

JUL 26 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George M. McFaddin, Circuit Court Judge

MATHEW C. DWYER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002210

APPENDIX

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The solicitor responded, “We don’t think that there’s **any evidence** of self defense **whatsoever**. . .” and then recited some of the elements of self-defense without much in the way of argument. Tr. 416, ll. 3 – 25 (emphasis added). Judge Murphy ruled:

In regards to the self defense issue, Mr. Keffer, the court will respectfully deny your motion. The court finds **that there is no testimony to establish the elements of self defense**; that the defendant was without fault, and the defendant was imminent danger, and that there was no other way to avoid the danger. The testimony **did not establish** those three elements.

Tr. 417, ll. 1 – 8 (emphasis added).

Discussion

The trial judge erred by not viewing the evidence and inferences in the light most favorable to appellant and by essentially placing the burden on appellant to prove self-defense. Light at 649-50, 664 S.E.2d at 469. Defense counsel gave the trial judge a copy of Light, but the court inexplicably ignored the principles set forth by the Supreme Court. Tr. 415, ll. 2 – 4. Light requires a self-defense charge in this case. It is the State, not appellant, who has the burden of disproving self-defense beyond a reasonable doubt and appellant raised the facts necessary to submit the issue to the jury. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

Light holds that when “there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge’s refusal to do so is reversible error.” Light at 649-50, 664 S.E.2d at 469. The trial judge failed to follow this command from Light when she reviewed the evidence in the case. The court did not use the “any evidence” standard. The court also failed to view the facts and inferences in the light most favorable to appellant. See State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012) (“When reviewing the circuit court’s refusal to deliver a requested jury instruction, appellate courts must consider

the evidence in a light most favorable to the defendant.”). Nor is a court permitted to weigh the credibility of the witnesses. See State v. Rogers, 405 S.C. 554, 569 n.5, 748 S.E.2d 265, 273 n.5 (Ct. App. 2013) (stating that at the directed verdict stage—which uses the same “any evidence” standard as a jury charge—the court may not weigh the credibility of witnesses).

The facts of Light make it clear that self-defense should have been charged in this case. The Supreme Court held the trial judge erred in not charging self-defense because evidence contained in one of the defendant’s contradictory statements supported the charge. Id. Here, while Stephen gave somewhat contradictory statements, Light makes it clear that contradictions are no bar to receiving a self-defense charge. Id.

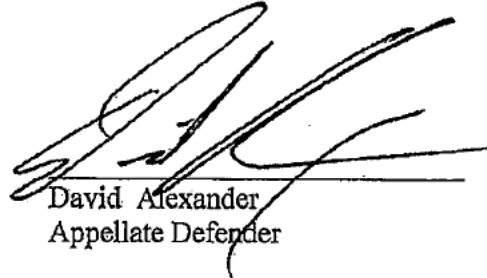
Stephen’s testimony presented sufficient facts on each element to submit the question of self-defense to the jury. Stephen said that appellant and Singleton were in the car together consensually. Singleton began to force himself sexually on appellant. This raises the first element of self-defense—that appellant was without fault in bringing on the difficulty. State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998). Stephen testified and said in his statement that appellant was scared, believed that Singleton knew karate, and had raped people. This sufficiently raises the second element that appellant believed he was in imminent danger. Id. Singleton and appellant got into a fight and, during the struggle, appellant found a gun and shot Singleton. This evidence sufficiently raises the third and fourth elements of self-defense—that appellant acted reasonably and had no other means of avoiding the danger. Id. The evidence also shows that the car was moving during the fight, which further demonstrates that appellant could not avoid the danger by simply running away. Despite the solicitor’s previous assertion at the charge conference that there was no evidence “whatsoever” to support self-

defense, his primary witness provided all of the elements necessary to send the case to the jury with a self-defense instruction.

Appellant's entire strategy was based on receiving a self-defense charge. Tr. 76, ll. 11 – 13. Defense counsel told the jury in his opening statement, "We believe that the evidence is going to suggest, is going to show this is a case of self defense. That is not murder." Tr. 76, ll. 11 – 13. When the trial judge refused the request, appellant was left without the ability to make good on the promise of his opening in closing argument. Further compounding the error in not charging self-defense, at the charge conference, the trial court agreed with the solicitor that a charge of inferred malice from use of a deadly weapon was not proper under State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) because it was charging voluntary manslaughter, but nevertheless later gave the charge. Tr. 417, l. 18 – 418, l. 8 (agreeing that inference from a deadly weapon should not be charged); Tr. 469, ll. 14 – 21 (giving the prohibited Belcher charge). Not only did appellant not receive the self-defense charge to which he was entitled, he received an erroneous charge on inferred malice. This Court should reverse.

CONCLUSION

For the above-stated reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'D' and 'A'.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of December, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW C. DWYER,

APPELLANT

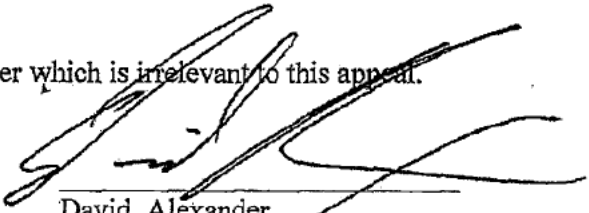
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript pages 1-2 (the entire index is misnumbered page 2, appellant designates the court reporter's entire index); 61-477; 487-88;
- (3) State's Exhibit 75;
- (4) State's Exhibit 76.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 02, 2016.



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

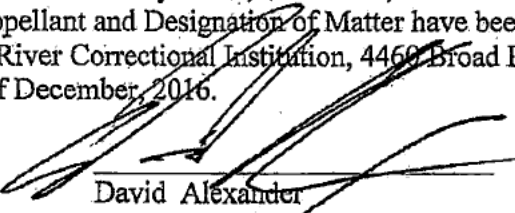
V.

MATTHEW C. DWYER,

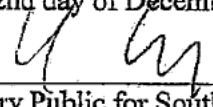
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Matthew C. Dwyer, #346172, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 2nd day of December, 2016.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW C. DWYER,

APPELLANT

Appellate Case No. 2015-002290

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

The court properly refused to charge self-defense because there was no evidence supporting three of the elements of self-defense: that the Appellant was without fault in bringing on the difficulty, that the Appellant had a reasonable belief he was in imminent danger, and that there was no other probable means to avoid the danger.

RESPONDENT'S STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant, Mathew C. Dwyer, in July of 2015 for the possession of a weapon during a violent crime and the murder of Johnny Singleton. (Indictment Number 2015-GS-43-0623.) On October 19, 2015, Appellant's case was called to trial before the Honorable Maite Murphy. (Transcript p. 1.) Appellant was represented by John S. Keffer, Esquire. (Tr. p. 1.) Assistant Solicitor John P. Meadors represented the State. (Tr. p. 1.) At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. (Tr. p. 1; Tr. pp. 476, line 21 – p. 477, line 14.) Judge Murphy sentenced Appellant to forty-five years' imprisonment for murder and a concurrent term of five years' imprisonment for the weapons charge. (Tr. p. 487, line 22 – p. 488, line 4.) Thereafter, Appellant filed a timely notice of appeal. (Notice of Appeal.)

