

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 23-6753**

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**JUSTIN JERMAINE JOHNSON, a/k/a Justin J. Johnson,**

**Petitioner - Appellant,**

**v.**

**WARDEN, BROAD RIVER CORRECTIONAL INSTITUTION,**

**Respondent - Appellee.**

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**Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Cameron McGowan Currie, Senior District Judge. (0:22-cv-03210-CMC)**

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**Submitted: March 28, 2024**

**Decided: April 2, 2024**

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**Before WYNN, THACKER, and HEYTENS, Circuit Judges.**

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**Dismissed by unpublished per curiam opinion.**

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**Justin Jermaine Johnson, Appellant Pro Se.**

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**Unpublished opinions are not binding precedent in this circuit.**

## PER CURIAM:

Justin Jermaine Johnson, a South Carolina prisoner, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Johnson's 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Johnson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Justin Jermaine Johnson,	)	C/A No. 0:22-3210-CMC-PJG
	)	
Petitioner,	)	
	)	
v.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Warden, Broad River Correctional Institution,	)	
	)	
Respondent.	)	
_____	)	

Petitioner Justin Jermaine Johnson, a self-represented state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on Respondent’s motion for summary judgment. (ECF No. 20.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Johnson of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to Respondent’s motion. (ECF No. 22.) Johnson filed a response in opposition to the motion. (ECF No. 26.) Having carefully considered the parties’ submissions and the record in this case, the court finds that Respondent’s motion should be granted and the Petition denied.

**BACKGROUND**

Johnson’s charges arise out of the shooting of his nine-month-old son, his son’s mother, and the mother’s grandmother, who were shot and killed in the victims’ Clarendon County home on April 6, 2011. Only the mother survived. The Clarendon County Grand Jury indicted Johnson for two counts of murder, attempted murder, first-degree burglary, kidnapping, and possession of a weapon during the commission of a violent crime. Johnson was tried in March 2014 and the jury returned verdicts of guilty on all of the charges except attempted murder. The trial court sentenced

Johnson to three consecutive terms of life imprisonment without parole for the murder and first-degree burglary convictions, a consecutive term of thirty years' imprisonment for kidnapping, and a concurrent term of five years' imprisonment for possession of a weapon during the commission of a violent crime.

The South Carolina Court of Appeals affirmed Johnson's convictions and sentences by published opinion on March 28, 2018.<sup>1</sup> State v. Johnson, 812 S.E.2d 739 (S.C. Ct. App. 2018). The South Carolina Supreme denied the petition for a writ of certiorari filed by Johnson to review the South Carolina Court of Appeal's opinion.

In December 2018, Johnson filed an application for post-conviction relief ("PCR") in the Clarendon County Court of Common Pleas. The PCR court held an evidentiary hearing on the application in February 2019 in which Johnson was represented by counsel. The PCR court denied relief in an order of dismissal filed April 15, 2019. Johnson's PCR appeal counsel filed a petition for a writ of certiorari pursuant to the coincidentally named Johnson v. State<sup>2</sup> on Johnson's behalf in the South Carolina Supreme Court, and Johnson filed a *pro se* response to the petition. The Supreme Court transferred the case to the South Carolina Court of Appeals, which denied the petition.

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<sup>1</sup> The published opinion substituted an earlier opinion after granting Johnson's petition for rehearing.

<sup>2</sup> Johnson v. State, 364 S.E.2d 201 (S.C. 1988) (applying the factors in Anders v. California, 386 U.S. 738 (1967), to post-conviction appeals). Anders requires that counsel who seeks to withdraw after finding the "case to be wholly frivolous" following a "conscientious examination" must submit a brief referencing anything in the record that arguably could support an appeal; furnish a copy of that brief to the defendant; and after providing the defendant with an opportunity to respond, the reviewing court must conduct a full examination of the proceedings to determine if further review is merited. Anders, 386 U.S. at 744.

### FEDERAL HABEAS ISSUES

Johnson now files this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising the following grounds for relief, quoted verbatim:

**Ground One:** Trial court erred in admitting irrelevant pre-death photographs of victims.

**Supporting Facts:** During applicant's trial, the state submitted into evidence pre-death photographs of two of the victims in this case. The identification of these victims was not an issue and nothing in the photographs was relevant to establishing appellant's guilt or innocence.

**Ground Two:** Trial court erred in allowing a state's witness to testify via SKYPE.

**Supporting Facts:** During applicant's trial, state's witness Mason Moore was allowed to testify via Skype Video Services. The video and audio repeatedly went out which interfered with the applicant's lawyer as well as the solicitor ability to question the witness properly. Also the state failed to show any public policy necessitating the use of video testimony.

**Ground Three:** Trial court erred in finding applicant's testimony was voluntary where it was coerced by investigators.

**Supporting Facts:** While being interrogated by investigators Mason Moore and Kipp Coker for over ten hours, applicant was repeatedly told that he was lying and that he was going to go to prison for life if he didn't change his statement. After investigators stated that they would tell applicant's daughter that he was cold blooded killer he then changed his statement but only repeated back information that investigators gave to him earlier that day. Applicant's statement, "rather or not it was mistake, how could I live with myself knowing I did what I did" was taken as a confession. No new information was presented to investigators through applicant's statement nor did applicant admit to committing the crime.

**Ground Four:** Trial court erred in denying motion for a mistrial and to empanel a new jury where applicant was led into courthouse wearing orange handcuffs and escorted by several officers.

**Supporting Facts:** During applicant's jury selection he was escorted into the courthouse by several officers while wearing orange handcuffs. He was taken past an area a few feet away from where potential jury members were sitting. The use of the orange handcuffs can only be meant to insure people were able to see them.

**Ground Five:** Trial court erred in denying motion for a mistrial due to state's witness discussing the facts and merits of the case within arm's length of jurors.

**Supporting Facts:** One of the state's witnesses was overheard discussing the case in front of potential jurors outside of trial. Applicant's trial lawyer and another state's witness observed this interaction.

**Ground Six:** Trial court erred in sentencing applicant to five years' incarceration for possession of a firearm in the commission of a violent crime.

**Supporting Facts:** Applicant has been sentenced to five years' incarceration for possession of a firearm during the commission of a violent crime in which he was also sentenced to life without parole for the same crime.

(Pet., ECF No. 1 at 16-17) (errors in original).

