No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

COREY BLAINE COGGINS, Petitioner

Vs.

MURRAY TATUM, Warden, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF GEORGIA, CASE 20H0188

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

COREY BLAINE COGGINS
#1127482
DODGE STATE PRISON
2971 OLD BETHEL ROAD
CHESTER, GEORGIA 31012

INDEX TO APPENDICES

APPENDIX A

SUPREME COURT OF GEORGIA
Case No. S20H0188

February 7, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

COREY COGGINS v. MURRAY TATUM, WARDEN

Upon consideration of the Motion for Reconsideration, it is ordered that it be hereby denied. Upon consideration of the Motion for Remittitur, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

APPENDIX B

SUPREME COURT OF GEORGIA
Case No. S20H0188

January 10, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

COREY COGGINS v. MURRAY TATUM, WARDEN.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

All the Justices concur.

Trial Court Case No. 17HC-0443

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

APPENDIX B

IN THE SUPERIOR COURT OF DODGE COUNTY
STATE OF GEORGIA

COREY BLAINE COGGINS,)
GDC # 1127482)
)
Petitioner,)
) Habeas Action File No. 17HC-0443
v.)
)
MURRAY TATUM, Warden,)
)
Respondent.)

FINAL ORDER

Corey Coggins ("Petitioner") filed an Application for Writ of Habeas Corpus ("Writ") on July 1, 2014. At the time of filing, Petitioner was a state prisoner incarcerated in Macon State Prison located in Macon County, Georgia. The Court, as a preliminary finding, determines that Petitioner's Writ was timely filed in the Superior Court of Macon County within the provisions of O.C.G.A. § 9-14-42 (c) and was filed on the appropriate, required Administrative Office of the Courts ("A.O.C.") forms and the allegations therein have been verified. On October 20, 2014, upon Petitioner's transfer to Hancock State Prison located in Hancock County, Georgia, Petitioner's Writ was transferred to the Superior Court of Hancock County. On April 26, 2017, upon Petitioner's transfer to Dodge State Prison located in Dodge County, Georgia, Petitioner's Writ was transferred to the Superior Court of Dodge County. Venue and jurisdiction are proper in the Superior Court of Dodge County under O.C.G.A. § 9-14-43. Legal service was perfected on the Warden of Dodge State Prison on April 27, 2017. Based on the foregoing findings, the Court has jurisdiction over the parties and subject matter to adjudicate the allegations set out in Petitioner's Writ. An evidentiary hearing ("Hearing") was held on December 4, 2018 in Dodge County, Georgia. After reviewing Petitioner's Writ, the entire record of the case, and applicable law, the Court makes the following findings:

PROCEDURAL HISTORY

Petitioner and Barry Keith Tabor, Jr., ("Tabor") were charged with Malice Murder (O.C.G.A. § 16-5-1 (a)) and Felony Murder (O.C.G.A. §16-5-1 (c)) of Mack Smith ("the victim"). (Transcript from Habeas Corpus Evidentiary Hearing, hereinafter "HT," 141-143).

Initially, beginning on March 20, 2006, Petitioner and Tabor were tried together before a Columbia County jury. (HT 268). However, prior to the conclusion of the presentation of the evidence in the State's case, the district attorney, outside of the presence of the jury, moved for an order of nolle pros with regard to Tabor. (HT 751). The State's motion was granted, the trial court entered an order of nolle pros as to Tabor, and Petitioner was left as the sole defendant. (HT 755). On March 23, 2006, the jury returned a verdict of guilty as to both counts of the indictment against Petitioner. (HT 168). Petitioner was sentenced to life imprisonment for Malice Murder and the Felony Murder conviction was vacated by operation of law. (HT 169).

David Weber ("trial counsel") was appointed to represent Petitioner at trial. (HT 170). Peter Johnson ("appellate counsel") was appointed to represent Petitioner on his motion for new trial and appeal. (HT 139). On April 23, 2006, trial counsel filed a preliminary Motion for New Trial. (HT 171). On January 31, 2012, the Superior Court of Columbia County entered an Order denying Petitioner's Motion for New Trial. (HT 173). Following the grant of a motion to allow an out of time appeal, appellate counsel filed a Notice of Appeal on March 30, 2012. (HT 135-137). On October 21, 2013, the Supreme Court of Georgia affirmed Petitioner's conviction and sentence. (HT 1008-1013).

On April 24, 2018, Petitioner filed an Amended and Recast Petition for Writ of Habeas Corpus alleging that Petitioner has been denied due process of law due to the use of perjured testimony and the inordinate amount of time that has transpired between his conviction and the appeal; that the State failed to reveal an implied deal in violation of *Brady* and *Giglio*; and various

instances of ineffective assistance of trial counsel and appellate counsel, including that appellate counsel had a conflict of interest.

At the Hearing, appellate counsel, Petitioner, and Amy Gay ("Amy") testified and were subject to cross-examination, and documentary evidence was admitted. On September 11, 2018, Petitioner filed a "Brief in Support of Amended and Recast Petition for Habeas Corpus." ("9/11/2018 Brief"). On January 3, 2019, Petitioner filed a "Supplemental Brief in Support of Petition for Writ of Habeas Corpus." ("1/3/2019 Brief"). On June 7, 2019, after being served with the transcript of the Hearing, Petitioner filed a "Brief in Support of Petition for Habeas Corpus Relief." ("6/7/2019 Brief").

DUE PROCESS

Petitioner alleges that he was denied due process of law in the following two ways: (1) his conviction was caused by the use of perjured testimony; and (2) an inordinate amount of time passed between his conviction and his appeal.

1. Perjured Testimony

Petitioner alleges he has been denied due process of law in that his conviction was caused by the use of perjured testimony. Specifically, Petitioner contends the testimony of Timothy Osborne ("Osborne") and Michael Robinson ("Robinson"), about jailhouse confessions made by Petitioner, was fabricated.

The record shows, and Petitioner concedes, appellate counsel raised the following issues on appeal: (1) the evidence was of insufficient weight to sustain the verdict; (2) the trial court erred in allowing the prosecution to improperly bolster a witness's credibility with the introduction of a prior consistent statement; (3) the trial court violated the prohibition against continuing witness evidence by acceding to the jury's request to review the correspondence written by state witnesses; (4) the trial court's charge on homicide precluded the jury from giving fair consideration to a verdict of the lesser offense of voluntary manslaughter; and (5) the State procured perjured

testimony. (HT 108). As to the procurement of perjured testimony, the Supreme Court of Georgia found Petitioner "made no showing that any perjury actually occurred at trial" and, thus, held that Petitioner "did not establish that the State knowingly used perjured testimony." (HT 1012-1013). "The law is well-established that 'any issue raised and ruled upon in the petitioner's direct appeal may not be reasserted in habeas corpus proceedings.'" *Schofield v. Meders*, 280 Ga. 865, 865 (2006) (quoting *Gaither v. Gibby*, 267 Ga. 96, 97 (1996)). To succeed on a due process claim based on the purported false testimony of a government witness, the defendant must establish that the witness committed perjury. *Daniels v. State*, A18A1865, 2019 WL 1090694 (March 8, 2019). The Supreme Court of Georgia ruled that Petitioner "made no showing that any perjury actually occurred at trial." (HT 1012). Thus, the underlying issue that Petitioner must establish to succeed on his due process claim has been ruled upon by the Supreme Court of Georgia. As Petitioner cannot reassert any issue already ruled upon in his direct appeal, Petitioner's due process claim as to perjured testimony fails. *Schofield*, 280 Ga. at 865.

Accordingly, this allegation provides no basis for relief.

2. *Time Between Conviction and Appeal*

Petitioner alleges he has been denied due process of law in that an inordinate amount of time passed between his conviction and his appeal. In evaluating a constitutional speedy appeal claim, the following "modified *Barker* factors" must be considered: "length of the delay, reason for the delay, defendant's assertion of the right, and prejudice, i.e., whether the delay prejudiced the defendant's ability to assert his arguments on appeal and, if so, whether the delay prejudiced the defendant's defenses in the event of a retrial or resentencing." *Lord v. State*, 304 Ga. 532, 542 (2018). Such prejudice must be shown, it is not presumed. *Id.* "Appellate delay is prejudicial when there is a reasonable probability that, but for the delay, the result of the appeal would have been different." *Id.*

To support this allegation, Petitioner cites *Owens v. State*, 303 Ga. 254 (2018), in which, the Supreme Court of Georgia directed the Council of Superior Court Judges of Georgia to submit a proposed Uniform Rule of Superior Court designed to address the issue regarding extraordinary post-conviction, pre-appeal delays. *Id.* at 259. In *Owens*, a period of nineteen (19) years passed while the defendant's motion for new trial was decided and the record in the case was transmitted to the Supreme Court of Georgia. *Id.* at 254. *Owens* cited several cases in which the Supreme Court of Georgia or the Court of Appeals of Georgia has "repeated its *Shank*[1] admonishment" or made "similar rebukes" and cases in which "similar admonition would have been appropriate." *Id.* at 258-259, n. 2, 3, 4. The delays in the cases cited in *Owens* range from nearly six (6) year delays to twenty-one (21) year delays. *Id.* Here, Petitioner was convicted on March 23, 2006 and his direct appeal was decided on October 21, 2013. (HT 168, 1008). Thus, a period of seven (7) years elapsed between Petitioner's conviction and his appeal. This Court acknowledges the delay in Petitioner's case is consistent with those admonished historically. See *Owens*, 303 Ga. at 258.