RESPONDENT'S STATEMENT OF FACTS

On the morning of January 27, 2015, emergency medical personnel responded to the scene of a crashed vehicle located off S.C. Highway 521 in Sumter County. (T. p. 79, lines 7-20.) EMS workers found the vehicle in a ditch, with the rear of the car resting against an embankment. (T. p. 80, lines 1-3.) In the back seat of the vehicle, a dead man was in a seated position. (T. p. 80, lines 8-12.) The victim's legs were draped across the center console. (T. p. 81, lines 19-22.) The rear window was broken out, the front passenger window was down, and the driver's window was broken. (T. p. 82, lines 19-23.) The man had dried blood by his left ear, on his pants near his left ankle, on his pants near the right back pocket, and by the right front pants' pocket. Blood was also on the victim's jacket, passenger side front seat, passenger side front door frame, and on the rear seat. (T. p. 82, line 23 – p. 83, line 3.) EMS noted brain matter on the rear seat below the window on the right side of the car and a wound to the back of the man's head. (T. p. 83, lines 4-7.) The vehicle was in reverse gear. (T. p. 81, lines 3-11.)

Investigator Michael McCauley, a crime scene investigator with the Sumter County Sheriff's Department, responded to the scene that morning. (T. p. 90, line 13 – p. 92, line 17.) The investigating officers were suspicious of the victim's placement inside the car and the blood and bodily fluids surrounding the body. (T. p. 93, lines 1-11.) The victim's head was resting over the back seat, just before the rear window. (T. p. 95, lines 21-24.) Blood found on the victim's pants leg and on the passenger side headrest was more consistent with a transfer pattern than with high velocity spatter from an injury to the back of the head during a car crash. (T. p. 97, lines 7-23, p. 99, lines 18-24.) McCauley also found blood on the outside of the passenger door. (T. p. 100, lines 1-5.) On the rear floorboard behind the passenger's seat, McCauley found a live round of 380 caliber ammunition. (T. p. 110, lines 6-21.) The victim's phone was found in the

woods behind the ditch and embankment in which the car was located. (T. p. 118, line 18 – p. 119, line 7.)

The following day, McCauley attended the autopsy of the victim at the Newberry Pathology Center. (T. p. 113, lines 2-10.) McCauley examined the victim's clothing he was wearing the night he was killed, as well as the bullet recovered from the victim's skull. (T. p. 114, line 2 – p. 115, line 1.) McCauley identified the bullet as a 380 round of ammunition. (T. p. 132, line 21 – p. 133, line 5.)

Dr. Janice Ross, the State's pathologist, performed the autopsy on the man identified as Johnny Singleton on January 28, 2015. (T. p. 180, line 13 – p. 181, line 16.) Ross found the victim had a gunshot wound to the back of the head and a bruise inside his upper lip but appeared to have no other external injuries. (T. p. 183, lines 2-8.) Dr. Ross believed the injury to the upper lip occurred near the time of death. (T. p. 183, line 22 – p. 184, line 2.) The gunshot wound to the back of the victim's head indicated the bullet traveled from the back, right side of the head through the brain and toward the front left of the head into the left sinus cavity. (T. p. 184, line 15 – p. 185, line 9.) Dr. Ross opined the gun was at least two feet away from the victim when it was fired. (T. p. 187, lines 18-24.) The victim's dentures were intact and in place at the time of his death, and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.)

Janie Mae Shaw testified she played cards with the victim on a daily basis. (T. p. 150, lines 4-8.) On the night of January 26, 2015, Johnny Singleton ate some food and took a nap at Ms. Shaw's house before playing cards with four other people. (T. p. 150, line 19 – p. 151, line 8.) Singleton left between 9:30 and 10:00 pm that night. (T. p. 151, lines 9-16.) As was his custom, Singleton hid his cash of approximately \$500 from the evening's card game inside his sock. (T. p. 151, line 17 – p. 152, lines 1-5.) Singleton was angry as he prepared to leave

because someone was calling him repeatedly. (T. p. 153, lines 20-23.) Ms. Shaw also recognized Appellant as a visitor to her house, but not the night Singleton died. (T. p. 154, line 17 – p. 156, line 8.)

Phone logs from the victim's phone revealed multiple calls made to and received from the victim's phone by Appellant. When investigators called Appellant's phone and identified themselves, Appellant claimed to be Novian Sinclair, a prior roommate of his. (T. p. 360, line 17 - p. 364, line 4.) Appellant maintained he had no information about the death of Johnny Singleton, and he claimed he was not with the victim on the night of his death. Appellant did not attempt to explain why his cell phone records showed calls from his phone to the victim's. (T. p. 338, lines 1-9.) The officers executed a search warrant for Appellant's residence, obtained a DNA sample from Appellant, and questioned him about the death of the victim. (T. p. 212, line 10 - p. 216, line 14.) Appellant continued to deny having any knowledge or involvement in the victim's death. (T. p. 242, line 16 - p. 243, line 20.)

Phone records revealed Appellant also called his brother, Stephen, multiple times on the night of the shooting. In his statement to law enforcement officers with the Sumter County Sheriff's Department, Stephen Dwyer said Appellant called him to come pick him up around 10:30 pm off on Hwy 521. (T. p. 285, lines 2-10.) Stephen asked his brother what happened, and Appellant said, "I F'd up." (T. p. 285, lines 7-8.) Stephen, who needed to give a friend a ride to her place of work, agreed to pick his brother up along the way. (T. p. 285, lines 12-22.) Appellant told Stephen he had been shot and asked him to hurry. (T. p. 286, lines 2-4.)

When Stephen found Appellant, he was near a club off of Hwy. 521, walking toward Sumter. (T. p. 285, line 23 - p. 286, line 1.) Appellant's hand was bleeding and was wrapped with something like a shirt. (T. p. 286, lines 5-6.) Appellant told his brother he did not want to go

to the hospital. (T. p. 286, lines 6-8.) After Stephen dropped his friend off at her workplace, he drove Appellant to his house. Stephen asked Appellant what happened to his hand, and Appellant told him he cut it. (T. p. 286, lines 9-14.) Appellant would not give his brothers any details about the victim that night. (T. p. 286, lines 14-21.)