## DISCUSSION

### A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party "shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the

existence of an element essential to that party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322. Further, while the federal court is charged with liberally construing a petition filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g., Erickson v. Pardus, 551 U.S. 89 (2007), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

#### **B. Habeas Corpus Standard of Review**

In accordance with the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), claims adjudicated on the merits in a state court proceeding cannot be a basis for federal habeas corpus relief unless the decision was "contrary to, or involved an unreasonable application of clearly established federal law as decided by the Supreme Court of the United States," or the

decision “was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.” 28 U.S.C. § 2254(d)(1), (2). When reviewing a state court’s application of federal law, “a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.” Williams v. Taylor, 529 U.S. 362, 410 (2000); see also White v. Woodall, 572 U.S. 415, 419 (2014) (describing an “unreasonable application” as “objectively unreasonable, not merely wrong” and that “even clear error will not suffice”) (internal quotation marks and citation omitted); Harrington v. Richter, 562 U.S. 86, 100 (2011); Humphries v. Ozmint, 397 F.3d 206 (4th Cir. 2005); McHone v. Polk, 392 F.3d 691 (4th Cir. 2004). Moreover, state court factual determinations are presumed to be correct and the petitioner has the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Where, as here, the petitioner seeks relief based on a state trial court error, the petitioner must also show that the error had a substantial and injurious influence on the verdict. Brown v. Davenport, 142 S. Ct. 1510, 1523 (2022) (quoting Brecht v. Abrahamson, 507 U.S. 619, 637 (1993)). That is, for a federal habeas court to grant relief on a perceived state trial court error, the petitioner must satisfy both the court’s equitable precedent under Brecht and the statutory standard in § 2254(d).

“A state court’s determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the correctness of the state court’s decision.” Harrington, 562 U.S. at 101 (quoting Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)); see also White, 572 U.S. at 419-20 (stating that “[a]s a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court’s ruling on the claim being presented

in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement' ") (alteration in original) (quoting Harrington, 562 U.S. at 103). Under the AEDPA, a state court's decision "must be granted a deference and latitude that are not in operation" when the case is being considered on direct review. Harrington, 562 U.S. at 101. Moreover, review of a state court decision under the AEDPA standard does not require an opinion from the state court explaining its reasoning. See id. at 98 (finding that "[t]here is no text in [§ 2254] requiring a statement of reasons" by the state court). If no explanation accompanies the state court's decision, a federal habeas petitioner must show that there was no reasonable basis for the state court to deny relief. Id. Pursuant to § 2254(d), a federal habeas court must (1) determine what arguments or theories supported or could have supported the state court's decision; and then (2) ask whether it is possible that fairminded jurists could disagree that those arguments or theories are inconsistent with the holding of a prior decision of the United States Supreme Court. Id. at 102. "If this standard is difficult to meet, that is because it was meant to be." Id. Section 2254(d) codifies the view that habeas corpus is a " 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." Id. at 102-03 (quoting Jackson v. Virginia, 443 U.S. 307, 332 n.5 (1979) (Stevens, J., concurring in judgment)).

### **C. Exhaustion Requirements**

A habeas corpus petitioner may obtain relief in federal court only after he has exhausted his state court remedies. 28 U.S.C. § 2254(b)(1)(A). "To satisfy the exhaustion requirement, a habeas petitioner must present his claims to the state's highest court." Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997), abrogated on other grounds by United States v. Barnette, 644 F.3d 192 (4th Cir. 2011); see also In re Exhaustion of State Remedies in Criminal and Post-Conviction

Relief Cases, 471 S.E.2d 454, 454 (S.C. 1990) (holding that “when the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies.”). To exhaust his available state court remedies, a petitioner must “fairly present[] to the state court both the operative facts and the controlling legal principles associated with each claim.” Longworth v. Ozmint, 377 F.3d 437, 448 (4th Cir. 2004) (internal quotation marks and citation omitted). Thus, a federal court may consider only those issues which have been properly presented to the state appellate courts with jurisdiction to decide them. Generally, a federal habeas court should not review the merits of claims that would be found to be procedurally defaulted (or barred) under independent and adequate state procedural rules. Lawrence v. Branker, 517 F.3d 700, 714 (4th Cir. 2008); Longworth, 377 F.3d at 447-48; see also Coleman v. Thompson, 501 U.S. 722 (1991). For a procedurally defaulted claim to be properly considered by a federal habeas court, the petitioner must “demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.” Coleman, 501 U.S. at 750.

#### **D. Respondent’s Motion for Summary Judgment**

##### **1. Grounds One and Six**

Johnson’s Grounds One and Six are not cognizable claims in a federal habeas petition. A district court may only entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a); see also Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (“It is not the province of a federal habeas corpus court to reexamine state-court determinations on state-law questions.”); Pulley v. Harris,

465 U.S. 37, 41(1984) (“A federal court may not issue the writ [of habeas corpus] on the basis of a perceived error of state law.”).

In Ground One, Johnson claims the trial court erred by admitting pre-death photographs of the murder victims. Thus Ground One raises an issue of state evidentiary law and Johnson does not argue that the error was so extreme that it implicates due process concerns. See, e.g., Burket v. Angelone, 208 F.3d 172, 186 (4th Cir. 2000) (“In federal habeas actions, we do not sit to review the admissibility of evidence under state law unless erroneous evidentiary rulings were so extreme as to result in a denial of a constitutionally fair proceeding.”). In Ground Six, Johnson claims the trial court erred by sentencing Johnson to five years’ imprisonment for possession of a weapon during the commission of a violent crime in light of South Carolina Code § 16-23-490, which expressly provides that the five-year sentence does not apply when the defendant is sentenced to life without parole for the violent crime. Thus, Ground Six raises an issue of state statutory interpretation rather than an issue of federal law. See, e.g., Slavek v. Hinkle, 359 F. Supp. 2d 473, 483 (E.D. Va. 2005) (finding the petitioner’s claim that he was sentenced outside of Virginia’s sentencing guidelines was not cognizable in a federal habeas petition); Krempa v. Parrish, Civil Action No. DKC-12-841, 2012 WL 6738287, at \*6 (D. Md. Dec. 27, 2012) (“Sentence calculation and/or construction issues generally are issues of state law and do not give rise to a federal question.”). Consequently, Respondent is entitled to judgment as a matter of law on Grounds One and Six.

