Rel: May 29, 2020

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0397

Anthony Stanley

v.

State of Alabama

Appeal from Colbert Circuit Court
(CC-05-608.60)

KELLUM, Judge.

Anthony Stanley, currently an inmate on death row at Holman Correctional Facility, appeals the circuit court's partial summary dismissal and partial denial of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he attacked his capital-murder conviction and sentence of death.

Facts and Procedural History

In 2007, Stanley was convicted of murdering Henry Smith during the course of a robbery, an offense defined as capital by § 13A-5-40(a)(2), Ala. Code 1975. The jury, by a vote of 8 to 4, recommended that Stanley be sentenced to life imprisonment without the possibility of parole. The trial court overrode the jury's recommendation and sentenced Stanley to death.[1] On direct appeal, this Court affirmed Stanley's conviction but remanded the case for the trial court to clarify its reasons for overriding the jury's sentencing recommendation; on return to remand, we affirmed Stanley's sentence of death. Stanley v. State, 143 So. 3d 230 (Ala. Crim. App. 2011). By order dated August 17, 2012, the Alabama Supreme Court vacated this Court's judgment affirming Stanley's sentence and directed this Court to "allow the parties to brief the issues raised by the trial court's amended sentencing order, and then address those issues by

[1]Sections 13A-5-45, 13A-5-46, and 13A-5-47, Ala. Code 1975, were amended by Act No. 2017-131, Ala. Acts 2017, to eliminate judicial override and to place the final sentencing decision in the hands of the jury. That Act, however, does not apply retroactively to Stanley. See § 2, Act No. 2017-131, codified at § 13A-5-47.1, Ala. Code 1975.

further opinion" (case no. 1110298). After remand by the Alabama Supreme Court, this Court again affirmed Stanley's sentence of death, with an extended opinion. Stanley, 143 So. 3d at 321 (opinion on remand from the Alabama Supreme Court). The Alabama Supreme Court denied certiorari review, and this Court issued a certificate of judgment on November 22, 2013. The United States Supreme Court subsequently denied certiorari review. Stanley v. Alabama, 574 U.S. 828 (2014).

In this Court's opinion on direct appeal, we set out the facts surrounding Stanley's conviction:

> "On Saturday, June 18, 2005, Henry Smith was stabbed to death in an apartment in Tuscumbia that Stanley shared with his wife, Shelly. The crime was discovered the following Monday, June 20, 2005, when the landlord's son, Ronald Berryhill, cut the padlock on the apartment door. He accessed the apartment because his mother, Swanie Berryhill, the landlord, had been told by Dorothy ('Dot') Stanley, who actually leased the apartment from Swanie, that her son, Stanley, and his wife Shelly, had left town and that several dogs remained inside the apartment. The medical examiner and forensic pathologist, Dr. Emily Ward, testified that Smith died as a result of multiple stab wounds and severe head injuries.
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> "Shelly Stanley testified that she and Stanley had been using illegal narcotics, including crack cocaine and OxyContin, for several days, including Friday evening into the early morning hours of

> Saturday, June 18, 2005.[2] When they exhausted their supply of money and drugs, Stanley directed her to telephone Smith, an individual they knew to carry cash and pills. She called Smith under the guise that she was going to pay him for the pills she and Stanley had obtained from him that Friday night. Stanley told her that he planned to rob and kill Smith. When Smith arrived at the Stanleys' apartment [around 7:30 a.m.], Shelly, while standing away from the door, called for Smith to come inside. As Smith entered the apartment, Stanley attacked him with an aluminum baseball bat, striking him in the face, the leg, and other parts of his body numerous times. Stanley knocked Smith to the floor, took a steak knife from the top of a china cabinet, straddled Smith with his knees on the floor, and repeatedly stabbed him in the back, while Smith begged for his life. When the steak knife bent, Stanley got another steak knife and continued to stab Smith.
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> "Shelly testified that, while Stanley was stabbing Smith, she moved Smith's truck, which Smith had left running outside the Stanleys' apartment, behind the laundromat so that it was not visible from the road. When she returned to the apartment, she and Stanley searched Smith's pockets and wallet. Because they found no cash or drugs, Stanley changed clothes, padlocked the apartment door, and left to search Smith's apartment for money and pills. They ransacked Smith's apartment, taking cash, change jars, and OxyContin pills, and returned to their apartment to get a 1987 maroon Toyota pick-up truck, which had been loaned to them by another acquaintance, Jonathan Patterson, who testified at

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[2]Shelly Stanley was indicted for capital murder. In exchange for her truthful testimony at Stanley's trial, she pleaded guilty to the lesser-included offense of intentional murder and was sentenced to life imprisonment. At the time of Stanley's trial, Shelly was in prison serving that sentence.

trial that he was addicted to drugs and that he often purchased pills from the Stanleys.

"Around 9:00 a.m. on Saturday morning, Stanley took Smith's pick-up truck into the Colbert Heights area of Tuscumbia and abandoned it. Shelly followed him in their borrowed pick-up truck. After abandoning Smith's truck, they drove to Muscle Shoals and checked into a room at the Best Western hotel. They also purchased supplies from a nearby K-Mart discount store with the proceeds from the sale of the stolen OxyContin pills. Sometime that day, Shelly returned to their apartment in Tuscumbia and put a comforter over Smith's body to prevent the several dogs that were in the apartment from disturbing it. Around noon that day, Shelly visited her daughter, Jenna Mitchell, and told her that she was going to be gone for awhile and needed to tell her and her granddaughter goodbye before she left. According to Mitchell, Stanley was not with her mother that afternoon, and her mother was visibly upset and crying.

"The next morning, Sunday, June 19, 2005, Stanley and Shelly checked out of the hotel and returned to their apartment to pack their belongings. While there, they moved Smith's body to the floor on the other side of their bed and covered the bloodstained floor with another carpet. Jonathan Patterson knocked on the door to retrieve the pick-up truck he had loaned to the Stanleys. When they did not answer the door, Patterson, using his extra set of keys, took his truck. They now were without transportation, and Stanley, who, according to Shelly, panicked, telephoned his mother, Dot, to come pick them up. Dot picked them up and drove them to Stanley's sister's house. They stayed there until Monday morning, June 20, 2005. According to Shelly, they used drugs throughout Sunday evening.

"On Monday morning, Dot drove Stanley and Shelly to the Colbert Heights area near where they had left Smith's truck on Saturday. Stanley and Shelly drove Smiths' truck to a friend's house in Russellville, where they left their duffel bags they had packed on Sunday. While driving back to Muscle Shoals that afternoon, Stanley telephoned his mother, and she informed him that the Berryhills planned to enter their apartment that afternoon because they believed the Stanleys had left town and they were concerned about the dogs that had been left in the apartment. The Stanleys drove back to the Colbert Heights area, abandoned the truck a second time, and spent the next several days hiding in the woods with only a cooler containing their cellular telephones, wallets, and toothbrushes.

"Christie Smith, the victim's daughter, testified that she tried to locate her father on Saturday and Sunday without success. When she drove by her father's apartment early Sunday morning, she noticed that neither he nor his truck was there. She realized something was wrong. She returned a second time later that day and noticed the door to the apartment was ajar. While Christie waited outside, Janice Berryhill, a family friend who had dated Smith, went into the apartment and discovered that the place had been ransacked.

"On Sunday evening, Christie filed a missing-person report with the Tuscumbia Police Department. At the police station, Christie encountered Patterson, who was also filing a police report because his house had been burglarized on or around June 16, 2005, and a shotgun, among other things, had been stolen. Patterson told Christie that he believed Shelly had sold her father, Smith, the shotgun taken from his house. Patterson also told Christie that he last saw Christie's father on Friday night around 11:00 p.m. when he dropped him off at his apartment.

"Patterson, who worked out of town as an engineer for the Tennessee Valley Authority ('TVA'), testified at trial that he believed Shelly had broken into his house sometime earlier, during the week of the murder, because she had done so once before when he was away. In addition, Patterson's neighbor told him that he had seen the truck Patterson had loaned the Stanleys at his house during the week he was away. When Patterson confronted Shelly on or around Friday, June 17, 2005, she denied that she had stolen the shotgun and other items. Later that evening, Patterson spoke to Smith on the telephone around 9:00 p.m. and Smith had agreed to help him locate the Stanleys because, during their conversation, Patterson and Smith realized that Shelly had sold Patterson's missing shotgun to Smith for $50. Smith rode with him to look for the Stanleys until around 11:00 p.m., when Patterson dropped Smith off at his apartment.

"On Monday morning, Christie met and talked with Capt. Jim Heffernan of the Tuscumbia Police Department at her father's apartment regarding the missing-person report. Doug Hendon, also a family friend, accompanied her. Later that day, Capt. Heffernan had a roll-call meeting with the on-duty police officers and informed the officers of the missing-person report regarding Smith. Capt. Heffernan also told the police officers that he was looking for Shelly for questioning concerning a separate incident involving a shotgun and other items that had been stolen from Patterson's house. He told the officers that Smith and the Stanleys were acquaintances. Capt. Heffernan issued a BOLO [be-on-the-lookout] for the Stanleys.

"Around 5:30 p.m. on Monday, one of the officers on a routine patrol, Stuart Setliff, who had taken the missing-person report on Smith from his daughter, saw three people gathered outside the Stanleys's apartment. Thinking that one of the individuals might be one of the Stanleys or Smith,

Officer Setliff stopped, approached the apartment, and learned that the three people were Swanie Berryhill, the owner of the apartment, her son Ronald Berryhill, and Dot, Stanley's mother. As noted, the Berryhills had called Dot because they wanted to get into the apartment based on their concern that Stanley and Shelly had left dogs unattended in the apartment. Officer Setliff called Capt. Heffernan, informing him that the landlord was going to cut the padlock on the door of the apartment.

"Ronald testified that he had learned that Stanley and Shelly were leaving town because Shelly had a warrant for her arrest. Ronald stated that he had already knocked on the door on Sunday and earlier in the day on Monday, with no answer, and he had heard dogs barking. After Ronald drove his mother and Dot to the apartment, Dot informed them that she did not have a key to the apartment. Ronald left them at the apartment with Officer Setliff, who had recently arrived, and went to get bolt cutters. When he returned to the apartment, he cut the padlock on the door, and Officer Setliff accompanied him into the apartment. Officer Setliff testified that he had informed Ronald before he cut the lock that a missing-person report had been filed on Smith. Ronald testified that he had already learned from Christie on Sunday that her father was missing. According to Ronald, Officer Setliff also informed him that a warrant had been issued for Stanley.

"When Ronald and Officer Setliff entered the apartment, they saw a comforter rolled up near the bed, and they exited the apartment. Officer Setliff called Capt. Heffernan. Based on Officer Setliff's call, Capt. Heffernan drove to the Stanleys's apartment. Capt. Heffernan arrived shortly after Ronald and Officer Setliff exited the apartment. Capt. Heffernan, who also served as the Colbert County Coroner, testified to smelling the odor of

decomposition when he arrived at the scene and approached the doorway of the apartment.

"Officer Setliff, upon direction from Capt. Heffernan, lifted up a corner of the comforter on the floor, which revealed a dead body lying face down with a knife in its back and several gash wounds on its head. Capt. Heffernan did not know the identity of the body. He ordered everyone out of the apartment and left to obtain a search warrant. Officer Setliff taped off and secured the crime scene. Ronald drove Dot, who was crying, to her house.

"At around 9:00 p.m. on Monday evening, Capt. Heffernan returned with a search warrant and additional personnel and searched the apartment. Ronald and Doug Hendon identified the body as Smith's. Capt. Heffernan discovered that Smith had a knife embedded in his back. Capt. Heffernan also found a bent steak knife, a machete covered in blood, and drug paraphernalia in the apartment. Capt. Heffernan collected the evidence. He and Officer Ricky Joe Little photographed the crime scene. During the search of the apartment, Officer Setliff and Officer Little were called to Dot's house twice. The second time the officers were called to her house, they were told that Stanley and his wife could be located in the Colbert Heights area of Tuscumbia.

"Tuscumbia police officers began looking for the Stanleys late Monday evening, June 20, 2005. Law-enforcement officers found Smith's truck early Tuesday morning on Valley View Road in the Colbert Heights area of Tuscumbia. Smith's truck was dusted for fingerprints but revealed no matches. Finally, on Thursday, June 23, 2005, Stanley and Shelly came out of the woods and traveled to Dot's house with the intention of taking Dot's car and leaving town. When family members saw them near Dot's house, however, they decided to surrender to the police.

> The retired Chief of Police of Tuscumbia, Wayne Burns, picked them up at Dot's house at their request and transported them to the police station, where they were arrested for the murder of Smith During the ride to the station, retired Chief Burns testified that he advised them of their rights and notified the police station that he was bringing them to the station. Chief Burns stated that Stanley's and Shelly's clothes were crumpled and dirty like they had slept in them. They indicated to Chief Burns that they had slept in the woods for several days. According to Chief Burns, while being transported, Stanley told Shelly that law enforcement was not going to play them against each other. Once they arrived at the station, officers photographed them. The photographs introduced at trial showed that they both suffered from rashes caused by poison oak. Stanley also had a laceration on his back and what appeared to be a 'carpet burn' on his knee.
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> "The evidence at trial revealed that Smith suffered 36 stab wounds; his internal organs were damaged by stab wounds to the abdomen. Samples taken from the knives and machete matched Smith's DNA. Dr. Emily Ward, medical examiner with the Alabama Department of Forensic Sciences, testified that the four visible lacerations on the top of Smith's head could have been caused by several blows from either a baseball bat or a machete. She testified that his nose was broken, as were his upper and lower jaws. He had stab wounds on his back and right thigh and defensive wounds on his hands."[3]

[3]This Court may take judicial notice of its own records. See Nettles v. State, 731 So. 2d 626, 629 (Ala. Crim. App. 1998), and Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992).

Stanley, 143 So. 3d at 245-50 (footnotes omitted). Stanley's defense at trial was that he was not present at the time of the murder and that it was his wife, Shelly Stanley, who had killed Henry Smith. Stanley attacked Shelly's credibility and pointed out the lack of forensic evidence linking him to the murder.

In November 2014, Stanley timely filed his Rule 32 petition;[4] he filed an amended petition in July 2015 and a second amended petition in August 2016.[5] The State filed answers to the petition and amended petitions in February 2015, May 2016, and October 2016. In August 2018, the circuit court issued an order summarily dismissing all but one of the claims asserted in Stanley's petition; the court scheduled an evidentiary hearing on Stanley's claim that his trial counsel

[4]The time for filing a Rule 32 petition in a case in which the death penalty has been imposed was changed by Act No. 2017-417, Ala. Acts 2017, codified at § 13A-5-53.1, Ala. Code 1975. However, that Act does not apply retroactively to Stanley. See § 3, Act No. 2017-417, Ala. Acts 2017, § 13A-5-53.1(j), Ala. Code 1975.

[5]An amended petition supersedes the original petition. See, e.g., Reeves v. State, 226 So. 3d 711, 722 (Ala. Crim. App. 2016); and Smith v. State, 160 So. 3d 40, 47-49 (Ala. Crim. App. 2010). Unless otherwise stated, all references in this opinion to Stanley's petition are references to the second amended petition filed in August 2016.

were ineffective for not objecting to his being shackled in the presence of the jury during his trial. After an evidentiary hearing in November 2018, the circuit court issued an order denying that claim. Stanley timely filed a postjudgment motion to reconsider, which the circuit court denied. This appeal followed.

Standard of Review

Rule 32.7(d), Ala. R. Crim. P., authorizes a circuit court to summarily dispose of a petitioner's Rule 32 petition without accepting evidence,

> "[i]f the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings ...."

See also Hannon v. State, 861 So. 2d 426, 427 (Ala. Crim. App. 2003); Cogman v. State, 852 So. 2d 191, 193 (Ala. Crim. App. 2002); Tatum v. State, 607 So. 2d 383, 384 (Ala. Crim. App. 1992). Summary disposition is appropriate if the record directly refutes a petitioner's claim or if the claim is obviously without merit. See, e.g., Shaw v. State, 148 So. 3d 745, 764-65 (Ala. Crim. App. 2013). Moreover, "a judge who presided over the trial or other proceeding and observed the

conduct of the attorneys at the trial or other proceeding need not hold a hearing on the effectiveness of those attorneys based upon conduct that he observed." Ex parte Hill, 591 So. 2d 462, 463 (Ala. 1991). In this case, the same judge presided over Stanley's trial and the Rule 32 proceedings.

> "A Rule 32 petitioner is entitled to an evidentiary hearing on a claim in a postconviction petition only if the claim is 'meritorious on its face.' Ex parte Boatwright, 471 So.2d 1257, 1258 (Ala.1985). A postconviction claim is 'meritorious on its face' only if the claim (1) is sufficiently pleaded in accordance with Rule 32.3 and Rule 32.6(b); (2) is not precluded by one of the provisions in Rule 32.2; and (3) contains factual allegations that, if true, would entitle the petitioner to relief."

Kuenzel v. State, 204 So. 3d 910, 914 (Ala. Crim. App. 2015).

The majority of the claims in Stanley's petition were claims of ineffective assistance of counsel, and the circuit court summarily dismissed all but one of those claims, in part, on pleading grounds. To prevail on a claim of ineffective assistance of counsel, the petitioner must meet the standard articulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). The petitioner must show: (1) that counsel's performance was deficient, and (2) that the petitioner was prejudiced by his counsel's

deficient performance. 466 U.S. at 687. "To meet the first prong of the test, the petitioner must show that his counsel's representation fell below an objective standard of reasonableness. The performance inquiry must be whether counsel's assistance was reasonable, considering all the circumstances." Ex parte Lawley, 512 So. 2d 1370, 1372 (Ala. 1987). "'This court must avoid using "hindsight" to evaluate the performance of counsel. We must evaluate all the circumstances surrounding the case at the time of counsel's actions before determining whether counsel rendered ineffective assistance.'" Lawhorn v. State, 756 So. 2d 971, 979 (Ala. Crim. App. 1999) (quoting Hallford v. State, 629 So. 2d 6, 9 (Ala. Crim. App. 1992)). "A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689. As the United States Supreme Court explained:

> "Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney

> performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way."

Strickland, 466 U.S. at 689 (citations omitted). To meet the second prong of the test, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. "The likelihood of a different result must be substantial, not just conceivable." Harrington v. Ricter, 562 U.S. 86, 112 (2011).

Rule 32.3, Ala. R. Crim. P., provides that "[t]he petitioner shall have the burden of pleading ... the facts

necessary to entitle the petitioner to relief." Rule 32.6(b), Ala. R. Crim. P., requires that the petition "contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings." As this Court noted in Boyd v. State, 913 So. 2d 1113 (Ala. Crim. App. 2003):

> "'Rule 32.6(b) requires that the petition itself disclose the facts relied upon in seeking relief.' Boyd v. State, 746 So. 2d 364, 406 (Ala. Crim. App. 1999). In other words, it is not the pleading of a conclusion 'which, if true, entitle[s] the petitioner to relief.' Lancaster v. State, 638 So. 2d 1370, 1373 (Ala. Crim. App. 1993). It is the allegation of facts in pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala. R. Crim. P., to present evidence proving those alleged facts."

913 So. 2d at 1125.

> "The burden of pleading under Rule 32.3 and Rule 32.6(b) is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot

> determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b). See Bracknell v. State, 883 So. 2d 724 (Ala. Crim. App. 2003). To sufficiently plead an allegation of ineffective assistance of counsel, a Rule 32 petitioner not only must 'identify the [specific] acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment,' Strickland v. Washington, 466 U.S. 668, 690, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), but also must plead specific facts indicating that he or she was prejudiced by the acts or omissions, i.e., facts indicating 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' 466 U.S. at 694, 104 S.Ct. 2052. A bare allegation that prejudice occurred without specific facts indicating how the petitioner was prejudiced is not sufficient."

Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006).

"Once a petitioner has met his burden .... to avoid summary disposition pursuant to Rule 32.7(d), Ala. R. Crim. P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof." Ford v. State, 831 So. 2d 641, 644 (Ala. Crim. App. 2001).

Rule 32.9(a), Ala. R. Crim. P., provides:

> "Unless the court dismisses the petition, the petitioner shall be entitled to an evidentiary hearing to determine disputed issues of material fact, with the right to subpoena material witnesses on his behalf. The court in its discretion may take evidence by affidavits, written interrogatories, or depositions, in lieu of an evidentiary hearing, in

> which event the presence of the petitioner is not required, or the court may take some evidence by such means and other evidence in an evidentiary hearing."

In Wilkerson v. State, 70 So. 3d 442, 451 (Ala. Crim. App. 2011), this Court explained:

> "'The burden of proof in a Rule 32 proceeding rests solely with the petitioner, not the State.' Davis v. State, 9 So. 3d 514, 519 (Ala. Crim. App. 2006), rev'd on other grounds, 9 So. 3d 537 (Ala. 2007). '[I]n a Rule 32, Ala. R. Crim. P., proceeding, the burden of proof is upon the petitioner seeking post-conviction relief to establish his grounds for relief by a preponderance of the evidence.' Wilson v. State, 644 So. 2d 1326, 1328 (Ala. Crim. App. 1994). Rule 32.3, Ala. R. Crim. P., specifically provides that '[t]he petitioner shall have the burden of ... proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief.'"