The day after the shooting, Stephen, who had seen the news that morning, deduced his brother was involved in Singleton's death. (T. p. 287, lines 6-12.) Stephen stopped by his brother's house again on his way home from the gym. (T. p. 287, lines 6-8.) Appellant told Stephen he and the victim were fighting in the car, and the man was ex-military and knew karate. Appellant told his brother he was scared and shot the victim in the head, but he did not mean to shoot him in the head. (T. p. 287, lines 12-17; State's Ex. 75.) Appellant told Stephen "that the dude saw the gun. They were in the car when they were tussling. And after he shot him, the car was wrecked and hit a tree. (T. p. 287, lines 17-20; State's Ex. 75.) Appellant took the victim's wallet and money and threw the victim's phone into the woods. (T. p. 287, lines 21-22.) Appellant also told his brother he hid the gun in the back of a truck at the club off of Hwy. 521. (T. p. 289, lines 7-21.) The following day, when Stephen asked his brother again if he killed Johnny Singleton, Appellant told his brother he did not and claimed he was "just playing" and made up the story he told him earlier. (T. p. 288, lines 1-7.)¹

¹ The case later took an interesting twist. One day during March of 2015, a security guard at Sumter Mall was approached by a woman he did not know and asked if he was a real cop. (T. p. 142, lines 1-221.) The woman wanted to remain anonymous, but told the guard she had information that might help a case. (T. p. 142, line 24 – p. 143, line 2.) The woman handed him a letter and asked him to give it to the police. (T. p. 139, line 12 – p. 140, line 3; p. 143, lines 2-4.) The letter said "Mathew Dwyer" on the top of the envelope (T. p. 145, lines 17-19), and it was addressed to Demetrius Cooper. The guard handed the letter over to Detective Mathew Yates with the Sumter Police Department. (T. p. 140, lines 3-20.)

The Sumter Police Department, determined the subject of the letter was unrelated to a city case, but discovered the county had a pending case to which the letter was relevant. (T. p. 172, line 17 – p. 174, line 21.) Demetrius Cooper, who was Matthew Dwyer's friend, testified for

ARGUMENT

The court properly refused to charge self-defense because there was no evidence supporting three of the elements of self-defense: that the Appellant was without fault in bringing on the difficulty, that the Appellant had a reasonable belief he was in imminent danger, and that there was no other probable means to avoid the danger.

Introduction

Appellant was not entitled to the self-defense charge because the evidence presented at trial through Stephen Dwyer's testimony did not support the required elements of self-defense. The evidence and testimony presented to the jury clearly showed Appellant was guilty of murder. Appellant initiated the meeting with the victim, he brought a weapon to a meeting with an unarmed man, he admitted to his brother he shot the victim after the victim saw the gun, and he shot the victim while Singleton was operating the car. Appellant presented no evidence he was without fault in bringing about the difficulty; he presented no evidence he was in actual imminent danger of losing his life or sustaining serious bodily injury; his defense was based upon a belief of imminent danger, but it was not reasonable; and he presented no evidence he had no other probable means of avoiding the danger when he killed Singleton. Appellant is not entitled to a jury instruction on self-defense.

How the Issue Was Presented at Trial

Appellant elected not to testify at trial, and the defense chose not to present any evidence to the jury. (T. p. 408, lines 9-13; p. 409, lines 2-5.) After the defense informed the trial court it

the State. (T. p. 194, lines 7-16.) Cooper said he received an encoded letter from Dwyer. However, the letter also contained a key code so that Cooper could decipher its contents. (T. p. 196, lines 1-17.) In the letter, Dwyer thanked Cooper for "everything you are doing for me." (T. p. 199, lines 12-18.) Dwyer also told Cooper he needed an alibi for January 26th. (T. p. 200, line 15 - p. 201, line 5.) Dwyer told Cooper the story he wanted Cooper to fabricate about his activities that night if anyone asked him. (T. p. 200, line 1 - p. 207, line 14.) Cooper forgot about the letter, but he was later surprised that the letter fell into the hands of law enforcement. (T. p. 208, lines 10-21.)

would rest, Appellant requested a jury instruction on self-defense and involuntary manslaughter.

(T. p.413, lines 19-25.) The trial judge rejected the charges of self-defense and involuntary manslaughter, stating:

THE COURT: In regards to the self-defense issue, Mr. Keffer, the court will respectfully deny your motion. The court finds that there is no testimony to establish the elements of self-defense; that the defendant was without fault, and the defendant was imminent danger, and that there was no other way to avoid the danger. The testimony did not establish those three elements. Further, regarding the involuntary manslaughter, the court finds there is no evidence to support that charge. However there is slight evidence to support and if there's any evidence to support a potential voluntary manslaughter charge, the court will charge it. So I will charge the voluntary manslaughter, but not the involuntary manslaughter. Anything further before we bring the jury out?

MR. MEADORS: I beg the court's indulgence. Judge, I was thinking about State v. Belcher on the ride over here today. There is no evidence at all to mitigate through self-defense. I think and before I argue, I wanted to ask Your Honor. I think I'm allowed to argue it, but Your Honor not charge it. I think I am still allowed to argue the inference of malice from a deadly weapon when there is no evidence. I just want to make sure I am right. I know Your Honor may not charge it, but I think I can still argue it. Is that correct?

THE COURT: Yes, sir.

MR. MEADORS: Thank you.

THE COURT: Do you have any objection to that, Mr. Keffer?

MR. KEFFER: No, Your Honor.

(T. p. 417, line 1 – p. 418, line 8.)

In denying Appellant's request, the trial court specifically said there was "no testimony to establish" the elements of self-defense. The court did not suggest the defense failed to meet any particular burden of proof in offering testimony; instead the court properly cited the complete lacking of evidence supporting these elements as the basis for its ruling. Moreover, the court then correctly cited the "any evidence" standard to support a jury instruction when ruling on voluntary manslaughter. Clearly, the court understood the proper standard for ruling on a requested jury charge.

Standard of Review

As this Court has stated, “[t]he trial court is required to charge the correct law applicable to the case. When a party requests the trial court charge a correct and applicable principle of law, the court must charge it. However, the court is not required to use any particular language in explaining the principle.” *State v. Marin*, 404 S.C. 615, 619–20, 745 S.E.2d 148, 151 (Ct. App. 2013) (citations omitted). In reviewing jury charges for error, [appellate courts] must consider the [trial] court’s jury charge as a whole in light of the evidence and issues presented at trial. *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011).

“To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603 (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010)). “A jury charge which is substantially correct and covers the law does not require reversal.” *State v. Zeigler*, 364 S.C. 94, 105, 610 S.E.2d 859, 865 (Ct. App. 2005) (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996); *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994)).

The Law of Self Defense in South Carolina

At one time, self-defense was an affirmative defense in this State, and a defendant bore the burden of establishing it by a preponderance or greater weight of the evidence. *State v. McDowell*, 272 S.C. 203, 249 S.E.2d 916 (1978). However, current law requires the State to disprove self-defense, **once raised by the defendant**, beyond a reasonable doubt. *See State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989) (emphasis added); *State v. Bellamy*, 293 S.C. 103, 105, 359 S.E.2d 63, 64–65 (1987), overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (“It is clear that the defendant need not establish self-defense by a preponderance of the evidence but must merely produce evidence which causes the jury to

have a reasonable doubt regarding his guilt.”). *State v. Wiggins*, 330 S.C. 538, 544–45, 500 S.E.2d 489, 492–93 (1998) (“[C]urrent law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt.”)