However, Petitioner must show that he was prejudiced by the delay. *Lord*, 304 Ga. at 542. Petitioner contends it is now more difficult for him to show that letters written by Osborne detailing confessions made to him by Petitioner and Tabor are not true because, due to the delay, certain records are now unavailable. (9/11/2018 Brief, p. 31). Specifically, Petitioner argues the records showing Petitioner's jail pod assignments are now unavailable by an open records request and, but for the time delay, Petitioner would have been able to obtain the records and, therefore, would have been able to show that Osborne was never housed with both Petitioner and Tabor before he wrote the letter thereby discrediting Osborne's letter. (9/11/2018 Brief, p. 31-32).

The record shows Petitioner sent an Opens Records Request to the Columbia County Sheriff's Department seeking a copy of written policies and procedures relating to the housing of

---

[1] Referring to *Shank v. State*, 290 Ga. 844 (2012), a case involving a fifteen (15) year post-conviction, pre-appeal delay.

inmates at the Columbia County Jail and documents showing all jail pods Petitioner, Tabor and Osborne were assigned to beginning in 2005. In response, the Columbia County Sheriff's Office explained they are only required to keep the records of inmates for ten years and, thus, Petitioner's requested information is beyond the retention schedule. Under this ten-year retention policy, the records were available until 2015. As explained above, Petitioner was convicted on March 23, 2006, and his appeal was decided on October 21, 2013. Thus, the records were available throughout the Petitioner's motion for new trial and appeal. Petitioner had nine (9) years after his conviction to obtain these records. To establish that the unavailable records would have shown Petitioner was not housed with Osborne and Tabor, Petitioner sent a series of written interrogatories to Captain Brett Carani ("Carani") with the Columbia County Detention Center seeking information regarding the facility's policy for housing co-defendants. However, in his response; Carani stated, "There is no written policy to house co-defendants separately. Inmates are housed based upon classification criteria which includes keep-aways with other inmates based on safety & security of the inmates involved. Co-defendants may be house separately at the request of investigators or district attorney." Thus, Petitioner has failed to demonstrate what the records would have shown. As a result, Petitioner has failed to show the delay, and consequent inability to obtain these records, prejudiced him. *Lord*, 304 Ga. at 542.

Moreover, Petitioner has failed to demonstrate that proving that Osborne could not have been housed with Petitioner and Tabor would discredit Osborne's trial testimony and letters. The letters written by Osborne detailing the confessions were admitted without objection at trial and, thus, are a part of the record. (HT 987-989). In Osborne's first letter, he claims to have talked to Tabor about the murder first and then, after Tabor was transferred to another unit and Petitioner was transferred into Osborne's unit, he spoke with Petitioner about the murder. (HT 971). The first letter also states that "[Petitioner] and Tabor constantly talk to each other by hollering to one another threw the crack of the door." (HT 974). In Osborne's second letter, he reiterates the

confessions that were made to him by Petitioner and Tabor and seeks a lighter sentence in exchange for his testimony. (HT 987-989). Osborne also testified at trial regarding the confession made to him by Petitioner:

> A. Well, it all started with -- I used to sit around with a [lot] of law books, read law books every day and study law books and he'd just periodically ask me questions. And one day he asked me about what can I do to beat a murder charge? And I said what do you mean, what can you do to beat a murder charge? And then he said that's what I mean. I said, well, if you didn't do it, you better tell them who did it. If not, then, you know, you're going to get found guilty if you didn't. Then he mentions one statement after another, he makes little statements periodically, things like I didn't mean to do it, Chris Jarrard took the knife and ran with it or came back to the scene and stuff like that, you know. Then he made a statement that when I beat these charges that [the victim's wife], she can have an accident.
>
> Q. Let's stop right there. You've covered an awful lot of ground and I want to try and cut this up in little bitty pieces. Okay? You referred to the words I didn't mean to do it. Did he tell you what he had done?
>
> A. Yes.
>
> Q. What was that?
>
> A. Well, from what he told me and what I gathered from him was that when Tabor grabbed him and held him, Tabor was trying to subdue him from fighting him and he stabbed him, from what it was told me, and he told me Jarrard took the knife and took and got rid of it.
>
> Q. Did [he] tell you how many times he stabbed him?
>
> A. No, sir.
>
> Q. Did he tell you why they were involved in this melee, if you will, with [the victim]?
>
> A. Yes, from what I was told, he said something about [the victim] had found out that they had called him a snitch and stuff like that and he was going to come over and try to straighten his business or something like that. That's the way he put it, you know.
>
> Q. Over how many days did you have these conversations with [Petitioner]?
>
> A. Periodically. It was like once a week, sometimes twice a week.
>
> Q. Has he ever denied to you that he stabbed [the victim]?
>
> A. No.
>
> Q. On how many occasions has he told you that he did stab [the victim]?
>
> A. Twice.
>
> (HT 780-781).

Thus, the record shows Osborne did not claim to have talked with Petitioner and Tabor at the same time. In fact, he admits that Petitioner and Tabor had to "holler" through a door to talk to one another. (HT 974). For the reasons stated above, Petitioner has failed to show he was prejudiced by the delay in his case. *Lord*, 304 Ga. at 258.

Accordingly, this allegation provides no basis for relief.

STATE FAILED TO REVEAL THE DEAL WITH OSBORNE

Petitioner alleges the State failed to reveal an implied deal with Osborne in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. U.S.*, 405 U.S. 150 (1972).

> Under *Brady* and *Giglio*, the state is under a duty to reveal any agreement, even an informal one, with a witness concerning criminal charges pending against that witness, and a failure to disclose such an agreement constitutes a violation of the due process requirements of *Brady*, supra. *Giglio*, supra. In order to show that the state violated *Brady* [and *Giglio*] by failing to reveal a deal with one of its witnesses, a defendant must show that the state possessed evidence of the deal; that the defendant did not possess the evidence nor could he obtain it himself with any reasonable diligence; that the state suppressed evidence of the deal; and that, had the evidence of the deal been disclosed to the defendant, there existed a reasonable probability that the result at trial would have been different. The burden is on the defendant to prove each of these elements.

Colbert v. State, 345 Ga. App. 554, 555 (2018) (citations omitted) (quoting *Alford v. State*, 293 Ga. App. 512 514-515 (2008)).

As explained above, Osborne testified at Petitioner's trial on behalf of the State regarding a conversation he had with Petitioner during which Petitioner confessed to the murder of the victim. (HT 268, 777-793). Petitioner has failed to present any evidence that an agreement was in place prior to Osborne testifying. See *Serrate v. State*, 268 Ga. App. 276, 280 (2004). On the contrary, the record shows Osborne and his plea counsel stated on the record that no such deal was in place. (HT 96-101). The transcript from Osborne's sentencing hearing shows that Osborne denied the existence of any promise or agreement in exchange for his guilty plea. (HT 96-97). Moreover, appellate counsel (then-plea counsel for Osborne) stated as follows:

I -- I'm pleased that you remember that Judge, I forgot to mention it. He had provided assistance to the State, not in exchange for any leniency. In fact, as you may recall during his testimony in the trial of Tabor and [Petitioner], he very plainly told the jury that he had been promised nothing. But, yes, sir, he has been helpful and his cooperation has been factored into our plea negotiations.

(HT 101).

As mentioned during Osborne's sentencing hearing, the record shows that Osborne testified at Petitioner's trial that he had not been promised anything in exchange for his testimony:

Q. And you're hoping to get some kind of benefit or reward from this testimony, aren't you?

A. No, sir, I'm not.

[TRIAL COUNSEL]: Your honor, may I approach the witness?

THE COURT: You may.

Q. [Trial counsel] Mr. Osborne, I'm showing you what's been marked State's Exhibit 39 and I direct your attention to the bottom paragraph of that page, starting to sum this up. Can you read that for the jury, please?

A. Yes, sir. To sum all this up, I'll trade my testimony for the killing of [the victim] for a lighter sentence.

Q. Read the rest of it.

A. I said I've never snitched no one out, but I couldn't resist this golden opportunity. This is a big deal. It will be known worldwide.