70 So. 3d at 451.

"[W]hen the facts are undisputed and an appellate court is presented with pure questions of law, that court's review in a Rule 32 proceeding is de novo." Ex parte White, 792 So. 2d 1097, 1098 (Ala. 2001). "The sufficiency of pleadings in a Rule 32 petition is a question of law" and is reviewed "'de novo.'" Ex parte Beckworth, 190 So. 3d 571, 573 (Ala. 2013) (quoting Ex parte Lamb, 113 So. 3d 686, 689 (Ala. 2011)).

> "'However, where there are disputed facts in a postconviction proceeding and the circuit court

> resolves those disputed facts, "[t]he standard of review on appeal ... is whether the trial judge abused his discretion when he denied the petition."' Boyd v. State, 913 So. 2d 1113, 1122 (Ala. Crim. App. 2003) (quoting Elliott v. State, 601 So. 2d 1118, 1119 (Ala. Crim. App. 1992)). 'When conflicting evidence is presented ... a presumption of correctness is applied to the court's factual determinations.' State v. Hamlet, 913 So. 2d 493, 497 (Ala. Crim. App. 2005). This is true 'whether the dispute is based entirely upon oral testimony or upon a combination of oral testimony and documentary evidence.' Parker Towing Co. v. Triangle Aggregates, Inc., 143 So. 3d 159, 166 (Ala. 2013) (citations omitted). 'The credibility of witnesses is for the trier of fact, whose finding is conclusive on appeal. This Court cannot pass judgment on the truthfulness or falsity of testimony or on the credibility of witnesses.' Hope v. State, 521 So. 2d 1383, 1387 (Ala. Crim. App. 1988). Indeed, it is well settled that, in order to be entitled to relief, a postconviction 'petitioner must convince the trial judge of the truth of his allegation and the judge must "believe" the testimony.' Summers v. State, 366 So. 2d 336, 343 (Ala. Crim. App. 1978). See also Seibert v. State, 343 So. 2d 788, 790 (Ala. 1977)."

Bryant v. State, 181 So. 3d 1087, 1132-33 (Ala. Crim. App. 2011) (opinion on return to second remand).

Moreover, on direct appeal, this Court reviewed the trial proceedings for plain error. See Rule 45A, Ala. R. App. P. However, the plain-error standard of review does not apply in a postconviction proceeding. See, e.g., Ferguson v. State, 13 So. 3d 418, 424 (Ala. Crim. App. 2008). Additionally, "[t]he

procedural bars of Rule 32 apply with equal force to all cases, including those in which the death penalty has been imposed." Brownlee v. State, 666 So. 2d 91, 93 (Ala. Crim. App. 1995). With certain exceptions not applicable here, "this Court may affirm the judgment of the circuit court for any reason, even if not for the reason stated by the circuit court." Acra v. State, 105 So. 3d 460, 464 (Ala. Crim. App. 2012).

Analysis

I.

Stanley contends that the circuit court erred in summarily dismissing his claim that Alabama's former capital-sentencing scheme is unconstitutional pursuant to Hurst v. Florida, 577 U.S. ___, 136 S.Ct. 616 (2016). The circuit court found that this claim was meritless and presented no material issue of law and that a similar claim under Ring v. Arizona, 536 U.S. 584 (2002), had been rejected by this Court on Stanley's direct appeal. We agree with the circuit court.

Both this Court and the Alabama Supreme Court have held that neither Hurst nor Ring rendered Alabama's former capital-sentencing scheme unconstitutional. See State v. Billups, 223

So. 3d 954 (Ala. Crim. App. 2016), and Eatmon v. State, 992 So. 2d 64 (Ala. Crim. App. 2007). See also Ex parte Bohannon, 222 So. 3d 525 (Ala. 2016), and Ex parte Waldrop, 859 So. 2d 1181 (Ala. 2002). In addition, both this Court and the Alabama Supreme Court have expressly rejected the argument Stanley makes that Hurst expanded the holding in Ring. "The Court in Hurst did nothing more than apply its previous holdings in Apprendi [v. New Jersey, 530 U.S. 466 (2000),] and Ring to Florida's capital-sentencing scheme. The Court did not announce a new rule of constitutional law, nor did it expand its holdings in Apprendi and Ring." Billups, 223 So. 3d at 963. "The United States Supreme Court's holding in Hurst was based on an application, not an expansion, of Apprendi and Ring." Ex parte Bohannon, 222 So. 3d at 533. To the extent that Stanley argues that the Alabama Supreme Court's opinion in Ex parte Bohannon was incorrect, this Court is bound by the decisions of the Alabama Supreme Court and has no authority to reverse or modify those decisions. § 12-3-16, Ala. Code 1975. Finally, contrary to Stanley's contention, because he challenged Alabama's capital-sentencing scheme on direct appeal under Ring, his current challenge under Hurst is

precluded by Rule 32.2(a)(4), Ala. R. Crim. P. See, e.g., Woodward v. State, 276 So. 3d 713, 788 (Ala. Crim. App. 2018) ("Woodward raised this claim under Ring on direct appeal. ... Therefore, it is precluded by Rule 32.2(a)(4), Ala. R. Crim. P.").

In any event, even if the circuit court erred in finding this claim to be meritless and precluded (which it did not), Hurst "does not apply retroactively on collateral review, ... [it] applies only to cases not yet final when that opinion was released." Reeves v. State, 226 So. 3d 711, 757 (Ala. Crim. App. 2016). See also McKinney v. Arizona, 589 U.S. ___, 140 S.Ct. 702, 708 (2020) ("Ring and Hurst do not apply retroactively on collateral review.") Stanley's conviction and sentence were final almost three years before Hurst was decided; therefore, Hurst does not apply to him.

Summary dismissal of this claim was proper.

II.

Stanley contends that the circuit court erred in summarily dismissing all but one of his ineffective-assistance-of-counsel claims because, he says, all of his

claims were sufficiently pleaded and entitled him to an evidentiary hearing.

Before addressing Stanley's specific claims, we first point out that Stanley argues that the circuit court "impermissibly heightened the burden of pleading." (Stanley's brief, p. 27.) After thoroughly reviewing the circuit court's summary-dismissal order, we do not agree. In its order, the circuit court set out the proper burden of pleading for a Rule 32 petitioner, the same burden we set out previously in this opinion. However, with many of Stanley's claims, the circuit court appears to have conflated the pleading of a claim with the merits of a claim.[6]

For example, one of Stanley's claims was that his trial counsel were ineffective for not calling a certain witness to testify in his defense. See Part II.A.3 of this opinion, where we address that claim. In his petition, Stanley identified the witness by name and alleged what he believed the witness would have testified to had the witness been

[6]This is not to say that the circuit court confused the burden of pleading with the burden of proof. The circuit court did not place on Stanley a burden of proof as to those of his claims it summarily dismissed.

called to testify. He also alleged that the witness's testimony was exculpatory because it would have shown that Stanley was not present at the time of the murder and that, therefore, there is a reasonable probability that the outcome of his trial would have been different had his counsel presented that testimony. In other words, he specifically identified the omission that he believed constituted deficient performance and pleaded specific facts indicating why he believed he was prejudiced by that deficient performance. Thus, this claim was sufficiently pleaded. See, e.g., Mashburn v. State, 148 So. 3d 1094, 1151 (Ala. Crim. App. 2013) ("To sufficiently plead a claim that counsel was ineffective for not calling witnesses, a Rule 32 petitioner is required to identify the names of the witnesses, to plead with specificity what admissible testimony those witnesses would have provided had they been called to testify, and to allege facts indicating that had the witnesses testified there is a reasonable probability that the outcome of the proceeding would have been different.").

In its order, the circuit court found that the witness's proffered testimony would not have been exculpatory; that,

even had the witness been called to testify, there was no reasonable probability that the outcome of Stanley's trial would have been different; and that, therefore, Stanley failed to sufficiently plead this claim. In other words, the court found that because the claim was meritless, Stanley had failed to satisfy his burden of pleading.

However, there is a distinction between an insufficiently pleaded claim and a meritless claim. A claim is insufficiently pleaded "[i]f, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief." Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006) (emphasis added). On the other hand, a claim is meritless if a court can determine based on the pleadings that, even if every factual allegation in a Rule 32 petition is true, the petitioner is not entitled to relief. Merely because a claim is meritless does not mean the claim is insufficiently pleaded. Stated differently, a postconviction claim, including a claim of ineffective assistance of counsel, may be meritless and still be sufficiently pleaded.

In this case, the circuit court purported to find the majority of the claims in Stanley's petition to be insufficiently pleaded, but it did so in many instances by finding that the claims were, in fact, meritless. Although blending the pleading requirements with a merits finding is improper, for the reasons explained below, we conclude that the circuit court's factual findings were nevertheless largely correct. Therefore, any error in the circuit court's conflating the pleading requirements with the merits of the claims in this case was harmless. See Rule 45, Ala. R. App. P. See also Bryant v. State, 181 So. 3d 1087, 1140 (Ala. Crim. App. 2011) (recognizing that the harmless-error rule applies in Rule 32 proceedings).

A.

First, Stanley contends that the circuit court erred in summarily dismissing his claims that his trial counsel were ineffective during the guilt phase of his trial. We address each of those claims in turn.

1.

Stanley argues that his trial counsel were ineffective for not challenging what he describes as the State's "key

evidence" against him, specifically, that he had what appeared to be a carpet burn on one knee after the murder that was not there before the murder. (Stanley's brief, p. 28.) Stanley alleged in his petition that counsel should have objected to the testimony about the wound given by his wife Shelly and Captain Jim Heffernan on the ground that they were not wound experts and that his counsel should have retained a wound expert to testify that the wound was not a carpet burn and could not have occurred at the time of the murder. Stanley attached to his petition an affidavit from Dr. Christopher M. Davey, an expert in wound causation, care, and treatment. In his affidavit, Dr. Davey stated that he had examined photographs of the wound on Stanley's knee that were taken after Stanley was in custody, and that, in his opinion, the wound was likely caused by the knee falling against a hard object and not the result of carpet burn; that the wound was less than 36 hours old; and that, therefore, the wound could not have been inflicted at the time of the murder, i.e., five days before Stanley's arrest.

The circuit court made the following findings, in relevant part, as to this claim:

> "Stanley finds fault with his counsel's treatment of his injuries in two ways. First, he erroneously argues that 'the only piece of physical evidence connecting Mr. Stanley to the scene of the crime' is Shelly Stanley's testimony regarding the wound to his knee that occurred during the murder. (Pet. 14.) This is incorrect. The record is clear that Stanley lived at the 'scene of the crime,' and thus, he was directly 'connected' to the scene. (R. 722.) Stanley attacked, beat, and murdered Smith in the very apartment where he lived with Shelly Stanley, and then left Smith's body locked in the apartment alone with his ten dogs as he and Shelly fled to the woods to hide from the police for several days. Further, there were numerous other factors corroborating Shelly's testimony, not the least of which was Stanley's own statement accepting responsibility for the murder.[7] (R. 707, 1016.)
>
> "Second, Stanley faults his counsel for failing to object to Shelly's testimony regarding the injury to his knee on the grounds that Shelly is not a wound expert. Even assuming his factual assertions are true, this argument fails because it involves a mischaracterization of Shelly's testimony as expert testimony. Shelly was not proffered by the State as an expert, and her testimony was not expert testimony. Her testimony consisted merely of generic observations of the events that she observed and nothing outside of the ordinary knowledge and experience of a layperson.
>
> "Shelly testified that her husband did not have the injury prior to the attack on Smith and that he had the injury after he straddled the victim while wearing shorts and stabb[ing the victim] numerous times. (R. 741.) She characterized the injury as

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[7]Stanley told his stepdaughter that Shelly was not involved in the murder and that she should not take the blame for it.

a carpet burn, as did Captain [Jim] Heffernan, who took her statement, presumably based on her characterization, but she did not testify that she saw the cause of the injury. Rather, her testimony gave the jury a narrow frame of time within which the injury could have first occurred. Whether the injury was caused by the carpet or in some other way, the relevant portion of the testimony is that Stanley received an injury to his knee during his prolonged and violent attack on Smith. Shelly's characterization of the injury as a carpet burn was obviously the testimony of a layperson and was not offered based on some expertise on her part in wounds or their causation, any more than was her testimony regarding the wounds incurred by Smith. Her descriptions were that of a layperson who witnessed the murder, not the clinical testimony of a scientist. Thus, Stanley's claim is facially meritless.

"Stanley also contends that his counsel were ineffective for failing to retain a wound expert. His postconviction counsel found such an expert, Dr. Christopher Davey (Pet. 17), but Stanley's allegations concerning Dr. Davey's testimony are insufficient to support his Strickland [v. Washington, 466 U.S. 668 (1984),] claim.

"First, Stanley's proffer regarding Dr. Davey lacks merit .... Dr. Davey opined that the wound photographed by police appeared to be too 'fresh' to have occurred at the time of the murder, which occurred five days prior to the time of Stanley's arrest. (Pet. Ex. 3.) However, Shelly's testimony concerning the wound related to her observations of what happened immediately before, during, and after the actual attack itself, not the specific causation of the wound. There is nothing in Dr. Davey's affidavit that calls into question the pertinent portion of Shelly's testimony -- that Smith was stabbed multiple times in Stanley's apartment and that Shelly saw Stanley stab him -- because Dr.

Davey was not there. Moreover, such testimony would not affect the fact that Shelly testified she observed some injury to Stanley's knee after the attacks. In short, even if Stanley had presented such testimony, there is no reasonable probability of a different outcome given the fact that an eyewitness to Stanley's crime testified during trial. ...

"Second, ... [s]imply alleging that Dr. Davey could offer somewhat contradictory testimony on a peripheral point does not establish that counsel was unreasonable for failing to present it, particularly where it would not have added anything substantive regarding how or when Stanley was injured, but would have only addressed the appearance of the wound five days after the relevant time period, with no reference to what happened during the intervening period.

"....

"Fourth, ... [t]he record establishes that counsel did more than an adequate job undermining [Shelly's] credibility. Most of counsel's closing argument was spent arguing that Shelly was a drug addict who traded sex for drugs. (R. 1027-42.) The failure of that argument was largely because, contrary to the argument Stanley makes in his petition, Shelly's testimony was both credible and broadly corroborated by other evidence adduced by the State. (R. 1023-26, 1044-51.)

"Adding the testimony of a wound doctor in order to try to undermine Shelly's testimony would not have added anything of substance to the defense's theory of the case. Given that counsel 'is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,' Hartley v. State, 592 So. 2d 661 (Ala. Crim. App. 1991), even assuming his allegations as true, Stanley cannot establish

> that his counsel was deficient. Accordingly, because Stanley's claim is meritless on its face and fails to state a material issue upon which he would be entitled to relief, and because 'no purpose would be served by any further proceedings,' this claim is summarily dismissed. Ala. R. Crim. P. 32.7(d)."

(C. 1090-94; footnotes omitted.) The circuit court's findings are supported by the record.

Neither Shelly nor Capt. Heffernan were proffered by the State as expert witnesses, and there was no basis on which to object to their testimony describing the wound on Stanley's knee as a carpet burn. A lay witness may testify to his or her observations of a wound under Rule 701, Ala. R. Evid. See, e.g., Ex parte Sharp, 151 So. 3d 329, 336-37 (Ala. 2009) (holding that nurse's testimony describing the victim's wounds and stating that "we see these injuries after somebody's been repeatedly pounded" was admissible lay-witness testimony and did not invade the province of the jury); McCray v. State, 88 So. 3d 1, 67 (Ala. Crim. App. 2010) (holding that police officer's testimony that the victim's wounds were consistent with a knife found at the crime scene and were defensive wounds was admissible lay-witness testimony); and Potter v. State, 46 Ala. App. 95, 98, 238 So. 2d 894, 897 (Ala. Crim. App. 1970) ("There was no error in allowing [a lay witness]

to describe the wounds on the deceased's body which he observed when preparing the deceased for burial. It is also permissible for a witness who has observed wounds to testify that they seemed to have been made with a sharp or blunt instrument."). But see Hutto v. State, 53 Ala. App. 685, 689, 304 So. 2d 29, 32 (Ala. Crim. App. 1974) ("A witness may not testify as to the cause of a wound unless it is shown that he is an expert or possesses greater knowledge of the cause of wounds than the average person."). "[C]ounsel could not be ineffective for failing to raise a baseless objection." Bearden v. State, 825 So. 2d 868, 872 (Ala. Crim. App. 2001).

Moreover, at trial, Shelly gave a detailed account of how Stanley had murdered Smith, including that he straddled Smith and stabbed Smith numerous times. When the knife he was using bent, Shelly said, Stanley got up and got another knife and started stabbing Smith again. The following then occurred:

> "[Prosecutor]: Did you see any physical injuries to [Stanley]?
>
> "[Shelly]: Yes, I did.
>
> "[Prosecutor]: What did you see? What kind of injuries did you see to [Stanley]?
>
> "[Shelly]: He had a big rug burn on his knee and a place on his back.

> "[Prosecutor]: Did Tony have that rug burn and that place on his back prior to Henry Smith coming over there?
>
> "[Shelly]: No, sir.
>
> "[Prosecutor]: Did [Stanley] show you that rug burn?
>
> "[Shelly]: Yes, he did.
>
> "[Prosecutor]: Did [Stanley] say anything to you about that rug burn?
>
> "[Shelly]: He just showed it to me."

(Record on Direct Appeal ("RDA"), R. 741.) Contrary to Stanley's apparent belief, the importance of Shelly's testimony was not what type of injury Stanley sustained on his knee but the fact that he did not have an injury to his knee before he killed Smith but did have an injury after he had killed Smith. We agree with the circuit court that, even if Stanley had presented expert testimony that the wound on Stanley's knee that was depicted in the photographs taken upon his arrest was not a carpet burn and was likely less than 36 hours old, it "would not have added anything of substance to the defense's theory of the case" and "there is no reasonable probability of a different outcome given the fact that an eyewitness to Stanley's crime testified during trial."

For these reasons, the circuit court did not err in summarily dismissing this claim of ineffective assistance of counsel.

2.

Stanley argues that his trial counsel were ineffective for not adequately challenging the State's forensic investigation and for not retaining a forensic expert. He makes several arguments in support of this claim.

a.

First, Stanley alleged in his petition that his counsel should have had the two steak knives, the machete, and a knife sheath found at the crime scene tested for "touch DNA" and fingerprints.[8] (C. 686.) He alleged that, although bloodstains found on the blades and handles of the knives and machete were tested for DNA and found to contain Smith's DNA

[8]In his petition, Stanley alternatively referred to testing all the "items" found at the crime scene and to testing the "weapons" found at the crime scene. However, a review of the entirety of his claim indicates that the basis of the claim is that counsel should have had testing conducted on the two steak knives, the machete, and the knife sheath, not on the additional items collected from the scene, i.e., a bottle of laundry detergent, a rug, a comforter, a pair of boots, a set of bed sheets, Smith's wallet, a "crack pipe," a padlock, and "assorted letters and papers." (C. 684.)

but not Stanley's or Shelly's DNA, other parts of the knives and machete, and the knife sheath, were not tested for "touch DNA," which he described as "trace epithelial cells left behind through natural processes," and were not tested for fingerprints. (C. 686.) According to Stanley, the lack of his DNA and fingerprints on the knives, machete, and knife sheath "would have indicated that he did not use the weapons around the time of the murder" and would have refuted the State's case, and Shelly's testimony. (C. 687.) On the other hand, even if his DNA and fingerprints were found on the knives, machete, and knife sheath, it would not have harmed him because, he said, "it would not be surprising" to find traces of his own DNA and his fingerprints on items found in his own home "even if he had not participated in the murder." (C. 687.) Stanley also alleged that if Shelly's DNA or fingerprints had been found on the knives, machete, or knife sheath, it "could have indicated that she did use the weapons around the time of the murder" and would have supported his defense that she had committed the murder and undermined her testimony that Stanley had committed the murder. (C. 687.) Thus, Stanley concluded, there was "no strategic benefit to

not testing the weapons." (C. 687.) Stanley attached to his petition an affidavit from George Schiro, a forensic scientist Stanley said could have been retained by trial counsel to test the items for "touch DNA" and fingerprints.

The circuit court made the following findings, in relevant part, as to this claim:

> "[H]e attempts to argue that the testing could not have harmed him if his prints or DNA had been on the weapons, as this would merely be consistent with someone who lived in the home with the weapons. Of course, the same analysis would apply to Shelly Stanley, who also lived in the apartment, which undercuts Stanley's justification for the testing. Regardless, testing that would have led to confirming Stanley's prints on the murder weapons would have only confirmed his guilt and the testimony that was presented at trial. ...
>
> "Moreover, and more importantly, Stanley ... admits that further testing could have provided incriminating DNA or fingerprint evidence, made particularly likely by the fact that the crime occurred in his place of residence. If this had been the result, then Stanley would have lost one of the most powerful arguments used by his counsel in his closing: that there was no real physical evidence to buttress Shelly's testimony. (R. 1027, 1033, 1037.)."

(C. 1095.) We agree with the circuit court.

Stanley's claim in this regard is internally contradictory. Basically, Stanley argued that the absence of his DNA and fingerprints on the items and/or the presence of

Shelly's DNA and fingerprints on the items would support his theory that Shelly had committed the murder but that the presence of his DNA and fingerprints on the items and/or the absence of Shelly's DNA and fingerprints on the items would not support the State's theory that he had committed the murder. However, if the absence of his DNA and fingerprints and/or the presence of Shelly's DNA and fingerprints would support the theory that Shelly had committed the murder then certainly the presence of his DNA and fingerprints and/or the absence of Shelly's DNA and fingerprints would support the theory that Stanley had committed the murder. We cannot say that it was unreasonable for trial counsel to avoid the risk of providing forensic evidence against their own client, especially when part of the defense strategy at trial was to attack the lack of forensic evidence linking Stanley to the murder.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

b.