A self-defense charge is not required unless it is supported by the evidence. *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007); *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and that the circumstances were such that would warrant a person of ordinary prudence, firmness, and courage to strike the deadly blow to save himself from serious bodily harm or the loss of his life; and, (4) the defendant had no other probable means of avoiding the danger. *State v. Bryant*, 336 S.C. 340, 344–45, 520 S.E.2d 319, 321–22 (1999); *see also Slater*, 373 S.C. at 70; 644 S.E.2d at 52; *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372. To warrant reversal on appellate review, a trial judge's refusal to give a requested charge must be both erroneous and prejudicial. *State v. Burkhardt*, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

Failure by the defense to present evidence on **any one** of the above elements precludes a jury charge on the law of self-defense. *See, e.g., Bryant*, 336 S.C. 340, 345–46, 520 S.E.2d 319, 322 (1999) (finding that defendant's testimony failed to establish he did not bring on the difficulty; thus, a self-defense charge was not warranted); *State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996) (finding that appellant “was not entitled to a self-defense charge, because he presented no evidence that he believed he was in imminent danger of losing his life or

sustaining serious bodily injury”); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (finding defendant was not entitled to self-defense charge when he presented no evidence showing actual or perceived imminent danger). Thus, **the burden of production** lies with the defense for evidence supporting a self-defense charge, but the **burden of persuasion** to disprove the elements of self-defense remains with the State. The trial court applied the proper standard in evaluating the evidence.

Analysis

The trial judge properly denied the requested instruction because Appellant failed to produce any evidence to satisfy three of the elements of self-defense. There was no evidence Appellant was without fault in bringing on the difficulty, no evidence that a reasonably prudent person of would have struck the deadly blow to save himself from serious bodily harm or loss of his life, and no evidence Appellant had no other probable means to avoid the danger when he shot the victim.. The State's evidence at trial showed Appellant initiated contact with Singleton, brought a gun to the encounter, and shot the unarmed victim while he was controlling the car. Stephen Dwyer's testimony his brother was scared because the victim, who was ex-military and knew karate, attempted to force himself on Appellant is minimal evidence Appellant believed himself to be in in imminent danger of losing his life or sustaining serious bodily injury, but this belief was not reasonable. Without more, Appellant is not entitled to the self-defense jury instruction.

Initially, Appellant fails to meet the first requirement for the self-defense charge: specifically, Matthew Dwyer was not without fault in bringing on the difficulty. “Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense.” *Bryant*, 336 S.C. at 345, 520

S.E.2d at 322. Here, the testimony concerning the events leading to the encounter between the men came from Janie Mae Shaw, who said the victim was angry because someone continued to call his cell phone (T. p. 153, lines 20-23), and the phone records reflecting Appellant made numerous calls to the victim before he shot him. (State's Ex. 82.) According to State's Exhibit 82, Mathew Dwyer made seven calls to Johnny Singleton by 9:55 pm on January 25, 2015. By contrast, Singleton initiated only two calls to Dwyer during that period. (State's Ex. 82.) It is clear from the testimony Appellant was the caller who repeatedly phoned Singleton to set up the meeting between the men.

Further, the only information about the actual encounter arose from Stephen Dwyer's statement to the police detailing what his brother told him happened that night. According to Stephen, the victim gave Appellant money in exchange for sexual favors.² (T. p. 274, lines 1-15.) Stephen testified the victim gave Appellant his wallet before anything transpired and then pulled the car over. (T. p. 274, lines 8-13.) Moreover, Stephen told the police his brother possessed a 380 caliber firearm because Appellant pointed it at Stephen a few weeks prior to the shooting. (State's Exhibit 75 at p. 2.) Thus, the evidence showed Appellant brought a loaded gun to the encounter, which he then used to shoot the victim after the victim saw the gun and the men "were tussling." (State's Exhibit 75, p. 2.)

Further, the uncontroverted testimony at trial showed Appellant initiated and brought a loaded 380 caliber firearm to a consensual sexual encounter in exchange for payment from the victim. Stephen's testimony indicated Appellant agreed to and accepted payment from Singleton

² In Stephen's testimony on the direct examination, Stephen said his brother "took the wallet and the money" after he shot Singleton. (T. p. 287, lines 21-22.) Reading his testimony with his statement to police, it is unclear whether "took the wallet" refers to a theft of the wallet from the body or refers to Appellant's act of taking the wallet, which was already given to him by the victim, from the car.

before the men began fighting. Such activity could be reasonably calculated to bring the difficulty that arose in this case, which was Appellant's claim he shot the victim in the head after the men began tussling over the sexual services Appellant would provide. *See, e.g. State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (finding the defendant was not entitled to a self-defense charge because the record showed Slater approached an altercation in a parking lot with a loaded weapon by his side).

Moreover, Appellant's participation in an unlawful act – the exchange of sexual favors for payment – precludes him from claiming this first element of self-defense. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (“Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense.”). Stephen testified Singleton gave him Appellant his wallet after they discussed the sexual favors and Appellant accepted it “before anything went down.” (T. p. 274, lines 5-10.) Even if the court were to accept Stephen's testimony Singleton later attempted to force himself on Appellant, Appellant cannot claim he was without fault in bringing on the difficulty.

Appellant cannot satisfy the second element of self-defense either, as he offered no testimony he was in imminent danger of losing his life or sustaining serious bodily injury. The victim was sixty-five years old and Appellant was in his early twenties at the time of the murder. (T. p. 182 line 4; p. 482, line 24.) Despite his contention the victim was ex-military and knew martial arts, Appellant offered no testimony the victim threatened to kill or even hurt him. Stephen described the interaction between the men as a “tussle,” but the victim had no signs of injury other than the gunshot wound and a bruise inside his upper lip, which occurred at the time of death. (T. p. 183, lines 2-8; p. 267, lines 11-14; State's Ex. 75 at p. 2.) The victim's dentures

were still in place and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.) If the men did engage in a "tussle," it was not a physically taxing one.

Further, Appellant also told his brother the victim was in control of the vehicle when he shot him, causing the vehicle to crash into a tree. (State's Ex. 75, at p. 2.) Appellant did not explain how the victim could be a threat to him while still maintaining control of the automobile. Indeed, when asked whether Appellant thought "he was going to die, or thought he [was] in danger of suffering serious injury or dying," Stephen said Appellant had not. (T. p. 277, line 23 – p. 278, line 2.) Appellant could have offered direct evidence of the supposed danger he faced that night, but he elected not to testify at trial. The Court is not required to speculate to fill in this information. Thus, he did not satisfy the second element required to entitle him to the self-defense instruction. *See State v. Bruno*, 322 S.C. 534, 536–37, 473 S.E.2d 450, 452 (1996) ("Since Bruno presented no evidence of that he believed he was in imminent danger of losing his life or sustaining serious bodily injury, he fails the second element of self-defense.")

Appellant instead appears to argue he believed he was in imminent danger, or the third element of self-defense. Stephen testified his brother was scared because Singleton was ex-military, knew karate, and attempted to force Appellant to perform sexual favors. (IBOA at p. 8.) Although Stephen's testimony did offer minimal evidence Appellant believed he was in danger, Appellant must still show that a reasonably prudent person would have shot the victim to save himself from the victim's threat.

