home to play because she had raised enough children and was raising Anthony; she did not want to raise any more (T1141). When Anthony was eighteen (18), he left his grandmother's house and moved in with an uncle in Jacksonville (T1142-43).

Anthony's younger cousin, Angie Jacobs, testified that when she visited Mrs. Mungin's home, she saw that Anthony was respectful of his grandparents, and seemed close to them (T1147). Anthony's older cousin, Clifton Butler, confirmed that Anthony was obedient to his grandparents (T1150). The grandfather walked with a stick, and Anthony would fetch things for him to save him from having to walk (T1150). Butler said that while Anthony lived with his grandparents, he attended church regularly (T1150-51). Butler had not had much contact with Anthony in recent years (T1151-52).

Tracy Black testified that Anthony is the father of her daughter (T1153-54). When she got pregnant in 1975, Anthony asked her to marry him, but she decided not to accept, due to the influence of her family (T1154). Their daughter, Jennifer, was born on April 28, 1986 (T1154). Anthony remained in contact with Tracy and Jennifer (T1154). He provided support for the first year after Jennifer was born (T1155).

Camden County, Georgia, Deputy Sheriff Malcolm Gillette, who had

merits:

> Mungin first contends that the trial court erred in denying without an evidentiary hearing his claim that trial counsel was ineffective for accepting the jury without objection, which thereby failed to preserve for appeal the issue of whether the trial court erred in overruling a defense objection to the State's use of a peremptory challenge to strike juror Galloway, an African-American female. At the *Huff* hearing, the State argued that Mungin was not prejudiced by trial counsel's failure to object because the underlying claim was meritless. After reviewing the record of the voir dire, we conclude that the trial court did not abuse its discretion in granting the State's peremptory challenge of juror Galloway. Therefore, the prejudice prong of *Strickland* is conclusively refuted.

Mungin II, 932 So. 2d at 996-97.

Mr. Mungin submits that the Florida Supreme Court's confusing decision affirming the denial of relief on this claim is an unreasonable application of *Strickland* and its progeny. First, while it is true that the Florida Supreme Court was not required to and indeed did not explicitly discuss the deficient performance prong, it is not clear from the Florida Supreme Court's conclusion whether the Court found that trial counsel was not deficient in failing to preserve Mr. Mungin's *Batson* claim because the trial court did not abuse its discretion in granting the State's peremptory challenge, or if the Court assumed that trial counsel was deficient but that there was no prejudice because the outcome of the direct appeal was not undermined. The difference in these two different

429-30 (Fla. 2004) (affirming the trial court's finding that counsel was not ineffective for failing to present an alibi defense when, after an investigation, trial counsel concluded that the available testimony provided, at best, an incomplete alibi).

In this case, it appears that counsel was confused about the details of Mungin's alibi defense. However, Mungin has failed to establish prejudice. Mungin was linked to the crime by the ballistics evidence that identified the gun used in the Tallahassee and Monticello shootings, and found in Mungin's room the night he was arrested, as the same gun that was used to shoot the victim in this case. The State also presented the eyewitness testimony of Ronald Kirkland, who identified Mungin as the man he saw leaving the store. In addition, Mungin presented no evidence at the evidentiary hearing that trial counsel would have been able to locate "Ice" or any evidence connecting "Ice" to the gun. Although Edward Kimbrough and Jesse Sanders testified that they knew an individual who went by the name "Ice," Kimbrough had not seen "Ice" since the early or mid-1990s and Sanders had not seen him since 1987. Neither witness testified that he could have helped Cofer find "Ice" in 1992, and neither witness directly supported Mungin's claim that he gave "Ice" the gun.

Equally important, Mungin's other alibi witnesses do not establish that Mungin could not have committed the murder on the afternoon of September 16, 1990. The testimony of Brian Washington, who was sure that the date he drove Mungin to Jacksonville was September 16, 1990, placed Mungin in Jacksonville on the day of the shooting. Philip Levy and Vernon Longworth remembered seeing Mungin in Jacksonville on a Sunday in September but neither could remember the exact date or time. Therefore, even assuming that the day they saw Mungin was September 16, 1990, their testimony does not provide persuasive evidence that Mungin would have been unable to commit the murder between 1:30 and 2:00 that afternoon.

In light of the strong evidence linking Mungin to the crime and