Q. So this is a golden -- you're not expecting any benefit, but this is a golden opportunity?

A. Yes, sir.

Q. And you'll trade your testimony for a lighter sentence?

A. It don't work like that. I've already spoke with Mr. Craig and he don't give lighter sentences for testimony, sir.

Q. You still have hopes of getting easier treatment or being rewarded, don't you?

A. No, sir. I know what to expect.

(HT 788-789).

Petitioner argues the fact that Osborne helped the State in Petitioner's case "was acknowledged by Appellate Counsel Johnson and Judge Brown at Osborne's sentencing." (9/11/2018 Brief, p. 26). Although Petitioner is correct that Osborne's help was "acknowledged"

during his sentencing hearing, Osborne's assistance was not acknowledged in relation to an existing agreement in place at the time Osborne testified against Petitioner. As explained above, there is no evidence that any agreement was in place prior to Osborne testifying. "Mere speculation that such a deal existed is insufficient to substantiate [Petitioner's] claim that the State withheld exculpatory evidence which prejudiced his defense." *Rhodes v. State*, 299 Ga. 367, 369 (2016). Petitioner has failed to present any evidence of a deal made in exchange for Osborne's testimony and, thus, he has failed to carry his burden to show that the State violated *Brady* and *Giglio*.

Accordingly, this allegation provides no basis for relief.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Petitioner alleges trial counsel rendered ineffective assistance of counsel in the following ten (10) ways:

(1) Trial counsel failed to subpoena and call Deputy Dennis Mack ("Mack") as a witness and failed to bring up the fact that Tabor had admitted to hurting the victim and "putting him into the cement" on the night of the stabbing;

(2) Trial counsel failed to object to the two incriminating letters written by Osborne and Robinson going out with the jury;

(3) Trial counsel failed to call Ashley Smith ("the victim's wife") as a witness who could verify that the victim and Petitioner were friends and that Petitioner was not involved in the fights between her late husband, Tabor, and Christopher Jarrard ("Jarrard");

(4) Trial counsel's cross-examination of William Brandon Taylor ("Taylor") was ineffective as he failed to ask him about the fact that he never saw a knife, that Tabor carried a knife, and that Petitioner told him he didn't know who stabbed the victim;

(5) Trial counsel failed to subpoena Whitney Lauren Vrana ("Vrana") to testify that Tabor told her it was self-defense on March 15, 2005;

(6) Trial counsel failed to bring out on cross-examination of Anthony Scott Brown ("Brown") that he did not see Petitioner do "anything" as set forth in his August 18, 2001 statement to police;

(7) Trial counsel failed to bring out on cross-examination of Michael Ivey ("Ivey") that he gave a statement to the police that the last two people near the victim was a short guy in the white t-shirt and a guy with a bare back;

(8) Trial counsel failed to bring out on cross-examination of Brian Maurice Benning ("Benning") that Petitioner never said he killed the victim;

(9) Trial counsel failed to point out in arguments and on cross-examination that after the victim was injured, Amy, Jarrard, and a number of individuals other than Petitioner ran into the woods and that in Brittany Glisson's ("Brittany") statement to the police on March 24, 2005, she stated that Amy stated "When we ran to the woods Amy mentioned to me that [the victim] had been stabbed," which shows Amy would only have known this if she had seen the victim stabbed; and

(10) Trial counsel failed to move for a mistrial when the State moved to nolle pros the case against Tabor and failed to find out why Tabor was being released on bond and did not request that a proper instruction be given.

Any allegation of a violation of the right to counsel should be made at the earliest practicable moment. *Smith v. State*, 255 Ga. 654, 655 (1986). Essentially, new counsel must raise the ineffectiveness of previous counsel at the first possible stage of post-conviction review. *White v. Kelso*, 261 Ga. 32, 32 (1991). Here, "previous counsel" is not trial counsel, but appellate counsel. Appellate counsel did not raise a claim of ineffective assistance of trial counsel in Petitioner's Motion for New Trial or on appeal. The claim of ineffective assistance of trial counsel has been

waived by appellate counsel's failure to raise it at the earliest practicable moment. See *id.* As such, this claim is procedurally barred unless Petitioner can demonstrate cause for the failure to raise the issue at the earliest practicable moment and actual prejudice arising therefrom, or when the procedural bar will work a miscarriage of justice. *Black v. Hardin*, 255 Ga. 239 (1985); *Turpin v. Todd*, 268 Ga. 820, 829 (1997). "A common method of satisfying the cause and prejudice test is to show that trial and direct appeal counsel rendered ineffective assistance." *Humphrey v. Walker*, 294 Ga. 855, 858 (2014) (quoting *Perkins v. Hall*, 288 Ga. 810, 820 (2011)). Here, ineffective assistance of appellate counsel is the only argument Petitioner offers to excuse the procedural default of his ineffective assistance of trial counsel claim. (9/11/2018 Brief, p. 32-34).

> Similar to other claims of ineffective assistance, a habeas petitioner seeking to overcome a procedural default must show professionally deficient performance by trial or direct appeal counsel and that the deficiencies had a reasonable probability of changing the outcome of the trial. Because a showing of ineffective assistance of counsel regarding a procedurally defaulted issue requires a showing of prejudice that is comparable to the prejudice that must be shown under the cause and prejudice test, a petitioner who has shown the former will be deemed to have automatically shown the latter.

Perkins, 288 Ga. at 822 (citing *Strickland*, 466 U.S. 668, 687 (1984); *Hall v. Lewis*, 286 Ga. 767, 769 (2010); *Turpin*, 268 Ga. at 828-829).

To prove that the performance of appellate counsel was deficient, Petitioner must show that appellate counsel "performed [his] duties in an objectively unreasonable way, considering all the circumstances, and in the light of the prevailing professional norms. This is no easy showing." *Walker*, 294 Ga. at 859. The law recognizes a "strong presumption" that counsel performed reasonably, and Petitioner bears the burden of overcoming this presumption. *Id.* To carry this burden, Petitioner must show that no reasonable lawyer would have done what appellate counsel did or would have failed to do what appellate counsel did not. *Humphrey v. Nance*, 293 Ga. 189, 192 (2013). "Even when a petitioner has proved that the performance of his lawyers was deficient in a constitutional sense, he must also prove prejudice by showing 'a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Walker*, 294 Ga. at 860 (citing *Strickland*, 466 U.S. at 694). It is not enough to show that the errors of counsel had some conceivable effect on the outcome of the proceeding; rather, the petitioner must show a probability sufficient to undermine confidence in the outcome. See, e.g., *Harrington v. Richter*, 562 U.S. 86 (2011); *Strickland*, 466 U.S. at 694. "In all, the burden of proving a denial of effective assistance of counsel is a heavy one." *Walker*, 294 Ga. at 860; see also *Kimmelman v. Morrison*, 477 U.S. 365, 382 (1986).

> [W]here the alleged ineffective assistance of appellate counsel is premised upon the failure to raise ineffective assistance of trial counsel on direct appeal, two layers of fact and law are involved in the analysis of the habeas court's decision. To find that appellate counsel provided ineffective assistance, a reviewing court must find appellate counsel's failure to raise trial counsel's ineffectiveness on appeal represents deficient professional conduct. Even if deficient performance of appellate counsel is shown, a demonstration of prejudice requires a showing that, had the ineffective assistance of trial counsel been raised on direct appeal, a reasonable probability exists that the outcome of the appeal would have been different. This, in turn, requires a finding that trial counsel provided deficient representation and that the defendant was prejudiced by it.
>
> *Gramiak v. Beasley*, 304 Ga. 512, 513 (2018).

If Petitioner fails to show trial counsel provided ineffective assistance of counsel, then Petitioner also fails to show ineffective assistance of appellate counsel, because "an attorney is not deficient for failing to raise a meritless issue on appeal." *Id.*; see also *Shelton v. Lee*, 299 Ga. 350, 357 (2016); *Humphrey v. Lewis*, 291 Ga. 202, 214 (2012). "Because the ineffectiveness of trial counsel plays a role in both prongs of the test of ineffectiveness of appellate counsel, we start by examining whether [Petitioner] has demonstrated that trial counsel was ineffective." *Gramiak*, 304 Ga. at 514.