In *State v. Dickey*, 394 S.C. 491, 716 S.E. 2d 97 (2011), the South Carolina Supreme Court found a security guard who fatally shot a man who he escorted from the building was entitled to a directed verdict on self-defense. Dickey, who was disabled, initially responded to a tenant who was fearful of her guest, who was intoxicated and acting in a threatening manner,

Id. at 495, 716 S.E.2d at 98-99. Dickey called the police for assistance, then escorted the man from the building, keeping his distance until the man left the building. *Id.* The man walked down the street, then turned to approach Dickey in an "an aggressive manner." *Id.* at 497, 719 S.E. 2d. at 100. Dickey saw the man reach under his shirt and believed him to be reaching for a weapon, so he him. At the scene, Police found a broken liquor bottle with a blood smear matching the victim's blood. *Id.* The court considered several factors in finding Dickey's belief he was in imminent danger reasonable, saying "a person of Petitioner's stature and limited agility would entertain the same fear when faced with an attack by a belligerent, intoxicated, more agile, and younger male, who appeared to be reaching for a weapon." *Id.* at 502, 716 S.E.2d at 102.

By contrast, in the case before the court, Appellant was younger than the sixty-five year old victim. Appellant knew his victim well enough to call the victim repeatedly and then agree to ride in the victim's car. According to Stephen's testimony, the victim gave Appellant his wallet in exchange for Appellant's agreement to provide sexual favors. Appellant offered no evidence of the victim's stature or posture toward him other than he tried to "force" him and a "tussle" broke out. Appellant told his brother that although the victim pulled the car over, he was still operating the vehicle. Therefore, Singleton could not also be fully engaged in a physical confrontation while maintaining control of the car. Moreover, Appellant offered no evidence the victim was armed or intoxicated. The only evidence of the weapon at the scene was the live round of the 380, the bullet in the victim's skull, and Stephen's testimony Mathew possessed such a gun. The fact the victim was ex-military and Appellant believed he knew karate, without more, does not make his reaction in shooting the victim reasonable. And whereas in *Dickey*, the defendant shot the man after he believed the man to be reaching for his weapon, Appellant shot Singleton after the victim "saw the gun" and "didn't mean to shoot him in the head." (State's Ex.

75.) Either the Appellant was inexplicably and unreasonably afraid of the victim, or he shot him accidentally. Neither factual scenario supports the third element of self-defense.

Similarly, Appellant offered no evidence he had no other means of avoiding the shooting death of Singleton. According to Stephen's testimony, the men pulled the car over when the tussle broke out. No evidence was presented that the car door was locked or that the car was in motion, precluding Appellant from simply exiting the vehicle. The evidence showed that even if Appellant were engaged in a struggle with the victim and he was afraid of him, he did nothing to extricate himself from the situation and went straight for his gun. Moreover, Appellant shot the victim as soon as the victim saw the gun, so he never offered the victim a chance to avoid a deadly confrontation by backing down from the "tussle." Accordingly, Appellant's actions proved he failed to meet the fourth required element to be entitled to a self-defense instruction, and the trial judge's ruling he was not entitled to an instruction on self-defense was proper.

For all the reasons discussed above, the trial court properly denied Appellant's request to charge the jury with the self-defense instruction. Indeed, the charges for murder and voluntary manslaughter were the only charges supported by the evidence presented to the jury. As such, Appellant was not entitled to a self-defense charge, and the trial court's ruling should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

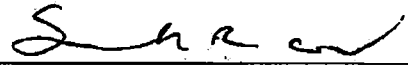
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ATTORNEY(S) FOR RESPONDENT

February 17, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW C. DWYER,

APPELLANT

Appellate Case No. 2015-002290

**DESIGNATION OF MATTER TO
BE INCLUDED IN RECORD ON APPEAL**

Respondent agrees with Appellant's proposal regarding the designation of matter on appeal. Respondent requests the following additional material be included in the record on appeal:

- (1) Indictment Number 2015-GS-43-0623;
- (2) Notice of Appeal; and
- (3) State's Exhibit 82.

I certify that this designation contains no matter that is irrelevant to this appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW C. DWYER,

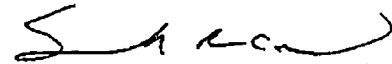
APPELLANT

PROOF OF SERVICE

I, Susannah Cole, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record:

David Alexander, Esquire
SCCID/Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 17th day of February, 2017.



Susannah R. Cole
Assistant Attorney General
SC Bar No. 68383

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Matthew Cory Dwyer, Appellant.

Appellate Case No. 2015-002290

Appeal From Sumter County
Maite Murphy, Circuit Court Judge

Unpublished Opinion No. 2017-UP-449
Submitted October 1, 2017 – Filed December 6, 2017

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney W. Jeffrey Young, Deputy Attorney General
Donald J. Zelenka, and Assistant Attorney General
Susannah Rawl Cole, all of Columbia; and Solicitor
Ernest Adolphus Finney, III, of Sumter, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009) ("In

criminal cases, the appellate court sits to review errors of law only."); *id.* ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."); *State v. Light*, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) ("A self-defense charge is not required unless it is supported by the evidence."); *id.* at 650, 664 S.E.2d at 469 ("If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense . . ."); *State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) ("It is an axiomatic principle of law that [self-]defense has not been established if any one element is disproven."); *State v. Williams*, 400 S.C. 308, 314-15, 733 S.E.2d 605, 609 (Ct. App. 2012) (Observing a person is justified in using deadly force in self-defense when (1) the defendant is without fault; (2) the defendant was in actual imminent danger, or actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonable prudent man would have had the same belief under the circumstances; and (4) the defendant had no other probable means of avoiding the danger).

AFFIRMED.¹

LOCKEMY, C.J., and HUFF and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 27, 2017

The Honorable James C. Campbell
Sumter County Judicial Center
215 North Harvin Street
Sumter SC 29150-4974

REMITTITUR

Re: The State v. Matthew C. Dwyer
Lower Court Case No. 2015GS4300623
Appellate Case No. 2015-002290

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

J. A. Kitchings
CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire
Susannah Rawl Cole, Esquire
Ernest Adolphus Finney, III, Esquire
W. Jeffrey Young, Esquire

RECEIVED
DEC 27 2017
APPELLATE DEFENSE

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Sumter

Matthew C. Dwyer 346172
 Full name and prison number (if any) of Applicant

v.