Stanley also alleged generally in his petition that his counsel should have retained a crime-scene-reconstruction

expert "to examine the crime scene, the collected evidence, or the blood stain pattern photos taken at the crime scene." (C. 688.) However, the only specific allegation Stanley made within this claim in his petition is that boots belonging to Shelly had a substantial amount of blood on them, more so than Stanley's boots, and that an expert "could have evaluated the boots to determine whether the blood spatter was consistent with the testimony of Ms. Stanley, as presented by the State, that she was standing in a different part of the apartment, away from the altercation, and did not get any blood on her," and "could have established that there was not blood spatter on the interior lining of the boots, which could indicate that Ms. Stanley was wearing the boots at the time of the altercation and was within close range of the altercation." (C. 689.) As noted previously, Stanley attached to his petition an affidavit from George Schiro, a forensic scientist, who averred that he had experience in crime-scene reconstruction.

The circuit court found that this claim was insufficiently pleaded, in part because Stanley "fail[ed] to plead the name of a specific expert who his trial counsel

should have retained to reconstruct the crime scene." (C. 1095-96.) The circuit court was correct that Stanley did not, in his petition, name an expert in crime-scene reconstruction. However, he attached to his petition Schiro's affidavit. "Although a Rule 32 petitioner is not required to include attachments to his or her petition in order to satisfy the pleading requirements in Rule 32.3 and Rule 32.6(b), when a petitioner does so, those attachments are considered part of the pleadings." Conner v. State, 955 So. 2d 473, 476 (Ala. Crim. App. 2006). See also Ex parte Lucas, 865 So. 2d 418 (Ala. 2002) (holding that attachments to a Rule 32 petition are considered part of the pleadings). Because Schiro's affidavit is considered part of Stanley's pleadings, Stanley did sufficiently plead the name of the crime-scene-reconstruction expert he believed his counsel should have retained.

However, we conclude that this claim is meritless. As noted, the only specific allegation Stanley made in this regard is that an expert could have testified that the amount of blood on Shelly's boots indicated that the boots were close to the altercation, which would have undermined Shelly's

testimony that she was not close to the altercation and did not get blood on her. In his affidavit, Schiro averred that "[p]hotographs of Ms. Stanley's boots show the presence of a substantial amount of blood on the boots" and that "[t]his indicates that the boots were close to the altercation." (C. 772.) However, we fail to see why an expert would be needed to reach a conclusion that common sense dictates, i.e., that the presence of a substantial amount of blood on Shelly's boots indicates that the boots were in close proximity to the altercation. "Counsels' failure to call an expert witness is not per se ineffective assistance, even where doing so may have made the defendant's case stronger, because the State could always call its own witness to offer a contrasting opinion." Marshall v. State, 20 So. 3d 830, 841 (Ala. Crim. App. 2008) (quoting People v. Hamilton, 361 Ill.App.3d 836, 847, 838 N.E.2d 160, 170, 297 Ill.Dec. 673, 683 (2005)).

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

c.

Stanley further alleged in his petition that his trial counsel should have challenged the adequacy of the State's

investigation through expert testimony. He alleged that investigators did not follow proper procedures in collecting and documenting evidence from the crime scene and did not properly preserve evidence. Stanley alleged that counsel should have "challenged the quality of the State's investigation of the crime" which, he said, would have lessened the strength of the State's case. (C. 691.) In his affidavit, George Schiro identified what he said were the deficiencies in the State's investigation, including the alleged failure of investigators to document and preserve blood-spatter evidence at the crime scene with appropriate photographs and diagrams and the collection of items and surfaces containing blood; the failure to collect and preserve the baseball bat used to subdue Smith; the failure to preserve the clothing Stanley and Shelly were wearing at the time of their arrest; the failure to take adequate photographs of, and to preserve evidence from, Smith's truck; and the failure to adequately document with photographs the evidence that was collected from the crime scene.

The circuit court found that this claim was insufficiently pleaded. However, we need not address this

finding because, as the State argues on appeal, this claim is meritless on its face. In Alabama, a challenge to the State's investigation is not a proper subject for expert testimony. In Floyd v. State, 289 So. 3d 337 (Ala. Crim. App. 2017), this Court upheld the trial court's refusal to qualify a defense witness as an expert in blood-spatter analysis and crime-scene investigation on the ground that challenging deficiencies in a police investigation is not a proper subject of expert testimony. We explained:

> "We also find no error in the trial court's refusal to qualify Remus as an expert in blood-spatter analysis and crime-scene investigation. It is abundantly clear from the record that the purpose of Remus's testimony was not to provide expert testimony on the circumstances of the murder, such as the relative positions of the victim and assailant, see, e.g., Gavin v. State, 891 So. 2d 907, 969 (Ala. Crim. App. 2003) (noting that '[b]lood-spatter analysis is typically used to determine the position of the victim and the assailant at the time of the crime'), or the characteristics of the offense, such as the motivation for the crime, see, e.g., Simmons v. State, 797 So. 2d 1134, 1150-56 (Ala. Crim. App. 1999) (opinion on return to remand) (noting that crime-scene analysis involves 'the gathering and analysis of physical evidence' to determine characteristics about the offense and possible motivation for the offense, and is similar to the field of accident reconstruction). Rather, the purpose of Remus's testimony, as Floyd readily admits, was to attempt to provide an 'expert's"

opinion that the police investigation of Jones's murder was flawed.

"However, we cannot say that such testimony would 'assist the trier of fact to understand the evidence or to determine a fact in issue.' Rule 702(a), Ala. R. Evid. '[T]he focus of [Rule 702] is not whether the subject matter of the testimony is within the common knowledge or understanding of the jurors, but whether the expert's opinion or testimony will assist the trier of fact in understanding the evidence or deciding an issue of fact.' Woodward v. State, 123 So. 3d 989, 1011 (Ala. Crim. App. 2011). The purpose for which Remus's testimony was offered -- to point out the alleged deficiencies in the police investigation of Jones's murder -- is not a proper subject of expert testimony because it would not assist the trier of fact in understanding the evidence or deciding a fact in issue.

"Indeed, other courts have held that such testimony is not only not a proper subject of expert testimony, but is inadmissible in its entirety. In Mason v. United States, 719 F.2d 1485 (10th Cir. 1983), '[t]he defendants sought to introduce the testimony of a private detective and offered to have him testify regarding the inadequacy of the investigation techniques employed by the police.' 719 F.2d at 1490. The United States Court of Appeals for the Tenth Circuit held that the trial court had properly excluded the testimony, explaining:

> "'As we view it, the presentation of expert testimony criticizing the presentation of the other side of the case is not appropriate. It may be a proper subject for comment by the lawyers in their final arguments and seemingly the defendants' attorneys discussed the inadequacies in their final arguments to

> the jury. We conclude the trial court acted properly in excluding the testimony of defendants' expert.'

"719 F.2d at 1490. See also People v. Godallah, 132 A.D.3d 1146, 1150, 19 N.Y.S.3d 119, 123-24 (2015) (holding that the trial court did not err in refusing to allow a retired police detective with 24 years of experience to testify as an expert that the investigation of the defendant's case was inadequate, because 'such opinion was not outside of the jury's general knowledge'); State v. Martin, 222 N.C.App. 213, 216-18, 729 S.E.2d 717, 720-21 (2012) (holding that the trial court did not err in refusing to allow a forensic scientist and criminal profiler to testify regarding the inconsistencies in the victim's account of the crime and the manner in which the police investigation was conducted because such testimony would have invaded the province of the jury); Proffit v. State, 191 P.3d 974, 979-81 (Wy. 2008) (holding that the trial court did not err in refusing to allow a defense witness to testify as an expert regarding 'what he perceived to be deficiencies in the investigation' of the murder for which the defendant was on trial because the testimony was not relevant and would have confused the jury); State v. Mackey, 352 N.C. 650, 654-59, 535 S.E.2d 555, 557-60 (2000) (holding that the trial court did not err in refusing to allow a retired police officer to testify as an expert about proper undercover investigative techniques on the ground that the jury could, on its own, assess the credibility of the undercover police officer and the undercover procedures used in the case and because the proposed testimony would not have assisted the trier of fact to understand the evidence or to determine a fact in issue and would have potentially confused the jury); United States v. Borda, (unpublished disposition), 178 F.3d 1286 (4th Cir. 1999) (holding that the trial court did not err in refusing to allow a former police officer to testify as an expert regarding applying for and executing

> search warrants, and targeting and apprehending drug traffickers); and State v. Vogler, (No. 89-L-14-105, December 7, 1990) (Ohio Ct. App. 1999) (not reported) (holding that the trial court did not err in refusing to allow a criminologist to testify regarding inadequacies of the police in not collecting certain evidence from the crime scene and performing certain tests on that evidence on the ground that the testimony lacked probative value). Therefore, we find no error in the trial court's refusal to find Remus to be an expert in blood-spatter analysis and crime-scene investigation."

289 So. 3d at 413-14.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

3.

Stanley argues that his trial counsel were ineffective for not calling Zachary Jackson as a witness. In his petition, Stanley alleged that Jackson could have testified that he went to the Stanleys apartment between midnight and 3:00 a.m. the morning of the murder to sell crack cocaine to Shelly and that Shelly was alone in the apartment at that time. He alleged that Jackson would have testified that he was "nervous that [Shelly] was setting him up and that she was going to rob him" and that he "left the Stanley home without receiving money from Shelly for fear she was planning to rip him off." (C. 692.) According to Stanley, Jackson's

testimony was exculpatory because it indicated that Stanley "was not even in the apartment near the time of the murder," and it would have refuted Shelly's testimony "that she and Mr. Stanley used crack [cocaine] leading up to the murder and were together in the apartment until after the murder." (C. 693.) He further alleged that, when Jackson could not be located to testify, his counsel should have requested a recess or a continuance of the trial in order to secure Jackson's presence.

The circuit court made the following findings, in relevant part, as to this claim:

> "Jackson's proffered testimony does not show anything remotely akin to what Stanley claims it would indicate. Jackson was in the Stanley apartment, at most, 4.5 hours prior to the arrival of Henry Smith, and perhaps as long as 7.5 hours before. Therefore, even if Stanley had not been in the apartment when Jackson was present, it would have had no bearing on whether he returned sometime in the ensuing hours. Further, Jackson's proffered testimony does not indicate that Stanley was not in the apartment, but merely that Jackson did not see him there."

(C. 1099.) These findings are correct. The fact that Jackson did not see Stanley in the apartment several hours before the murder was in no way exculpatory, i.e., it did not establish that Stanley was not in the apartment at the time of the

murder. In addition, Jackson's proffered testimony would not have refuted Shelly's testimony that she and Stanley used crack cocaine in the hours leading up to the murder because, based on Stanley's own allegations, Jackson did not stay at the apartment after he stopped by, and therefore, he had no personal knowledge of what Stanley and Shelly did in the hours before the murder or after.

> "'[I]n the context of an ineffective assistance claim, "a decision regarding what witnesses to call is a matter of trial strategy which an appellate court will not second-guess."' Curtis v. State, 905 N.E.2d 410, 415 (Ind. Ct. App. 2009). '[T]he decision of which witnesses to call is quintessentially a matter of strategy for the trial attorney.' Boyle v. McKune, 544 F.3d 1132, 1139 (10th Cir. 2008). 'Whether to call a particular witness is a tactical decision and, thus, a "matter of discretion" for trial counsel.' United States v. Miller, 643 F.2d 713, 714 (10th Cir. 1981)."

Johnson v. State, [Ms. CR-05-1805, June 14, 2013] ___ So. 3d ___, ___ (Ala. Crim. App. 2007) (opinion on return to remand), judgment vacated on other grounds, Johnson v. Alabama, ___ U.S. ___, 137 S.Ct. 2292 (2017). Based on Stanley's own pleadings, counsel were not ineffective for not calling Jackson to testify.[9]

[9]Because counsel was not ineffective for not calling Jackson to testify, we need not address Stanley's additional

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

4.

Stanley argues that his trial counsel were ineffective for not eliciting on cross-examination what, he says, was critical testimony from Jonathan Patterson, a witness for the State who testified that he had frequently bought drugs from Stanley and Shelly. In his petition, Stanley alleged that his counsel should have elicited that Patterson often took late-night drives with Stanley to comfort him about Shelly's addiction to drugs, that Stanley had told Patterson that Shelly had stolen from Patterson, and that Stanley had confronted Shelly about the thefts and returned the stolen items to Patterson. According to Stanley, this testimony would have placed Shelly "in a bad light and [him] in a positive light, ... would have corroborated Mr. Patterson's testimony that [Shelly] twice previously mentioned to him plans for robbing the victim," and would have supported his defense that Shelly had committed the murder. (C. 693.)

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challenges to counsel's actions when Jackson could not be found for trial.

The circuit court made the following findings, in relevant part, as to this claim:

> "Here, Stanley alleges that Patterson's testimony, had it been more deeply probed, would have provided a motive and a likelihood that Shelly murdered Smith. But Stanley's counsel already made that argument effectively through his cross-examination of Patterson by establishing that Smith was going to report to the police that Shelly had broken into Patterson's home. By arguing that Smith was on the verge of reporting this at the time of his murder, Stanley's counsel was able to establish a much darker picture of potential culpability than the one suggested in Stanley's petition without relying on hearsay. The suggested line of questioning would have undercut the more effective testimony that counsel was able to establish. ...
>
> "... Stanley alleges that his counsel should have cross-examined Patterson to put himself in a favorable light and Shelly in a negative light, and that Shelly was more likely to have committed the murder. Even assuming these allegations as true, the record demonstrates that counsel already effectively achieved this result during trial."

(C. 1100-01.) We agree with the circuit court.

The record from Stanley's direct appeal shows that counsel did a thorough job of cross-examining Patterson. Counsel elicited testimony that Patterson bought drugs from the Stanleys, that Shelly had told him two different times that she was considering robbing Smith, that Smith confided in Patterson that he had bought a shotgun from Shelly that Smith

believed had been stolen from Patterson's apartment, and that, the Friday before Smith was murdered, Patterson and Smith had decided to go to the police the next day about Shelly's theft. The following also occurred during cross-examination of Patterson:

> "[Stanley's counsel]: To your knowledge, was [Henry Smith] the only one that knew that Shelly had stolen that shotgun from your apartment?
>
> "[Patterson]: He very well could have been. Yes.
>
> "[Stanley's counsel]: So he ended somehow getting murdered. And he couldn't come in and testify against her later on, could he?
>
> "[Patterson]: No.
>
> "[Stanley's counsel]: In fact, he never did make any kind of report to the police department that he bought the gun from you, did he?
>
> "[Patterson]: From her.
>
> "[Stanley's counsel]: Yeah.
>
> "[Patterson]: No, he never did.
>
> "[Stanley's counsel]: He's dead, wasn't he?
>
> "[Patterson]: Right.
>
> "[Stanley's counsel]: And that shut him up. He couldn't tell what happened. Right?
>
> "[Patterson]: Right."

(RDA, R. 394-95.) In addition, counsel established during trial that Shelly had stolen from Patterson and that she had confided in Patterson about robbing Smith. Counsel conducted a vigorous cross-examination of Patterson.

> "'[D]ecisions regarding whether and how to conduct cross-examinations and what evidence to introduce are matters of trial strategy and tactics.' Rose v. State, 258 Ga. App. 232, 236, 573 S.E.2d 465, 469 (2002). '"'[D]ecisions whether to engage in cross-examination, and if so to what extent and in what manner, are ... strategic in nature.'"' Hunt v. State, 940 So. 2d 1041, 1065 (Ala. Crim. App. 2005), quoting Rosario-Dominguez v. United States, 353 F. Supp.2d 500, 515 (S.D.N.Y. 2005), quoting in turn, United States v. Nersesian, 824 F.2d 1294, 1321 (2d Cir. 1987). 'The decision whether to cross-examine a witness is [a] matter of trial strategy.' People v. Leeper, 317 Ill. App. 3d 475, 483, 740 N.E.2d 32, 39, 251 Ill. Dec. 202, 209 (2000)."

A.G. v. State, 989 So. 2d 1167, 1173 (Ala. Crim. App. 2007). "'[T]he scope of cross-examination is grounded in trial tactics and strategy, and will rarely constitute ineffective assistance of counsel.'" Bonner v. State, 308 Ga. App. 827, 828, 709 S.E.2d 358, 360 (2011) (quoting Cooper v. State, 281 Ga. 760, 762, 642 S.E.2d 817, 820 (2007)). Counsel was not ineffective in their cross-examination of Patterson.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

5.

Stanley argues that his trial counsel were ineffective for not adequately cross-examining Shelly. In his petition, Stanley alleged that counsel should have impeached Shelly with inconsistencies between her statement to police and her trial testimony and for not questioning her concerning whether her addiction to drugs was greater than Stanley's addiction.

The circuit court made the following findings, in relevant part, as to this claim:

> "Stanley generally alleges that his counsel could have argued that Shelly had murdered Smith if he had impeached her on several peripheral matters. (Pet. 32-33.) But Stanley fails to plead any facts showing how this approach would have helped his case, given that counsel argued all along that Shelly acted alone in the murder of Henry Smith.
>
> "Stanley then alleges in a conclusory fashion that through this impeachment, he could have made the argument that Shelly was the killer. (Pet. 35.) ... For example, Stanley argues that his counsel should have pointed out that Shelly claimed he obtained the knife from a table in one account and a china cabinet in another. But this is wholly insignificant and fails to take into account that there were two knives used in the murder.
>
> "Stanley argues that his counsel should have proven that his drug habit was less problematic than Shelly's. ... At trial, Stanley argued that Shelly committed the murder alone and lied in order to secure a lesser sentence. Hall v. State, 979 So. 2d 125, 151 (Ala. Crim. App. 1997) ('Conclusory

allegations not supported by specifics do not warrant relief.'). Stanley's bare allegation also ignores that fact that counsel was already provided with Shelly's statements and plea agreement, which was available to question Shelly, had such questioning been consistent with counsel's strategy.

"None of the suggested impeachment strategies support Stanley's conclusory allegations. For example, Stanley argues that his counsel should have examined a note purportedly written by Shelly in which she details another violent robbery in which her husband would ostensibly attack someone named Zack. (Pet. 34.) Even assuming such facts as true, such a note detailing the robbery of 'Zack' would have supported the State's theory of the case, since it described an offense very similar to the murder of Henry Smith. ...

"....

"Here, this is not a situation where counsel was unprepared for Shelly's testimony, as her statement and plea agreement were available, and the record shows that counsel was prepared to question her in a particular manner. ...

"... Even accepting Stanley's allegations as true that counsel did not impeach Shelly on the issues alleged, the record establishes that counsel was well prepared for her testimony and effectively challenged it during trial. Moreover, this Court observed counsel's performance and was able to witness counsel's efforts to challenge the credibility of Shelly's testimony. The fact that counsel may have failed to address certain inconsistencies in her statement, even if true, does not establish ineffective assistance of counsel. For '[g]enerally, failure to impeach a witness does not amount to ineffective assistance of counsel.' Daniel [v. State], 86 So. 3d [405] at 428 [(Ala. Crim. App. 2011)]. Therefore, based on the record

> and even assuming Stanley's allegations as true, this Court summarily dismisses this claim because it is meritless on its face, and no purpose would be served by any further proceedings."

(C. 1101-03.) The circuit court's findings are supported by the record.

The record from Stanley's direct appeal reflects that Stanley's counsel elicited testimony from Shelly that she frequently bought and used drugs, that she had sex with several of her drug dealers in exchange for "crack," and that, the morning of the murder, she made numerous calls trying to get more drugs. Counsel also had Shelly read a letter that she had written to Stanley. The letter read:

> "My love, this is the hardest thing I've ever had to write. Tony, I'm scared. I don't want to die. I'll be the second women ever put to death here. I don't want you to, either. Do you want me to die? I know it's not fair to you. I do have a child and a grandchild. I thought we would get out eventually. But they're not letting us go. I need to know if you would rather me be put to death or get out in five to ten years and be able to see you in prison. I need to know. Time is not on our side.
>
> "If you plead guilty to the capital murder charge, they'll drop mine to murder. I'll get 20 years, out in six or seven. The drug programs, maybe earlier than that. Baby, you know, if I thought there was any way possible you could get out, I'd take the blame. But they won't let you out never."

(RDA, R. 822.) Counsel also questioned Shelly about her plea agreement with the State, including that portion of the agreement in which she agreed to submit to a polygraph test. However, Shelly admitted that she never took a polygraph test. In its case-in-chief, defense counsel also presented the testimony of a cellmate of Shelly's that Shelly had told her that Shelly was the axe murderer. Another witness testified that Shelly told her that she and her husband had killed Smith together.

Counsel thoroughly cross-examined Shelly and attacked her credibility at numerous times during Stanley's trial. Merely because counsel did not do more does not make counsel ineffective. "'The method and scope of cross-examination "is a paradigm of the type of tactical decision that [ordinarily] cannot be challenged as evidence of ineffective assistance of counsel."'" Davis v. State, 44 So. 3d 1118, 1135 (Ala. Crim. App. 2009) (quoting State ex rel. Daniel v. Legursky, 195 W.Va. 314, 328, 465 S.E.2d 416, 430 (1995)).

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

6.