## 2. Ground Two

In Ground Two, Johnson claims the trial court violated his Sixth Amendment right to confront the witnesses against him by allowing investigator Mason Moore to testify remotely by two-way video. Respondent argues that Johnson cannot show pursuant to 28 U.S.C. § 2254(d)

that the South Carolina Court of Appeals's decision rejecting this claim was contrary to, or an unreasonable application of, clearly established federal law, or was an unreasonable determination of the facts. Respondent also argues that pursuant to Brecht, any error by the trial court was harmless. The court agrees.

The Confrontation Clause of the Sixth Amendment states “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. “The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.” Maryland v. Craig, 497 U.S. 836, 845 (1990). Generally, the Confrontation Clause requires that witnesses testifying against a criminal defendant be physically present at trial, but that right is not absolute. United States v. Abu Ali, 528 F.3d 210, 240 (4th Cir. 2008); see also Craig, 497 U.S. at 849 (“In sum, our precedents establish that the Confrontation Clause reflects a *preference* for face-to-face confrontation at trial, a preference that must occasionally give way to considerations of public policy and the necessities of the case.”) (internal quotations marks and citations omitted).

Here, the trial court held a pretrial Jackson v. Denno<sup>3</sup> hearing to determine whether Johnson's statement to police was given voluntarily. The State called Clarendon County Sheriff's Department investigators Mason Moore and Kipton Coker to testify at the hearing. Moore and Coker were deputies who interviewed Moore and purportedly obtained a confession after interviewing him for several hours. However, Moore had since moved to Montana, so the State had him testify remotely via two-way video. Johnson did not object to Moore testifying remotely at the Jackson v. Denno hearing, but noted that he may object to the use of remote testimony at

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<sup>3</sup> 378 U.S. 368 (1964).

trial. The following day, the trial court heard argument from the parties on whether Moore's remote testimony violated the Confrontation Clause. The trial court found that Johnson would not be prejudiced by Moore's remote testimony because the two-way video technology allowed the jury to fully understand Moore, Moore's testimony was cumulative of Coker's testimony, and the interview with Johnson was on video. At trial, Moore testified remotely about his and Coker's interview of Johnson. (App. at 87-93, ECF No. 19-1 at 90-96.) At the end of Moore's testimony, Johnson renewed his objection and noted that the video froze a few times during Moore's testimony. The trial court overruled the objection, finding the freezing did not ultimately stop the parties from being able to ask questions or receive answers, and thus, Johnson was not prejudiced by the testimony.

On appeal, Johnson argued that Moore's remote testimony during trial violated the Confrontation Clause. The South Carolina Court of Appeals agreed, but found that the error was harmless in Johnson's case. The Court of Appeals first found that pursuant to Maryland v. Craig, remote testimony is only appropriate where necessary to further an important public policy and the reliability of the testimony is otherwise assured.<sup>4</sup> The Court of Appeals also found, pursuant to United States v. Abu Ali, that a generalized interest in law enforcement, or convicting someone of a criminal offense, is not an "important public policy" that justifies the use of remote testimony in a criminal trial. Thus, the Court of Appeals found that the trial court erred in allowing Moore to testify remotely because no public policy consideration beyond a generalized interest in criminal

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<sup>4</sup> As pointed out by Respondent, the proper standard for evaluating the Confrontation Clause's effect on remote testimony is unsettled under federal law. See Wrotten v. New York, 560 U.S. 959 (2010) (J., Sotomayor, concurring in the denial of the petition for a writ of certiorari) (questioning whether Maryland v. Craig is the controlling precedent in deciding whether testimony via two-way video violates the Confrontation Clause, but noting that the question has not been addressed by the Supreme Court). However, the South Carolina Court of Appeals's decision as to the merits of the Johnson's Confrontation Clause claim is not at issue here.

convictions existed in Johnson's case. However, the Court of Appeals found the error was harmless because Moore's testimony was largely cumulative to the evidence already before the jury. Johnson, 812 S.E.2d at 749-54.

Here, Johnson fails to show that the South Carolina Court of Appeals's decision was contrary to, or an unreasonable application of, clearly established federal law, or an unreasonable determination of the facts. Under federal law, Confrontation Clause violations are subject to harmless error analysis. Lilly v. Virginia, 527 U.S. 116, 140 (1999); United States v. Banks, 482 F.3d 733, 741 (4th Cir. 2007). Whether the error is harmless depends on "a host of factors," including, "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and . . . the overall strength of the prosecution's case." Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986).

Several factors support the Court of Appeals's finding that the error was harmless in Johnson's case. Moore's testimony was cumulative because Coker also testified about their interview of Johnson and the video recording of the interview was played to the jury.<sup>5</sup> The interview showed what the State argued was a confession by Johnson—which Johnson disputed—but Moore's testimony was not essential to establishing that key piece of evidence. Rather, the video was admitted and played during *Coker's* testimony and the jury was able to see the purported

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<sup>5</sup> Johnson does not challenge the trial court's and Court of Appeals's finding that Moore's testimony was cumulative of other evidence presented about Moore's and Coker's interview of Johnson. See generally 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.").

confession themselves. See, e.g., Wiggins v. Boyette, 635 F.3d 116, 125 (4th Cir. 2011) (finding that the admission of witnesses' statements that violated the Confrontation Clause but were ultimately cumulative of other evidence supported a finding of harmless error). Further, Johnson argues that the video froze several times, but the record shows that the parties were able ask every question and receive an answer, and Johnson fails to explain how a few instances of the video freezing prejudiced him. Consequently, Johnson fails to show that the Court of Appeals's harmless error finding was contrary to, or an unreasonable application of, clearly established federal law; was based on an unreasonable determination of the facts; or that the admission of Moore's testimony had a substantial and injurious influence on the verdict.

### 3. Ground Three

In Ground Three, Johnson argues the trial court erred by finding that his statement to investigators—that he fired the gun and accidentally killed the victims, which the investigators considered to be a confession—was given voluntarily. Respondent argues that Johnson cannot show that the Court of Appeals's rejection of this claim was contrary to, or an unreasonable application of, federal law, or was based on an unreasonable determination of fact. The court agrees.