State of South Carolina

2018-CP-43-934

APPLICATION FOR
 CERTIFICATE OF ORIGINAL FILE
 POST-CONVICTION RELIEF
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

RECORDED
 2018 MAY 21 PM 3:19
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Department of Corrections
2. Name and location of Court which imposed sentence Sumter County Judicial Center, 215 North Harvin St. Sumter SC 29150
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 16-03-0010 Murder

RECEIVED

MAY 25 2018

Referred to

Answered

- (b) 16-23-0490 - Possession of a weapon during the commission of a
violent crime
 (c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 10/23/15 - 45 years for Murder
 (b) 10/25/15 - 5 years for possession of a weapon
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 i. The South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Appeal was denied
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. 12/6/2017
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii. _____
 iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) N/A

- (b) N/A
 (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel
 (b) State misconduct and presentation of false evidence
 (c) The trial court erred in refusing to charge self defense

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Inadequate advice on right to testify and make closing argument
 (b) Stephen Dwyer was threatened with prosecution if he did not testify
 (c) Evidence clearly showed that appellant and decedent got into a fight

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____

10) Continued from Page 3

- d Violation of my 14th Amendment / I was not given sufficient due process
- e Biased jury / Biased testimony
- f Hearsay

11)

- a My Attorney John Hetter advised me not to testify against my wishes, he also informed me that my family advised me not to testify as well in an effort to further persuade me not to take the stand. I talked to my family after trial and found out they told Hetter no such thing.
- Violated attorney-client privileges by discussing information with my family that I told him in confidence. - Failed to inform me of plea offer.
- Failed in allowing me to address the court/jury
- Failed to call Sheriff Anthony Dennis as a witness when he "quoted" in Stephen Dwijer's interview referring to the decedent's criminal background.
- Failed to ask for a mistrial when one of the jurors was seen talking to somebody during a lunch break. - Kept lying to my mother (saw the one who paid him)
- Against my wishes, my attorney decided not to present any evidence to the jury, knowing I facing very serious charges. - Got paid yet did nothing he promised, didnt make effort
- Failed to request a continuance when we clearly didnt have enough time to prepare for trial. He only met with me in the county jail to discuss my case about 5 or 6 times and it was only a month before trial before he finally asked me what happened. - It is impossible to prepare for a murder trial in less than a month. I instructed him to put some character witnesses on the stand to testify of the decedent's character in order to prove to the jury that Mr. Singleton had a dangerous reputation, therefore proving I had good reason to believe I was in immediate danger of losing my life. My lawyer dismissed the idea as being irrelevant.

During trial my lawyer failed to object to the many points I instructed him to, especially where the witnesses were using hearsay and circumstantial evidence. I also failed to ask for mistrial when one juror was replaced with another.

At the charge conference the trial court agreed with the solicitor that a charge of attempted murder from use of a deadly weapon was not proper under State v. Belcher, because it was charging voluntary manslaughter, but nevertheless later gave that charge. I failed to disclose potentially exculpatory evidence related to the circumstantial evidence, motive, failure to inform defendant of plea offer. Improper procedure in obtaining DNA there was no medical examiner present. State used circumstantial evidence time of death not exact 12 hour span. Victim was a registered sex offender and had a record dating back to 1976. But the documents presented to us and the jury showed he had a clean record. Newspaper articles ran referred to him simply as a sex offender, yet the trial court presented him as a law abiding citizen. The state tampered with evidence by submitting a clean record on his behalf.

Sheriff Anthony Dennon is quoted acknowledging the decedent's criminal background, but he was never called to testify.

The tape containing my interrogation was never presented.

Nevian Sinclair was presented as a prior roommate of mine, yet I've never been incarcerated with a Nevian Sinclair. Janie Mae Shaw testified she saw me in her home yet I've never saw the woman a day in my life.

2.) Improper procedure in obtaining DNA no medical examiner was present. "I want a trial in 8 months and I never asked for a speedy trial, furthermore I asked for a continuance, because I didn't have enough time to prepare for trial."

3.) The decedent was 65 years old not extraordinary, my jury consisted of older citizens and many were ex-military as well. The State's star witness was also the victim in my 2011 assault and Battery charge that constitutes conflict of interest.

F) Most of the evidence used was circumstantial evidence. There were no eye witnesses, yet the jury were led to believe the account of third parties and the speculation made by the State, and they treated their testimonies as if they were facts.

iv. _____

(c) the disposition thereof: _____

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: _____

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. The trial court erred in refusing to charge self defense

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Appeal

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) My lawyer didn't raise them, plus he informed me that only
 (b) points objected to at trial can be argued during my appeal.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ~~yes~~ N/A
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ~~yes~~ N/A

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. John S. Keffer
23 West Calhoun St. Sumter SC 29150
 ii. David Alexander
P.O. Box 11589 Columbia SC 29211
 iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. ~~Arraignment~~, Bond hearing, trial, sentencing
 ii. Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

Immediate release

Reverse and remand for a new trial

Time reduction

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Matthew Corey Dwyer, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 14th
day of MAY, 2018.

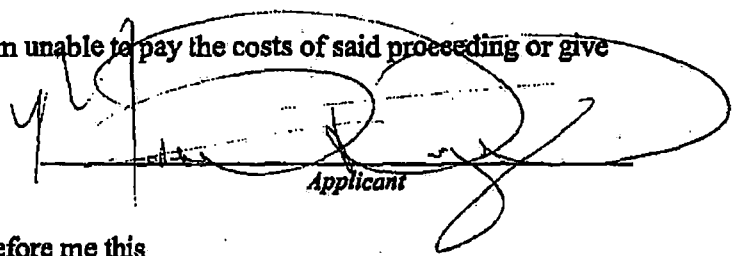
Julia Cole (L.S.)
Notary Public

My Commission Expires: MARCH 8, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Matthew Corey Dwyer, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

14 day of MAY, 2018.


Notary Public

My Commission Expires: MARCH 8, 2026

STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS
	)	
Mathew C. Dwyer,	)	2018-CP-43-934
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed May 21, 2018, would respectfully show this Court:

PROCEDURAL HISTORY

A Sumter County Grand Jury indicted Applicant, Mathew C. Dwyer, in July of 2015 for the possession of a weapon during a violent crime and the murder of Johnny Singleton. (Attachment 1, Indictments.) On October 19, 2015, Applicant's case was called to trial before the Honorable Maite Murphy. Applicant was represented by John S. Keffer, Esquire. Assistant Solicitor John P. Meadors represented the State. (Attachment 2, Trial Transcript ("T.") p. 1.) At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. (T. p. 1, pp. 446-447.) Judge Murphy sentenced Applicant to forty-five years' imprisonment for murder and a concurrent term of five years' imprisonment for the weapons charge. (T. pp. 487-488.) Thereafter, Applicant filed a timely notice of appeal.

Appellate Defender David Alexander, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed the Final Brief of Appellant on March 27, 2017. In his brief, Applicant presented the following issue on appeal:

Whether the trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial

arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared?

(Attachment 3.) The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Mathew C. Dwyer, Unpublished Opinion No. 2017-UP-449 (Ct. App. December 6, 2017). (Attachment 4.) The Remittitur was issued on December 27, 2017, by the South Carolina Court of Appeals. (Attachment 5.)

Attached herewith and incorporated herein are the following records:

- 1) Indictments;
- 2) Trial Transcript;
- 3) Final Brief of Appellant;
- 4) Unpublished Opinion from the Court of Appeals;
- 5) Remittitur from the Court of Appeals; and
- 6) South Carolina Department of Corrections records.

GROUNDS FOR RELIEF

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel;
 1. Failure to advise right to testify and closing argument;
 2. Failure to inform of plea offer;
 3. Failure to keep attorney/client privilege;
 4. Failure to prevent Applicant from addressing court;
 5. Failure to call Sheriff as a witness;
 6. Failure to request a mistrial;
 7. Failure to present evidence in defense;
 8. Failure to request continuance;
 9. Failure to object to hearsay;
- b. State misconduct and presentation of false evidence;
 1. Stephen Dwyer was threatened with prosecution if he did not testify;
 2. State failed to disclose exculpatory information;
 3. State used improper procedure to obtain DNA;

4. State failed to inform jury victim was a sex offender;
 5. State tampered with evidence;
 6. State presented witness who was victim of prior assault;
 7. State treated the testimony of the witnesses as fact;
- c. The trial court erred in refusing to charge self-defense;
1. Evidence clearly showed that Applicant and decedent got into a fight;
- d. Violation of my 14th amendment/due process;
- e. Biased jury/ biased testimony; and
- f. Hearsay.