Petitioner's first basis for ineffective assistance of trial counsel alleges trial counsel failed to subpoena and call Mack as a witness and failed to bring up the fact that, in Tabor's statement to Mack, Tabor admitted to hurting the victim and "putting him into the cement" on the night of the stabbing. As a general rule, matters of reasonable trial strategy and tactics do not amount to

ineffective assistance of counsel. *Lynch v. State*, 291 Ga. 555, 558 (2012) (citing *Wright v. State*, 274 Ga. 730, 732 (2002)). "Trial tactics and strategy, no matter how mistaken in hindsight, are almost never adequate grounds for finding trial counsel ineffective unless they are so patently unreasonable that no competent attorney would have chosen them." *Henry v. State*, 316 Ga. App. 132, 135 (2012) (quoting *Gray v. State*, 291 Ga. App. 573, 579 (2008)). "An attorney's decision about which defense to present is a question of trial strategy." *Blackwell v. State*, 302 Ga. 820, 824 (2018) (quoting *Hendrix v. State*, 298 Ga. 60, 62 (2015)). Furthermore, "[t]he decision on which defense witnesses will be called is a matter of trial strategy and tactics and does not usually constitute ineffective assistance of counsel." *Crawford v. State*, 302 Ga. App. 782, 784 (2010). In Petitioner's Written Interrogatory No. 4, Petitioner asked trial counsel, "Can you explain why [Mack] was not subpoenaed as a witness for [Petitioner] to testify to the utterance by [Tabor]?" Trial counsel responded that he entered into an informal agreement to cooperate with Tabor in the presentation of a unified defense. (HT 84). In Respondent's Written Interrogatory No. 17, Respondent asked trial counsel, "Petitioner has alleged that you rendered ineffective assistance at the trial level because you failed to investigate and prepare his defense by failing to interview or subpoena [Mack] who spoke to [Tabor]. Do you recall this witness? Do you recall investigating or interviewing this witness prior to trial?" Trial counsel explained that he recalls the statement given by Tabor but he did not interview or subpoena Mack regarding Tabor's statements because the statements did not implicate Petitioner in the victim's death and "the informal joint defense agreement was in effect at the time, and it was [trial counsel's] considered judgment to stay away from [Mack's] statement and let counsel for [Tabor] address it in both cross-examination and in argument to the jury. I did not anticipate the case against [Tabor] being dismissed during the trial. I found it exceedingly difficult to change horses midstream, so to speak." Thus, trial counsel made a strategic decision to present a joint defense with Tabor and, thus, a strategic decision not to call Mack as a defense witness. Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not

examples of conscious and deliberate trial strategy." *Archie v. State*, 248 Ga. App. 56, 58 (2001). Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to subpoena and call Mack to testify to Tabor's statement. *Hines v. State*, 320 Ga. App. 854, 867-868 (2013).

Petitioner's second basis for ineffective assistance of trial counsel alleges trial counsel failed to object to the incriminating letters written by Osborne and Robinson going out with the jury in violation of the continuing witness rule. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The decision of whether to interpose certain objections is a matter of trial strategy and tactics." *Henry*, 316 Ga. App. at 135 (quoting *Gray*, 291 Ga. App. at 579).

> In Georgia, the continuing witness objection is based on the notion that written testimony is heard by the jury when read from the witness stand just as oral testimony is heard when given from the witness stand. But, it is unfair and places undue emphasis on written testimony for the writing to go out with the jury to be read again during deliberations, while oral testimony is received but once.
>
> *Rainwater v. State*, 300 Ga. 800, 803 (2017).

It is usually applied to testimonial documentary evidence, such as affidavits and depositions. *Starks v. State*, 240 Ga. App. 346, 350 (1999). However, the continuing witness rule is inapplicable where the document at issue is "original documentary evidence" or where the document is not the reduction to writing of an oral statement, nor a written statement provided in lieu of testimony. *Adams v. State*, 344 Ga. App. 159, 166 (2018) (citing *Young v. State*, 292 Ga. 443, 446 (2013) (where jailhouse informant's letter was admissible as original documentary evidence, counsel was not deficient in failing to object when letter went out with the jury)). Here, all of the letters were admitted into evidence without objection. (HT 769, 785). As in *Young*, the letters were not the reduction to writing of oral statements given by Osborne or Robinson nor provided in lieu of testimony. Instead the letters were original documentary evidence of Osborne and Robinson's

attempts to provide information. See *Young*, 292 Ga. at 446. "The proscription on the jury's possession of written testimony does not extend to documents which are themselves relevant and admissible as original documentary evidence in a case." *Starks*, 240 Ga. App. At 350 (quoting *Whiteley v. State*, 188 Ga. App. 129, 132 (1988)). As a result, trial counsel's performance was "not deficient when he failed to object to the letter[s] going out with the jury." *Id.* Additionally, Petitioner has failed to establish trial counsel's failure to object prejudiced him, as required by *Strickland*, since the evidence contained in the letters was also brought out during trial and the evidence of Petitioner's guilt was overwhelming. *Kent v. State*, 245 Ga. App. 531, 533 (2000) (allowing written statement to go out violated the continuing witness rule, but the error was harmless since the evidence contained therein was brought out during trial and evidence of guilt was overwhelming); *Coggins v. State*, 293 Ga. 864, 865 (2013) (HT 1010) (Supreme Court of Georgia found "overwhelming evidence" of Petitioner's guilt on appeal). Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to object to the letters going out with the jury. *Hines*, 320 Ga. App. at 867-868.

Petitioner's third basis for ineffective assistance of trial counsel alleges trial counsel failed to call the victim's wife as a witness who could verify that the victim and Petitioner were friends and that Petitioner was not involved in the fights between her late husband, Tabor, and Jarrard. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The decision on which defense witnesses will be called is a matter of trial strategy and tactics and does not usually constitute ineffective assistance of counsel." *Crawford*, 302 Ga. App. at 784. In Written Interrogatory No. 6, Petitioner asked trial counsel, "Why did you not call [the victim's wife] as a witness, since she could testify that [the victim] and [Petitioner] knew one another and were friends and that [Petitioner] was not involved in the fights?" Trial counsel responded as follows:

> [The victim's wife] was not called as a witness for tactical reasons. I was of the opinion that she was a loose cannon who potentially could do more harm to

> [Petitioner] than help. As the widow of the decedent I was afraid that if she were to testify in a manner unfavorable to [Petitioner] that the jury might have unwarranted sympathy for her and notwithstanding any jury charge to the contrary might feel that they had to return a guilty verdict to reward that sympathy.
>
> (HT 84).

Thus, trial counsel made a strategic decision not to call the victim's wife as a witness. Furthermore, the victim's wife could not have testified that Petitioner was not involved in the fights as Petitioner claims because Petitioner has admitted to his involvement. (HT 56-57). Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy." *Archie*, 248 Ga. App. at 58. Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to call Ashley Smith to testify. *Hines*, 320 Ga. App. at 867-868.

Petitioner's fourth basis for ineffective assistance of trial counsel alleges trial counsel's cross-examination of Taylor was ineffective as he failed to ask him about the fact that he never saw a knife, that Tabor carried a knife, and that Petitioner told him he did not know who stabbed the victim. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The scope of cross-examination is grounded in trial tactics and strategy, and will rarely constitute ineffective assistance of counsel." *Simpson v. State*, 277 Ga. 356, 358 (2003) (citing *Butler v. State*, 273 Ga. 380, 385 (2001)). In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677. Thus, Petitioner must overcome the strong presumption that trial counsel's cross-examination of Taylor was reasonable. *Walker*, 294 Ga. at 859. Despite Petitioner's allegation that trial counsel failed to ask Taylor about the fact that he never saw a knife, the record shows trial counsel did cross-examine Taylor as to this issue:

> Q. Mr. Taylor, let's talk a little bit about the second interview that you had, the interview that was conducted with Sgt. -- excuse me, Inv. Wyn Howard and Sgt. Mike Cullinan in March a year ago.

A. Yes, sir.

Q. And at that time [the District Attorney] indicated that you said that [Petitioner] admitted -- excuse me, that you saw [Petitioner] with a knife on the day of the incident?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. When did you see [Petitioner] with a knife on the day of the incident?

A. It could have been at the hotel or earlier that evening. I mean earlier that day. We had been together the whole day.

[TRIAL COUNSEL]: Your Honor, may I approach the witness?

THE COURT: You may.

Q. [Trial counsel] I reviewed a little bit of your -- do you remember giving a taped statement?

A. Yes, sir.

Q. And in the tape statement you're ahead -- I'm going to ask you about page --

[TRIAL COUNSEL]: Page 499, counsel, about the middle of the page.