Stanley argues that his trial counsel were ineffective for not adequately cross-examining Christie Smith,[10] Smith's daughter, concerning Smith's physical condition at the time of his murder. In his petition, Stanley alleged that Christie had testified at trial that Smith was a large man and very strong, but that he had had multiple joint replacements, had arthritis, and was taking OxyContin and methadone in the time leading up to the murder. According to Stanley, the State used Smith's size and strength to bolster its argument that Shelly would have been unable to subdue Smith and commit the murder by herself. Stanley alleged that Smith's toxicology report indicated that, at the time of his death, he had muscle relaxants and methadone in his system, and that counsel should have questioned Christie about "whether the combination of methadone and muscle relaxants typically rendered [him] weak, unbalanced, or generally less able to protect himself from physical confrontation." (C. 97.) He also alleged that his counsel should have questioned Christie about Smith's

[10]In his petition, Stanley spelled the witness's name "Kristie." However, in the record from Stanley's direct appeal her name is spelled "Christie."

arthritis to establish that "there were days" that Smith could not grip items and had difficulty walking, and should have asked her "to expand on what [Smith's] 'bad' physical days were like." (C. 97.)

The circuit court made the following findings, in relevant part, as to this claim:

> "First, Stanley failed to plead any specific factual basis that, if true, would show a reasonable probability that the outcome of his trial would have been different had trial counsel questioned Smith differently. ... For example, Stanley contends that counsel should have asked 'Ms. Smith as to how methadone or muscle relaxants affected Mr. Smith or for her to expand on what his "bad" physical days were like.' However, Stanley failed to plead what the answer to these questions would have been or even if Smith would have known the answer to these questions.
>
> "Second, Stanley failed to specifically plead how, if these questions had been asked, Smith's answers would have led to a reasonable probability that 'the factfinder would have had a reasonable doubt respecting guilt.' Strickland [v. Washington], 466 U.S. [668] at 695 [(1984)]. Stanley failed to plead how the failure to pursue this line of impeachment was prejudicial. See Daniel [v. State], 86 So. 3d [405] at 428 [(Ala. Crim. App. 2011)] ('Generally, failure to impeach a witness does not amount to ineffective assistance of counsel').
>
> "Third, even assuming that Smith had testified in a way that might have highlighted her father's infirmities, her testimony would not have constituted significant impeachment evidence. The

> testimony, whatever it might have been, would not have changed the fact that the victim was a large man. Stanley simply has failed to plead specific facts that, if true, would show further cross-examination would have led to a reasonable probability that the outcome of his trial would have been different."

(C. 1104.) We agree with the circuit court.

Other than his allegation that Christie could have testified that "there were days" that Smith was unable to grip items and had difficulty walking because of his arthritis, Stanley failed to plead in his petition exactly what Christie's testimony would have been had counsel asked her "whether the combination of methadone and muscle relaxants typically rendered [him] weak, unbalanced, or generally less able to protect himself from physical confrontation" and asked her "to expand on what [Smith's] 'bad' physical days were like." (C. 97.) In addition, he failed to plead sufficiently specific facts indicating that there is a reasonable probability that, had Christie testified that "there were days" that Smith was unable to grip items and had difficulty walking, the outcome of his trial would have been different. Indeed, absent an allegation that the day he was murdered was one of the days that Smith was having difficulty walking and

gripping items, we fail to see how such testimony would have had any impact on the outcome of Stanley's trial. Therefore, Stanley failed to sufficiently plead this claim. See, e.g., Mashburn v. State, 148 So. 3d 1094, 1151 (Ala. Crim. App. 2013) ("To sufficiently plead a claim that counsel was ineffective for not calling witnesses, a Rule 32 petitioner is required to identify the names of the witnesses, to plead with specificity what admissible testimony those witnesses would have provided had they been called to testify, and to allege facts indicating that had the witnesses testified there is a reasonable probability that the outcome of the proceeding would have been different.").

Moreover, this claim is meritless. The record from Stanley's direct appeal indicates that Christie, who was a nurse, testified on direct examination that her father was taking methadone and a "lot of different kind[s of] medications" (RDA, R. 414; 427.), including "pain medication," "arthritis medication," "stomach medication," and "gout medication." (RDA, R. 428.) Christie also testified that Smith had had two knee replacements, a shoulder replacement, and had arthritis. She said: "He couldn't work, like, a

regular full-time job. No. But he, you know, he could do little bitty jobs for people. He could mow the yard or something like that. Some days were better than others." (RDA, R. 432.) Although she described her father as strong and not weak, her testimony nonetheless established for the jury the plethora of physical ailments her father suffered and the numerous medications he was taking at the time of his murder, and there is no reasonable probability that additional testimony about Smith's physical condition would have altered the outcome of Stanley's trial. Counsel was not ineffective in this regard and the circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

7.

Stanley argues that his trial counsel were ineffective for not adequately undermining the testimony of Jenna Mitchell, Shelly's daughter and Stanley's stepdaughter. In his petition, Stanley alleged that Mitchell testified about a conversation she had with Stanley after the murder during which Stanley told Mitchell that Shelly "should not have to take the blame for the crime and that he should take the blame." (C. 698.) Stanley alleged that the State

characterized his statement to Mitchell as an admission of guilt and that his counsel should have more thoroughly cross-examined Mitchell about the statement and called Daniel and Pamela Holt, Dewannah Bange, and his mother, Dorothy Stanley, to undermine the State's characterization of the statement. According to Stanley, those witnesses could have testified that Stanley blamed himself for Shelly's drug addiction, "put a mountain of pressure on his [own] shoulders to help Shelly," and "would have rather died than see his wife harmed or imprisoned." (C. 698.) Such testimony, Stanley alleged, would have placed his statement to Mitchell "in an exculpatory light" by portraying him "in a positive light as a responsible, concerned husband." (C. 698.)

The circuit court made the following findings, in relevant part, as to this claim:

> "Mitchell's testimony was damning to Stanley's case, and no defense attorney would have been eager to leave her on the stand any longer than necessary to draw further attention to his confession. Stanley fails to plead what crucial questions his counsel should have asked Mitchell and what her answers to those questions would have been. ...
>
> "... Further, even assuming that Stanley's counsel had been able to elicit testimony that Stanley had a deep and abiding affection for his wife and/or that he blamed himself for Shelly's drug

> addiction, this would not have constituted significant impeachment evidence. Nor would it have had any relevance to Mitchell's testimony in the slightest. The testimony, whatever it might have been, would not have changed the fact that Stanley told Mitchell that Shelly was not to blame for what happened and that he was."

(C. 1105.) We agree with the circuit court.

Although Stanley alleged that his trial counsel should have conducted a more thorough cross-examination of Mitchell, he failed to allege in his petition exactly what questions he believed counsel should have asked, what the answers to those questions would have been, or how those answers would have impacted his trial. In addition, the record from Stanley's direct appeal shows that counsel conducted a thorough cross-examination of Mitchell. The fact that Rule 32 counsel would have challenged Mitchell's testimony in a different manner does not make trial counsel ineffective. Counsel's method of attacking witness credibility is a matter of trial strategy. See, e.g., A.G. v. State, 989 So. 2d 1167, 1173 (Ala. Crim. App. 2007). Moreover, the fact that Stanley blamed himself for Shelly's drug addiction would not have transformed his statement to Mitchell from an admission of guilt into an exculpatory statement.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

8.

Stanley argues that his trial counsel were ineffective for not adequately preparing his mother, Dorothy Stanley, to testify on his behalf. In his petition, Stanley alleged that his mother was a senior citizen with multiple health issues and difficulty with her long-term memory. He alleged that his trial counsel should have met with Dorothy multiple times before trial and conducted mock direct and cross-examination to refresh her memory about events and to prepare her to testify. According to Stanley, Dorothy had difficulty remembering events surrounding the murder when she testified, and counsel's failure to prepare Dorothy for her testimony "left her unprepared for a devastating cross-examination that flustered, upset, and confused her." (C. 699.) He also alleged that counsel called Dorothy to testify "purely as a rebuttal witness to the State's claim that the search" of the apartment was legal even though the trial court had already ruled that the search was legal and, therefore, counsel did

not "use" Dorothy "appropriately, instead relying on her for irrelevant testimony." (C. 699.)

The circuit court made the following findings, in relevant part, as to this claim:

> "First, Stanley does not specifically allege ... how a different investigation would have changed her testimony, or, most importantly, to what Dorothy possibly could have testified that would have changed the outcome of the trial.
>
> "Second, ... Stanley does not identify specific questions that his counsel should have asked his mother, nor does he plead what information she could have provided that would have altered the outcome of his trial. Rather, Stanley merely alleges that his counsel failed to prepare her for her questioning and for having an 'approach to Dot Stanley's testimony (that) was deeply flawed.' (Pet. 37.)
>
> "....
>
> "Fourth, Stanley's claim is facially meritless because there is no reasonable probability that 'the factfinder would have had a reasonable doubt respecting guilt,' [Strickland, 466 U.S.] at 695. The entire basis of his substantive allegation is baseless. The record indicates that Shelly's testimony was clear and convincing, Stanley confessed to his responsibility for the crime, and the victim was found in Stanley's apartment, with the murder weapon protruding from his back. Even if Stanley's petition had included pleadings indicating what testimony his mother could have provided in his defense, her testimony would have been perceived as that of a mother trying desperately to save her child. Such attempts in themselves would have had little to no value, given the overwhelming nature of the evidence against Stanley."

(C. 1106-1107.) The circuit court's findings are supported by the record.

Stanley made only a bare allegation that trial counsel's "approach" to Dorothy's testimony was not appropriate, without alleging, within this claim in his petition, what he believed Dorothy could have testified to or how that testimony would have impacted his trial.[11] In any event, as the circuit court noted, any testimony from Stanley's mother "would have been perceived as that of a mother trying desperately to save her child." Indeed, this Court has recognized that, "'[a]s a matter of trial strategy, counsel could well decide not to call family members as witnesses because family members can be easily impeached for bias.'" Davis v. State, 44 So. 3d 1118, 1141 (Ala. Crim. App. 2009) (quoting Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995)).

[11]Stanley did allege within other claims in his petition testimony he believed Dorothy could have provided. However, "the claim of ineffective assistance of counsel is a general allegation that often consists of numerous specific subcategories. Each subcategory is an independent claim that must be sufficiently pleaded." Coral v. State, 900 So. 2d 1274, 1284 (Ala. Crim. App. 2004), overruled on other grounds, Ex parte Jenkins, 972 So. 2d 159 (Ala. 2005). Absent any factual allegations within this specific claim for relief regarding what testimony he believed Dorothy could have provided, the claim is insufficiently pleaded.

As for his allegation that his counsel should have better prepared Dorothy to testify, the record from Stanley's direct appeal shows that Dorothy testified that she rented from the Berryhills the apartment that the Stanleys lived in; that she had been renting the apartment for about five years; that, when her husband did not want to use the property, her son and his wife moved in; that, when they could not contact Stanley at the time of the murder, the Berryhills contacted her; and that she told the Berryhills that she could not get into the apartment because she did not have a key. Dorothy's testimony was minor, and any failure to prepare her for trial could not have possibly resulted in any prejudice to Stanley; therefore, the circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

9.

Stanley argues that his trial counsel were ineffective during opening and closing statements. In his petition, Stanley alleged what counsel said during opening and closing statements -- including that counsel attacked Shelly's credibility and argued that it was Shelly, not Stanley, who had committed the murder but also argued that, if Stanley was

guilty of anything, he was guilty of felony murder, not capital murder -- and then alleged that counsel's opening and closing statements "were incoherent and prejudiced" him because, he said, "[t]hey offered no theory of the case and failed to challenge the State's case." (C. 701.) According to Stanley, had counsel been adequately prepared, they "would have presented a cognizable theory of the case, presented evidence in support of that theory, and given a consistent argument between the opening and closing statements." (C. 701.) He alleged that counsel could have presented the testimony of Schiro and Dr. Davey, see Parts II.A.1 and II.A.2 of this opinion, "to support a theory that [he] was not present at the scene of the crime or that [Shelly] was the sole murderer." (C. 701.)

The circuit court made the following findings, in relevant part, as to this claim:

> "Stanley describes portions of the opening and closing statements, but he fails to suggest any arguments that might have been more effective until ... he suggests that his counsel could have presented testimony from two experts he used in his [Rule 32] petition to support a theory that Stanley was not present when Smith was murdered. Neither expert, incidentally, offered any testimony in [their affidavits attached to] Stanley's petition that would pertain to the issue of Stanley's

> presence at Smith's murder. Thus, Stanley fails to plead facts that show deficient performance on the part of his counsel.
>
> "... Stanley simply fails to plead any facts that, if true, would show any unreasonableness on the part of his counsel. Additionally, Stanley fails to plead facts showing that the outcome of the case could have been different had counsel implemented Stanley's suggestions concerning the opening and closing statements. Indeed, most of this claim is limited to summarizing trial counsel's arguments at trial, and Stanley fails to specifically plead what statements or arguments his counsel should have made."

(C. 1107.) We agree with the circuit court.

Stanley made bare and conclusory allegations that counsel failed to put forth a coherent defense theory and to challenge the State's case during opening and closing statements, but he failed to allege in his petition what he believed counsel should have said during opening and closing statements. Moreover, the record from Stanley's direct appeal shows that, contrary to Stanley's assertion, counsel did offer a defense theory during opening and closing statements -- that Shelly had acted alone in committing the murder.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

10.

Stanley argues that his trial counsel were ineffective for not adequately cross-examining two of the State's expert witnesses, specifically, Nancy Jones, a forensic scientist specializing in DNA, and Dr. Emily Ward, a pathologist. In his petition, Stanley alleged that Jones testified that the DNA on the knives found at the crime scene matched Smith's DNA and that counsel should have questioned Jones "about the lack of any forensic evidence linking [him] to the crime scene" and "the likelihood that such evidence should have been found given the characteristics of the crime scene" so as to make it "clear to the jury" that the State's case lacked forensic evidence and relied entirely on Shelly's testimony. (C. 702.) Stanley alleged that counsel should have questioned Dr. Ward about Smith's "toxicology report and the level of drugs found in Mr. Smith's system" at the time of his death. (C. 702.) According to Stanley, had counsel done so, "it would have been clear to the jury that Mr. Smith had several drugs in his body at the time of his death that may have slowed and weakened him." (C. 702.)

The circuit court made the following findings, in relevant part, as to this claim:

> "Stanley alleges that his counsel should have asked the State's DNA expert about the absence of physical evidence linking Stanley to the crime scene, but he failed to plead what specific testimony the State's expert would have provided and how it would have helped his defense. Moreover, the evidence collected from the crime scene was clearly established by the direct examination. Thus, it was already clear that Stanley's DNA was not found on the knives, and any further examination in that regard would have been either impermissible argument or repetitive. (R. 854-81.) Moreover, the lack of Stanley's DNA at the crime scene was not inconsistent with the State's theory of the case, nor would it have helped his defense.
>
> "Stanley also argues that his trial counsel should have asked the pathologist about the effect of drugs found in Smith's bloodstream at the time of his death .... However, Stanley fails to plead what the answers to these questions would have been, if the presence of drugs in his system would have made him more susceptible to an attack from a person who was much smaller and weaker than him or, more importantly, how this evidence would have helped in his defense."

(C. 1108-1109.) We agree with the circuit court.

Although Stanley alleged in his petition what he believed his counsel should have asked Jones and Dr. Ward on cross-examination, he failed to allege what their testimony would have been in response. In addition, we point out that Stanley failed to allege any facts in his petition indicating that

Jones, a DNA expert who conducted DNA testing but was not otherwise involved in the investigation of the murder, was privy to any part of the State's case other than the evidence that was given to her for testing so that she would have been able to testify "about the lack of any forensic evidence linking [him] to the crime scene." Likewise, Stanley failed to plead any facts indicating that Jones, as a DNA expert, would have been qualified to testify as to "the likelihood that such evidence should have been found given the characteristics of the crime scene." Moreover, the record from Stanley's direct appeal reflects that Dr. Ward testified that Smith had muscle relaxants and methadone in his system at the time of his death, and Smith's daughter also testified to the numerous medications he was taking at the time of his death. Additional testimony from Dr. Ward on the subject would have been cumulative because it was already "clear to the jury that Mr. Smith had several drugs in his body at the time of his death that may have slowed and weakened him."

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

B.

Stanley contends that his trial counsel were ineffective during what he describes as the "[p]re-trial phase." (Stanley's brief, p. 61.)

1.

Stanley argues that his trial counsel were ineffective for not presenting expert testimony on the effect his use of crack cocaine had on his ability to form the specific intent to kill and for not requesting jury instructions on [voluntary intoxication as a defense and] on reckless manslaughter as a lesser-included offense of the capital-murder charge. In his petition, Stanley alleged that Shelly's testimony at trial established that she and Stanley had been on a "four-day crack binge" before the murder during which they did not eat or sleep, that they had run out of cocaine "around 3 to 5 a.m. on the day of the murder," and that, while discussing how to obtain more money and drugs, they had devised the plan to rob Smith. (C. 706.) He alleged that an expert toxicologist, such as Dr. William Sawyer, whose affidavit he attached to his petition, could have testified, among other things, that, given Shelly's testimony about the four-day binge as well as

the sheer brutality of the murder, it was likely that Stanley had been experiencing "cocaine-induced psychosis" and was unable to think rationally at the time of the murder. (C. 708.) He further alleged that there was sufficient evidence adduced at trial to warrant sending the issue of his intoxication to the jury and that N.Y., who sat on his jury, had indicated in an affidavit, which he attached to his petition, that "had she received an instruction explaining voluntary intoxication and its impact on specific intent, she 'likely would not have voted to convict Mr. Stanley.'" (C. 709.)

The circuit court found that those claims were meritless on the ground this Court held on direct appeal that there was no plain error in the trial court's not instructing the jury on voluntary intoxication and reckless manslaughter because there was no evidence to support such charges. The court further found that those claims were insufficiently pleaded because Stanley had failed to plead in his petition any additional evidence that could have been presented at trial to establish that he was, in fact, intoxicated at the time of the murder. We need not address the propriety of the court's

findings in this regard, because we conclude that those claims are meritless for another reason.

On direct appeal, in addition to holding that there was no plain error in the trial court's not instructing the jury on voluntary intoxication and reckless manslaughter because there was not sufficient evidence to support such instructions, this Court also held that there was no plain error in the trial court's not instructing the jury on voluntary intoxication and reckless manslaughter because such instructions "would have been inconsistent with the defense's theory that Shelly acted alone in Smith's murder." Stanley, 143 So. 3d at 292. As stated previously, the defense theory was that Stanley did not participate in the murder but that his wife murdered Smith and lied about Stanley's involvement. This Court has held that counsel is not ineffective for not requesting a jury instruction that is inconsistent with the theory of defense:

> "Here, an intoxication instruction would have been inconsistent with counsel's defense strategy. '[T]he mere existence of a potential alternative defense theory is not enough to establish ineffective assistance based on counsel's failure to present that theory.' Rosario-Dominguez v. United States, 353 F. Supp. 2d [500] at 513 [(S.D. N.Y. 2005)]. We cannot say that counsel's performance is

> deficient for failing to request a jury instruction on intoxication when such an instruction would have been inconsistent with counsel's defense. See Commonwealth v. Doucette, 391 Mass. 443, 458, 462 N.E.2d 1084 (1984). The circuit court correctly denied relief on this claim."

Hunt v. State, 940 So. 2d 1041, 1067 (Ala. Crim. App. 2005).

We recognize, of course, that "a determination on direct appeal that there has been no plain error does not automatically foreclose a determination of the existence of the prejudice required under Strickland to sustain a claim of ineffective assistance of counsel." Ex parte Taylor, 10 So. 3d 1075, 1078 (Ala. 2005). "However, Ex parte Taylor applies only to the prejudice prong of Strickland, not to the deficient-performance prong." Woodward v. State, 276 So. 3d 713, 769 (Ala. Crim. App. 2018). This Court's holding on direct appeal that Stanley was not entitled to jury instructions on voluntary intoxication and reckless manslaughter because such instructions would have been inconsistent with Stanley's defense establishes that trial counsel's performance was not deficient in not requesting those instructions. Therefore, Ex parte Taylor is inapplicable here. See Woodward, 276 So. 3d at 769 ("Because this Court's holding on direct appeal establishes that

counsel's performance was not deficient, Ex parte Taylor is inapplicable.").

Moreover, the presentation of expert testimony on the effects of Stanley's "four-day crack binge" would likewise have been inconsistent with Stanley's asserted defense and, even had counsel presented such testimony, Stanley would not have been entitled to jury instructions that were inconsistent with his defense. See Ex parte McWhorter, 781 So. 2d 330, 339 (Ala. 2000) ("Had an instruction been requested that would have conflicted with defense strategy, there is no error in the trial court's failure to give the instruction."); Harbin v. State, 14 So. 3d 898, 911 (Ala. Crim. App. 2008) (holding that "[a] trial court does not err in refusing to give an instruction that is inconsistent with the defense strategy"); Johnson v. State, 820 So. 2d 842, 865 (Ala. Crim. App. 2000) ("When instructions are inconsistent with the defense strategy, there is no error in failing to give the challenged instruction."), aff'd, 820 So. 2d 883 (Ala. 2001); and Bush v. State, 695 So. 2d 70, 113 (Ala. Crim. App. 1995) ("Where the instructions requested would have conflicted with defense

strategy, there is no error in the trial court's failure to give the instructions."), aff'd, 695 So. 2d 138 (Ala. 1997).

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

2.

