (noting that “leading questions may be used to bring out preliminary matters such as the witness’s name and occupation, or to elicit matters that are not seriously disputed”). Even if counsel was somehow deficient, this Court finds the alleged violations of Rule 611(c), SCRE, are each so miniscule as to preclude a finding of deficiency.

Applicant further failed to show how allowing the State to ask any of the allegedly leading questions actually prejudiced his case, given that many of the instances of alleged leading involved facts testified to by that witness or other witnesses. Counsel Mauldin testified he elected not to object to the allegedly leading questions because they were not harmful. *See Strickland*, 466 U.S.

at 691 (“An error by counsel, even if professionally unreasonable, does not warrant reversal of a criminal conviction if it had no effect on the judgment.”); *cf. Reynolds v. State*, 269 Ga. App. 268, 270, 603 S.E.2d 779, 782 (2004) (holding trial counsel was not ineffective by failing to object to “excessive” leading questions, because “decisions as to whether to interpose certain objections fall within the realm of trial tactics and strategy and usually provide no basis for reversal of a conviction, nor do they amount to ineffective assistance of counsel” (citations and alterations omitted)). This Court finds Applicant failed to provide with any evidence—aside from the blanket statement that he was prejudiced—to show that there is a reasonable probability that but for Trial Counsel’s failure to object to the cited leading questions, there is a reasonable probability he would have been acquitted.

Because none of the seven instances of alleged leading identified by Applicant are of a sufficiently prejudicial nature to support a grant of relief, Applicant’s request for relief by way of these allegations is **DENIED**.

ii. Hearsay Testimony

Applicant next alleges Counsel Mauldin was ineffective for failing to object to hearsay and testimony regarding items not in evidence from Amanda Sucher. Specifically, Applicant contends Counsel Mauldin should have objected to the following testimony about the victim’s blood pressure and respiration levels contained in her report:

- Q. During that time that you were with Mr. Clemmons, can you tell the jury about his blood pressure and his respirations and recordings and what they meant to you?
- A. Uhm, if you look at his record, we started off, we have a set of vital signs that, uhm, is what we consider normal in a patient which would be just anybody walking and talking with no medical problems, that’s what sets the normal range that we look at. His first set of vitals that we took, if you look, at them, his blood pressure was 98 over 74. That’s a little bit low and that can be indicative

of shock or bleeding. His pulse rate was. 86 and regular which means he had a regular heart rate. His respiratory was 8 which was low so we assisted him by putting a mask on his face and giving him additional – we let him breathe 8 times a minute, but we also would give him a few extra breaths in between.

If you look at my second set of vitals are pretty much the same, but if you look at my third set, uhm, got a blood pressure of 100 over 80.

(Trial Tr. 178–79; R. 143–44).

At the PCR hearing, Counsel Mauldin testified that none of this testimony was prejudicial to Applicant. (PCR Tr. 35). On cross-examination, he testified that he could not recall whether Sucher was reading from her own report or another EMT's report. (PCR Tr. 45). However, it appears from the record that Sucher was reading from her own report. (Trial Tr. 176, 179, 184; R. 141, 144, 149).

Rule 801(c) of the South Carolina Rules of Evidence defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” A statement is “(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.” Rule 801(a), SCRE.

This Court finds Sucher's testimony regarding the victim's blood pressure and respiration levels is not hearsay because it is not a statement nor an assertion. Rather, they are measurements Sucher recorded based on her personal observation of the readings indicated by the medical equipment. *See* 31A C.J.S. Evidence § 365 (“[T]estimony is not hearsay where it relates to what the witness himself did in reliance on, or in response to, a statement, facts upon which action was taken, personal observations, explanation of conduct, the effect of statements on the listener, the fact that something was said, or identifying what was said.”) (cited with approval in *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 30–31, 609 S.E.2d 506, 512 (2005)).