Q. [Trial counsel]: You say now I remember Cory having a green knife. I don't remember exactly what it looked like, the details of it or this or that. I remember he had a green knife. I remember many a times during our childhood -- like I said, we grew up together. We, you know, wrestled around, things of that nature. He'd pulled it out, you know, acting, just joking around basically. Say oh, watch out, you know, I'll stab you or something like that, you know. He'd pull it out and he just, he just -- that's really about it. Inv. Howard asked you, okay, how -- you said the knife, it was a green knife; was it -- was the base of the knife, was it a standard size or was it a bigger knife. The blade? You remember -- you have a knife? Well, that you said that was the -- and you said yes, I have a -- and he says the handle on it was wider? You said I have a knife here and the handle's probably -- it has a curve to it, the one I have. The one he had, I can remember it did not have such a curve to it. And then, Mr. Howard says okay. You say it was almost like that, you know? Uh-huh. But it as probably same type knife? Close to it, I mean similar? Your response: no, this would probably be far off. I mean I'm almost wanting to say it had like a -- and this wood here with metal. The one I'm wanting to say he had is like a rubber grip, you know, kind of like a bunch of little grips on it. It was all kind of robbery, you know, and not like soft rubber but more like a harm form rubber maybe. What kind of blade did it have? Howard: what kind of blade did it have? Was it similar blade as that, did it have the flat on the front and striations in the middle? Your response was: I couldn't really describe the blade, to be honest about it. Then Howard says okay, but you do remember seeing [Petitioner]. And you say

> I do remember it being a green knife and he always carried that knife. Howard says okay. And you say and. Howard says so you would think that, that knife, that he didn't have that knife, that it would be inconsistent with his normal behavior? And you say can you -- what was that? And Howard says if he didn't , if he said he did not have that knife with him that night, that -- and Howard says that would be inconsistent with his normal -- and you say I would say that would be inconsistent.
>
> A. Yes.
>
> Q. So what you're saying is you don't really know whether [Petitioner] had a knife that night but it would be inconsistent with the pattern of his behavior; is that correct?
>
> A. Yes, sir.
>
> Q. So you didn't see [Petitioner] with a knife that night, did you?
>
> A. No, sir.
>
> (HT 494-497).

Furthermore, despite Petitioner's allegation that trial counsel failed to ask Taylor about the fact that Petitioner told him he did not know who stabbed the victim, the record shows trial counsel asked Taylor to read a portion of his statement to police which included this fact:

> Q. [Trial counsel]: Mr. Taylor, I'm directing your attention to about almost halfway down the page. Can you read that paragraph that I'm pointing to right now to the jury, please?
>
> A. And I talked to Cor[e]y yesterday. I went out to the neighborhood where he lives and I asked well, did you stab the guy, trying to find out if he did or not. And he said that he didn't and said that he don't know who stabbed him or anything like that. But you know what I'm saying? If they knew I doubt they'd tell me whoever done it and I'm sure they ain't going to tell me.
>
> (HT 500).

Thus, the record shows some of the testimony that Petitioner complains trial counsel failed to bring out through cross-examination was still before the jury. As to the remaining issue Petitioner complains trial counsel should have cross-examined Taylor about, Petitioner has failed to demonstrate that Taylor would have known that Tabor carried a knife and, consequently, that trial counsel should have cross-examined this particular witness about that fact. Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy."

Archie, 248 Ga. App. at 58. As trial counsel's cross-examination is presumed to be reasonable trial strategy and the record shows two of the issues complained of were addressed during trial counsel's cross-examination of Taylor, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to adequately cross-examine Taylor. *Hines*, 320 Ga. App. at 867-868.

Petitioner's fifth basis for ineffective assistance of trial counsel alleges trial counsel failed to subpoena Vrana to testify that Tabor told her he killed the victim but it was self-defense on March 15, 2005. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The decision on which defense witnesses will be called is a matter of trial strategy and tactics and does not usually constitute ineffective assistance of counsel." *Crawford*, 302 Ga. App. at 784. Petitioner's Written Interrogatories to trial counsel do not contain a question regarding the failure to subpoena Vrana. However, in Petitioner's Written Interrogatories to appellate counsel, Written Interrogatory No. 8 (f) asks appellate counsel whether he believes that trial counsel provided ineffective assistance of counsel "in failing to subpoena Vrana, who on March 5, 2015 told deputies that Tabor told her he stabbed the victim and that it was self-defense." Appellate counsel responded, "I am aware of the statement by [Vrana]. Vrana's credibility was irrevocably compromised prior to trial. A subpoena to her would have been counterproductive." At the Hearing, appellate counsel testified concerning Vrana's credibility: "She was horribly compromised as a credible witness because, among other things, she failed a polygraph and there were good and sufficient reasons why she would not have been a good, helpful witness at trial." (HT 18). In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677 (citing *Baker*, 251 Ga. App. at 378). Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy."

Archie, 248 Ga. App. at 58. Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to subpoena Vrana to testify. *Hines*, 320 Ga. App. at 867-868.

Petitioner's sixth basis for ineffective assistance of trial counsel alleges trial counsel failed to bring out on cross-examination of Brown that he did not see Petitioner do "anything" as set forth in his August 18, 2001 statement to police. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The scope of cross-examination is grounded in trial tactics and strategy, and will rarely constitute ineffective assistance of counsel." *Simpson*, 277 Ga. at 358 (citing *Butler*, 273 Ga. at 385). In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677 (citing *Baker*, 251 Ga. App. at 378). Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy." *Archie*, 248 Ga. App. at 58. Furthermore, Petitioner has failed to show that trial counsel's failure to ask Brown about this statement prejudiced him. Brown's testimony at trial shows that he was intoxicated the night of the incident because he had been "eating" Xanax, drinking beer, smoking pot, and had a little bit of cocaine. (HT 572-573). Brown testified by the time he got out of the victim's truck, the first series of fights were over and another one had started back up. (HT 574). He testified that the only people he recognized in the fights were Petitioner and Jarrard. (HT 568). Brown later identified, via photo lineup, Tabor as the last person he witnessed over the victim at the end of the fight. (HT 568-571). Thus, Brown's statement to police that he did not see Petitioner doing "anything" is consistent with the rest of his trial testimony. Brown only identified Petitioner as a participant in the fight generally, a fact which Petitioner has admitted. (HT 56-57). Petitioner has failed to show that introducing this statement would likely have changed the outcome of Petitioner's trial. Accordingly, Petitioner has failed to carry his

burden to show trial counsel rendered ineffective assistance for failing to cross-examine Brown regarding his statement to police. *Hines*, 320 Ga. App. at 867-868.

Petitioner's seventh basis for ineffective assistance of trial counsel alleges trial counsel failed to bring out on cross-examination of Ivey that he gave a statement to the police that the last two people near the victim was "a short guy in the white t-shirt and a guy with a bare back." As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The scope of cross-examination is grounded in trial tactics and strategy, and will rarely constitute ineffective assistance of counsel." *Simpson*, 277 Ga. at 358 (citing *Butler*, 273 Ga. at 385). In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677. Thus, Petitioner must overcome the strong presumption that trial counsel's cross-examination of Ivey was reasonable. *Walker*, 294 Ga. at 859. Despite Petitioner's allegation that trial counsel failed to bring out on cross-examination Ivey's statement to police, the record shows trial counsel did cross-examine Ivey as to this issue. At trial, Ivey testified, "I looked to my left and [the victim] was getting double-teamed. You know, he was getting jumped on. One guy was bare-backed and one guy had on a white tee shirt. And the last I remember, it was two guys. One was on each side of [the victim] and I just briefly took glances over, because as I say I was in an altercation myself. That's the last time I saw [the victim] standing for over a minute." (HT 663). This testimony was reiterated during Tabor's counsel's cross-examination:

> Q. Now, you also had some difficulty that evening or subsequent to this incident remembering everyone that [the victim] came into contact with or fought; is that correct?
>
> A. Briefly. I mean I remember like it was one guy bare-backed. There was another guy that had a tee shirt on. It was basically those two that [the victim] was -- them two at the most.
>
> Q. Someone without a tee shirt; I think you said bare-backed, so he didn't have any shirt on?
>
> A. Yes.

Q. And then another person with a white tee shirt on?

A. Right.

Q. And those are the two people that were primarily engaged in the fight with [the victim]; is that correct?

A. Yes.

(HT 675).

Thus, the record shows the testimony that Petitioner complains trial counsel failed to bring out through cross-examination was still before the jury. Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy." *Archie*, 248 Ga. App. at 58. Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to cross-examine Ivey regarding his statement to police. *Hines*, 320 Ga. App. at 867-868.

Petitioner's eighth basis for ineffective assistance of trial counsel alleges trial counsel failed to bring out on cross-examination of Benning that Petitioner never said he killed the victim. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The scope of cross-examination is grounded in trial tactics and strategy, and will rarely constitute ineffective assistance of counsel." *Simpson*, 277 Ga. at 358 (citing *Butler*, 273 Ga. at 385). In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677. Thus, Petitioner must overcome the strong presumption that trial counsel's cross-examination of Benning was reasonable. *Walker*, 294 Ga. at 859. On direct examination, Benning testified that Petitioner was talking about "we just got finished killing someone" and that "somebody got stabbed." (HT 557-558). The record shows Benning testified that Petitioner only stated that the victim in this case had been stabbed. (HT 559). Benning did not testify that Petitioner said he was the one who stabbed the victim. Petitioner has failed to show that trial counsel was deficient for failing to cross-examine Benning regarding that fact that Petitioner never said he killed the victim

as such a question would have been consistent with Benning's trial testimony. Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy." *Archie*, 248 Ga. App. at 58. Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to cross-examine Benning specifically about Petitioner not stating he killed the victim. *Hines*, 320 Ga. App. at 867-868.