Stanley argues that his trial counsel were ineffective for not adequately preparing to argue several pretrial motions. In his petition, Stanley alleged that 19 of the 20 pretrial motions filed by counsel were denied by the trial court. According to Stanley, the motions were "well written" but counsel did not adequately argue the motions during pretrial hearings, and "it appears likely that trial counsel copied the motions out of a manual and did not prepare to address the legal issues to the court." (C. 711-12.) Specifically, Stanley alleged that counsel did not adequately argue the following nine motions: a motion to apply heightened standards; a motion for discovery of the transcript, exhibits, and other memorializations of the grand-jury proceedings and a list of the grand-jury members; a motion to incorporate all federal and state constitutional bases in support of all motions and objections made in the

proceedings; two motions to dismiss the indictment; a motion for a jury questionnaire; a motion to bar imposition of the death penalty on the ground that Alabama's death-penalty statute fails to narrow the class of death-eligible offenders; a motion for a jury instruction on the weighing of aggravating circumstances and mitigating circumstances; and a motion to suppress the 27 crime-scene and 19 autopsy photographs introduced into evidence by the State.

The circuit court found that this claim was insufficiently pleaded because Stanley failed "to plead what arguments his counsel should have made [and] how these arguments would have made a difference in the outcome of the pretrial hearings or of his trial." (C. 1111.) The court further found that, with respect to his claim that his counsel did not adequately argue his motion to suppress the crime-scene and autopsy photographs, Stanley "failed to plead what about the photographs were objectionable [or] how his counsel could have successfully managed to keep them from being placed into evidence." (C. 1111.) We agree with the circuit court.

Stanley made bare allegations that his counsel did not adequately argue nine pretrial motions but, for the most part,

he failed to allege in his petition what arguments his counsel should have made. As for those motions as to which Stanley did allege in his petition the alternative arguments he believed his counsel should have made, he failed to plead sufficiently specific facts indicating that there is a reasonable probability that, had counsel made the arguments, the outcome of his trial would have been different.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

3.

Stanley argues that trial counsel were ineffective for, he says, not conducting an adequate voir dire examination during jury selection. In his petition, Stanley alleged that his counsel conducted only "a cursory voir dire examination covering a mere 20 transcript pages"; asked no "substantive questions of the venire as to their beliefs on criminal justice, religious affiliations, or any other trait that would help to differentiate the members"; and asked no questions to "discern if [the jurors] would be biased or should otherwise be struck for cause." (C. 714-15.) He further alleged that counsel did not "adequately examine jurors to identify those

who would, following a capital conviction, automatically sentence Mr. Stanley to death" and that, because "neither the prosecutor nor trial court inquired as to whether any of the venire members would automatically impose the death penalty upon finding a defendant guilty, it was trial counsel's duty to ask this question during [their] voir dire examination." (C. 715.)

The circuit court found, in relevant part, that "[w]ith regard to the detail of his counsel's voir dire examination, save pure speculation, Stanley has failed to plead any facts that show he was prejudiced by the questioning that he now characterizes as inadequate." (C. 1112.) We agree.

We addressed a similar claim in Washington v. State, 95 So. 3d 26 (Ala. Crim. App. 2012):

> "Washington next argues that the circuit court erred in summarily dismissing his claim that counsel was ineffective for allegedly failing to conduct effective voir dire examination.
>
> "The circuit court stated the following in regard to this claim:
>
> > "'This ground fails pursuant to Rule 32.6(b) because it does not contain a clear and specific statement of facts that would entitle [Washington] to relief. [Washington] fails to identify which juror or jurors should have been disqualified.

> [Washington] fails to describe in particular how much more individual jurors should have been asked, and how that would entitle [Washington] to relief.'
>
> "'....'
>
> "The circuit court correctly summarily dismissed this claim because Washington failed to identify specific jurors by name; he failed to plead what should have been done during voir dire examination; and he failed to plead how he was prejudiced by counsel's performance during the voir dire examination. See Rule 32.6(b), Ala. R. Crim. P.
>
> "Moreover,
>
> "'Generally, "[a]n attorney's actions during voir dire are considered to be matters of trial strategy," which "cannot be the basis" of an ineffective assistance claim "unless counsel's decision is ... so ill chosen that it permeates the entire trial with obvious unfairness."'
>
> "Neill v. Gibson, 263 F.3d 1184, 1193 (10th Cir. 2001) (quoting Nguyen v. Reynolds, 131 F.3d 1340, 1349 (10th Cir. 1997)). 'Counsel, like the trial court, is granted "particular deference" when conducting voir dire.' Keith v. Mitchell, 455 F.3d 662, 676 (6th Cir. 2006)."

95 So. 3d at 63-64.

Although Stanley alleged generally that his counsel should have asked prospective jurors questions about their beliefs on criminal justice and their religious affiliations, about "any other trait that would help to differentiate the

members," and to "discern if [they] would be biased," he failed to allege in his petition what specific questions he believed counsel should have asked or what responses he thought he would have received to such questions. Stanley further alleged that his counsel should have asked prospective jurors if any of them would automatically impose the death penalty upon finding Stanley guilty of capital murder. However, he failed to identify in his petition a single juror who sat on his jury who he believed would have answered that question in the affirmative. Therefore, he failed to plead sufficient facts indicating that he was prejudiced by counsel's not asking this question. See, e.g., Thompson v. State, [Ms. CR-16-1311, November 16, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018) (holding that Rule 32 petitioner failed to sufficiently plead his claim that his trial counsel was ineffective for not asking prospective jurors whether any of them had attended the memorial service for the victims or had watched a television program in which the facts of the murders were described because the petitioner "pleaded the name of no juror who had attended the memorial service or who had watched the [television] episode").

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

4.

Stanley argues that his trial counsel were ineffective for not making a motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), and J.E.B. v. Alabama, 511 U.S. 127 (1994), on the ground that the State used its peremptory strikes in a discriminatory manner to remove women from his jury. In his petition, Stanley alleged that the State used 10 of its 14 peremptory strikes against women; that 4 of its first 5 strikes were against women; that women constituted 54% of the venire and 71% of the State's strikes; and that the women struck were as heterogenous as the community as a whole. Stanley further alleged that the State treated men and women differently. According to Stanley, the State struck four women who said they had heard about the case but did not strike a man who had heard about the case; struck a woman who knew the families of both defense attorneys but did not strike a man who said he had previously retained one of the defense attorneys; and struck two women who had family members who had been convicted of a crime -- one whose mother-in-law had been

convicted of murder and one whose son had been convicted of driving under the influence of alcohol -- but did not strike two men who had previously been charged with driving under the influence of alcohol. Because there was a prima facie case of gender discrimination, Stanley concluded, his counsel were deficient for not making a Batson/J.E.B. objection and that deficient performance is presumptively prejudicial.

The circuit court found that this claim was insufficiently pleaded and meritless because Stanley "presents nothing beyond the number of strikes exercised by the State against female members of the venire and fails to even establish a comparison of the percentage of women in the venire and on the jury." (C. 1113.) We do not agree that Stanley pleaded nothing beyond the number of strikes exercised by the State. Stanley also alleged that there was a pattern of strikes against women -- four of the State's first five strikes -- and that there was disparate treatment. Nonetheless, we agree that Stanley's claim was insufficiently pleaded.

In Carruth v. State, 165 So. 3d 627, 638-39 (Ala. Crim. App. 2014), this Court held that the petitioner had failed to

sufficiently plead his claim that his trial counsel were ineffective for not making a Batson objection because the petitioner had failed to allege in his petition the composition of the petit jury; had not identified all the prospective jurors he claimed had been struck in a discriminatory manner; and had failed to allege any facts indicating that counsel's decisions not to raise a Batson objection was not sound trial strategy. As in Carruth, Stanley did not allege in his petition the composition of the petit jury and, more importantly, he alleged no facts in his petition indicating that counsel's decision not to make a Batson/J.E.B. objection was not sound trial strategy. Contrary to Stanley's apparent belief, "it is not per se deficient performance for counsel not to make a Batson objection even when there is a prima facie case of discrimination." Woodward v. State, 276 So. 3d 713, 751 (Ala. Crim. App. 2018). The record from Stanley's direct appeal indicates that, after the jury was struck but before it was sworn, the trial court asked the parties if they had any motions or challenges and Stanley's counsel replied that they had none.

> "Thus, counsel did not simply forget or overlook the possibility of raising Batson[/J.E.B.] challenges but affirmatively stated that they did not have any such challenges. Counsel could have been completely satisfied with the jury that was selected and not wished to potentially disturb its composition by making a Batson[/J.E.B.] challenge. Because [Stanley] failed to even allege that counsels' decision was not the result of sound trial strategy, his petition failed to meet the specificity requirement of Rule 32.6(b), Ala. R. Crim. P."

Carruth, 165 So. 3d at 639.

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

C.

Stanley contends that his trial counsel were ineffective for not adequately investigating his case and developing and presenting from such an investigation a cognizable defense theory. In his petition, Stanley alleged that his counsel failed to adequately interview and communicate with him. According to Stanley, his counsel should have communicated with him at least once a month but spoke to him only three or four times in the two years they represented him. Stanley maintained that his counsel did not discuss discovery with him; did not question him adequately about the circumstances of the crime or his drug use; "did not seek his insight or

input in shaping the defense's case"; "did not follow up on evidence that Mr. Stanley explained would help his case," including "with respect to the testimony of Jonathan Patterson and Shelly Stanley"; and "did not discuss with Mr. Stanley the identity of witnesses with exculpatory and mitigating evidence." (C. 717-18.) Stanley also alleged that his counsel did not interview any of the State's 15 witnesses and that, if they had, "they would have obtained critical information to aid in Mr. Stanley's defense." (C. 718.) According to Stanley, had counsel adequately investigated his case, they could have presented "a coherent defense theory that adequately responded to the State's case, which likely would have been focused on Mr. Stanley's intoxication on the day of Henry Smith's murder that was the result of Mr. and Mrs. Stanley's four-day crack binge in the days leading up to the murder." (C. 719.) If counsel had conducted an adequate investigation, Stanley concluded, there is a reasonable probability that the outcome of his trial would have been different, as evidenced by the affidavit of juror N.Y., in which she stated that "had she received a voluntary

intoxication instruction, she 'likely would not have voted to convict Mr. Stanley' of capital murder." (C. 719.)

The circuit court made the following findings, in relevant part, as to this claim:

> "Although Stanley contends that his attorney failed to meet with him enough -- 'only three to four occasions in the two years that he was incarcerated' (Pet. 55) -- Stanley fails to plead ... what would have been the result of the additional meetings and how [that] would have led to a different outcome in his trial. Similarly, Stanley argues that his trial counsel should have interviewed the fifteen witnesses called by the State in his case, but he failed to plead what resultant information from these meetings would have changed the jurors' guilty verdict in his case. Finally, he alleges that his counsel should have developed a stronger theory of his case, but he failed to articulate one, other than the voluntary intoxication theory, which was addressed previously. ... Stanley does not explain how an unsustainable defense of intoxication, which would necessarily involve him essentially admitting to the murder, would be more coherent than the theory used by his counsel, which did not involve an admission to the brutal and vicious murder. ...
>
> "Stanley also failed to specifically plead what his counsel could have done differently at trial, or how there would have been a reasonable probability that the outcome of the guilt phase would have been different had his counsel spent more time with him, interviewed the State's witnesses, or developed a competing theory of the case. For example, Stanley generally alleges that his counsel could have more effectively cross-examined the State's witnesses if he had interviewed them prior to trial. (Pet. 56.) But Stanley failed to plead any facts that show what

> these interviews would have developed or how his cross-examination would have been improved. He failed to offer any clear or specific facts that, if true, would make his case stronger. In another example, Stanley argues that his counsel should have developed a theory of the case that hinged on his intoxication. He did not plead any facts in support of this allegation, but rather merely stated it as an accusation. Stanley did not plead facts that would show how he would establish this theory, which was clearly not supported by the facts of the case, or why it would be superior to the defense theory actually used. ..."

(C. 1116-17.) We agree with the circuit court.

Although Stanley alleged that his counsel should have communicated with him more often and should have interviewed State's witnesses, he made only bare and conclusory allegations that doing so would have resulted in evidence that would "help his case," witnesses who could have provided "exculpatory and mitigating evidence," and "critical information to aid in Mr. Stanley's defense." Tellingly, Stanley failed to allege in his petition exactly what evidence would have been discovered that would have helped his case, would have been exculpatory, would have been mitigating, or would have been "critical" to his defense. He also failed to allege sufficiently specific facts within this claim in his petition indicating that counsel's decision to pursue the

defense that Shelly alone had committed the murder rather than the defense that Stanley had committed the murder but was intoxicated at the time was not a reasonable strategic one or that, had the intoxication defense been asserted, there is a reasonable probability that the outcome of the trial would have been different.[12]

Moreover:

> "'We know of no case establishing a minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.' United States ex rel. Kleba v. McGinnis, 796 F.2d 947, 954 (7th Cir. 1986). '[B]revity of consultation time between a defendant and his counsel, alone, cannot support a claim of ineffective assistance of counsel. Jones v. Wainwright, 604 F.2d 414, 416 (5th Cir. 1979).' Murray v. Maggio, 736 F.2d 279, 282 (5th Cir. 1984). Here, Davis makes no specific argument as to how any more meetings between Davis and his attorneys would

[12]Contrary to Stanley's belief, N.Y.'s affidavit stating that she "likely" would not have voted to convict Stanley if she had been provided with a jury instruction on voluntary intoxication cannot be used to impeach the jury's verdict and show a reasonable probability of a different outcome. See, e.g., Adair v. State, 641 So. 2d 309, 313 (Ala. Crim. App. 1993) ("A juror cannot impeach his verdict by later explaining why or how the juror arrived at his or her decision."). See also Woodward v. State, 480 So. 2d 69, 73 (Ala. Crim. App. 1985) (holding that the trial court properly excluded testimony from jurors at the hearing on the defendant's motion for a new trial offered to support the defendant's claim that he was entitled to a new trial based on newly discovered evidence).

> have been beneficial to his defense. Davis failed to satisfy the requirements of Strickland."

Davis v. State, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009). In addition, "'the failure to interview or take the depositions of the State's witnesses for impeachment purposes is not prejudicial per se.'" Robitaille v. State, 971 So. 2d 43, 72 (Ala. Crim. App. 2011) (quoting Aldrich v. Wainwright, 777 F.2d 630, 636-37 (11th Cir. 1985)). And,

> "'"the mere existence of a potential alternative defense theory is not enough to establish ineffective assistance based on counsel's failure to present that theory."' Hunt v. State, 940 So. 2d 1041, 1067 (Ala. Crim. App. 2005), quoting Rosario-Dominguez v. United States, 353 F. Supp. 2d 500, 513 (S.D.N.Y. 2005). 'Hindsight does not elevate unsuccessful trial tactics into ineffective assistance of counsel.' People v. Eisemann, 248 A.D.2d 484, 484, 670 N.Y.S.2d 39, 40-41 (1998)."

Davis v. State, 44 So. 3d 1118, 1132 (Ala. Crim. App. 2009).

We also point out that the record from Stanley's direct appeal indicates that trial counsel requested and received $5,000 to hire a private investigator, and testimony at trial indicated that the private investigator conducted interviews relating to the case.

> "'[I]t is neither unprofessional nor unreasonable for a lawyer to use surrogates to investigate and interview potential witnesses rather than doing so personally.

> See Harris v. Dugger, 874 F.2d 756, 762 n. 8 (11th Cir. 1989). In fact, we have criticized counsel in other cases for failing to utilize subordinates to conduct pre-trial investigation. See Henderson v. Sargent, 926 F.2d 706, 714 (8th Cir. 1991).'
>
> "Walls v. Bowersox, 151 F.3d 827, 834 n. 4 (8th Cir. 1998). See also Callahan v. State, 24 S.W.3d 483, 486 (Tex. Ct. App. 2000) (holding that '[a] defense attorney is not required to investigate the facts of a case personally. Counsel may delegate the investigation to a private investigator')."

Hall v. State, 979 So. 2d 125, 163 (Ala. Crim. App. 2007).

The circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

D.

Stanley contends that his trial counsel were ineffective for not objecting to several instances of what he describes as prosecutorial misconduct. In his petition, Stanley alleged that his counsel should have objected in four instances:

> (1) when the prosecutor in closing argument during the guilt phase stated that Stanley was more likely to have committed the murder than his wife, which statement, Stanley claimed, "conflated the ideas of reasonable doubt and the presumption of innocence and blatantly asked the jurors to convict Mr. Stanley based on his gender and pre-conceived gender roles" (C. 720);

> (2) when the prosecutor asked leading questions of witnesses "throughout the State's case-in-chief" and particularly during Shelly's testimony (C. 720);
>
> (3) when the prosecutor introduced 27 crime-scene and 19 autopsy photographs, which Stanley claimed were graphic and prejudicial and then showed some of them to the jury during closing argument; and
>
> (4) when the State presented what Stanley claimed was improper victim-impact evidence during the guilt phase of his trial when Smith's daughter, Christie, testified "to her and her father's relationship (R. 400); how they spoke and visited everyday (R. 401); how she referred to him as 'daddy' throughout her testimony (R. 399-443.); and how he loved NASCAR (R. 434.)." (C. 722.)

The circuit court made the following findings, in relevant part, as to this claim:

> "First, ... Stanley claims that his counsel failed to object to the State's argument that Stanley was more likely to have committed the murder than his wife (Pet. 58.). ... Obviously, the State indicted Stanley and was trying him for the murder of Henry Smith. It stands to reason that the prosecution felt he was responsible and would argue that he committed the murder. The argument to which Stanley here objects had nothing to do with gender, but rather was a commentary on the relative size and strength of Stanley and Shelly as it related to the amount of strength that it would take to commit a crime of such intense ferocity. ... The argument was entirely permissible, appropriate, and a necessary rejoinder to the defense argument that Shelly committed the murder by herself. ...
>
> "Second, Stanley argues that his counsel should have objected to leading questions he alleges the

prosecution asked of Shelly, but he failed to plead what testimony from these questions would have changed the jurors' guilty verdict in his case. ...

"Stanley failed to plead any specific 'evidence' or information that was improperly presented to the jury as a result of the State's 'leading' questions. ... Thus, Stanley's claim fails to meet the specificity and full factual pleading requirements of Rule 32.6(b), and it is summarily dismissed.

"Third, Stanley argues that his counsel was ineffective for failing to object to the prosecution's introduction of the crime scene and autopsy photographs into evidence. (Pet. 59-60.) Although Stanley claims that his attorney should have objected to these photographs because they were gruesome and prejudicial, he again failed to plead any legitimate grounds for such an objection. Gruesome and prejudicial are not legitimate grounds to exclude a photograph if the photograph is relevant. As Stanley failed to identify a single photograph and explain specifically how it was objectionable, his claim is insufficiently pleaded and dismissed.

"....

"Finally, Stanley alleges that his counsel was ineffective for failing to object to victim impact testimony made during the guilt phase of his trial. (Pet. 60-61.)

"....

"The record shows that there was no improper victim-impact testimony. Stanley contends that testimony of the victim's daughter was improper, yet the record demonstrates that she did not describe the impact of the crime on her life. Further, the alleged facts could not demonstrate that the

> testimony distracted the jury or kept the jurors from performing their duties. ..."

(C. 1118-20.) We agree with the circuit court's findings.

First, Stanley argued on direct appeal that the prosecutor's argument that Stanley was more likely to have committed the murder than his wife was improper, and this Court held that "the prosecutor's remarks were a proper argument that the facts of the case did not support Stanley's claim that his wife was more culpable than he was or that she acted alone in murdering Smith"; that "the comments did not improperly appeal to gender stereotypes and that they were not of such a nature as to inflame the passions of the jury"; and that "the prosecutor did not misstate the law or improperly shift the burden of proof to Stanley." Stanley, 143 So. 3d at 300-02. Thus, we concluded that "we do not find that there was any error, much less plain error, in this regard." Id. at 302. Because this Court has already held that the prosecutor's argument was proper, trial counsel were clearly not ineffective for not objecting to it. "[C]ounsel could not be ineffective for failing to raise a baseless objection." Bearden v. State, 825 So. 2d 868, 872 (Ala. Crim. App. 2001).

Second, Stanley also argued on direct appeal that the prosecutor had "'made extensive use of leading questions'" and we found "no plain error in the prosecutor's questions." Stanley, 143 So. 3d at 303-04. Although a finding of no plain error on direct appeal does not preclude a finding of prejudice under Strickland, in this case it does indicate that counsel were not deficient for not objecting to the prosecutor's questioning of witnesses, and in particular his questioning of Shelly. "Alabama has never enforced an across-the-board ban on leading questions by a prosecutor during direct examination. 'Every question may be said in some sense to be leading....'" Calhoun v. State, 932 So. 2d 923, 963 (Ala. Crim. App. 2005) (quoting Donnell v. Jones, 13 Ala. 490, 507 (1848)).

Third, Stanley made the bare and general allegation in his petition that the crime-scene and autopsy photographs were graphic and prejudicial, but he failed to plead any facts in his petition to support that assertion. Nor did he plead any legitimate basis for an objection to the photographs. As the circuit court correctly found: "'The fact that a photograph is gruesome and ghastly is no reason to exclude it from the

evidence, so long as the photograph has some relevancy to the proceedings, even if the photograph may tend to inflame the jury.'" Eggers v. State, 914 So. 2d 883, 914-15 (Ala. Crim. App. 2004) (quoting Bankhead v. State, 585 So. 2d 97, 109–10 (Ala. Crim. App. 1989), remanded on other grounds, 585 So. 2d 112 (Ala. 1991), aff'd on return to remand, 625 So. 2d 1141 (Ala. Crim. App. 1992), rev'd, 625 So. 2d 1146 (Ala. 1993)).