Nor did the solicitor's question eliciting this testimony "assume facts not in evidence." An issue with the form of the question occurs "when the examiner words the question so that it assumes as true matters which no witness has yet testified to, and which are disputed between the parties." McCormick, *supra*, § 7(c). The danger here is two-fold; first, if the examiner is putting the question to a friendly witness, the recitation of the assumed fact may suggest the desired answer, and second, whether the witness is friendly or hostile, the answer is likely to be misleading. *Id.*¹⁸ However, neither dangers are present if the witness has previously testified to the truth of the fact assumed in the question. *Id.*¹⁹

Here, the solicitor's question did not contain an *assumption* about the victim's blood pressure and respiration levels. Rather, he asked Sucher a direct, open-ended question as to what the measurements were, which she testified to based on her report. This Court finds Applicant failed to establish Trial Counsel was ineffective for failing to object to Sucher's testimony because it was neither hearsay nor did the solicitor's question assume facts not in evidence. Accordingly, Applicant's request for relief by way of this claim is **DENIED**.

iii. Misstatement of Evidence

Finally, Applicant alleges Counsel Mauldin was ineffective for failing to object to the solicitor allegedly misstating the evidence during his recross-examination of Applicant. In its full context, the following exchange occurred:

- Q. I'm going to show you a picture and ask you if you recognize that as being taken while you're wearing that collar brace the day or two after this, incident? Is that you?
- A. Yes, sir.

¹⁸ The classic illustration is, "When did you stop beating your wife?"

¹⁹ For example, in *State v. Marshall*, 105 Iowa 38, 74 N.W. 763, 765 (1898), the Supreme Court of Iowa held it was not error for the prosecutor to ask the witness to a burglary to name the goods that were stolen from his store because he previously testified that goods had been stolen.

MR. GRAHAM: Your Honor, the State would offer this into evidence.

THE COURT: Any objection?

MR. MAULDIN: No objection, Your Honor.

THE COURT: All right. That will be State's exhibit 63, I believe.

MR. GRAHAM: Thank you, Your Honor.

Q. State's number 63, that's the left side of your face, right?

A. Yes, sir.

Q. And you agree that this was taken a day or two after this incident happened, correct?

A. I can't agree. I can't tell you when that picture was taken.

Q. You've got your collar brace on, correct?

A. But understand, I can't tell you who took that 1 picture or when that picture was taken, sir.

Q. You don't know when this picture was taken?

A. No, sir. I never remember anyone taking no picture of me or anything like that, sir.

MR. GRAHAM: Your Honor, I would ask for the previous testimony. I think he admitted earlier that this was taken, that this was accurate for a day or two after this incident.

THE COURT: That's right. That was the testimony.

(Trial Tr. 417–18, R. 380–81). At the PCR hearing, Counsel Mauldin stated the solicitor was not misstating the evidence because, as seen above, Applicant testified just moments earlier that the photograph referenced by the solicitor was taken a day or two after the incident. (PCR Tr. 37). This Court agrees. *See Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence). Accordingly, Applicant's request for relief by way of this claim is **DENIED**.

iv. Cumulative Error

In his closing argument, PCR counsel asserted that the cumulative effect of Trial Counsel's

failure to object to the above-referenced individual instances identified by Applicant deprived him of a fair trial. (PCR Tr. 73). The State replied that our appellate courts have never recognized the cumulative error doctrine, citing our Supreme Court's opinion in *Green v. State*, 351 S.C. 184, 569 S.E.2d 318 (2002). (PCR Tr. 74). Rather, each issue must be considered individually.

In *Green*, our Supreme Court noted that [w]hether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina. *Id.* at 197, 569 S.E.2d at 324. The Court nonetheless recognized that “the threshold to asking the cumulative prejudicial question is to first find multiple errors.” *Id.* at 197, 569 S.E.2d at 325. Here, having found that none of the allegedly objectionable issues raised by Applicant amounted to error, multiple errors do not exist in this case to form any cumulative prejudicial effect. *See Fisher v. Angelone*, 163 F.3d 835, 852–853 (1998) (holding that various claims of ineffective assistance of counsel, like claims of trial error, would not entitle petitioner to relief because a cumulative error analysis would apply only to the effect of those matters actually determined to be constitutional error and not the cumulative effect of all matters alleged or deemed deficient); *Lorenzen v. State*, 376 S.C. 521, 535, 657 S.E.2d 771, 779 (2008) (holding that where none of the errors alleged by the PCR applicant were meritorious, the alleged errors did not have the cumulative effect of denying the applicant of effective legal representation to the extent that prejudice was presumed), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Accordingly, Applicant's allegation of ineffective assistance of Trial Counsel based on cumulative error is **DENIED**.