Petitioner's ninth basis for ineffective assistance of trial counsel alleges trial counsel failed to point out in arguments and on cross-examination that after the victim was injured, Amy, Jarrard, and a number of individuals other than Petitioner ran into the woods and that in Brittany's statement to the police on March 24, 2005, she stated "When we ran to the woods Amy mentioned to me that [the victim] had been stabbed." Petitioner claims Amy would only have known this if she had seen the victim be stabbed. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The scope of cross-examination is grounded in trial tactics and strategy, and will rarely constitute ineffective assistance of counsel." *Simpson*, 277 Ga. at 358 (citing *Butler*, 273 Ga. at 385). In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677. Thus, Petitioner must overcome the strong presumption that trial counsel's cross-examination of Brittany was reasonable. *Walker*, 294 Ga. at 859. The record shows that Brittany testified as follows:

> And then I saw [the victim] get up and he staggered to his truck and he collapsed on the ground and Amy, not Amy, excuse me, Ashley said something about somebody killed him or he's bleeding. I think she said he's bleeding, somebody help him. And then one of -- I guess Scott, I remember it was a white guy, picked him up and put him in the back of the pickup. And then I believe Amy [sic] got in the truck and they got ready to drive off. And for some reason, I don't know why we ran, but I started running toward the apartment 'cause everybody started running and I figured that's where everybody was going. So I ran toward the apartment and inside the apartment were Amy and Chris. And I was like what's going on, you know, duh, duh, duh, where's everybody at? And they were like we're going to run. So we all, Chris and Amy and I ran into the hallway and I kept screaming for Bert

> 'cause I didn't know where he was. And he ran up behind me and grabbed my hand and we ran into the woods. Chris, Amy, Bert and I. And then when we got in the woods, Chris ran through the woods, kept running, so it was Amy and I. And Bert had fallen head first into like some sewage or something. And then the cops came.
>
> (HT 528).

During Tabor's counsel's cross-examination, Brittany further testified regarding what occurred while the group was in the woods:

> We ran what seemed like forever to the edge of the woods. And when we got to the woods, Chris kind of like left. I don't know where he went, but he went somewhere and I just remember he wasn't there. So it's just Amy and Bert and I. And I talked to Bert for a brief second and I know that -- I remember Ashley saying, you know, he's bleeding through his mouth. And I remember someone saying that he had -- like he was dying or that he had been killed. I don't know to my knowledge who said that. But someone throughout all that once he had started to his truck. I believe someone said he had been stabbed. And I know that Bert had, you know, on occasion carried a knife and I asked him, I said do you have your knife and did you kill [the victim]? And he said no, I didn't. And then after that Bert collapsed into the water.
>
> (HT 542).

Thus, the record shows the testimony that Petitioner complains trial counsel failed to bring out through cross-examination was still before the jury. Furthermore, notwithstanding the fact that neither opening arguments nor closing arguments were reported for the record,[2] "argument of counsel is not evidence to be considered by the jury." *Hazelrigs v. State*, 255 Ga. App. 784, 785 (2002). Thus, Petitioner cannot show that there is a reasonable probability that the outcome of the trial would have been different if counsel had argued differently to the jury. See *id.* at 785-786; *Moody v. State*, 206 Ga. App. 387, 389 (1992). Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy." *Archie*, 248 Ga. App. at 58. Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective

---

[2] See HT 308 & 916. The arguments of counsel at trial are not required to be transcribed. O.C.G.A. § 17-8-5(a).

assistance for failing to point out these facts during arguments and cross-examination. *Hines*, 320 Ga. App. at 867-868.

Petitioner's tenth basis for ineffective assistance of trial counsel alleges trial counsel failed to move for a mistrial when the State moved to nolle pros the case against Tabor and failed to find out why Tabor was being released on bond and did not request that a proper instruction be given. As explained above, matters of reasonable trial strategy and tactics generally do not amount to ineffective assistance of counsel. *Lynch*, 291 Ga. at 558 (citing *Wright*, 274 Ga. at 732). "The decision of whether to interpose certain objections is a matter of trial strategy and tactics." *Henry*, 316 Ga. App. at 135 (quoting *Gray*, 291 Ga. App. at 579). Additionally, "[t]he decision to move for a mistrial may be a matter of trial strategy." *Pearce v. State*, 300 Ga. App. 777, 786 (2009) (citing *Rowe v. State*, 244 Ga. App. 654, 656 (2000)). In Written Interrogatory No. 7, Petitioner asked trial counsel, "When the District Attorney offered to nolle pros the case against [Tabor], why did you not object to the dismissal; or when the dismissal was granted, why did you not move for a mistrial, since the effect of that dismissal before the jury was for the District Attorney to give his opinion that the remaining party ([Petitioner]) was the guilty party?" Trial counsel responded as follows:

> I did not object to the dismissal of the case against [] Tabor when it was offered for an Order of Nolle Prosequi because I believed the ruling upon that motion was within the sound discretion of the [trial court]. In retrospect I probably should have moved for a mistrial, because even with the [trial court] granting the requested instructions about drawing no inference as to the guilt or innocence of [Petitioner], it was inevitable that the jury would speculate about the dismissal and left the jury with the [trial court's] sanction of the imprimatur of guilty on the part of [Petitioner]. A mist[r]ial would have eliminated that possibility and could have resulted in a different outcome for [Petitioner].
>
> (HT 84).

"Hindsight has no place in an assessment of the performance of trial counsel, and a lawyer second-guessing his own performance with the benefit of hindsight has no significance for an ineffective assistance of counsel claim." *Keener v. State*, 301 Ga. 848, 850 (2017) (quoting *Shaw v. State*, 292

Ga. 871, 876 (2013)). Thus, trial counsel's response where he states "in retrospect" he should have moved for a mistrial has no significance here. In the absence of contrary evidence, trial counsel's actions are presumed to be strategic. *Rogers*, 253 Ga. App. at 677 (citing *Baker*, 251 Ga. App. at 378). Petitioner has "made no affirmative showing that the purported deficiencies in his trial counsel's representation were indicative of ineffectiveness and were not examples of conscious and deliberate trial strategy." *Archie*, 248 Ga. App. at 58. Accordingly, Petitioner has failed to carry his burden to show trial counsel rendered ineffective assistance for failing to object to the letters going out with the jury. *Hines*, 320 Ga. App. at 867-868.

To further support his claim of ineffective assistance of trial counsel, Petitioner argues that trial counsel admitted to being ineffective in his Response to Petitioner's Written Interrogatories. (9/11/2018 Brief, p. 32). Trial counsel's Response contained the following:

> In retrospect, I was still in a mindset in which I attempted to focus on Chris Jarrard as the most likely perpetrator and I failed to target [Tabor] as an alternative theory of defense from which a jury could have formed reasonable doubt. I say this for the following reasons, in addition to the fact that [Tabor] was clearly involved in numerous physical altercations with the decedent on the night of the incident: (1) the GBI Forensics Division issued a report concluding that the blood of both [the victim] and [Tabor] was found to be present on the clothing worn by [Tabor] on the night of the incident; (2) that [Tabor] made an unsolicited utterance to law enforcement (Columbia County Sheriff's Deputy Dennis Mack) on August 18, 2001 in which [Tabor] stated "that he was responsible for hurting [the victim]" and that "he put him into the cement"; and (3) that two days after the incident Whitney Vrana went to [Tabor's] house (they were boyfriend/girlfriend at the time) and she asked [Tabor] what happened and [Tabor] stated "I stabbed him ([the victim])," claiming it was self-defense.
>
> None of the foregoing items were presented to the jury as part of an alternative defense. Had they been presented it is my belief that it would have resulted in a different outcome for [Petitioner].
>
> (HT 86).

However, as explained above, "[h]indsight has no place in an assessment of the performance of trial counsel, and a lawyer second-guessing his own performance with the benefit of hindsight has no significance for an ineffective assistance of counsel claim." *Keener*, 301 Ga.

at 850 (quoting *Shaw*, 292 Ga. at 876). Accordingly, Petitioner has failed to carry his burden of establishing that trial counsel provided ineffective assistance of counsel in above mentioned ways. *Hines*, 320 Ga. App. at 867-868 (citing *Mathis v. State*, 299 Ga. App. 831, 841 (2009)). As a result, Petitioner has failed to show appellate counsel provided ineffective assistance of counsel for failing to raise this issue on appeal. See *Gramiak*, 304 Ga. at 513. Based on Petitioner's failure to establish that appellate counsel provided ineffective assistance of counsel, Petitioner has also failed to satisfy the cause and prejudice test to overcome the procedural default here. *Walker*, 294 Ga. at 858.