Finally, the circuit court was correct that how frequently Smith spoke with his daughter, the fact that Smith liked NASCAR, and the fact that Christie referred to her father as "daddy," is not victim-impact evidence. "'Victim-impact statements typically "describe the effect of the crime on the victim and his [or her] family."' Jackson v. State, [Ms. CR-16-1039, September 20, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019) (quoting Turner v. State, 924 So. 2d 737, 770 (Ala. Crim. App. 2002)). Christie did not testify about the impact her father's death had on her life. "[C]ounsel could not be ineffective for failing to raise a baseless objection." Bearden v. State, 825 So. 2d 868, 872 (Ala. Crim. App. 2001). In any event, even if Christie's testimony could arguably be considered victim-impact evidence,

"[i]t would elevate form over substance for us to hold ... that [Stanley] did not receive a fair trial simply because the jurors were told what they probably had already suspected -- that [Smith] was not a 'human island,' but a unique individual whose murder had inevitably had a profound impact on [his family]." Ex parte Rieber, 663 So. 2d 999, 1006 (Ala. 1995).

For these reasons, the circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

E.

Stanley contends that his trial counsel were ineffective for not adequately investigating and presenting mitigating evidence at the penalty phase of the trial and at the sentencing hearing before the trial court.

> "'[T]rial counsel's failure to investigate the possibility of mitigating evidence [at all] is, per se, deficient performance.' Ex parte Land, 775 So. 2d 847, 853 (Ala. 2000), overruled on other grounds, State v. Martin, 69 So. 3d 94 (Ala. 2011). However, 'counsel is not necessarily ineffective simply because he does not present all possible mitigating evidence.' Pierce v. State, 851 So. 2d 558, 578 (Ala. Crim. App. 1999), rev'd on other grounds, 851 So. 2d 606 (Ala. 2000). When the record reflects that counsel presented mitigating evidence during the penalty phase of the trial, as here, the question becomes whether counsel's mitigation investigation and counsel's decisions regarding the presentation of mitigating evidence were reasonable.

> "'"[B]efore we can assess the reasonableness of counsel's investigatory efforts, we must first determine the nature and extent of the investigation that took place. ..." Lewis v. Horn, 581 F.3d 92, 115 (3d Cir. 2009). Thus, "[a]lthough [the] claim is that his trial counsel should have done something more, we [must] first look at what the lawyer did in fact." Chandler v. United States, 218 F.3d 1305, 1320 (11th Cir. 2000).'
>
> "Broadnax[v. State], 130 So. 3d [1232,] 1248 [(Ala. Crim. App. 2013)]...."

Reeves v. State, 226 So. 3d 711, 751 (Ala. Crim. App. 2016)

As this Court explained in Woodward v. State, 276 So. 3d 713 (Ala. Crim. App. 2018):

> "Whether trial counsel were ineffective for not adequately investigating and presenting mitigating evidence '"turns upon various factors, including the reasonableness of counsel's investigation, the mitigation evidence that was actually presented, and the mitigation evidence that could have been presented."' McMillan v. State, 258 So. 3d 1154, 1168 (Ala. Crim. App. 2017) (quoting Commonwealth v. Simpson, 620 Pa. 60, 100, 66 A.3d 253, 277 (2013)).
>
> > "'"[W]hen, as here, counsel has presented a meaningful concept of mitigation, the existence of alternate or additional mitigation theories does not establish ineffective assistance." State v. Combs, 100 Ohio App. 3d 90, 105, 652 N.E.2d 205, 214 (1994). "Most capital appeals include an allegation that additional witnesses could have been called. However, the standard of review on appeal is deficient performance plus

> prejudice." Malone v. State, 168 P.3d 185, 234-35 (Okla. Crim. App. 2007).'
>
> "State v. Gissendanner, 288 So. 3d 923, 965 (Ala. Crim. App. 2015). '[C]ounsel does not necessarily render ineffective assistance simply because he does not present all possible mitigating evidence.' Williams v. State, 783 So. 2d 108, 117 (Ala. Crim. App. 2000), overruled on other grounds by Ex parte Taylor, 10 So. 3d 1075 (Ala. 2005).
>
> "... '[W]hen a defendant challenges a death sentence such as the one at issue in this case, the question is whether there is a reasonable probability that, absent the errors, the sentencer -- including an appellate court, to the extent it independently reweighs the evidence -- would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.' Strickland v. Washington, 466 U.S. 668, 695, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). 'To assess that probability, we consider "the totality of the available mitigation evidence -- both that adduced at trial, and the evidence adduced in the habeas proceeding" -- and "reweig[h] it against the evidence in aggravation."' Porter v. McCollum, 558 U.S. 30, 41, 130 S.Ct. 447, 175 L.Ed.2d 398 (2009) (quoting Williams v. Taylor, 529 U.S. 362, 397-98, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000)). We '"must consider the strength of the evidence in deciding whether the Strickland prejudice prong has been satisfied."' McWhorter v. State, 142 So. 3d 1195, 1231 (Ala. Crim. App. 2011) (quoting Buehl v. Vaughn, 166 F.3d 163, 172 (3d Cir. 1999))."

276 So. 3d at 773-74.

> "'[T]he assessment should be based on an objective standard that presumes a reasonable decisionmaker,' Williams v. Allen, 542 F.3d 1326, 1345 (11th Cir. 2008), and, in an override case, necessarily includes considering whether the totality of the

> available mitigating evidence would have persuaded additional jurors to recommend a sentence of life imprisonment without the possibility of parole. See Ex parte Carroll, 852 So. 2d 833, 836 (Ala. 2002) ('[A] jury's recommendation of life imprisonment without the possibility of parole ... is to be treated as a mitigating circumstance. The weight to be given that mitigating circumstance should depend upon the number of jurors recommending a sentence of life imprisonment without parole, and also upon the strength of the factual basis for such a recommendation in the form of information known to the jury.'). Although a jury's recommendation of life imprisonment without the possibility of parole does not preclude a finding of prejudice under Strickland, it does weigh against such a finding. See, e.g., McMillan v. State, 258 So. 3d 1154 (Ala. Crim. App. 2017); Spencer v. State, 201 So. 3d 573, 613 (Ala. Crim. App. 2015); Jackson v. State, 133 So. 3d 420, 449 (Ala. Crim. App. 2009); Hooks v. State, 21 So. 3d 772, 791 (Ala. Crim. App. 2008); and Boyd v. State, 746 So. 2d 364, 389 (Ala. Crim. App. 1999)."

Woodward, 276 So. 2d at 739.

In this case, the record from Stanley's direct appeal indicates that trial counsel requested and received $5,000 to hire a private investigator and $15,000 to hire a mitigation expert. Counsel retained Dr. J. Davis Martin, a forensic psychologist and "board certified sentence mitigation specialist." (RDA, R. 1160.) Dr. Martin testified that she evaluated Stanley and spent a great deal of time with him in preparation for the case, and also spent a great deal of time

with family members and friends to obtain background information on Stanley. Dr. Martin stated that she secured certain records but that Stanley's school records could not be obtained because, she said, "Colbert County does not hold school records five years past a graduation date." (RDA, R. 1163.) She also said that she worked in tandem with the private investigator, who also conducted interviews in relation to the case. It is clear from the record that trial counsel delegated the primary responsibility of investigating the case to the private investigator and mitigation expert. "[T]rial counsel is not ineffective for delegating the responsibility of investigating mitigation evidence to subordinates." Marshall v. State, 182 So. 3d 573, 601 (Ala. Crim. App. 2014). In addition, counsel called four witnesses to testify during the penalty phase of the trial -- Stanley's mother, Dorothy; Stanley's father, Charles; Stanley's sister, Christie Strickland; and Dr. Martin.

Dorothy testified that drugs took Stanley away from his family; that Stanley started drinking alcohol when he was young and started using drugs when he got married; that Stanley's drug use "got heavier" over time (RDA, R. 1149);

that Stanley did not drive and stayed at home; that she worried because Stanley did not associate with people; that, at the time of trial, Stanley had been off drugs for almost two years; and that his life had changed in prison. Charles testified that drugs affected Stanley's behavior and that Stanley was withdrawn but that Stanley was, at the time of trial, a different person than he had been in 2005, when the murder was committed. Charles also read to the jury a letter that Stanley had recently written him and said that Stanley was a good person who helped people and that Stanley had spent five years caring for his grandfather. Strickland, who was two and a half years older than Stanley, testified that she had not had a relationship with Stanley since he was about 13 years old and that Stanley was involved with drugs and had had problems as a teenager, but that she had corresponded with and visited him in prison, and that Stanley was a different person than he was in 2005.

Dr. Martin testified that she interviewed, investigated, procured records, and developed background information on Stanley. Dr. Martin testified, in part:

> "[Dr. Martin]: Tony grew up in what is economically considered an impoverished home. For

example, the family qualified for Tony to attend Head Start. He attended Head Start for three, four, and five years of age.

"At about six years old, he was being supervised by his older sister Christie. She was 10 at the time. The mother worked 16 hours a day. The father worked, and the father also drank. So he was unavailable. He was out with friends, or he would be drinking. So Tony from about six years of age was essentially raising himself.

"[Stanley's counsel]: What can you tell us about Tony's family situation and about Tony as he got older?

"[Dr. Martin]: Well, this kind of set Tony up to make a lot of his own decisions at such a young age, which probably to many of us would be unthinkable. Imagine putting your six-year-old out in the world. So about nine years old -- I'm sorry. Nine years of age, Tony started kind of skipping school.

"He began drinking. He began hanging out with a much older crowd. My understanding is there was a child of about 15, 16 across the street that began hanging out with Tony. Of course, I would question that relationship. But there was no intervention. No one seemed to think there was anything wrong with this at the time. But he began drinking at nine years old.

"[Stanley's counsel]: It's mighty young to start drinking. Can you tell the jury what type of impact that might have had on Tony and his development as an adult?

"[Dr. Martin]: At nine, we're still developing. We're still physically developing. Our brains are still developing. Our intelligence and cognition is still developing. There's no -- There's no way for us to go back in time and determine what huge effect

that probably had on his brain developing and his physical health.

"He also began to use marijuana at about age 13. So all those factors were great risk factors. And there was no intervention, no parental supervision. There was very little family structure available to Tony and, of course, his sisters at the time.

"[Stanley's counsel]: What were you able to determine about the relationship between Tony's parents?

"[Dr. Martin]: It was very volatile. The elder Mr. Stanley drank quite a bit. And when he drank, he would become abusive. He would become angry and aggressive. He would break furniture. He -- It was relayed to me that he threw concrete blocks, would punch out car windows. Even the wife would go after him with a knife.

"He also engaged in extramarital affairs. And the elder Mrs. Stanley would go about loading her kids in the car and driving around town trying to hunt down Mr. Stanley. So all those kinds of abuses were going on pretty much on a daily basis in the Stanley home while the three children were growing up.

"[Stanley's counsel]: In your opinion, how did this affect Tony?

"[Dr. Martin]: Tony, again, was essentially raising himself. There was no one that I have discovered that influenced any kind of prosocial -- what I would call prosocial behavior, positive social behavior. He had problem behaviors. There was no intervention, no one there to say, 'Tony, that's not the right way to do things.'

"There was no one there to teach him how to interact in relationships because what he saw for a

relationship was people screaming, fighting, and throwing things. So all this had an impact on all three children. All three children have problem behaviors.

"The only one that was able to, kind of, salvage herself was Christie, the elder [sister]. She was put in charge of these children. And at 10 years old, she began to take that seriously. And she's the only one that was successfully able to salvage her life, so to speak, and move on and live a quiet, domestic kind of existence.

"[Stanley's counsel]: Did you find any evidence during your examination that Tony had some type of behavioral or perhaps psychological problems?

"[Dr. Martin]: There was. I think I can relate it best to when he was sent to Taylor Hardin for psychological evaluation. They diagnosed him with adult antisocial behavior. And typically, that can trace its roots back into childhood to conduct disorder. Conduct disorder is somebody who's just not going to listen to authority, who actually has very little feelings for others and others's safety and their own safety. You call them risk behaviors.

"And Tony certainly exhibited a lot of these. I also believe there was some depression that probably began to exist about seven or eight years old. Tony, again, was pretty much alone in the world. All three siblings were going out doing their own thing. The folks were engaged in other things that were very self-centered and self-promoting so that there's depression.

"Tony himself said he was experiencing anxiety. And I think we can trace those back to about those years. And he is now on Elavil for depression and Clonidine for hypertension, which both relate back to those two conditions."

(RDA, R. 1163-67.) Dr. Martin also testified that there were two occasions in his life when Stanley lost consciousness for no apparent reason; that he suffered from enuresis, or bed wetting, until he was 12 years old; and that, even as a small child, he tried to stop his father from abusing his mother. However, Dr. Martin said that, despite his upbringing, Stanley was close with his family.

At the conclusion of the penalty phase of the trial, the jury recommended, by a vote of 8 to 4, that Stanley be sentenced to life imprisonment without the possibility of parole for his capital-murder conviction. Stanley presented no additional evidence at the sentencing hearing before the court. The trial court overrode the jury's recommendation and sentenced Stanley to death. In its sentencing order, the trial court found three aggravating circumstances: that Stanley had previously been convicted of a felony involving the use or threat of violence to the person; that Stanley had committed the murder during the course of a robbery; and that the murder was especially heinous, atrocious, or cruel as compared to other capital offenses. The trial court found no statutory mitigating circumstances and found that the jury's

recommendation was a nonstatutory mitigating circumstance but found no other nonstatutory mitigating circumstances to exist. In doing so, the court expressly recognized the evidence presented by Stanley regarding his family history and substance abuse and addiction but specifically found that it was not mitigating.

In his petition, Stanley alleged that his counsel did not spend a sufficient amount of time discussing mitigation with him, his mother, his father, and his sister; did not adequately prepare his mother, his father, and his sister to testify at the penalty phase of the trial; did not interview and call to testify his aunt and uncle--Homer and Mary Ann Alsobrooks; his cousins Pamela Holt, Ramona Langston, Shirley Whitehead, and Daniel Holt; and his friends Ladonna Miles, and Michael Shaw; did not secure his school and medical records; and did not retain the services of an expert in drug abuse and addiction, such as toxicologist Dr. William Sawyer, whose affidavit Stanley attached to his petition, to testify about the effects of Stanley's drug addiction on his mental state and behavior.

Had counsel done so, Stanley alleged, counsel would have discovered, and could have presented the following mitigating evidence:

> (1) that he had been raised in poverty;
>
> (2) that his parents' relationship was volatile;
>
> (3) that his mother worked long hours and his father was an alcoholic who had numerous extramarital affairs and paid little to no attention to him, thus leaving him largely unsupervised as a child, other than by his older sister, who took care of him;
>
> (4) that, despite his family life, he was a good and kind child who suffered from anxiety but who did well in school until he was a teenager, when he began skipping school and ultimately dropped out;
>
> (5) that he began using alcohol and drugs at a young age;
>
> (6) that several of his distant relatives were alcoholics and/or suffered from mental-health issues, and five relatives had committed suicide;
>
> (7) that he suffered neck and back injuries in an automobile accident that resulted in chronic back pain, and that he suffered from insomnia, depression, anxiety, and panic attacks;
>
> (8) that he was an addict who abused alcohol, pain medication, marijuana, and other drugs;
>
> (9) that he had an unhealthy attachment to his wife, who often stole from his friends and family; that he was infatuated with her, dependant on her, and tried to manage her drug addiction but was unable to confront her about her negative behaviors

> and refused to give up on her; that his wife had left him more than once and, each time she left, he became depressed, anxious, and suicidal; and that he was suffering from anxiety and depression around the time of the murder because of his wife;
>
> (10) that his drug use and addiction, combined with his anxiety and antisocial disorder and "early use" of marijuana made it "particularly likely [that he would] experience symptoms of cocaine-induced psychosis, including 'agitation, anger, aggressiveness, hallucinations, delusions, violence and suicidal or homicidal thinking' as well as incapability to engage in rational thought processes as a result of a crack binge" he had been on in the days before the murder (C. 727.); and
>
> (11) that he had a close relationship with his cousin's son, who would be devastated if Stanley was sentenced to death.

The circuit court found that much of the evidence Stanley alleged in his petition should have been presented by counsel was largely cumulative to evidence that counsel had, in fact, presented. The court noted that "numerous witnesses testified to Stanley's substance abuse (R. 1149, 1152, 1165, 1175.), his father's drinking (R. 1164.), his parents' troubled marriage (R. 1165.), his academic abilities (R. 1170.), and his mental, physical, and marital difficulties. (R. 1157, 1166-68.)." (C. 1125-27.) The court also noted that evidence about Stanley's childhood and relationship with his wife, as well as his wife's behavior, was likewise largely cumulative to the

evidence that had been presented at trial, and that any additional mitigating evidence Stanley alleged should have been presented that was inconsequential in light of the aggravating circumstances that existed. We agree with the circuit court.

The bulk of the evidence Stanley alleged in his petition should have been presented at the penalty phase of his trial was, in fact, presented. As this Court explained in Brownfield v. State, 266 So. 3d 777 (Ala. Crim. App. 2017):

> "'"'[T]he failure to present additional mitigating evidence that is merely cumulative of that already presented does not rise to the level of a constitutional violation.' Nields v. Bradshaw, 482 F.3d 442, 454 (6th Cir. 2007) (quoting Broom v. Mitchell, 441 F.3d 392, 410 (6th Cir. 2006))." Eley v. Bagley, 604 F.3d 958, 968 (6th Cir. 2010). "This Court has previously refused to allow the omission of cumulative testimony to amount to ineffective assistance of counsel." United States v. Harris, 408 F.3d 186, 191 (5th Cir. 2005). "Although as an afterthought this [witness] provided a more detailed account with regard to [mitigating evidence], this Court has held that even if alternate witnesses could provide more detailed testimony, trial counsel is not ineffective for failing to present cumulative evidence." Darling v. State, 966 So. 2d 366, 377 (Fla. 2007).'

"Daniel v. State, 86 So. 3d 405, 429–30 (Ala. Crim. App. 2011).

> "'"[I]n order to establish prejudice, the new evidence that a habeas petitioner presents must differ in a substantial way -- in strength and subject matter -- from the evidence actually presented at sentencing." Hill v. Mitchell, 400 F.3d 308, 319 (6th Cir.), cert. denied, 546 U.S. 1039, 126 S.Ct. 744, 163 L.Ed.2d 582 (2005). In other cases, we have found prejudice because the new mitigating evidence is "different from and much stronger than the evidence presented on direct appeal," "much more extensive, powerful, and corroborated," and "sufficiently different and weighty." Goodwin v. Johnson, 632 F.3d 301, 328, 331 (6th Cir. 2011). We have also based our assessment on "the volume and compelling nature of th[e new] evidence." Morales v. Mitchell, 507 F.3d 916, 935 (6th Cir. 2007). If the testimony "would have added nothing of value," then its absence was not prejudicial. [Bobby v.] Van Hook, [558 U.S. 4, 12,] 130 S.Ct. at 19 [(2009)]. In short, "cumulative mitigation evidence" will not suffice. Landrum v. Mitchell, 625 F.3d 905, 930 (6th Cir. 2010), petition for cert. filed (Apr. 4, 2011) (10–9911).'

"Foust v. Houk, 655 F.3d 524, 539 (6th Cir. 2011). '"[A] claim of ineffective assistance of counsel for failing to investigate and present mitigation evidence will not be sustained where the jury was aware of most aspects of the mitigation evidence that the defendant argues should have been presented."' Walker v. State, 194 So. 3d 253, 288 (Ala. Crim. App. 2015) (quoting Frances v. State, 143 So. 3d 340, 356 (Fla. 2014))."

266 So. 3d at 810.

Here, the jury and the trial court were aware of most aspects of the mitigating evidence Stanley alleged in his petition should have been presented. "'[T]he notion that the result could have been different if only [counsel] had put on more than the ... witnesses he did, or called expert witnesses to bolster his case, is fanciful.'" Stallworth v. State, 171 So. 3d 53, 80 (Ala. Crim. App. 2013) (quoting Wong v. Belmontes, 558 U.S. 15, 28 (2009)). Moreover, the additional evidence Stanley identified in his petition that was not presented at his trial was not so strong as to create a reasonable probability that the outcome of the trial would have been different had the evidence been presented. We have reweighed the evidence in aggravation against the totality of the evidence in mitigation, both that presented at trial and that pleaded in Stanley's petition, and we have no trouble concluding that the additional mitigating evidence would not have altered the balance of aggravating circumstances and mitigating circumstances in this case. This is so even assuming that the additional mitigating evidence would have swayed more of, or even all, the jurors to vote for life

imprisonment without the possibility of parole. In light of the strength of the three aggravating circumstances and the relative weakness of the totality of the mitigating evidence, the additional weight to be afforded a unanimous jury recommendation of life imprisonment without the possibility of parole would not have altered the balance of aggravating and mitigating circumstances. Therefore, trial counsel were not ineffective in this regard, and the circuit court properly summarily dismissed this claim of ineffective assistance of counsel.

F.

Stanley contends that the circuit court erred in not considering all of his claims of ineffective assistance of counsel cumulatively. In Taylor v. State, 157 So. 3d 131, 140 (Ala. Crim. App. 2010), this Court stated:

> "Taylor also contends that the allegations offered in support of a claim of ineffective assistance of counsel must be considered cumulatively, and he cites Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). However, this Court has noted: 'Other states and federal courts are not in agreement as to whether the "cumulative effect" analysis applies to Strickland claims'; this Court has also stated: 'We can find no case where Alabama appellate courts have applied the cumulative-effect analysis to claims of ineffective assistance of counsel.' Brooks v.