D. Failure to Adequately Cross-Examine Witnesses²⁰

Applicant next contends Counsel was ineffective for failing to cross-examine witnesses

²⁰ Claim 18

about inconsistencies in the evidence pertaining to Applicant's height and black shirt. This Court disagrees, and finds Applicant failed to overcome *Strickland*'s strong presumption that Trial Counsel's cross-examination fell within the wide range of reasonable professional assistance.

At trial, photographs of Applicant's light-colored jeans (State's Exhibit #49) and black t-shirt (State's Exhibit #50) were introduced through Detective Garrick, who collected these items from a bag in Applicant's hospital room. (Trial Tr. 239–41). Clemmons, however, was in surgery at the time Detective Garrick arrived at the hospital. (Trial Tr. 242–43). Hospital staff gave Detective Garrick Clemmons' clothing, which included a white, green, and brown strip Polo shirt; a black or gray t-shirt; and dark blue jeans. (Trial Tr. 242–43).

At the PCR hearing, Applicant alleged Counsel Mauldin failed to challenge or cross-examine witnesses regarding the black t-shirt (State's Exhibit #50) that was identified as Applicant based on Garrick's testimony he collected the shirt from Applicant's hospital room. (Trial Tr. 241) (PCR Tr. 7–8). Applicant stated that Jonathan Ruple testified that the person who robbed him was wearing a black shirt with designs on it rather than an all-black shirt. (PCR Tr. 7–8). However, when he was extracted from the car following the accident, Applicant explained that EMS "cut the whole inside of the front of the shirt so as to look like a whole black shirt, so the front of the shirt was never, like, presented to the Court. So therefore, the Court actually looked at it as being an all-black shirt." (PCR Tr. 8).

Counsel Mauldin testified at the PCR hearing that he did not recall anything specifically about a black shirt versus a black shirt with designs on it. (PCR Tr. 25). However, he pointed out that he argued during closing that neither a Rastafarian hat nor a green puffy jacket were ever recovered. (PCR Tr. 25) (Trial Tri. 431–32). The only green jacket found belonged to Carlisle and the only puffy jacket found belonged to Iquawn. (PCR Tr. 25) (Trial Tri. 431–32).

This Court finds Applicant failed to establish Trial Counsel's cross-examination was ineffective regarding alleged inconsistencies in the evidence pertaining to the black t-shirt. Contrary to Applicant's assertion, Ruple testified at trial the man who robbed him was wearing a black t-shirt under a green puffy jacket and "silver grayish" jeans. (Trial Tr. 74–77; R. 39–42). He did not mention any design on the front of the shirt. Ruple testified the man accompanying Applicant—Clemmons—was wearing a green striped shirt and Rastafarian-style hat. (Trial Tr. 77–78). Rather, Applicant testified at trial that he was wearing a black shirt with a red and silver design on the night of the incident. (Trial Tr. 405). When asked on cross-examination if he recognized the black t-shirt Garrick collected from his hospital room, Applicant stated at first that he did not recognize it. (Trial Tr. 404–05). However, he then stated he could not tell if the shirt was his because part of it was cut. (Trial Tr. 405).

This Court further finds Applicant's cross-examination of Ruple regarding the perpetrator's height fell below an objective standard of reasonableness. At trial, Ruple testified the man who robbed him had shoulder-length dreadlocks, was roughly 5'9" to 5'10" tall, and weighed approximately 180 pounds (Trial Tr. 74–77; R. 39–42). Counsel Mauldin testified he cross-examined Ruple that he told the police at one point that the robber was 5'5" and another time stated the robber was 5'8." (PCR Tr. 53) (Trial Tr. 88–89). Counsel Mauldin further cross-examined Ruple about other discrepancies in his description of the man who robbed him. (PCR Tr. 53) (Trial Tr. 88–89).