In addition to the cause and prejudice exception, O.C.G.A. § 9-14-48 (d) provides an exception to the procedural default rule where necessary "to avoid a miscarriage of justice." This exception has always been interpreted as a very narrow exception tied to evidence of actual innocence:

> [Miscarriage of Justice] is by no means to be deemed synonymous with procedural irregularity, or even with reversible error. To the contrary, it demands a much greater substance, approaching perhaps the imprisonment of one who, not only is not guilty of the specific offense for which he is convict, but, further, is not even culpable in the circumstances under inquiry.
>
> *Valenzuela v. Newsome*, 253 Ga. 793, 796 (1985).

As explained above, Petitioner only argues that his claim of ineffective assistance of counsel should not be procedurally defaulted due to appellate counsel's ineffective assistance of counsel. Petitioner has not argued that the miscarriage of justice exception applies to his claim of ineffective assistance of counsel. Further, the record does not reflect any miscarriage of justice. To the contrary, the Supreme Court of Georgia held on appeal there is "overwhelming evidence" of Petitioner's guilt. *Coggins*, 293 Ga. at 865 (HT 1010).

Based on the foregoing, Petitioner cannot satisfy the cause and prejudice test to overcome the procedural bar to consideration of this issue, nor is an exception to procedural default necessary to avoid a miscarriage of justice. See *Turpin*, 268 Ga. at 829.

Accordingly, this allegation provides no basis for relief.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Petitioner alleges appellate counsel rendered ineffective assistance of counsel in the following ways:

(1) Appellate counsel had a conflict of interest, in that he had previously represented Osborne, which was never disclosed to Petitioner nor waived by Petitioner and resulted in Petitioner being denied due process of law;

(2) Appellate counsel failed to investigate the facts that were revealed while the Motion for New Trial was pending;

(3) Appellate counsel failed to raise on appeal that trial counsel was ineffective in the above-stated ways, as requested by Petitioner; and

(4) Appellate counsel failed to raise any *Giglio* defense on appeal concerning an implied agreement between Osborne and the State.

As explained above, any allegation of a violation of the right to counsel should be made at the earliest practicable moment. *Smith*, 255 Ga. at 655. Accordingly, Petitioner is appropriately raising appellate counsel's ineffective assistance of counsel claim here at the earliest practicable moment.

Petitioner's first basis for ineffective assistance of appellate counsel alleges that appellate counsel had a conflict of interest that was never disclosed to Petitioner nor waived by Petitioner. "One component of the right to the effective assistance of counsel is the right to representation that is free of actual conflicts of interests." *Edwards v. Lewis*, 283 Ga. 345, 348 (2008). "To show a violation of his right to counsel, [Petitioner] must establish actual conflict of interest." *Williams v. State*, 302 Ga. 404, 408 (2017) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 349 (1980) ("[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.")). Thus, "a defendant asserting ineffective assistance of counsel based on an actual conflict of interest must demonstrate that the

conflict of interest existed and that it significantly affected counsel's performance." *State v. Abernathy*, 289 Ga. 603, 604 (2011) (quoting *Edwards*, 283 Ga. at 349).

On September 12, 2006, appellate counsel represented Osborne in entering a guilty plea in an unrelated criminal matter. (HT 94-103). On August 16, 2007, Appellate counsel was appointed to represent Petitioner on his Motion for New Trial and appeal. (HT 139). "The legal presumption is, of course, that an attorney-client relationship terminates once the case or controversy in which the attorney was originally employed is resolved by the entry of a final judgment." *Hill v. State*, 269 Ga. 23, 24 (1998). Thus, appellate counsel's representation of Osborne ceased when the guilty plea was entered on September 12, 2006. As appellate counsel's representation of Petitioner did not commence until August 16, 2007, almost a year after his representation of Osborne terminated, Petitioner has failed to show that appellate counsel actively represented conflicting interests. *Cuyler*, 446 U.S. at 349. Consequently, Petitioner has failed to establish the constitutional predicate for his claim of ineffective assistance of appellate counsel. *Id.*

Where an alleged conflict of interest is based upon prior representation of a prosecution witness, the particular circumstances of the representation must be examined to "determine whether counsel's undivided loyalties remain with his or her current client, as they must." *Hill*, 269 Ga. at 24. "The factors that may arguably interfere with . . . the effective assistance of counsel, include: (1) concern that the lawyer's pecuniary interest in possible future business may cause him or her to avoid vigorous cross-examination which might be embarrassing or offensive to the witness; (2) the possibility that privileged information obtained from the witness in the earlier representation might be relevant to cross-examination; and (3) whether the subject matter of the first representation is substantially related to that of the second." *Perry v. State*, 314 Ga. App. 575, 581 (2012). Here, application of the aforementioned factors militate against Petitioner's claim of a conflict of interest. There is no evidence that appellate counsel held any hope of future pecuniary gain from Osborne. Moreover, there is no evidence suggesting that appellate counsel obtained

privileged information from Osborne that would have been relevant to examining Osborne at the motion for new trial hearing nor is there any evidence suggesting appellate counsel would have been prevented from conducting a thorough examination of Osborne. To the contrary, the record shows that appellate counsel raised Osborne's perjured testimony as an issue in Petitioner's motion for new trial and on appeal, and called Osborne to testify at the motion for new trial hearing despite his prior representation of Osborne. Additionally, Osborne's guilty plea was wholly distinct and separate from Petitioner's case. "These factors, considered together with the remoteness of trial counsel's earlier representation of [Osborne], lead us to reject [Petitioner's] claim that [appellate counsel] was impermissibly conflicted." *Hill*, 269 Ga. at 25.

At the Hearing, appellate counsel testified regarding his representation of Osborne:

> Q. Now, did you ever disclose to [Petitioner] that you had represented Mr. Osborne?
>
> A. I don't think I did, no.
>
> Q. Do you think you should have?
>
> A. Yes.
>
> Q. Looking back at everything, and I know I've gotten the advantage of being sort of the airplane looking over the battlefield and you're in the battle, so I don't mean -- but looking at this thing now, in 2018, do you think that you should have disqualified yourself?
>
> . . .
>
> A. I remember thinking about that issue and it really came to the forefront when I heard that Timothy Osborne had -- I should have disqualified myself when I realized that Timothy Osborne and [Petitioner] had a conversation in which Timothy Osborne admitted that he had lied during [Petitioner's] trial. They had that conversation because they were transported together from the prison back to a hearing in Richmond County. On the bus, Timothy Osborne and [Petitioner] apparently had a conversation in which Osborne confessed that he'd lied. I then went and met with Timothy Osborne in the jail and Timothy Osborne confirmed that he had, in fact, said to [Petitioner] that he had lied. Probably at that point, I should have disqualified.
>
> Q. I think that you mentioned --
>
> A. But earlier, did I think I should have disqualified simply because I had represented Timothy Osborne, no, I am not of that opinion. But I am of the opinion

that the disqualification issue became a prominent concern after I spoke to Timothy Osborne.

Q. And you think you should have disclosed that fact to [Petitioner] you had a serious conflict?

A. I think I did. I mean, at some point, I must have said hey, we've got this issue here, but I don't specifically recall whether I ever actually had that conversation with [Petitioner].

Q. Now, before Mr. Osborne testified, did you tell him he needed to get another lawyer?

A. I did because he had been instrumental in securing a conviction for murder, I felt that I needed to tell Timothy Osborne that he was at risk for serving the sentence that he'd manage to visit upon [Petitioner]. So yes, I --

Q. Should you have told him to get another lawyer?

A. Should -- you know, I thought I was morally bound to advise him. Legally, ethically, that's a different question. Personally, I felt that he needed to know what was going to happen if, in fact, he took the stand and testified that he had lied and his lie had been helped in securing a conviction for murder. That meant that he was on the line for the sentence that [Petitioner] had received.

Q. Basically, he did get another lawyer and took the Fifth Amendment?

A. He did.

Q. Do you think your loyalty at that time should have been only to [Petitioner]?

A. That is a question I struggle with today. Mr. Long, yeah, I had a professional obligation to [Petitioner], but I -- I'm sorry.

(HT 28-30).