> State, 929 So. 2d 491, 514 (Ala. Crim. App. 2005), quoted in Scott v. State, [Ms. CR-06-2233, March 26, 2010] ___ So. 3d ___, ___ (Ala. Crim. App. 2010); see also McNabb v. State, 991 So. 2d 313, 332 (Ala. Crim. App. 2007); and Hunt v. State, 940 So. 2d 1041, 1071 (Ala. Crim. App. 2005). More to the point, however, is the fact that even when a cumulative-effect analysis is considered, only claims that are properly pleaded and not otherwise due to be summarily dismissed are considered in that analysis. A cumulative-effect analysis does not eliminate the pleading requirements established in Rule 32, Ala. R. Crim. P. An analysis of claims of ineffective assistance of counsel, including a cumulative-effect analysis, is performed only on properly pleaded claims that are not summarily dismissed for pleading deficiencies or on procedural grounds. Therefore, even if a cumulative-effect analysis were required by Alabama law, that factor would not eliminate Taylor's obligation to plead each claim of ineffective assistance of counsel in compliance with the directives of Rule 32."

157 So. 3d at 140.

As already explained, some of Stanley's ineffective-assistance-of-counsel claims were properly summarily dismissed because they were insufficiently pleaded. Therefore, a cumulative-error analysis here would not encompass all of Stanley's claims of ineffective assistance of counsel and the circuit court did not err in not considering all of Stanley's claims of ineffective assistance of counsel cumulatively.

III.

As noted previously, the circuit court conducted an evidentiary hearing on Stanley's claim that his trial counsel were ineffective for not objecting to his being shackled in the presence of the jury during his trial. Stanley contends that the circuit court erred in several rulings it made before and during the evidentiary hearing, which he claims denied him a fair hearing. He also argues that the circuit court erred in denying relief on this claim. We address each of Stanley's arguments in turn.

A.

First, Stanley argues that the circuit court erred in denying his motion for a negative inference or, in the alternative, motion to compel. Stanley argued in the motion that he was entitled to a "negative inference that he was visibly shackled before the jury" because the Colbert County Sheriff's Department had not responded to the subpoena duces tecum he had issued requesting the department's policies and procedures in place at the time of Stanley's trial for shackling criminal defendants. (C. 1201.) In the alternative, Stanley requested that the circuit court "compel

a response to his subpoena." (C. 1201.) The State objected to the motion, arguing, among other things, that a subpoena duces tecum is not the appropriate method for obtaining discovery in postconviction proceedings.

> "[B]ased on Alabama law a subpoena duces tecum would have no application to discovery in postconviction proceedings. The circuit court did not abuse its discretion in denying the request for a subpoena duces tecum directed to the Mobile County District Attorney's Office."

State v. Lewis, 36 So. 3d 72, 80 (Ala. Crim. App. 2008). Because a subpoena duces tecum is not the proper avenue for seeking postconviction discovery, the lack of response to Stanley's subpoena duces tecum did not entitle him to a "negative inference" or to have the circuit court compel a response to the subpoena duces tecum. Therefore, the circuit court properly denied Stanley's motion.

B.

Second, Stanley argues that the circuit court erred in denying his motion for the circuit judge to recuse himself or to transfer his Rule 32 petition to another circuit judge. He argues, as he did in his motion, that recusal or transfer was necessary because the circuit judge who presided over the Rule 32 proceedings also presided over his trial and "may have had"

personal knowledge of disputed evidentiary facts regarding whether Stanley was shackled during trial.[13] (C. 27; Stanley's brief, p. 19.)

Canon 3.C(1)(a), Alabama Canons of Judicial Ethics, provides:

> "(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:
>
> > "(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. ..."

Merely because the circuit judge may have had knowledge of the facts underlying Stanley's claim because the judge had presided over Stanley's trial does not warrant recusal. Canon 3.C(1)(a) is "directed at the situation where the trial judge has some independent extra-judicial knowledge of the facts of the case pending before him." McLeod v. State, 581 So. 2d

[13]Stanley also argues, as he did in his motion, that the circuit judge should have recused himself because he was about to retire and had "other obligations" that left insufficient time to conduct the evidentiary hearing. (C. 1227; Stanley's brief, p. 19.) Stanley fails to identify what "other obligations" the circuit judge had that would have impacted the judge's time, and the fact that the circuit judge was about to retire is simply not a basis for recusal.

1144, 1152 (Ala. Crim. App. 1990) (some emphasis added; some emphasis omitted). Indeed, this Court has long held that, "[i]f the circuit judge has personal knowledge of the actual facts underlying the allegations in [a Rule 32] petition, he may deny the petition without further proceedings as long as he states the reasons for the denial in a written order." Sheats v. State, 556 So. 2d 1094, 1095 (Ala. Crim. App. 1989). This is the rationale behind the Alabama Supreme Court's adoption of Rule 32.6(d), Ala. R. Crim. P., which provides: "The proceeding shall be assigned to the sentencing judge where possible, but for good cause the proceeding may be assigned or transferred to another judge." "Disqualification because [a judge] is familiar with what occurred at the trial would render [Rule 32.6(d), Ala. R. Crim. P.] anomalous." Bresnahan v. Luby, 160 Colo. 455, 458, 418 P.2d 171, 173 (1966).

Moreover, "'[f]acts learned by a judge while acting in his judicial capacity cannot serve as a basis for disqualification on account of personal bias' because they are not extrajudicial." Nickerson-Malpher v. Baldacci, 522 F. Supp. 2d 293, 295 (D. Maine 2007). "'All judges are presumed to be impartial and unbiased.' ... The burden is on the party

making a motion to recuse to establish that the trial judge is biased or prejudiced against the defendant." Stallworth v. State, 868 So. 2d 1128, 1140 (Ala. Crim. App. 2001).

Because there was no basis for the circuit judge to recuse himself or to transfer Stanley's petition to another judge, the circuit court properly denied Stanley's motion.

C.

Third, Stanley argues that the circuit court erred in denying his motion to continue the evidentiary hearing. In his motion, Stanley asserted that the court had allotted only one afternoon for the hearing; that Stanley intended to call five witnesses at the hearing and that the State intended to call an additional eight witnesses; and that one afternoon was not sufficient time for that many witnesses. However, the record reflects that, at the evidentiary hearing, Stanley called only four witnesses and the State called two witnesses. There is no indication in the record that Stanley wanted or intended to call additional witness at the hearing but ran out of time and was denied that opportunity, nor does he argue on appeal that he was denied the opportunity to call witnesses.[14]

[14]In his reply brief, Stanley affirmatively states that he is not asserting that he was unable to call witnesses to

"A motion for a continuance is addressed to the discretion of the court and the court's ruling on it will not be disturbed unless there is an abuse of discretion." Ex parte Saranthus, 501 So. 2d 1256, 1257 (Ala. 1986). "'As a general rule, continuances are not favored,' In re R.F., 656 So. 2d 1237, 1238 (Ala. Civ. App. 1995), and '[o]nly rarely will [an] appellate court find an abuse of discretion' in the denial of a motion for a continuance." Sullivan v. State, 939 So. 2d 58, 66 (Ala. Crim. App. 2006). "The time and manner of introducing and closing evidence are within the discretion of the trial judge." Carden v. State, 621 So. 2d 342, 346 (Ala. Crim. App. 1992).

Under the circumstances in this case, we find no abuse of discretion on the part of the circuit court in denying Stanley's motion for a continuance.

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testify at the hearing. Rather, Stanley argues that a continuance was necessary to give the circuit court "time to substantively consider all of Stanley's pre-trial motions or to write an opinion or order providing reasoning or making factual findings" on those motions. (Stanley's reply brief, 9.) However, nothing in the record indicates that the circuit court did not properly and adequately consider Stanley's motions (despite the fact that Stanley waited until three days before the hearing to file those motions), and a trial court is not required "to write an opinion" when ruling on motions.

D.

Fourth, Stanley argues that the circuit court erred in excluding the testimony of LaDonna Miles.

At the hearing, Miles testified that she was a childhood friend of Stanley's and that she had attended about 90% of his trial. After she testified that she had been sitting in the gallery behind the jury box during the trial and indicated that she could see Stanley from where she had been sitting, the State objected and argued, in part:

> "I am going to object to this testimony ... her testimony as an observer would be irrelevant. The issue concerns what jurors saw. Now, what Ms. Miles may have seen or may not have seen would be irrelevant to the issue -- limited issue which is before the Court. So for those reasons, the State would object to Ms. Miles' testimony as to what she has stated being excluded or stricken, and that she be excluded from testifying further."

(R. 67.) Stanley argued: "If Ms. Miles were to testify and explain that she was sitting behind the jury box, what she could or could not see is relevant circumstantial evidence as to what the jury could see as well." (R. 69.) The circuit court prohibited Miles's testimony and Stanley then made an offer of proof, stating that Miles would testify that "she saw Mr. Stanley visibly shackled on multiple occasions during his trial." (R. 72.)

Stanley argues on appeal that Miles's testimony was relevant and admissible to show that he had been shackled during his trial. The State argues, on the other hand, that Miles's testimony was not relevant to the issue and was properly excluded. It is well settled that the Alabama Rules of Evidence apply to postconviction proceedings. See Walker v. State, 194 So. 3d 253, 305 (Ala. Crim. App. 2015); Broadnax v. State, 130 So. 3d 1232, 1242-43 (Ala. Crim. App. 2013); and Hunt v. State, 940 So. 2d 1041, 1051 (Ala. Crim. App. 2005). See also Rule 32.4, Ala. R. Crim. P., and Rule 1101, Ala. R. Evid.

> "Rule 402, Ala. R. Evid., provides that '[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or that of the State of Alabama, by statute, by these rules, or by other rules applicable in the courts of this State.' Rule 401, Ala. R. Evid., defines 'relevant evidence' as 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' 'Alabama recognizes a liberal test of relevancy, which states that evidence is admissible "if it has any tendency to lead in logic to make the existence of the fact for which it is offered more or less probable than it would be without the evidence."' Hayes[v. State], 717 So. 2d [30,] 36 [(Ala. Crim. App. 1997)], quoting C. Gamble, Gamble's Alabama Evidence § 401(b) [(5th ed. 1996)]. '[A] fact is admissible against a relevancy challenge if it has any probative value, however[] slight, upon a matter in the case.' Knotts v.

> State, 686 So. 2d 431, 468 (Ala. Crim. App. 1995), aff'd, 686 So. 2d 486 (Ala. 1996). Relevant evidence should be excluded only 'if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.' Rule 403, Ala. R. Evid."

Gavin v. State, 891 So. 2d 907, 963-64 (Ala. Crim. App. 2003). "Trial courts are vested with considerable discretion in determining whether evidence is relevant, and such a determination will not be reversed absent ... an abuse of discretion." Hayes v. State, 717 So. 2d 30, 36 (Ala. Crim. App. 1997).

We agree with the State that Miles's testimony was not relevant. The issue before the circuit court was not, as Stanley appears to believe, whether he was, in fact, shackled during his trial, but whether the jurors saw Stanley in those shackles and whether that impacted their verdict. Miles was not a juror and could not testify whether the jurors saw Stanley in shackles or, if they did, what impact that had on their verdict. Therefore, her testimony was not relevant and the circuit court properly excluded it. Moreover, to the extent that Miles's testimony could be considered marginally relevant, there was no dispute during the evidentiary hearing

that Stanley was in ankle shackles during his trial. Indeed, one of Stanley's attorneys, who was called to testify by the State, indicated that Stanley was in ankle shackles during the trial. Thus, even if relevant, Miles's testimony was properly excluded under Rule 403, Ala. R. Evid., because it was offered solely on an undisputed issue and was cumulative to other evidence presented at the hearing.

We note that Stanley also argues that the circuit court's ruling excluding Miles's testimony is contrary to its subsequent ruling allowing, over his objection, Nancy Hearn, the circuit clerk of Colbert County, to testify that, at the time of Stanley's trial in April 2007, there was a skirt around the defense table covering the underside of the table. According to Stanley, if Hearn's testimony was admissible, when Hearn admitted that she was not present during Stanley's trial, then Miles's testimony was likewise admissible. However, unlike Miles's testimony, Hearn's testimony was not offered to show whether Stanley was shackled during his trial, an issue that was undisputed and not before the circuit court. Rather, the State called Hearn to dispute the issue that was before the court -- whether the jurors saw that Stanley was in the ankle shackles during his trial. Thus, Hearn's testimony

was relevant and admissible, and the circuit court's rulings excluding Miles's testimony and permitting Hearn's testimony were not inconsistent.

E.

Fifth, Stanley argues that the circuit court erred in excluding written notes that were purportedly taken during an interview with M.L., a juror who served on Stanley's jury. He argues that the notes were admissible because they were relied on by Dr. Amy Smith, a psychologist and associate professor at San Francisco State University, who testified at the hearing on Stanley's behalf about the effect seeing a defendant shackled can have on a juror.

In rendering her opinion, Dr. Smith said that she considered notes that had been taken from a telephone interview with M.L. The following then occurred:

> "[Rule 32 counsel]: And, Dr. Smith, are the notes that were taken by counsel of the conversation with [M.L.], are those the sort of notes that you would review and rely on typically as part of your work in jury psychology?
>
> "[Dr. Smith]: Yes.
>
> "THE COURT: Did you talk to Mr. [M.L.]?
>
> "[Dr. Smith]: Not about this trial, no, sir.

"THE COURT: Did you talk to him at all?

"[Dr. Smith]: We were sitting in the hallway --

"THE COURT: So you spoke to him?

"[Dr. Smith]: I spoke to them.

"[Rule 32 counsel]: But, again, Dr. Smith, the notes of counsel's conversation with him are the sort of thing that you would use and rely upon in forming opinions or doing work in the field of jury psychology; is that right?

"[Dr. Smith]: Yes.

"[Rule 32 counsel]: And others in your field -- and, in fact, large studies have been conducted based on reviewing notes that were taken of conversations with jurors and other individuals?

"[Dr. Smith]: Yes.

"[Rule 32 counsel]: I would like to hand you what has been marked as [Stanley's] Exhibit 4? And, Dr. Smith, what is [Stanley's] Exhibit 4?

"[Dr. Smith]: These are the notes that I had the opportunity to review, and that would be the phone call of [M.L.] who was a juror.

"[Rule 32 counsel]: And is [Stanley's] Exhibit 4 the sort of notes again that you would review and rely upon in the work that you do in jury psychology?

"[Dr. Smith]: Yes.

"[Rule 32 counsel]: And did you, in fact, review and consider these notes in forming your opinions here?

"[Dr. Smith]: Yes.

"[Rule 32 counsel]: And what information contained in those notes specifically did you consider and rely upon in forming your opinion here?

"[The State]: Objection, Your Honor. Hearsay obviously. I mean, there is nothing indicating who took these notes. ... I don't know when those notes were taken or what year. It is hearsay. It is a double hearsay. It is a triple hearsay. Who took it? Did someone call him and then tell somebody else and that person took notes? I mean, I would ask to be excluded.

"[Rule 32 counsel]: Your Honor, again, Rule 703[, Ala. R. Evid.] allows an expert to rely upon evidence if it is reasonably relied upon by experts in particular fields in forming their opinions or influences. Facts or data don't need to be admissible in evidence to --

"THE COURT: This has gone way too far. Sustained."

(R. 89-92.) At that point, Stanley proffered the content of the notes, which included M.L. stating that he remembered seeing Stanley shackled during the trial.

Initially, we point out that Stanley's argument on this issue fails to comply with Rule 28(a)(10), Ala. R. App. P., which requires that an argument contain "the contentions of the appellant/petitioner with respect to the issues presented, and the reasons therefor, with citations to the cases,

statutes, other authorities, and parts of the record relied on." Stanley cites no authority in support of his argument that the notes were admissible. Therefore, this issue is deemed waived. See C.B.D. v. State, 90 So. 3d 227, 239 (Ala. Crim. App. 2011) ("Failure to comply with Rule 28(a)(10) has been deemed a waiver of the issue presented.").

In any event, Stanley's argument is meritless. As noted in Part III.D. of this opinion, the Alabama Rules of Evidence apply to postconviction proceedings. "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), Ala. R. Evid. Hearsay is inadmissible, see Rule 802, Ala. R. Evid., unless it falls within one of the exceptions in Rule 803 or Rule 804, Ala. R. Evid. The notes at issue here are classic hearsay and, indeed, are double hearsay. The notes are statements made by Rule 32 counsel about statements made by M.L. during an interview and were clearly offered by Stanley for the truth of the matter asserted.[15] Stanley does not argue

[15]Stanley did not call M.L. to testify at the evidentiary hearing even though he could have. Dr. Smith's testimony indicates that M.L. was present in the courthouse during the evidentiary hearing, and the circuit court specifically found

that the notes fell within any exception to the hearsay rule, and it is clear that they do not. Therefore, the circuit court properly excluded the notes as inadmissible hearsay.

F.

Last, Stanley contends that the circuit court erred in denying his claim that his trial counsel were ineffective for not objecting to his being shackled in the presence of the jury.

In his petition, Stanley alleged that his ankles were shackled throughout his trial and that the shackles were visible to the jury and to people in the courtroom watching the trial. He alleged that there was no reason for him to be shackled and that his trial counsel were ineffective for not objecting to the shackles and requesting a determination that the shackles were necessary. Stanley attached to his petition an affidavit from N.Y., a member of his jury, in which N.Y. stated, in part, that she saw the ankle shackles throughout the trial and that the shackles made her "think that he might be a dangerous criminal, and was possibly trying to escape or perhaps would act violently if he was not shackled." (C.

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that M.L. had been present but was not called to testify.

811.) However, we note that N.Y. also stated in her affidavit that she followed the trial court's jury instructions in reaching a verdict in Stanley's case.

At the evidentiary hearing, N.Y. testified as follows:

> "[Rule 32 counsel]: Did you see Mr. Stanley in shackles during --
>
> "[N.Y.]: Yes, the first day, I did.
>
> "[Rule 32 counsel]: What kind of shackles was he wearing?
>
> "[N.Y.]: Around his ankles right around here.
>
> "[Rule 32 counsel]: So you saw ankle shackles on Mr. Stanley?
>
> "[N.Y.]: Yes.
>
> "[Rule 32 counsel]: And you said on the first day?
>
> "[N.Y.]: Yes.
>
> "[Rule 32 counsel]: So that was before you reached your guilty verdict?
>
> "[N.Y.]: Uh-huh.
>
> "[Rule 32 counsel]: Did seeing Mr. Stanley in shackles make you think that he might try to escape or act violently if he was not shackled?
>
> "[N.Y.]: Well, that is what I decided in my mind. I thought, well, maybe they want just to put that on in case he wanted to escape.
>
> "[Rule 32 counsel]: And that is what you thought, right?

"[N.Y.]: That is what I thought.

"[Rule 32 counsel]: Okay. Did seeing Mr. Stanley in shackles make you think that he might be dangerous?

"[N.Y.]: Not really.

"[Rule 32 counsel]: Not really? Do you recall speaking with attorneys from Kirkland and Ellis in this case a few years ago in 2015?

"[N.Y.]: Yes, I did.

"[Rule 32 counsel]: And do you recall signing an affidavit that you told your recollection about seeing Mr. Stanley in shackles during the trial?

"[N.Y.]: Yes, I did.

"[Rule 32 counsel]: And you signed that affidavit under penalty of perjury?

"[N.Y.]: Yes, I did.

"[Rule 32 counsel]: And you told the truth in that affidavit, correct?

"[N.Y.]: That is the truth.

"[Rule 32 counsel]: And you would not have signed it if you did not think it was truthful, right?

"[N.Y.]: No.

"[Rule 32 counsel]: And did you say in paragraph 4 of the affidavit, 'Although, Mr. Stanley did not try to escape or do anything violent or dangerous, seeing Mr. Stanley in shackles made me think that he might be a dangerous criminal?'

"[N.Y.]: Well, at that time, the first day, he may; but I don't think he was.

"[Rule 32 counsel]: Okay. But you did say that in your affidavit?

"[N.Y.]: Uh-huh.

"[Rule 32 counsel]: And that was true when you signed it?

"[N.Y.]: Yeah.

"THE COURT: Did you see him in shackles other than the first day?

"[N.Y.]: Well, I didn't pay any more attention. Later on in the week, I was just listening to what, you know, they were asking questions.

"THE COURT: Either you did or you didn't.

"[N.Y.]: I did on the first day.

"THE COURT: First day only?

"[N.Y.]: Yes, sir, I did.

"[Rule 32 counsel]: Did you also say in the affidavit 'during the trial I saw Defendant Stanley wearing shackles around his ankles. I remember seeing shackles around Mr. Stanley's ankles on several days of the trial and possibly everyday of the trial?'

"[N.Y.]: No, ma'am, I didn't. Like I didn't pay any attention to that, but the first day I did.

"[Rule 32 counsel]: So you are saying that that is not what you said in the affidavit?

"[N.Y.]: (Shaking head no.)

"[Rule 32 counsel]: May I approach, ma'am?

"[N.Y.]: Yeah.

"(Reading affidavit.)

"I think I said there if I did, I didn't recognize anymore -- I hadn't recognized anymore days.

"[Rule 32 counsel]: Okay. But that is what you signed back then in 2015; is that correct?

"[N.Y.]: Well, I signed it, but I don't remember saying no several days. I did not see that. I seen it the first day, but I did not pay no attention the next several days."

(R. 16-19.)