Here, Applicant failed to allege what further questions Counsel Mauldin should have asked and to whom he should have asked them on cross-examination. *See Willis v. United States*, 87 F.3d 1004, 1006 (8th Cir. 1996) ("In hindsight, there are few, if any, cross-examinations that could not be improved upon. If that were the standard of constitutional effectiveness, few would be the

counsel whose performance would pass muster.”). Counsel is not required to raise every conceivable issue or pursue every avenue of inquiry upon its opportunity to examine a witness; “the proper measure of counsel’s performance is whether he has provided representation within the range of competence required by attorneys in criminal cases.” *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (addressing claim of deficient performance during cross-examination and affirming grant of PCR). Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

E. Failure to Request Jury Instruction

Applicant next contends Trial Counsel was ineffective for (1) failure to request a jury charge on expert witnesses and (2) failing to request the judge include the element “in the absence of mitigating circumstances” in his charge on failure to stop for a blue light resulting in death. This Court disagrees, and finds the jury was properly instructed on the means of analysis appropriate for the evidence presented in this case and applicable law; thus, no deficient performance or prejudice flows from counsel’s alleged omissions.

i. Expert Witness

At the PCR hearing, Counsel Mauldin testified that technically he technically should have requested a jury instruction on expert testimony because Dr. Ross testified. (PCR Tr. 38). However, he stated there was no dispute that an individual died or the manner of death. (PCR Tr. 38). Nor was it relevant to Applicant’s defense. (PCR Tr. 38). Additionally, the solicitor raised the issue during the charge conference, and the trial judge agreed it was not necessary. (Trial Tr. 426).

The purpose of a trial judge’s jury instructions is “to enlighten the jury and to aid it in arriving at a correct verdict.” *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). When instructing a jury on the law, a trial judge is required to charge only the current and correct

law of South Carolina. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003). In doing so, a trial judge is only required to instruct the jury on the substance of the law and does not have to use any particular verbiage. *State v. Burkhardt*, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). A trial judge's jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. *State v. Foust*, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); *see State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

This Court finds Applicant failed to establish Trial Counsel's failure to request a jury charge on expert witnesses constituted deficient performance. Even had the judge charged the jury on expert witnesses, Applicant failed to show the absence of the charge "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

ii. Failure to Stop for a Blue Light Resulting in Death

Applicant contends Counsel was ineffective for failing to request the judge include the language, "in the absence of mitigating circumstances," in his charge on failure to stop for a blue light resulting in death. S.C. Code Ann. § 56-5-750(A) provides that:

In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light.

(emphasis added). At the PCR hearing, Counsel Mauldin admitted that he certainly could have requested the judge use the language, "in the absence of mitigating circumstances." (PCR Tr. 38–39). However, he explained that the duress charge itself is an affirmative defense that would obviously constitute mitigating circumstances. (PCR Tr. 39). This Court agrees with Counsel

Mauldin's assessment, and rejects Applicant's argument that he is entitled to relief merely because this particular issue was not preserved for appellate review.

Assuming "in the absence of mitigating circumstances" constitutes an "element,"²¹ of the offense of failure to stop for a blue light resulting in death as Applicant alleges, it is immaterial in the context of a duress defense. "Duress excuses the crime but does not negate any element of the offense." *State v. New*, 371 S.C. 523, 526, 640 S.E.2d 871, 873 (2007); *accord. Dixon v. United States*, 548 U.S. 1, 6 (2006) (holding that the prosecution need not bear the burden disproving duress beyond a reasonable doubt because "the existence of duress normally does not controvert any of the elements of the offense itself"); *see, e.g., State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993) (duress does not negate element of malice in murder charge); *State v. Robinson*, 294 S.C. 120, 363 S.E.2d 104 (1987) (duress envisions a third person compelling another to commit a crime). Rather, it allows the defendant to "avoid liability . . . because coercive conditions or necessity negates a conclusion of guilt even though the necessary *mens rea* was present." *Dixon*, 548 U.S. at 7 (quoting *United States v. Bailey*, 444 U.S. 394, 402 (1980)).

Viewing the jury instruction in the context of the entire case, this Court finds Applicant failed to show Trial Counsel was constitutionally ineffective for failing to request the trial judge include the "mitigating circumstances" language in his charge on failure to stop for a blue light resulting in death. *See Fitzgerald v. Thompson*, 943 F.2d 463, 469 (4th Cir. 1991) (explaining that,

²¹ This Court would note that "in the absence of mitigating circumstances" appears to be a proviso creating an exception to the offense. *See Cain v. S.C. Pub. Serv. Auth.*, 222 S.C. 200, 213, 72 S.E.2d 177, 183 (1952) ("The natural and appropriate office of a proviso is to modify the operation of that part of the statute immediately preceding the proviso, or to restrain or qualify the generality of the language that it follows." (citation omitted)); *see also State v. Clarke*, 302 S.C. 423, 425–26, 396 S.E.2d 827, 827–28 (1990) ("The general rule, when dealing with statutory crimes to which there are exceptions, is that the defendant 'has the burden of excusing or justifying his act; and hence the burden may be on him to bring himself within an exception in the statute . . .'" (citation omitted)).