The Fifth Amendment provides, "No person . . . shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Where a suspect gives an involuntary confession while in custody, the use of that confession at trial offends due process. Abu Ali, 528 F.3d at 232; United States v. Braxton, 112 F.3d 777, 780 (4th Cir. 1997). A statement given during custodial interrogation is involuntary if the suspect's will was "overborne" or his "capacity for self-determination was critically impaired." United States v. Pelton, 835 F.2d 1067, 1071-72 (4th Cir. 1987) (quoting

Schneekloth v. Bustamonte, 412 U.S. 218, 225 (1973)). This requires the court to consider the totality of the circumstances, “including the characteristics of the defendant, the setting of the interview, and the details of the interrogation.” United States v. Cristobal, 293 F.3d 134, 140 (4th Cir. 2002) (citing Pelton, 835 F.3d at 1071). Coercive police activity is a necessary finding for a confession to be considered involuntary. United States v. Giddins, 858 F.3d 870, 881 (4th Cir. 2017) (citing Cristobal, 293 F.3d at 140-41). “The mere existence of threats, violence, implied promises, improper influence, or other coercive police activity, however, does not automatically render a confession involuntary.” Braxton, 112 F.3d at 780.

The State charged Johnson with shooting his nine-month-old son, J.C.; his children’s mother, Kaisha Caraway; and Caraway’s grandmother. The victims all lived together in a house that also included Johnson’s older child, K.C., and Caraway’s grandfather. The State presented evidence that Johnson entered the victims’ home and got into an argument with Caraway and her grandmother, retrieved a shotgun, and shot all three victims, killing J.C. and Caraway’s grandmother. When Clarendon County Sheriff’s Deputies originally arrived at the residence, Johnson and Caraway said that someone named “Robert” was responsible for the shootings, but when the deputies separated them, Caraway told the deputies that Johnson was the shooter.

At the pretrial Jackson v. Denno hearing, investigators Moore and Coker provided the following testimony. (App. at 25-83, ECF No. 19-1 at 28-86.) The deputies took Johnson to the Sheriff’s Department to interview him around 2:00 p.m. Investigators Moore and Coker advised Johnson of his Miranda rights from a printed card twice before they questioned him, and Johnson indicated his willingness to waive his rights and speak to the investigators. Johnson never invoked his right to counsel or right to remain silent. The interview lasted for many hours. Moore estimated

that the actual interviews lasted at least four to five hours.<sup>6</sup> During that time, the investigators offered Johnson food and drink and provided Johnson bathroom breaks as needed.

Johnson initially claimed that a third party was responsible for the shooting, but as the interview went on, Moore and Coker told Johnson that they believed he was lying and told him they had collected evidence that contradicted his story. Johnson's story changed over the course of the interview. Coker admitted to losing his temper and yelling at Johnson when calling him a liar. At one point, Moore put his hands on Johnson and told him that God would take the weight from Johnson and make everything okay. At another point, one of the investigators told Johnson that if he kept up with his false story about what happened, he was going to end up in prison for life, if not the death penalty. Later, Coker told Johnson that he would tell Johnson's surviving daughter that Johnson was a man for telling the truth, which Coker believed had a great effect on Johnson. At the end of the interview, Johnson admitted that he was the shooter and that he lied about a third party being present at the scene.

The following day, after reviewing the Jackson v. Denno hearing testimony and reviewing the video recording of Johnson's interview, the trial court found that Johnson gave his statement to investigators freely, voluntarily, knowingly, and intelligently. The court noted that Johnson was Mirandized twice; offered ample breaks, food, and drink; and was not under excessive oppression when he confessed. (App. at 87, ECF No. 19-1 at 90.)

On appeal, Johnson argued that the trial court erred in finding his confession was voluntarily because the investigators misrepresented evidence to him, threatened him with the

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<sup>6</sup> The record is unclear when the interview ended. Johnson's time in the Sheriff's Department was taped, and the tapes last for approximately eleven hours, though investigators did not actively interview Johnson the entire time—hours of the footage include breaks and time spent collecting physical evidence from Johnson's body and clothes.

death penalty, and referenced his daughter and what she would think of his actions.<sup>7</sup> The South Carolina Court of Appeals rejected these arguments.<sup>8</sup>

The Court of Appeals found that the circuit court did not abuse its discretion in admitting Johnson's statement because the evidence supported a finding that Johnson's will was not overborne by the investigator's tactics. As to the investigator's misrepresentation of evidence, the Court of Appeals found that case law requires more than just misrepresentation alone to find that the suspect's will was overborne. As to the death penalty comment, the Court of Appeals found that it was made in isolation, the death penalty was a possible sentence for the crime, and Johnson did not recant his story until well after the death penalty was mentioned. And as to the statement about Johnson's surviving daughter, the Court of Appeals found that the statement was not a

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<sup>7</sup> These arguments were not specifically made to the trial court. In his brief to the Court of Appeals, Johnson argued:

The investigators in this case continuously lied about the evidence in an effort to "wear on his (Johnson's) psyche" and "break him (Johnson) down." They told Johnson that the trunk of his car was analyzed and only his fingerprints were found, that his shoe matched a footprint left from kicking in the door, that his ring matched a wound left on [Caraway], and that you could hear him in the background of the 9-1-1 calls by [Caraway's grandmother] and [Caraway]. None of that was true.

...

In the present case, the statements regarding Johnson's two-year-old daughter were equally coercive. The investigators attempted to ameliorate some of their conduct by making their threats in the form of questions rather than statements. They all but said that if Johnson did not give them an alternate story, they were going to tell his daughter their version of events—that he was [a] cold blooded killer who intended to kill her too.

(App. at 1126-28, ECF No. 19-5 at 129-31.)

<sup>8</sup> The South Carolina Court of Appeals specifically stated that Johnson did not "directly argue" that the length of his interrogation rendered his confession involuntary. Johnson, 812 S.E.2d at 747 n.8.

tangible threat related to children or family members that could be considered coercive. Johnson, 812 S.E.2d at 747-49.