On cross-examination, N.Y. testified that if there had been a curtain or skirt covering the underside of the table where Stanley had been sitting during trial, she would not have been able to see the shackles from the jury box but that she did not remember there being any curtain or skirt. She also testified that after seeing Stanley in shackles the first day of trial, she put it out of her mind and did not think about it again:

"[The State]: So several days later when you and your fellow jurors went to deliberate whether to find Mr. Stanley guilty or not guilty, you had put it out of your mind and you did not think about it at all correct?

> "[N.Y.]: Yes, sir. I didn't think about it at all."

(R. 40-41.)

Stanley testified at the evidentiary hearing that, during his trial, he was transported to the courthouse in restraints. He said: "I was wearing ankle bracelets just not exactly like these, but very similar to the ones I am wearing now. And a belly chain attached with the [hand]cuffs -- attached to the cuffs very similar to these, but not exactly as these that I am wearing today." (R. 48.) Stanley said that he remembered being shackled like that in front of the jury and even having to walk in front of the jury while shackled. Stanley also stated that the table where he sat during the trial did not have a curtain or skirt covering the underside.

Dr. Amy Smith testified at the hearing about the effects on a jury of seeing a criminal defendant in shackles. The following occurred:

> "[Rule 32 counsel]: Can you tell the court about one of the ways in which visible shackling of a defendant could influence a jury in its decision making?
>
> "[Dr. Smith]: There are multiple ways in which that could happen. One of those ways is connected to a field of research that is often referred to as defendant characteristics. It is a large body of research that looks at the things that jurors

> observe in a courtroom, things that are particularly connected to the legal factors, things that are unrelated to the evidence and the facts in the case itself. And there is a lot of research that suggests that those things often cause a juror -- the defendant's characteristics impact jurors' perceptions, jurors' -- the way that they process the evidence and the way that they make their decisions.
>
> "....
>
> "[Dr. Smith]: So, if, for example, jurors were being asked to make a decision about whether someone had committed a crime, was guilty of that crime, was a criminal, and they saw an individual who was shackled in the courtroom, shackling unquestionably makes people think of criminality, of violence. And so by seeing the defendant in the case who seeing that individual shackled, the assumptions they have about criminality would be sort of triggered or brought to mind, and that stereo typicality would make it more likely that they would then find that defendant guilty separate and apart from what other evidence was being presented in the case."

(R. 93-97.)

In rebuttal, the State called Henry William Marthaler III, one of Stanley's trial attorneys. Marthaler testified concerning the procedure that was used to transport Stanley to and from the courtroom:

> "[Marthaler]: The courtroom would be empty except for essential personnel which would be the judge and the court reporter, the attorneys, the bailiffs. There would be no jury in here. He would be brought through the judge's secretary's office, through that door there and behind defense counsel marked as private. He would be brought into this

> area of the courtroom, and then they would prepare him to be seated.
>
> "[The State]: And when you say 'prepare him to be seated,' what would -- he was being escorted by the deputies from the Colbert County Sheriff's Department?
>
> "[Marthaler]: Yes, sir.
>
> "[The State]: What would they do to prepare him to be seated for court?
>
> "[Marthaler]: He would come in here with ankle shackles, and a belt shackle, and his hands cuffed to that belt shackle. And the belt -- the shackle around the waist and the handcuffs would be removed, and then he would be seated at counsel table."

(R. 128-29.) Marthaler also testified that the table where he and Stanley sat during the trial had a skirt around three sides that covered the underside of the table. (R. 129.) Marthaler also testified:

> "[The State]: If at any time during Mr. Stanley's trial when the jury was present, was he ever shackled at the waist and handcuffed?
>
> "[Marthaler]: I never saw that, no.
>
> "[The State]: All right. You were seated with him during those times?
>
> "[Marthaler]: Yes, I was. Yes, sir.
>
> "[The State]: And you certainly would have noticed it if he had been, wouldn't you?
>
> "[Marthaler]: I would [have] raised [cain] about it had I seen that.

> "[The State]: And that was going to be my next question. If he had been shackled around his hands and belly shackled that would have caused you to raise an objection?
>
> "[Marthaler]: Yes, sir, most certainly.
>
> "[The State]: All right. Are you aware of any time that the jury was present that Mr. Stanley walked about the courtroom, in the courtroom with ankle shackles on?
>
> "[Marthaler]: I am not.
>
> "[The State]: Had he been seen by a juror in shackles, what would you have done?
>
> "[Marthaler]: We would have addressed that. We would have brought that issue to the Court's attention, and would have more than likely asked for a mistrial."

(R. 132-33.)

The State also called Nancy Hearn, circuit clerk of Colbert County, who testified that she had worked in the Colbert County courthouse for 28 years and that her job included assisting with the selection of jurors and escorting jurors back and forth from the courtroom. She testified that at the time of Stanley's trial, in April 2007, there was a skirt around the defense table covering the underside of the table.

In its order denying Stanley's petition as to this claim, the circuit court made the following findings:

"Stanley alleged in his petition that Ms. [N.Y.] had indicated in an affidavit that she saw Stanley in shackles throughout his trial. Stanley also alleged that Ms. [N.Y.] had indicated seeing him in shackles made her think that he was a dangerous criminal. To support his claim, Stanley attached an affidavit to his petition purportedly signed by Ms. [N.Y.] and questioned her about it at the evidentiary hearing.

"Ms. [N.Y.'s] testimony at the evidentiary hearing was entirely different from the statements in her affidavit. Ms. [N.Y.] emphatically testified that she saw Stanley in ankle shackles only once and that was on the first day of trial. She also testified that she put it out of her mind and that it had no effect on her jury deliberations. She also denied saying that seeing Stanley in ankle shackles made her think he was dangerous. This Court finds that Ms. [N.Y.'s] evidentiary hearing testimony, as opposed to the statements in her affidavit, was credible. Simply proving that one juror may have briefly seen Stanley on the first day of trial in ankle shackles, while concerning to this Court, does not prove that Mr. Marthaler and Mr. Gardner were ineffective for failing to object.[2]

"This Court finds that Stanley's testimony about being shackled with handcuffs and a belly chain and about walking in ankle shackles in the presence of the jury is simply incredible. Further, the counsel tables with drapes currently in this Court's courtroom are the same as the tables and drapes that were in this courtroom during Stanley's trial in 2007.

"This Court further finds that the testimony of Dr. Smith concerning the possible effect on jurors of seeing a defendant in shackles does not support Stanley's claim of ineffective assistance of counsel. Dr. Smith did not read the trial transcript nor did she interview any jurors about seeing Stanley in shackles during trial. This Court

finds Dr. Smith's testimony that it is possible jurors may have [been] affected by seeing Stanley in ankle shackles, it stands to reason that it is just as possible that jurors were not affected.

"This Court finds that the testimony of Mr. Marthaler and Ms. Hearn concerning the tables in the courtroom at the time of Stanley's trial to be credible. This Court further finds that Mr. Marthaler's testimony concerning how Stanley was seated in the courtroom is also credible. Great care was taken by the Colbert County Sheriff's Office (CCSO) to ensure that jurors did not see Stanley in shackles.

"....

"This is not a case in which a defendant was tried before a jury in shackles that could readily be seen by the jurors. ... Given the fact that Stanley was on trial for capital murder, the CCSO requiring him to wear ankle shackles during his trial was a reasonable and appropriate safety measure. See Hyde v. State, 13 So. 3d 997, 1007 (Ala. Crim. App. 2007). That Mr. Marthaler and Mr. Gardner did not object to Stanley being tried in ankle shackles, without more, does not prove that they were ineffective. See Wrinkles v. Buss, 537 F.3d 804, 815 (7th Cir. 2008) ('Standing alone, the attorneys' failure to request an inquiry into the justification for the stun belt is not ineffective assistance. Some prejudice is required before a trial counsel's performance falls below the constitutional minimum.').

"....

"For the reasons stated above, this Court finds that Stanley failed to carry his burden of proving by a preponderance of the evidence that Mr. Marthaler and Mr. Gardner were ineffective for not objecting to Stanley being tried in ankle shackles.

> Therefore, this claim of ineffective assistance of counsel is hereby denied.
>
> "_____
>
> "[2]Stanley also claimed in his petition that another juror, [M.L.] had stated that he had seen Stanley in shackles throughout the trial. To support this claim Stanley offered some notes taken during a telephone interview with Mr. [M.L.] Though Mr. [M.L.] was present at the courthouse during the evidentiary hearing, Stanley did not call him to testify. The notes from the interview with Mr. [M.L.] will not be considered as evidence by this Court because they are clearly hearsay."

(C. 1293-1301.)

Stanley argues that the circuit court's findings are against the weight of the evidence because, he says, he presented "undisputed evidence that jurors saw him in shackles during his trial while he was seated at the defense table." (Stanley's brief, p. 23.) However, contrary to Stanley's assertion, the evidence at the hearing was not undisputed. Stanley testified on his own behalf that he was shackled in front of the jury, and he presented testimony from a single juror, N.Y., that she had seen Stanley in ankle shackles on the first day of trial. However, N.Y. testified that, had there been a drape or skirt covering the underside of the table where Stanley sat, she would not have been able to see the shackles from the jury box. The State presented evidence

indicating that there was, in fact, such a skirt covering the underside of the table during Stanley's trial, thus preventing the jurors from seeing Stanley's shackles. The circuit court found the State's evidence credible and concluded that "[t]his is not a case in which a defendant was tried before a jury in shackles that could readily be seen by the jurors." (C. 1300.) "When conflicting evidence is presented ... a presumption of correctness is applied to the court's factual determinations." State v. Hamlet, 913 So. 2d 493, 497 (Ala. Crim. App. 2005). The circuit court's findings are supported by the record.

Moreover, to the extent the circuit court credited N.Y.'s testimony at the hearing that she had seen Stanley in shackles on the first day of trial, it is clear that Stanley was not prejudiced by counsel's not objecting on this ground at trial. Stanley argued in his petition, and continues to argue on appeal, that, because jurors were exposed to him in restraints, it was not necessary for him to demonstrate prejudice to be entitled to relief because, under Deck v. Missouri, 544 U.S. 622 (2005), prejudice is presumed. In Deck, the United States Supreme Court stated that "where a court, without adequate justification, orders the defendant to

wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." 544 U.S. at 635. However, unlike in Deck, the issue in this case is whether trial counsel were ineffective for not objecting to Stanley's appearance before the jury in shackles.

Numerous courts have held that Deck does not relieve a petitioner from satisfying the prejudice prong of the Strickland test. As the Florida Supreme Court stated in Jones v. State, 998 So. 2d 573 (Fla. 2008):

> "Jones contends that trial counsel was ineffective for failing to object to his being shackled in front of members of the venire from which the ultimate jury was selected. At the Huff [v. State, 622 So. 2d 982 (Fla. 1993),] hearing, the presiding judge, William Gary, who also presided over the trial in which Jones was convicted and sentenced, emphatically denied that Jones was shackled during voir dire or any subsequent phase of the trial. We deny Jones's claim not based on Judge Gary's repudiation, however, but instead because the claim is legally insufficient: Jones has not established prejudice.
>
> "This Court has consistently held that to be entitled to an evidentiary hearing on a motion claiming ineffective assistance of counsel, the defendant must allege specific facts establishing both deficient performance of counsel and prejudice to the defendant. See Rhodes v. State, 986 So. 2d 501, 513-14 (Fla. 2008) (noting that a claim of ineffective assistance of counsel will be summarily denied absent specific factual allegations of both

a deficiency in performance and prejudice); Doorbal v. State, 983 So. 2d 464, 483 (Fla. 2008) (reminding 'attorneys who represent capital defendants of the importance of compliance with minimal pleading requirements to allege a claim of ineffective assistance of trial counsel' and repeating that insufficiently pled claims 'may not receive an evidentiary hearing or be considered by the trial court on the merits'); Spera v. State, 971 So. 2d 754, 758 (Fla. 2007) (holding that a motion claiming ineffective assistance of counsel must include facts establishing both deficient performance of counsel and prejudice to the defendant and instructing that the failure to sufficiently allege both prongs results in summary denial of the claim). We recognize that the use of shackles in view of the jury has the potential to prejudice a defendant. See Weaver v. State, 894 So. 2d 178 (Fla. 2004) (citing Hawkins v. Comparet-Cassani, 251 F.3d 1230, 1240 (9th Cir. 2001) (discussing the prejudice concerns posed by shackles)). Here, however, Jones makes a conclusory allegation of prejudice and fails to specifically plead any prejudice sufficient to warrant an evidentiary hearing. Jones does not contend that any venire members who ultimately sat on his jury saw him in restraints. Absent allegations that the actual jurors were exposed to Jones in shackles, he cannot demonstrate prejudice. Sireci v. Moore, 825 So. 2d 882, 887-88 (Fla. 2002) (finding no prejudice where the jury did not see defendant in shackles.)

"Overall, Jones has failed to demonstrate how any alleged deficiency in counsel's performance in failing to challenge the use of shackles 'so affected the fairness and reliability of the proceedings that confidence in the outcome is undermined.' Gore v. State, 846 So. 2d 461, 467 (Fla. 2003). Therefore, while we agree with Jones that the trial judge's testimony was insufficient to deny an evidentiary hearing on this claim, we nonetheless affirm the denial of this claim as legally insufficient. See Armstrong v. State, 862

> So. 2d 705, 712 (Fla. 2003) (finding no error in the trial court's denial of the defendant's claim, in which he asserted a mere conclusory allegation of prejudice without any degree of specificity as to how the outcome of the proceeding would have been different)."

998 So. 2d at 587-88.

Similarly, the Iowa Court of Appeals in Johnson v. State, 860 N.W.2d 913 (Iowa 2014), stated:

> "Our Iowa case law has yet to address the issue of shackling within the context of an ineffective-assistance-of-counsel claim; specifically, whether the burden remains on the applicant to show he was prejudiced by counsel's failure to object to either the shackling or the lack of reasons articulated by the district court as to what essential state interests were served by the shackling. We do note the majority of jurisdictions have held that, when asserting an ineffective-assistance claim, the applicant retains the burden of showing the outcome of the proceeding would have been different but for the shackling, and that the breach of duty for failing to object to shackling by itself does not necessarily result in prejudice. See Marquard v. Sec. for Dep't of Corr., 429 F.3d 1278, 1313–14 (11th Cir. 2005) (finding, in a habeas corpus action, the state supreme court did not improperly conclude the defendant failed to carry his burden showing he was prejudiced by shackling during the penalty phase; it further noted that, due to the overwhelming evidence of the defendant's culpability, the outcome of the sentencing proceeding would not have been different because, even after Deck [v. Missouri, 544 U.S. 622 (2005)], the postconviction applicant 'still has the burden in his IAC-shackling claim to establish a reasonable probability that, but for his trial counsel's failure to object to shackling, the result of [the proceeding] would have been different');

> Fountain v. United States, 211 F.3d 429, 436 (7th Cir. 2000) (holding that, due to the overwhelming evidence of the defendant's guilt, applicant failed to carry his burden showing he was prejudiced by counsel's failure to object to the shackling); People v. Robinson, 375 Ill. App. 3d 320, 313 Ill. Dec. 672, 872 N.E.2d 1061, 1071–72 (2007) (holding the trial court erred in shackling the defendant without stating particularized reasons; however, because of the overwhelming evidence in the State's case, the defendant did not meet his burden of showing he was prejudiced by trial counsel's failure to object to the court's error, and the State had proved beyond a reasonable doubt the error was harmless); Stephenson v. State, 864 N.E.2d 1022, 1038 (Ind. 2007) (holding the defendant bears the burden of establishing Strickland prejudice when asserting an ineffective-assistance claim based on shackling); but see Dickerson v. State, 269 S.W.3d 889, 893–94 (Mo. 2008) (determining that if the defendant 'establishes that he was visibly shackled, without the requisite finding of necessity,' prejudice is automatically established).
>
> "We agree with the majority of jurisdictions that it remains the applicant's burden to demonstrate prejudice when claiming ineffective assistance of counsel based on the lack of an objection to shackling, or counsel's failure to require the district court to make a particularized finding on the record as to why the shackling was necessary. Specifically, we hold that, when a postconviction applicant raises an ineffective-assistance claim alleging counsel breached an essential duty by failing to object to the applicant's shackling at trial, the applicant still must show a reasonable probability the result of the proceeding would have been different but for counsel's breach of duty. See Strickland, 466 U.S. at 695, 104 S.Ct. 2052."

860 N.W.2d at 919-20.

In our neighboring state of Mississippi, the Mississippi Supreme Court likewise held as follows in Smith v. State, 877 So. 2d 369 (Miss. 2004):

> "Here, there is no reference to the shackles in the trial court record. The attorneys did not object at trial and did not raise the issue on appeal, but that does not require a finding that the attorneys were ineffective. Smith has presented no evidence that his defense suffered any negative consequence from the fact that he was restrained during the trial. The two jurors who remember the shackles make no statement that they were disturbed by Smith's presence in shackles. Smith was charged with a brutal capital murder. He had a history of violent felonies, having been previously convicted of kidnaping and two counts of aggravated assault. We find no ineffective assistance of counsel in the failure to object to Smith being shackled at trial where no juror has stated that the shackling affected the conviction or sentence in any respect."

877 So. 2d at 379.

Here, N.Y. testified that seeing Stanley in restraints the first day of trial had no impact on her verdict, and Stanley called no other jurors to testify. Clearly, Stanley failed to prove that he was prejudiced by counsel's not objecting to his ankle shackles.

For the foregoing reasons, we find no error on the part of the circuit court in denying this claim of ineffective assistance of counsel.

IV.

Finally, Stanley contends that the circuit court erred in adopting the State's proposed orders summarily dismissing all but one of his claims and denying him relief on the remaining claim after the evidentiary hearing. Relying on the Alabama Supreme Court's opinions in Ex parte Scott, 262 So. 3d 1266 (Ala 2011), and Ex parte Ingram, 51 So. 3d 1119 (Ala. 2010), he argues that circuit court's orders contain the same errors and adversarial language as the State's proposed orders, thus indicating that the orders were not a product of the circuit court's own judgment. We disagree.

> "'"Alabama courts have consistently held that even when a trial court adopts verbatim a party's proposed order, the findings of fact and conclusions of law are those of the trial court and they may be reversed only if they are clearly erroneous." McGahee v. State, 885 So. 2d 191, 229–30 (Ala. Crim. App. 2003). "[T]he general rule is that, where a trial court does in fact adopt the proposed order as its own, deference is owed to that order in the same measure as any other order of the trial court." Ex parte Ingram, 51 So. 3d 1119, 1122 (Ala. 2010). Only "when the record before this Court clearly establishes that the order signed by the trial court denying postconviction relief is not the product of the trial court's independent judgment" will the circuit court's adoption of the State's proposed

> order be held erroneous. Ex parte Jenkins, 105 So. 3d 1250, 1260 (Ala. 2012).'
>
> "Riley v. State, 270 So. 3d 291, 297-98 (Ala. Crim. App. 2018).
>
> "In Ex parte Ingram, the Alabama Supreme Court found reversible error in the circuit court's adoption of the State's proposed order where the circuit court made patently erroneous statements that it had personal knowledge of the case and had '"presided over Ingram's capital murder trial and personally observed the performance of both lawyers throughout Ingram's trial and sentencing,"' 51 So. 3d at 1123 (citation and emphasis omitted), when, in fact, it had not. In Ex parte Scott, the Alabama Supreme Court found reversible error in the circuit court's adoption of the State's answer to the petition, which, 'by its very nature, is adversarial and sets forth one party's position in the litigation.' 262 So. 3d at 1274."

Jones v. State, [Ms. CR-13-1552, November 22, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019).

In this case, we cannot say that the circuit court's orders are infected with the errors that warranted reversal in Ex parte Ingram and Ex parte Scott. "The 'adversarial tone' of the adopted order and the typographical errors contained in it do not, in and of themselves, establish that the circuit court's order ... was not the product of the court's own independent judgment." Van Pelt v. State, 202 So. 3d 707, 723 (Ala. Crim. App. 2015). Indeed, it is clear that the circuit court read the State's proposed orders before adopting them.

As the State notes in its brief on appeal, a week after the circuit court issued its order summarily dismissing all but one of Stanley's claims, the court issued a supplemental order correcting a typographical error.

> "In sum, the circumstances here are substantially different than the circumstances in both Ex parte Ingram and Ex parte Scott, cases in which it was clear from the record that the orders adopted by the circuit court were not the product of the circuit court's independent judgment. After thoroughly reviewing the record in this case, we cannot say that the record clearly establishes that the order signed by the circuit court summarily dismissing [the appellant's] petition was not the product of the court's own independent judgment. Rather, we conclude that the circuit court's order was its own and was not merely an unexamined adoption of the proposed order submitted by the State. See Ex parte Jenkins, 105 So. 3d 1250 (Ala. 2012); Jackson v. State, 133 So. 3d 420 (Ala. Crim. App. 2009) (opinion on return to remand); McWhorter v. State, 142 So. 3d 1195 (Ala. Crim. App. 2011); and Miller v. State, 99 So. 3d 349, 355–59 (Ala. Crim. App. 2011). Likewise, for the reasons explained later in this opinion, we find that the circuit court's findings in its order are not clearly erroneous."

Mashburn v. State, 148 So. 3d 1094, 1113 (Ala. Crim. App. 2013).

After examining the record, we are convinced that the orders were based on the circuit court's own independent judgment. Therefore, we find no error on the part of the circuit court in adopting the State's proposed orders.

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and McCool and Minor, JJ., concur. Cole, J., concurs in the result.