in evaluating whether actual prejudice flowed from an attorney's failure to object to the instruction, "[i]t is important . . . to consider the challenged instruction in light of other jury instructions" and in the context of the entire case) (citing *Boyde v. California*, 494 U.S. 370 (1990)). Even had Trial Counsel requested the language be included in the charge, this Court finds no prejudice resulted as a matter of law because the jury was properly instructed on the affirmative defense of duress as it related to the offense of failure to stop for a blue light resulting in a death consistent with the relevant and applicable South Carolina law. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

F. Failure to Discuss Sentence and Motion to Reconsider²²

Applicant asserts Trial Counsel was ineffective for failing to discuss Applicant's sentence with him and "failing to explain a possible motion to reconsider sentence that [A]pplicant wanted to pursue." At the PCR hearing, Applicant was asked whether he asked Counsel Mauldin about a motion to reconsider the sentence. Applicant testified:

Yes. I asked -- I asked. I -- me and my mother, we asked why was it ran consecutive and can I do anything that can eliminate me having to do a consecutive sentence. And he never responded to me. He just looked at me and my mother and walked out of the courtroom. He never gave us the opportunity to fill out anything or to go in front of the judge and ask for a reconsideration. We were never afforded the opportunity.

(PCR Tr. 9).

This Court finds credible Counsel Mauldin's testimony that he spoke with Applicant after trial and advised him that he would serve 85% of his thirty-year sentence. (PCR Tr. 40). Counsel Mauldin testified he did not recall Applicant asking him about any kind of motion to reconsider the sentence. (PCR Tr. 40). On cross-examination, Counsel Mauldin testified he generally does not

²² Claim 17

discuss a motion to reconsider the sentence with his clients unless he has uncovered factors or facts the judge did not hear during sentencing. (PCR Tr. 40, 58–59).

This Court does not find credible Applicant's claim Counsel Mauldin never discussed his sentence with him. This Court further finds Applicant failed to establish Counsel Mauldin's failure to discuss a motion to reconsider the sentence with him constituted ineffective assistance of counsel. Applicant failed to allege any such factors or facts upon which Counsel Mauldin could have based a motion to reconsider Applicant's sentence.

Accordingly, Applicant's claims pertaining to sentencing and Trial Counsel's post-trial performance are **DENIED**.

G. Failure to Raise Issues on Appeal²³

Finally, Applicant alleges Appellate Counsel was ineffective for failing to argue on appeal that the (1) the trial court erred in admitting the .22 caliber pistol into evidence²⁴ and (2) the trial

²³ Claim 7 and 10

²⁴ At trial, Counsel Mauldin objected to the admission of the .22 caliber pistol into evidence based on lack of foundation and hearsay. (Trial Tr. 224–27; R. 189–92). The State introduced the pistol into evidence through Xavier Perdue, the hospital security guard on duty at the time Applicant was brought in. (Trial Tr. 223–24; R. 188–89). Perdue testified that anytime a patient comes into the emergency room with a gunshot wound, he or another security guard stays in the trauma room where the patient is being treated to ensure the safety of the patient and staff. (Trial Tr. 222; R. 187). Perdue testified he was in the trauma room at Palmetto Richland where hospital staff were tending to Applicant's injuries. (Trial Tr. 222; R. 187). He testified that he observed a weapon fell on the floor while the staff were removing Applicant's clothing. (Trial Tr. 222–23; R. 187–88). He stated that the staff immediately stepped back to allow him to retrieve and secure the weapon. (Trial Tr. 223; R. 188). Perdue then took the weapon to the security office, wrote down the patient information, and placed it into the safe. (Trial Tr. 223, 229; R. 188, 194). Later that night, he turned it over to Detective Garrick. (Trial Tr. 223; R. 188). Counsel Mauldin objected based on lack of foundation because Perdue did not specifically remember Applicant. (Trial Tr. 224; R. 189). Rather, Perdue obtained Applicant's information through hospital records that included Applicant's name and assigned patient number. (Trial Tr. 226; R. 191). Counsel Mauldin therefore argued the foundation was based on hearsay. (Trial Tr. 226–27; R. 191–92). The trial judge overruled Counsel Mauldin's objection, finding the patient admission form and records were sufficiently reliable to connect Applicant to the recorded patient number. (Trial Tr. 227; R. 192).

court erred in admitting Clemmons' clothing into evidence.²⁵ This Court disagrees, and finds Applicant failed to show that either of these issues were "clearly stronger" than the three Appellate Counsel raised on appeal. *Smith v. Robbins*, 528 U.S. 259, 288 (2000).