Here, Johnson fails to show that the South Carolina Court of Appeals's decision was contrary to, or an unreasonable application of, clearly established federal law, or an unreasonable determination of the facts. Notably, Johnson fails to specify what part of the Court of Appeals's decision he challenges, but regardless, the Court of Appeals's findings are generally compatible with federal law. Federal courts generally find that a confession is not rendered involuntary because the interrogators lie, mislead, or misrepresent the evidence, unless the suspect's will is overborne. See United States v. Whitfield, 695 F.3d 288, 302 (4th Cir. 2012) ("Indeed, misrepresentations are insufficient, in and of themselves, to render a confession involuntary. The determinative factor remains the question of whether such misrepresentations overbore the defendant's will.") (internal quotation marks and citations omitted); see also United States v. Haynes, 26 F. App'x 123, 134 (4th Cir. 2001) (collecting examples). Federal courts also generally find that threats of harsh sentences are not enough to overbear a suspect's will. See United States v. Jacques, 744 F.3d 804, 810 (1st Cir. 2014) ("[F]ederal courts considering the totality of the evidence have repeatedly found that an interrogator's threats of a harsher prison sentence if a defendant failed to cooperate did not suffice to overbear the defendant's will."); cf. Braxton, 112 F.3d at 783 ("A law enforcement officer's admonishment to a suspect during an investigatory interview to tell the truth or face consequences is simply not an implied promise of non-prosecution.").

Nor does Johnson explain how the Court of Appeals's decision is based on an unreasonable determination of the facts. The Court of Appeals found that the investigators did not make a tangible, coercive threat to Johnson's daughter. Johnson does not point to any evidence that could

contradict that finding. Instead, Johnson argues that the investigators threatened to “tell his daughter about him.” (Petr.’s Resp., ECF No. 26 at 10.) However, telling a suspect’s family member about the suspect’s crimes is not the type of threat against family members that federal courts have found can overbear a suspect’s will and render a confession involuntary. See, e.g., Lynumn v. Illinois, 372 U.S. 528, 534 (1963) (finding a threat to a mother that state financial aid for her infant would be cut off rendered her confession involuntary); Jacques, 744 F.3d at 811 (“[S]tatements that a defendant’s refusal to cooperate may lead to an extended separation from his or her loved ones may contribute to a finding that the defendant’s confession was coerced. However, the mere fact that a defendant is placed under some psychological pressure by agents does not necessarily render a confession involuntary.”) (internal quotations marks and citations omitted).

Viewing the totality of the circumstances, the court cannot say that the Court of Appeals’s decision is unreasonable. Johnson does not point to any evidence in the record that the investigator’s actions coerced him to the point that he was not able to freely decide how to answer their questions. See Pelton, 835 F.2d at 1071-72. There is no evidence that Johnson did not have the mental or emotional capacity to be interrogated or that he was under the influence of drugs or alcohol. Both investigators testified that Johnson appeared rational and responsive, was not overwhelmed by emotions, and appeared to understand their questions and his Miranda rights. They also testified that Johnson never asked the questions to end, said he no longer wanted to speak with them, or asked for an attorney. (App. at 491-96, 521-24; ECF No. 19-2 at 156-161, ECF No. 19-3 at 23-26.) Consequently, Johnson fails to show that the Court of Appeals’s decision was contrary to, or an unreasonable application of, clearly established federal law; an unreasonable

determination of the facts; or that the admission of his statement had a substantial and injurious influence on the verdict.

#### 4. Ground Four

In Ground Four, Johnson argues that the trial court erred by refusing to grant a mistrial based on the jury venire being exposed to a view of Johnson being escorted into the courthouse in handcuffs before trial. Respondent argues that Johnson cannot show that the Court of Appeals's decision finding that the trial court did not err by refusing to grant a mistrial was contrary to, or an unreasonable application of, clearly established federal law, or based on an unreasonable determination of the facts. The court agrees.

The Due Process Clause of the Fifth and Fourteenth Amendments generally forbids the use of restraints on a criminal defendant visible to jurors *inside of the courtroom*, absent special security considerations. See Deck v. Missouri, 544 U.S. 622, 630-32 (2005). As the Fourth Circuit has explained:

Basic to American jurisprudence is the principle that an accused, despite his previous record or the nature of the pending charges, is presumed innocent until his guilt is established beyond a reasonable doubt by competent evidence. It follows that he is also entitled to the indicia of innocence. In the presence of the jury, he is ordinarily entitled to be relieved of handcuffs, or other unusual restraints, so as not to mark him as an obviously bad man or to suggest that the fact of his guilt is a foregone conclusion.

However, the right to the indicia of innocence is a relative one. The judge presiding at the trial, the jurors, courtroom personnel and spectators are entitled to security in the performance of their functions or in observing the trial. The members of the public out of the courtroom are entitled to security in the pursuit of their daily activities. The public also has an interest in the expeditious trial of persons accused of crime, and an interest in preventing the guilty from being at large and committing other offenses. Thus, in appropriate circumstances, the accused's right to the indicia of innocence before the jury must bow to the competing rights of participants in the courtroom and society at large.

United States v. Samuel, 431 F.2d 610, 614-15 (4th Cir. 1970).

However, the use of restraints *outside of the courtroom* is not inherently prejudicial, and a defendant claiming that his right to due process was violated by visible restraints outside of the courtroom must show that he was actually prejudiced. See Wharton v. Chappell, 765 F.3d 953, 964 (9th Cir. 2014) (“We have held that visible shackling *outside the courtroom*—at least when the viewing is brief and accidental—is not inherently prejudicial; instead, a due process violation occurs only if the criminal defendant demonstrates actual prejudice.”); United States v. Morales, 758 F.3d 1232, 1237 (10th Cir. 2014) (same); United States v. Shaver, 511 F.2d 933, 935 (4th Cir. 1975) (finding that the jurors’ brief sighting of the defendant in handcuffs is not *per se* prejudicial and finding no prejudice where the trial court thoroughly questioned the jurors and determined there was no prejudice to the defendant); see also Mendoza v. Berghuis, 544 F.3d 650, 655 (6th Cir. 2008) (stating that there is no clearly established federal law that a defendant’s due process rights are violated by jurors seeing the defendant in restraints during transport outside of the courtroom).

Following *voir dire*, Johnson moved for a mistrial, arguing the jury venire was tainted for two reasons. (The second reason is addressed in Ground Five.) The first reason, Johnson argued, was that the jury venire was exposed to him being escorted into the courthouse in handcuffs. Johnson explained that while he was escorted into the courthouse in street clothes, his hands were cuffed in front of him and he was escorted by three or four jail personnel. Johnson claimed that this was done within full view of where the jury venire was assembling that morning. Johnson argued that, consequently, the entire jury venire was tainted and should be disqualified. Johnson also argued that he could not have asked prospective jurors about it during *voir dire* because it would have “re-rung” the bell. (App. at 191-94, ECF No. 19-1 at 194-97.)