TESTIMONY AT TRIAL

On the morning of January 27, 2015, emergency medical personnel responded to the scene of a crashed vehicle located off S.C. Highway 521 in Sumter County. (T. p. 79, lines 7-20.) EMS workers found the vehicle in a ditch, with the rear of the car resting against an embankment. (T. p. 80, lines 1-3.) In the back seat of the vehicle, a dead man was in a seated position. (T. p. 80, lines 8-12.) The victim's legs were draped across the center console. (T. p. 81, lines 19-22.) The rear window was broken out, the front passenger window was down, and the driver's window was broken. (T. p. 82, lines 19-23.) The man had dried blood by his left ear, on his pants near his left ankle, on his pants near the right back pocket, and by the right front pants' pocket. Blood was also on the victim's jacket, passenger side front seat, passenger side front door frame, and on the rear seat. (T. p. 82, line 23 – p. 83, line 3.) EMS noted brain matter on the rear seat below the window on the right side of the car and a wound to the back of the man's head. (T. p. 83, lines 4-7.) The vehicle was in reverse gear. (T. p. 81, lines 3-11.)

Investigator Michael McCauley, a crime scene investigator with the Sumter County Sheriff's Department, responded to the scene that morning. (T. p. 90, line 13 – p. 92, line 17.) The investigating officers were suspicious of the victim's placement inside the car and the blood

and bodily fluids surrounding the body. (T. p. 93, lines 1-11.) The victim's head was resting over the back seat, just before the rear window. (T. p. 95, lines 21-24.) Blood found on the victim's pants leg and on the passenger side headrest was more consistent with a transfer pattern than with high velocity spatter from an injury to the back of the head during a car crash. (T. p. 97, lines 7-23, p. 99, lines 18-24.) McCauley also found blood on the outside of the passenger door. (T. p. 100, lines 1-5.) On the rear floorboard behind the passenger's seat, McCauley found a live round of 380 caliber ammunition. (T. p. 110, lines 6-21.) The victim's phone was found in the woods behind the ditch and embankment in which the car was located. (T. p. 118, line 18 – p. 119, line 7.)

The following day, McCauley attended the autopsy of the victim at the Newberry Pathology Center. (T. p. 113, lines 2-10.) McCauley examined the victim's clothing he was wearing the night he was killed, as well as the bullet recovered from the victim's skull. (T. p. 114, line 2 – p. 115, line 1.) McCauley identified the bullet as a 380 round of ammunition. (T. p. 132, line 21 – p. 133, line 5.)

Dr. Janice Ross, the State's pathologist, performed the autopsy on the man identified as Johnny Singleton on January 28, 2015. (T. p. 180, line 13 – p. 181, line 16.) Ross found the victim had a gunshot wound to the back of the head and a bruise inside his upper lip but appeared to have no other external injuries. (T. p. 183, lines 2-8.) Dr. Ross believed the injury to the upper lip occurred near the time of death. (T. p. 183, line 22 – p. 184, line 2.) The gunshot wound to the back of the victim's head indicated the bullet traveled from the back, right side of the head through the brain and toward the front left of the head into the left sinus cavity. (T. p. 184, line 15 – p. 185, line 9.) Dr. Ross opined the gun was at least two feet away from the victim

when it was fired. (T. p. 187, lines 18-24.) The victim's dentures were intact and in place at the time of his death, and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.)

Janie Mae Shaw testified she played cards with the victim on a daily basis. (T. p. 150, lines 4-8.) On the night of January 26, 2015, Johnny Singleton ate some food and took a nap at Ms. Shaw's house before playing cards with four other people. (T. p. 150, line 19 - p. 151, line 8.) Singleton left between 9:30 and 10:00 pm that night. (T. p. 151, lines 9-16.) As was his custom, Singleton hid his cash of approximately \$500 from the evening's card game inside his sock. (T. p. 151, line 17 - p. 152, lines 1-5.) Singleton was angry as he prepared to leave because someone was calling him repeatedly. (T. p. 153, lines 20-23.) Ms. Shaw also recognized Applicant as a visitor to her house, but not the night Singleton died. (T. p. 154, line 17 - p. 156, line 8.)

Phone logs from the victim's phone revealed multiple calls made to and received from the victim's phone by Applicant. When investigators called Applicant's phone and identified themselves, Applicant claimed to be Novian Sinclair, a prior roommate of his. (T. p. 360, line 17 - p. 364, line 4.) Applicant maintained he had no information about the death of Johnny Singleton, and he claimed he was not with the victim on the night of his death. Applicant did not attempt to explain why his cell phone records showed calls from his phone to the victim's. (T. p. 338, lines 1-9.) The officers executed a search warrant for Applicant's residence, obtained a DNA sample from Applicant, and questioned him about the death of the victim. (T. p. 212, line 10 - p. 216, line 14.) Applicant continued to deny having any knowledge or involvement in the victim's death. (T. p. 242, line 16 - p. 243, line 20.)

Phone records revealed Applicant also called his brother, Stephen, multiple times on the night of the shooting. In his statement to law enforcement officers with the Sumter County

Sheriff's Department, Stephen Dwyer said Applicant called him to come pick him up around 10:30 pm off on Hwy 521. (T. p. 285, lines 2-10.) Stephen asked his brother what happened, and Applicant said, "I F'd up." (T. p. 285, lines 7-8.) Stephen, who needed to give a friend a ride to her place of work, agreed to pick his brother up along the way. (T. p. 285, lines 12-22.) Applicant told Stephen he had been shot and asked him to hurry. (T. p. 286, lines 2-4.)

When Stephen found Applicant, he was near a club off of Hwy. 521, walking toward Sumter. (T. p. 285, line 23 - p. 286, line 1.) Applicant's hand was bleeding and was wrapped with something like a shirt. (T. p. 286, lines 5-6.) Applicant told his brother he did not want to go to the hospital. (T. p. 286, lines 6-8.) After Stephen dropped his friend off at her workplace, he drove Applicant to his house. Stephen asked Applicant what happened to his hand, and Applicant told him he cut it. (T. p. 286, lines 9-14.) Applicant would not give his brothers any details about the victim that night. (T. p. 286, lines 14-21.)