At the PCR hearing, Counsel McCune testified he carefully reviewed the transcript several times; at first to gain familiarity with the facts of the case and then to carefully analyze all objections. (PCR Tr. 67). He then triaged what he believed were the most meritorious issues and began drafting his brief and researching applicable case law. (PCR Tr. 67). Counsel McCune recalled speaking with Counsel Mauldin; however, Counsel Mauldin did not report any issues in particular that stuck out to him at trial. (PCR Tr. 67). Based on his research and review of the record, Counsel McCune testified he ultimately argued the trial court erred by (1) giving jury instructions that shifted the burden of proof, (2) allowing the State to impeach Applicant with his post-*Miranda* silence, and (3) permitting an in-court identification process that was unduly prejudicial. (PCR Tr. 67-68). Following briefing, Counsel McCune recalled representing Applicant in an oral argument before the Court of Appeals. (PCR Tr. 68). However, Applicant's convictions were ultimately affirmed. (PCR Tr. 70).

Counsel McCune testified he considered raising both issues Applicant alleges he should have argued on appeal. (PCR Tr. 69). However, he believed both issues could be easily cured, and

On cross-examination, Perdue admitted that he did not specifically remember the identity of the patient aside from the hospital records he reviewed. (Trial Tr. 230; R. 195).

²⁵ At trial, Counsel Mauldin objected to the admission of Clemmons' clothing based on lack of foundation and hearsay. (Trial Tr. 241-42; R. 206-07). The State introduced the clothing into evidence through the testimony of Detective Garrick, who testified hospital staff gave him Clemmons' clothing. (Trial Tr. 241-43; R. 206-08). Clemmons' was in surgery at the time, and therefore did not have an assigned room like Applicant did. (Trial Tr. 242; R. 207). Rather, hospital staff collected his clothing from the floor of the trauma room he was being treated before he was rushed into surgery. (Trial Tr. 242; R. 207). The trial judge overruled Counsel Mauldin's hearsay objection. (Trial Tr. 242; R. 207).

at best would have amounted to harmless error. (PCR Tr. 69). Specifically regarding the admission of the pistol, he testified any issue could have easily been cured with the testimony of the custodian of records. (PCR Tr. 69). Moreover, multiple people were in the trauma room and observed the pistol fall out of Applicant's clothing and onto the floor. (PCR Tr. 69). Counsel McCune similarly explained that he did not raise the issue regarding Clemmons' clothing because he believed there would be adequate records to establish the clothing belonged to Clemmons. (PCR Tr. 69–70).

In applying *Strickland* to claims of ineffective assistance of appellate counsel, reviewing courts must accord appellate counsel the “presumption that he decided which issues were most likely to afford relief on appeal. A decision with respect to an appeal is entitled to the same presumption that protects sound trial strategy.” *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993). Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Robbins*, 528 U.S. at 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). To prove prejudice, the applicant must demonstrate that, “but for counsel’s errors, there is a reasonable probability he would have prevailed on appeal.” *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Particularly in light of the broad discretion afforded to the trial court on the admissibility of evidence,²⁶ this Court finds Applicant failed to establish a reasonable probability that his convictions would have been reversed had Appellate Counsel raised either the issue regarding the admissibility of the .22 or of the admissibility of Clemmons' clothing. See *Gilchrist v. State*, 364 S.C. 173, 179, 612 S.E.2d 702, 705 (2005) (holding appellate counsel was not ineffective for

²⁶ “The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court,” and will not be reversed absent a “manifest abuse of discretion accompanied by probable prejudice.” *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* at 429–30, 632 S.E.2d at 848.

failing to argue an issue on appeal because the issue did not amount to reversible error); *Bennett v. State*, 383 S.C. 303, 309–10, 680 S.E.2d 273, 276 (2009) (holding the PCR court erred in finding appellate counsel ineffective for failing to brief an issue because even if appellate counsel’s performance was deficient, such performance did not prejudice the petitioner); *cf. Anderson*, 354 S.C. at 436, 581 S.E.2d at 836 (“Anderson, unable to prove the inadmissibility of the evidence, would not have prevailed on appeal to this Court. He is, therefore, unable to prove prejudice.”).