The trial court denied the motion for a mistrial. Noting that Johnson was first seen by the jury in the courtroom without handcuffs, in plain clothes, and being escorted by counsel, the court also found that the jurors were questioned during *voir dire* during about whether they had any bias and none was found. (App. at 195, ECF No. 19-1 at 198.)

On appeal, the South Carolina Court of Appeals found that the trial court did not err in denying Johnson's motion for a mistrial. The Court of Appeals found that the record failed to demonstrate that any juror actually observed Johnson in handcuffs or being escorted by jail personnel. Johnson, 812 S.E.2d at 749.

The court concludes that the Court of Appeals's decision is not contrary to, or an unreasonable application of, clearly established federal law. As provided above, a consensus of federal authority provides that a criminal defendant cannot establish that his right to due process was violated by a jury venire observing him in restraints outside of the courtroom unless he can prove that he was actually prejudiced. See Wharton, 765 F.3d at 964; Morales, 758 F.3d at 1237; Shaver, 511 F.2d at 935. The Court of Appeals applied that standard here. Johnson cites to Deck v. Missouri, to argue that he is entitled to relief, but the Deck standard is not applicable here, because Deck dealt with the use of shackles in front of the jury in the courtroom during the guilt phase of a death penalty trial, 544 U.S. at 626-29, whereas Johnson was possibly seen by the jury venire while being transported into the courthouse.

Johnson also fails to point to any evidence that the Court of Appeals' decision is based on an unreasonable determination of the facts. The Court of Appeals found that the trial court record did not show whether any juror actually saw Johnson in handcuffs, and if so, whether they were prejudiced by it. Johnson appears to admit this and argues he is entitled to relief because it cannot be known if the jurors were prejudiced. (Petr.'s Resp., ECF No. 26 at 11-12.) However, it is

Johnson's burden to show that the trial court decision is based on an unreasonable determination of the facts in light of the evidence presented in the trial court, see 28 U.S.C. § 2254(d)(2), and Johnson's speculation does not meet that burden. Notably, Johnson did not raise this issue to prospective jurors during *voir dire*, nor did he ask the trial court to give a curative instruction or otherwise address the issue in front of the jury. Thus, the record is devoid of any evidence that would refute the trial court's determination that no bias was found among the jury members during *voir dire*. Consequently, Johnson cannot show that he is entitled to relief under § 2254, or that the jury venire possibly seeing him in handcuffs outside of the courtroom had a substantial and injurious influence on the verdict.

**5. Ground Five**

In Ground Five, Johnson argues the trial court erred in denying his motion for a mistrial based on witnesses for the state discussing the facts of the case near jurors outside of the courtroom. Respondent argues that Johnson cannot show that the state court decision was contrary to, or an unreasonable application of, clearly established federal law, or an unreasonable determination of the facts. The court agrees.

The Sixth Amendment guarantees that criminal defendants shall enjoy the right to a trial by an impartial jury. U.S. Const. Amend. VI. As the Fourth Circuit has explained:

An impartial jury is one that arrives at its verdict based upon the evidence developed at trial and without external influences.

...

It is clearly established under Supreme Court precedent that an external influence affecting a jury's deliberations violates a criminal defendant's right to an impartial jury. Especially troubling are private communications between a juror and a third party.

...

In light of these significant constitutional concerns, the Supreme Court in [Remmer v. United States, 347 U.S. 227 (1954)] created a rebuttable presumption of prejudice applying to communications or contact between a third party and a juror concerning the matter pending before the jury.

Barnes v. Joyner, 751 F.3d 229, 240-41 (4th Cir. 2014) (internal quotation marks and citations omitted); see also United States v. Johnson, 954 F.3d 174, 179 (4th Cir. 2020) (“ ‘[I]f even a single juror’s impartiality is overcome’ by such an external influence, the defendant’s right to an impartial jury has been compromised.”) (quoting United States v. Lawson, 677 F.3d 629, 648-49 (4th Cir. 2012)).

Following *voir dire*, Johnson moved for a mistrial, arguing the jury venire was tainted for two reasons. As explained above, the trial court denied the motion as to the jury venire being exposed to Johnson being escorted in handcuffs. Johnson’s second basis for a mistrial was that two of the State’s witnesses were seen by Johnson’s counsel discussing evidence of the case in front of potential jurors. Johnson stated that during the trial court’s break between jury qualifications and *voir dire*, Johnson’s counsel observed two law enforcement personnel having a conversation about the existence and weight of the evidence in front of jurors that were standing around outside the courtroom. Johnson claimed that the distance between the witnesses and potential jurors was “arm’s length.” Johnson stated that those law enforcement personnel, who Johnson identified by name, were witnesses for the State. Johnson also noted this occurred after the trial court went through general qualifications and exemptions with the jury venire, including the trial court’s question of whether anyone in the venire had reasons that they could not serve. (App. at 196-97, ECF No. 19-1 at 199-200.)

The trial court stated that, after the break, during *voir dire*, the potential jurors were asked if they knew anything about the case that did not come from within the four walls of the courtroom, and every potential juror answered “no.” Johnson replied that the jurors likely would not know

that the conversation they overheard was about his case until the witnesses took the stand. The trial court indicated that the jurors would be instructed that the only evidence they could consider would be evidence presented during the trial. The trial court also indicated that it was unclear whether any potential jurors actually heard the witnesses' conversation. The trial court denied the motion. (App. at 197-99, ECF No. 19-1 at 200-02.)

On appeal, the South Carolina Court of Appeals found that the trial court did not err in denying Johnson's motion for a mistrial based on the witnesses discussing evidence near potential jurors. Similar to Johnson's other motion for a mistrial, the Court of Appeals found that the record did not show that any juror actually overheard the comments or was prejudiced by them. Johnson, 812 S.E.2d at 749.