Petitioner has failed to present any evidence of how appellate counsel's performance was adversely affected by appellate counsel's prior representation of Osborne. See *Tolbert v. State*, 298 Ga. 147, 157 (2015) ("The trial court was authorized to conclude that [appellant] failed to demonstrate that his lawyer's theoretical division of loyalties ripened into an actual conflict of interest that significantly and adversely affected the adequacy of the lawyer's representation of him at trial."). Appellate counsel's testimony at the Hearing does not show that he advised Osborne to get an attorney based on his prior representation of Osborne or a division of loyalties. Additionally, as explained above, "[h]indsight has no place in an assessment of the performance of [appellate] counsel, and a lawyer second-guessing his own performance with the benefit of

hindsight has no significance for an ineffective assistance of counsel claim." *Keener*, 301 Ga. at 850 (quoting *Shaw*, 292 Ga. at 876). Accordingly, Petitioner has failed to carry his burden to show appellate counsel rendered ineffective assistance of counsel due to a conflict of interest. *Hines*, 320 Ga. App. at 867-868. Having failed to carry his burden of proof, Petitioner's claim of ineffective assistance cannot be sustained. *Johnson v. State*, 305 Ga. 475, 478 (2019).

Petitioner's second basis for ineffective assistance of appellate counsel alleges that appellate counsel failed to investigate the facts that were revealed while the Motion for New Trial was pending. Specifically, Petitioner alleges Deputy Sheriff Mike Lanham ("Lanham") received information that Jarrard was actually guilty of the victim's murder and that appellate counsel's "only follow up" was to contact Lanham who could not recall where he received the information. To prevail on a claim of ineffective assistance of counsel, the party asserting the claim must demonstrate both deficient performance of counsel and prejudice as a result of it. *Strickland*, 466 U.S. at 687.

> Strategic 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 investigations. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

Martin v. Barrett, 279 Ga. 593, 593 (2005) (quoting *Wiggins v. Smith*, 539 U.S. 510, 522 (2003)).

At the Hearing, appellate counsel testified that he immediately went to Lanham upon receiving this information and Lanham could not recall who provided the information. (HT 35). Appellate counsel stated, "I remember being astonished that a Sheriff's Department Investigator would actually speak to a witness about a murder case and that witness is saying hey, I know who actually did this or I've talked to someone who says he knows who did this and the Investigator would not follow up on that." (HT 35). Accordingly, the record shows that appellate counsel made reasonable investigations into the information he was provided but Lanham did not give him any

additional information to further his investigation. Petitioner has failed to carry his burden to show appellate counsel's investigation fell below an objective standard of reasonableness. *Martin*, 279 Ga. at 593. Thus, the Court finds Petitioner did not produce any evidence to satisfy either prong of the *Strickland* test. Failure to satisfy either prong of the Strickland test is sufficient to defeat a claim of ineffective assistance. *Smith v. State*, 296 Ga. 731, 733 (2015).

Petitioner's third basis for ineffective assistance of appellate counsel alleges that appellate counsel failed to raise on appeal that trial counsel was ineffective, in the above-stated ways, as requested by Petitioner. As explained above,

> Under the familiar test of *Strickland v. Washington*, to prevail on a claim of ineffective assistance of counsel, the party asserting the claim must demonstrate both deficient performance of counsel and prejudice as a result of it. Where the issue is the ineffective assistance of appellate counsel, the showing of prejudice calls for a demonstration that a reasonable probability exists that, but for appellate counsel's deficient performance, the outcome of the appeal would have been different. Consequently, where the alleged ineffective assistance of appellate counsel is premised upon the failure to raise ineffective assistance of trial counsel on direct appeal, two layers of fact and law are involved in the analysis of the habeas court's decision.
>
> *Gramiak*, 304 Ga. at 513.

Accordingly, a reviewing court must determine whether appellate counsel's failure to raise trial counsel's ineffectiveness on appeal represents deficient professional conduct and whether a reasonable probability exists that the outcome of the appeal would have been different had the ineffective assistance of trial counsel been raised. *Id.* This determination, in turn, requires a determination whether trial counsel provided deficient representation and that the defendant was prejudiced by it. *Id.* Thus, if Petitioner fails to show that trial counsel provided ineffective assistance of trial counsel, then he also fails to show ineffective assistance of appellate counsel because, as a general rule, an attorney is not deficient for failing to raise a meritless issue on appeal. See *id.* As detailed in the Ineffective Assistance of Trial Counsel section above, Petitioner has failed to show that trial counsel provided ineffective assistance of counsel. *Hines*, 320 Ga. App. at

867-868. As a result, Petitioner has failed to show appellate counsel rendered ineffective assistance of counsel for failing to raise this issue on appeal. See *Gramiak*, 304 Ga. at 513.

Petitioner's fourth basis for ineffective assistance of appellate counsel alleges that appellate counsel failed to raise any *Giglio* defense on appeal concerning an implied agreement between Osborne and the State. As explained above, "decisions regarding trial tactics and strategy may form the basis for an ineffectiveness claim only if they were so patently unreasonable that no competent attorney would have followed such a course." *Hicks v. State*, 295 Ga. 268, 276 (2014). In 2016, the Supreme Court of Georgia held that choosing which issues to raise on appeal is a matter of trial strategy:

> It is the attorney's decision as to what issues should be raised on appeal, and that decision, like other strategic decisions of the attorney, is presumptively correct absent a showing to the contrary by the defendant. The process of winnowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy. Accordingly, it has been recognized that in attempting to demonstrate that appellate counsel's failure to raise a [] claim constitutes deficient performance, it is not sufficient for the habeas petitioner to show merely that counsel omitted a nonfrivolous argument, for counsel does not have a duty to advance every nonfrivolous argument that could be made. Rather, in determining under the first *Strickland* prong whether an appellate counsel's performance was deficient for failing to raise a claim, the question is not whether an appellate attorney's decision not to raise the issue was correct or wise, but rather whether his decision was an unreasonable one which only an incompetent attorney would adopt.

Hooks v. Walley, 299 Ga. 589, 591 (2016) (quoting *Arrington v. Collins*, 290 Ga. 603, 604 (2012)). Accordingly, appellate counsel's decision as to which issues to raise on appeal is a matter of strategy that is presumptively correct absent a showing to the contrary by Petitioner. *Id.*

As detailed above, there is no evidence of an agreement between Osborne and the State at the time Osborne testified. As a general rule, "an attorney is not deficient for failing to raise a meritless issue on appeal." *Gramiak*, 304 Ga. at 513. Thus, Petitioner has failed to show that appellate counsel's decision not to raise a *Giglio* defense on appeal was unreasonable.

Accordingly, this allegation provides no basis for relief.

CONCLUSION

WHEREFORE, the instant Petition for Writ of Habeas Corpus is **DENIED**.

If Petitioner desires to appeal this Order, Petitioner must file a written application for certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within thirty (30) days from the date of this Order. Petitioner must also file a Notice of Appeal with the Clerk of the Superior Court of Dodge County within the same thirty (30) day period.

SO ORDERED, this 6th day of August, 2019.

Howard C. Kaufold, Jr., Judge
Dodge County Superior Court

IN THE SUPERIOR COURT OF DODGE COUNTY
STATE OF GEORGIA

COREY BLAINE COGGINS,	*	
GDC # 1127482	*	
Petitioner,	*	
	*	Habeas Action File No. 17HC-0443
vs.	*	
	*	
MURRAY TATUM, Warden,	*	
Respondent.	*	

CERTIFICATE OF SERVICE

Comes now, Krysta Grymes, Law Clerk to Judge Howard C. Kaufold, Jr., and hereby certifies that the original of the FINAL ORDER and Certificate of Service in the above-mentioned case has been transmitted through PeachCourt to the Clerk of Dodge County Superior Court for filing, and once accepted for filing, stamp-filed copies will be transmitted through PeachCourt and by mail to all interested parties, addressing it to:

Dan King, SAAG
danking@kinglawgroup.net

Tucker Long, Attorney for Petitioner
P.O. Box 2426
Augusta, GA 30903

Corey Blaine Coggins, GDC 1127482
Dodge State Prison
2971 Old Bethel Rd.
Chester, GA 31012

This the 11th day of August, 2019.

K. Grymes

Krysta Grymes,
Law Clerk to Judge Howard C. Kaufold, Jr.

IN THE SUPERIOR COURT FOR THE COUNTY OF DODGE

STATE OF GEORGIA

COREY COGGINS, #1127482)
)
) Habeas Corpus No. 17HC0443
VS.)
)
MURRAY TATUM, WARDEN)
)

NOTICE OF COGGINS' INTENTION TO INTRODUCE AFFIDAVIT OF KATHERINE MASON INTO EVIDENCE

Attached hereto is the affidavit of Katherine Mason. Pursuant to O.C.G.A. § 9-14-48(c), Petitioner hereby gives notice of his intention to introduce the attached affidavit into evidence.

This 8th day of MAY, 2018.

JOHN B. LONG, ESQ.
Georgia State Bar No. 457200
Attorney for Defendant

OF COUNSEL:

TUCKER LONG, P.C.
P. O. BOX 2426
453 GREENE STREET (30901)
AUGUSTA, GA 30903
(706) 722-0771
(706) 722-7028 Fax
jlong@tuckerlong.com

EXHIBIT
tabbies
B