Neither item of evidence were necessary to prove Applicant’s guilt for either crime. *See Hill v. State*, 415 S.C. 421, 433, 782 S.E.2d 414, 420 (Ct. App. 2016) (finding applicant was not prejudiced appellate counsel’s failure to raise directed verdict issue on appeal where “a reasonable probability of a different outcome does not exist because Petitioner would not have been entitled to a reversal; that is, the State provided independent evidence to corroborate Petitioner’s statements about the murders.”). Thus, Applicant cannot show Appellate Counsel’s determination that the trial court’s admissibility of these items amounted to reversible error was unreasonable under prevailing professional norms.

Although Appellate Counsel testified these issues were preserved, he articulated specific reasons why he did not raise these issues. *See Thrift v. State*, 302 S.C. 535, 539–40, 397 S.E.2d 523, 526 (1990) (holding that appellate counsel’s testimony that she reviewed the issue petitioner requested that she raise on appeal and consciously decided not to brief the issue clearly supported the PCR court’s finding that appellate counsel was not ineffective); *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996) (emphasizing that where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective); *see also Thrift*, 302 S.C. at 539, 397 S.E.2d at 526 (“[A]ppellate counsel is not required to raise every

nonfrivolous issue that is presented by the record.”); *see also Jones v. Barnes*, 463 U.S. 745, 752 (1983) (“For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy.”).

This Court finds Applicant failed to demonstrate that either of these issues “were more promising or had any more merit than the issues appellate counsel chose to raise on appeal.” *Hill v. State*, 415 S.C. 421, 432, 782 S.E.2d 414, 420 (Ct. App. 2016) (citing *Jones*, 463 U.S. at 752–53 (noting the importance of appellate counsel selecting the most promising issues for appellate review, especially when oral arguments are limited by time restrictions)); *see Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (“In a PCR proceeding, the burden is on the applicant to prove the allegations in his application.”). Accordingly, Applicant’s claims pertaining to Appellate Counsel’s allegedly ineffective performance are **DENIED**.

VI. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland* and Rule 71.1, SCRCP. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based

on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 22 day of September, 2021.



COURTNEY CLYBURN POPE
Presiding Circuit Court Judge
Eleventh Judicial Circuit



_____, South Carolina

FILED

STATE OF SOUTH CAROLINA 2021 OCT 11 AM 9:37 IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
 CLERK OF COURT
 LEXINGTON SC

Raphael L. Pontoo, #362840,

Case No. 2018-CP-32-4205

Applicant,

v.

CERTIFICATE OF SERVICE BY MAILING

State of South Carolina,

Respondent.

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 **Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ola A. Johnson
Ola A. Johnson, Attorney at Law
PO Box 549
Lexington, SC 29071

Dated this 28th day of September, 2021.


 Hannah Bradham
 Legal Assistant for Respondent

WITNESSES

S.C. Highway Patrol Headquarters

J G Snider

Law Enforcement Case #: 14001334

DSG

ARREST WARRANT NUMBER

2014A3210200152

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6/9/14

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

01/28/15

DOCKET NO. 2014GS3201408

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE

vs.

Raphael Lamarr Pontoo

CDR #: 2398

Indictment for

Failure to stop for blue light result death

§ 56-05-0750(C)(2)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.O.P., G.S. & F.C.