The court concludes that Johnson fails to show that the Court of Appeals' decision is contrary to, or an unreasonable application of, clearly established federal law. Johnson again does not explain how the Court of Appeals's decision contradicts federal law. Similar to his argument in Ground Four, Petitioner argues it is impossible to know if any jurors overheard the conversation and were prejudiced by it. (Petr.'s Resp., ECF No. 26 at 12.) As explained above, external influences on a jury pose serious constitutional issues, but Johnson points to no evidence that any juror *actually* overheard the State's witnesses outside of the courtroom. While federal law requires a presumption of prejudice and an evidentiary hearing when the defendant presents a credible allegation of improper external communication with a juror, see Remmer, 347 U.S. at 228, Johnson did not move for such a hearing in this case, and Johnson failed to establish on the record that improper contact necessitating such a hearing actually took place. See Barnes, 751 F.3d at 244 ("Therefore, to be entitled to the Remmer presumption and a Remmer hearing, a defendant must first establish

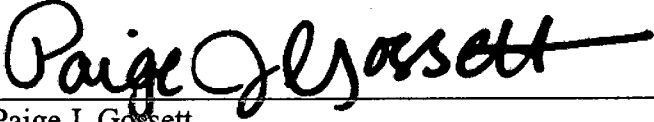
both that an unauthorized contact was made and that it was of such a character as to reasonably draw into question the integrity of the verdict.”) (internal quotation marks omitted).

Notably, Johnson did not question potential jurors about this in *voir dire*, despite the fact that his counsel observed the incident and brought it to the court’s attention. Thus Johnson was in a unique position to identify the potential jurors who may have been improperly influenced, but he did not identify them for the record. That said, the record also does not reveal whether the potential jurors that were exposed to the witnesses’ conversation were actually seated on the jury. Consequently, Johnson fails to show that the Court of Appeals’s finding that no jurors were prejudiced is an unreasonable determination of the facts, or that the jury venire possibly hearing the witnesses’ conversation had a substantial and injurious influence on the verdict.

#### RECOMMENDATION

For the foregoing reasons, the court recommends Respondent’s motion for summary judgment (ECF No. 20) be granted and the Petition be denied.

May 3, 2023  
Columbia, South Carolina

  
Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

*The parties’ attention is directed to the important notice on the next page.*

**Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

FILED: June 10, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-6753  
(0:22-cv-03210-CMC)

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JUSTIN JERMAINE JOHNSON, a/k/a Justin J. Johnson

Petitioner - Appellant

v.

WARDEN, BROAD RIVER CORRECTIONAL INSTITUTION

Respondent - Appellant

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O R D E R

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The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wynn, Judge Thacker, and Judge  
Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

Justin Jermaine Johnson,

Petitioner,

v.

Warden, Broad River Correctional Institution,

Respondent.

C/A No. 0:22-3210-CMC

Order

This matter is before the court on Petitioner's *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2254. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report").

Respondent filed a motion for summary judgment, as well as a return and memorandum of law on January 12, 2023. ECF Nos. 19, 20, 21. A *Roseboro* Order was mailed to Petitioner, advising him of the importance of a dispositive motion and the need to file an adequate response. ECF No. 22. Petitioner filed a response in opposition to summary judgment. ECF No. 26.

On May 4, 2023, the Magistrate Judge issued a Report recommending that Respondent's motion for summary judgment be granted on the merits. ECF No. 29. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed timely objections on May 17, 2023. ECF No. 31.

**Standard**

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Matthews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

**Discussion**

In his § 2254 petition, Petitioner alleges the trial court erred in (1) admitting pre-death photos of the victims; (2) allowing a state’s witness to testify via SKYPE; (3) finding Petitioner’s testimony was voluntary although he says it was coerced; (4) denying a motion for mistrial and to empanel a new jury because Petitioner was led into the courthouse wearing orange handcuffs and escorted by several officers; (5) denying a motion for mistrial due to state’s witness discussing facts and merits of the case within arm’s length of jurors; and (6) sentencing applicant to five years imprisonment for possession of a firearm in commission of a violent crime when he was also sentenced to life without parole for the same crime. The Magistrate Judge recommends granting Respondent’s motion for summary judgment and dismissing this case. ECF No. 29. Specifically, the report recommends dismissal of each of the grounds because: Grounds 1 and 6 are matters of

state law and not cognizable in a federal habeas petition, and the state Court of Appeals rejections of Grounds 2, 3, 4, and 5 were not contrary to or an unreasonable application of federal law, or based on unreasonable determinations of facts. Therefore, no ground survives summary judgment in this federal habeas action.

Petitioner objects to the Report. ECF No. 31. As to Ground 1, he asserts admission of the photographs violated Federal Rule of Evidence 403. *Id.* at 1. On Ground 2, he contends the Court of Appeals' determination was an unreasonable application of Rule 61 regarding Harmless Error, because the video testimony was used to corroborate other testimony and "properly confronting" the witness "could have resulted in different answers." *Id.* at 2. Petitioner objects to the findings on Ground 3 because his statement was a key piece of evidence and was coerced, not voluntary. For Grounds 4 and 5, Petitioner argues these were clear violations of federal law and it was not his burden to prove potential jurors were influenced by the handcuffs or statements made were heard by jurors. On Ground 6, Petitioner says his sentence is illegal and should be corrected.

Petitioner's objection on Ground 1 is overruled, as it relies on a Federal Rule of Evidence that would not have been utilized in his state court criminal proceedings. Petitioner attempts to rely on this Rule in order to make this ground cognizable in a federal habeas petition; however, his argument is to no avail. Ground 1 cannot be remedied in a federal proceeding and is thus dismissed.

Similarly, in Petitioner's objections to Ground 2, he attempts to utilize Federal Rule of Civil Procedure 61, "Harmless Error," to save his claim regarding the Appellate Court's finding of harmless error for the video testimony. However, the Federal Rules of Civil Procedure would not have applied in the South Carolina Appellate Court's determination of harmless error. To the extent Petitioner relies upon South Carolina Rule of Civil Procedure 61, there would not have been

an unreasonable application of federal law for this court to determine. Insofar as Petitioner alleges a violation of his Sixth Amendment right to confront witnesses against him, the court agrees with the Magistrate Judge that the South Carolina Court of Appeals' determination of harmless error was not contrary to, or an unreasonable application of, federal law, or was based on an unreasonable determination of the facts.