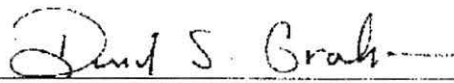
STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Failure to stop for blue light result death
 § 56-05-0750(C)(2)

At a Court of General Sessions, convened on May 2014, the Grand Jurors of Lexington County present upon their oath:

That **Raphael Lamarr Pontoo** did in Lexington County, South Carolina on or about January 24, 2014 willfully, knowingly and unlawfully fail to stop a motor vehicle, while driving said motor vehicle on a road, street or highway of this State when J G Snider a law enforcement officer with the SC Highway Patrol signaled and sounded his siren and/or turned on his flashing blue light, and when driving he did perform an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle that resulted in the death of Alexzander Clemons In violation of § 56-5-750 (C) (2), Code of Laws of South Carolina, 1976, as amended

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


 DEPUTY SOLICITOR

A TRUE COPY


 Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.Raphael Lamarr Pontoo

AKA:

Race: Black Sex: M Age: 21DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] Lawana DrCity, State, Zip: Gloversville, SC 29828-2015DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Failure to stop for a blue light, death resultsINDICTMENT/CASE#: 2014GS3201408A/W#: 2014A3210200152Date of Offense: 1/24/2014S.C. Code § : 56-05-0750(C)(2)CDR Code #: 2398

SENTENCE SHEET

0 - 25 years☐ CONVICTED OF or ☐ PLEADSin violation of § 56-05-0750(C)(2) of the S.C. Code of Laws, bearing CDR Code # 2398☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor1/6/50
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-65-32-1409
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit for 364 days time served.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (DUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL \$ 130

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2141Sentence Date: 1-28-2015

A TRUE COPY

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

Lex. Co. C.R.C.P., G.S. & E.C.

WITNESSES

Lexington County Sheriffs Department

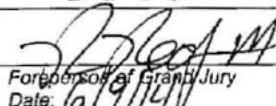
Bryan Todd Garrick

Law Enforcement Case #: 14001334

DSG

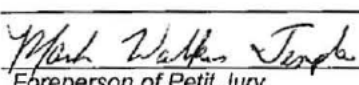
ARREST WARRANT NUMBER

2014A3210200151

ACTION OF GRAND JURY
Foreperson of Grand Jury
Date: 6/19/14

VERDICT

GUILTY


Foreperson of Petit Jury
Date: 01/28/15DOCKET NO. 2014GS3201409**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE

vs.

Raphael Lamarr Pontoo

CDR #: 0139

Indictment forArmed Robbery, robbery while armed with
a deadly weapon

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR
A TRUE COPY

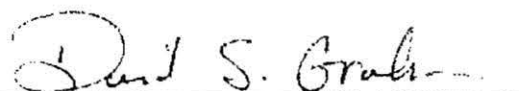
Lex. Co. O.C.C.R., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Armed Robbery, robbery while armed with a
COUNTY OF LEXINGTON	)	deadly weapon
	)	
		§ 16-11-0330(A)

At a Court of General Sessions, convened on May 2014, the Grand Jurors of Lexington County present upon their oath:

That **Raphael Lamarr Pontoo** did in Lexington County, South Carolina on or about January 24, 2014 knowingly and willfully while armed with a deadly weapon and/or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed, to wit: a .22 caliber pistol did feloniously take from the person or presence of Jonathan Ruple, by means of force, threats or intimidation goods or monies being described as follows: \$200.00 in US currency and/or a 9mm pistol and/or clothing with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

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


DEPUTY SOLICITOR

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Raphael Lamarr Pontoo

AKA:

Race: Black Sex: M Age: 21DOB: [REDACTED] SS#: [REDACTED]Address: Lawana DrCity, State, Zip: Gloversville, SC 29828-2015DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or 1.cwd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Dan S. Gish
Solicitor11650
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 ~~days/months/years~~ ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code 2014-65-32-1408 § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for 364 days Time Served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL		\$130

Clerk of Court/Deputy Clerk

Court Reporter: [REDACTED]

SCCA/2014-03/2014

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3201409A/W#: 2014A3210200151Date of Offense: 1/24/2014S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

10-30-2015☐ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or 1.cwd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Dan S. Gish
Solicitor11650
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 ~~days/months/years~~ ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code 2014-65-32-1408 § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for 364 days Time Served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
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§ 56-5-2995 (DUI Assessment)	\$12	\$
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§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL		\$130

Clerk of Court/Deputy Clerk

Court Reporter: [REDACTED]

SCCA/2014-03/2014

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk
during probation

Presiding Judge

Judge Code: 2141Sentence Date: 1-28-2015

A TRUE COPY

Clerk of Court/Deputy Clerk

Court Reporter: [REDACTED]

SCCA/2014-03/2014

Lex. Co. C.C.C.P., G.S. & E.C.