On Ground 3, Petitioner objects to the Magistrate Judge's determination that the Court of Appeals' decision was not contrary to federal law or an unreasonable determination of the facts. ECF No. 31 at 3. Petitioner asserts admission of the statement had a substantial and injurious impact on the verdict, because the State referred to the statement as its key piece of evidence. *Id.* He contends the statement was erroneously admitted because it was coerced by the officers. *Id.*

The court agrees with the Magistrate Judge that the Court of Appeals' determination regarding Petitioner's statement was not an unreasonable determination of the facts or contrary to federal law. Instead, as the Report explains, Petitioner's Sixth Amendment right was not violated as federal law allows comments such as those made by the officers during his interrogation. Further, there was no record evidence of coercion to the extent that Petitioner was unable to freely decide how to answer the officers' questions, or that Petitioner did not have capacity to be interrogated. The court overrules Petitioner's objections regarding Ground 3.

Petitioner objects to the Report's findings on Ground 4, arguing he should have been granted a mistrial because he was escorted by officers, in handcuffs, in view of potential jurors prior to jury selection. The Court of Appeals upheld the trial court's denial of a motion for mistrial, and the Report found this decision was not contrary to federal law or an unreasonable determination of the facts. Petitioner contends it was not his burden to attempt to remedy this via curative instruction or otherwise address the issue before the jury at *voir dire*. In addition, he

submits the Court of Appeals' decision was contrary to federal law because criminal defendants are to be tried free from bonds and shackles except in extraordinary circumstances.

However, Petitioner was not in the courtroom when he was in handcuffs, and cannot show any of the jury members saw him or were influenced by this if they did. Thus, the court agrees this determination by the Court of Appeals was not contrary to federal law or an unreasonable determination of the facts, and Petitioner's objection to Ground 4 is overruled.

On Ground 5, Petitioner argues a mistrial should have been granted because the jury was tainted by two of the State's witnesses discussing evidence in the case near potential jurors. The Court of Appeals affirmed denial of a mistrial because the record did not show any juror actually heard the comments or was prejudiced by them. Petitioner contends it does not matter whether jurors who specifically heard the statements or would admit to hearing them were identified, "because this is a blatant violation clearly establish federal law." ECF No. 31 at 4 (errors in original).

The court agrees with the Magistrate Judge the Court of Appeals' decision was not contrary to federal law or an unreasonable determination of the facts, when there was no record evidence of a jury member actually hearing the comments or being prejudiced by them. Petitioner's objection on this ground is therefore overruled.

Finally, the Report found Ground 6 was not cognizable in federal habeas petition. Petitioner claimed the trial court erred in sentencing him to five years' imprisonment for possession of a weapon in violation of state law providing it does not apply when sentenced to life without parole for an accompanying violent crime. Petitioner objects to the Report, noting he cannot cite any federal law but requests the court to review this unlawful sentencing. However, the court agrees

with the Report this state sentencing issue is not one cognizable in a habeas petition. Accordingly, the court overrules Petitioner's objection.

**Conclusion**

For the reasons above, after *de novo* review of the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioner's objections, the court agrees with the findings and conclusions of the Magistrate Judge. Accordingly, the court adopts the Report, grants summary judgment for Respondent (ECF No. 20), and dismisses the Petition with prejudice.

**CERTIFICATE OF APPEALABILITY**

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

**IT IS SO ORDERED.**

s/Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
Senior United States District Judge

Columbia, South Carolina  
June 27, 2023

## RELATED CASES

Arizona v. Fulminante No. 89-839 Supreme Court of the United States Judgement entered May 20, 1991

Ferguson v. Boyd No. 76-2034 United States Court of Appeals for the Fourth Circuit Judgment entered December 27, 1977

Colorado v. Connelly No. 85-660 Supreme Court of the United States Judgement entered December 10, 1986

State v. Collins No. 5861 Court of Appeals for South Carolina Judgement entered December 15, 2022

Hutto V. Ross No. 7501726 Supreme Court of the United States Judgement entered November 1, 1976

Miranda v. Arizona No. 759-761,584 Supreme Court of the United States Judgement entered October 10, 1966

Jackson v. Denno No. 62 Supreme Court of the United States Judgement entered June 22, 1964

Lego v. Twomey No. 70-5037 Supreme Court of the United States Judgement entered January 12, 1972

Haynes v. Washington Supreme Court of the United States Judgement entered May 27, 1963

Ashcraft v. State of Tennessee No. 391 Supreme Court of the United States Judgement entered May 1, 1944

Rogers v. Richmond No. 40 Supreme Court of the United States Judgement entered March 20, 1961

Beck v. Pate No. 181 Supreme Court of the United States Judgement entered June 12, 1961

Dickerson v. United States No. 99-5525 Supreme Court of the United States Judgement entered June 26, 2000

Payne v. State of Arkansas No. 99 Supreme Court of the United States Judgement entered May 19, 1958

Lyra v. Denno No. 635 Supreme Court of the United States Judgement entered June 1, 1954

Brooks v. State of Florida No. 14 Supreme Court of the United States Judgement entered December 18, 1967

Davis v. State of North Carolina No. 815 Supreme Court of the United States Judgement entered June 20, 1966

United States v. Giddins No. 15-4039 United States Court of Appeals for the Fourth Circuit  
Judgement entered June 6, 2017

State v. Johnson No. 25047 Supreme Court of South Carolina Judgement entered February 16,  
2000

State v. Langley No. 24924 Supreme Court of South Carolina Judgement entered March 22,  
1999

State v. Bray No. 25176 Supreme Court of South Carolina Judgement entered August 18, 2000

Barnes v. Joyner No. 13-5 United States Court of Appeals for Fourth Circuit Judgement entered  
May 5, 2014

Irvin v. Doud No. 41 Supreme Court of the United States Judgement entered June 5, 1961

Remmer v. United States No. 304 Supreme Court of the United States Judgement entered  
March 8, 1954

Fullwood v. Lee No. 01-13 United States Court of appeals for Fourth Circuit Judgement entered  
May 21. 2002

United States v. Williams No. 05-4405 Court of Appeals for the Seventh Circuit Judgement  
entered June 27, 2007

United States v. Whitmore No. 03-3022 Court of Appeals for the District of Columbia Judgement  
entered June 14, 2004

United States v. Perkins No. 96-3138 Court of Appeals for the District of Columbia Judgement  
entered November 24, 1998

United States Constitution Amendment V Due Process Clause

United States Constitution Amendment V Self Incrimination

United States Constitution Amendment VI Jury Trial for Crimes and Procedural Rights