The day after the shooting, Stephen, who had seen the news that morning, deduced his brother was involved in Singleton's death. (T. p. 287, lines 6-12.) Stephen stopped by his brother's house again on his way home from the gym. (T. p. 287, lines 6-8.) Applicant told Stephen he and the victim were fighting in the car, and the man was ex-military and knew karate. Applicant told his brother he was scared and shot the victim in the head, but he did not mean to shoot him in the head. (T. p. 287, lines 12-17; State's Ex. 75.) Applicant told Stephen "that the dude saw the gun. They were in the car when they were tussling. And after he shot him, the car was wrecked and hit a tree. (T. p. 287, lines 17-20; State's Ex. 75.) Applicant took the victim's wallet and money and threw the victim's phone into the woods. (T. p. 287, lines 21-22.) Applicant also told his brother he hid the gun in the back of a truck at the club off of Hwy. 521. (T. p. 289, lines 7-21.) The following day, when Stephen asked his brother again if he killed

Johnny Singleton, Applicant told his brother he did not and claimed he was “just playing” and made up the story he told him earlier. (T. p. 288, lines 1-7.)¹

DISCUSSION OF GROUNDS

Ineffective Assistance of Counsel

Applicant alleges numerous grounds of ineffective assistance of counsel. A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington, 466 U.S. 668 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v.

¹ The case later took an interesting twist. One day during March of 2015, a security guard at Sumter Mall was approached by a woman he did not know and asked if he was a real cop. (T. p. 142, lines 1-221.) The woman wanted to remain anonymous, but told the guard she had information that might help a case. (T. p. 142, line 24 – p. 143, line 2.) The woman handed him a letter and asked him to give it to the police. (T. p. 139, line 12 – p. 140, line 3; p. 143, lines 2-4.) The letter said “Mathew Dwyer” on the top of the envelope (T. p. 145, lines 17-19), and it was addressed to Demetrius Cooper. The guard handed the letter over to Detective Mathew Yates with the Sumter Police Department. (T. p. 140, lines 3-20.)

The Sumter Police Department, determined the subject of the letter was unrelated to a city case, but discovered the county had a pending case to which the letter was relevant. (T. p. 172, line 17 – p. 174, line 21.) Demetrius Cooper, who was Matthew Dwyer’s friend, testified for the State. (T. p. 194, lines 7-16.) Cooper said he received an encoded letter from Dwyer. However, the letter also contained a key code so that Cooper could decipher its contents. (T. p. 196, lines 1-17.) In the letter, Dwyer thanked Cooper for “everything you are doing for me.” (T. p. 199, lines 12-18.) Dwyer also told Cooper he needed an alibi for January 26th. (T. p. 200, line 15 – p. 201, line 5.) Dwyer told Cooper the story he wanted Cooper to fabricate about his activities that night if anyone asked him. (T. p. 200, line 1 – p. 207, line 14.) Cooper forgot about the letter, but he was later surprised that the letter fell into the hands of law enforcement. (T. p. 208, lines 10-21.)

State, 300 S.C. 115, 386 S.E.2d 624 (1989). Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id.

On information and belief, based on Respondent's investigation, including interviewing trial counsel, and review of the trial transcript, Respondent denies each and every allegation of the Application and requires strict proof thereof. Respondent requests this Court convene an evidentiary hearing into the allegations of the Application. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Prosecutorial Misconduct

Applicant further alleges numerous grounds of prosecutorial misconduct. Applicant claims the State's used improper investigative procedures, threatened witnesses, and made misrepresentations to the jury. Applicant has made only vague assertions regarding these claims and has provided little detail to support his claims. Respondent denies each and every allegation of this claim and requires strict proof thereof.

A PCR applicant bears the burden of establishing he is entitled to relief. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). With respect to the State's conduct during trial, "it is generally recognized that the prosecution and the defense should be afforded wide discretion in the selection and presentation of evidence." State v. Johnson, 338 S.C. 114, 525 S.E.2d 519 (2000) (citing State v. Richardson, 253 S.C. 468, 171 S.E.2d 717 (1969)). It is "unquestionably true as a general matter" that "the prosecution is entitled to prove its case by evidence of its own choice...." Old Chief v. U.S., 519 U.S. 172, (1997). On information and belief, based on Respondent's investigation, Petitioner will not be able to meet his burden on this claim.

Applicant also claims prosecutorial misconduct based on the State's alleged failure to

disclose exculpatory evidence. An individual asserting a Brady² violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419 (1995). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385.

On information and belief, based on Respondent's investigation, including interviewing trial counsel, and review of the trial transcript, Respondent denies each and every allegation of the Application regarding claims of prosecutorial misconduct and requires strict proof thereof.

Due Process Violation

Applicant also alleges he was denied due process of law. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The

² Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other information in the application. Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his allegation of a due process violation. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Applicant’s allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss these grounds in the application.

Trial Court Error, Biased Testimony, and Hearsay

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at the plea hearing or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430

S.E.2d 517, 520 (1993). Applicant raised the claim of trial court error regarding the self-defense instruction in his direct appeal. Applicant could have raised the alleged hearsay and biased testimony claims on appeal, but did not do so. His failure to present these claims has waived these allegations as grounds for relief. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Moreover, Applicant has made only vague assertions regarding these claims and has provided little detail to support his claims. Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss these grounds in the application.

NOTICE OF FUTURE CLAIMS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings should not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

CONCLUSION

Respondent denies each and every allegation of the Application for PCR and requires strict proof thereof. Respondent respectfully requests this Court convene an evidentiary hearing

into the allegations of the PCR Application. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Respectfully submitted,

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July 26, 2018

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Matthew C. Dwyer,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-43-0934

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion for Extension of Time to file Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire
 Timothy L. Griffith, Attorney at Law
 360 W. Wesmark Blvd
 Sumter, South Carolina 29150

DATED this 26th day of July, 2018.


Troyeshi Brailey
 Paralegal

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF COMMON PLEAS

MATTHEW C. DWYER)
346172)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
18-CP-43-0934

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

November 16, 2018
Sumter, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

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

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Petitioner

SUSANNAH R. COLE, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. COLE: Your Honor, this is the case of
2 Matthew Dwyer versus the State of South Carolina.
3 This is a Sumter county case arising out of
4 Mr. Dwyer's trial for murder and possession of a
5 weapon during a violent crime. The case went to
6 trial before Judge Murphy in October of 2015.
7 Solicitor John Meadors represented the State and
8 John Keffer represented Mr. Dwyer at trial. The
9 jury found Mr. Dwyer guilty of both charges, and
10 Judge Murphy sentenced Mr. Dwyer to 45 years for
11 murder and a concurrent term of five years for the
12 weapons charge.

13 The charge arose from the shooting death
14 of Mr. Johnny Singleton. The State alleged Mr.
15 Dwyer killed Mr. Singleton and then stole the money
16 he kept hidden away in his sock. Mr. Dwyer appealed
17 his convictions and argued on appeal he was
18 wrongfully denied a self-defense charge to the jury.
19 The South Carolina Court of Appeals affirmed his
20 convictions in December of 2017.

21 Mr. Dwyer filed his PCR application on May
22 21st of 2018. He makes numerous allegations of
23 ineffective assistance of counsel. He also alleges
24 prosecutorial misconduct and, again, claims the
25 trial court error for failure to instruct in

1 self-defense. Mr. Griffith may be able to elaborate
2 more on which grounds he will be going forward on
3 today, but we are aware of any new claims not listed
4 in his initial application. Your Honor, we're ready
5 to proceed.

6 THE COURT: All right, ma'am.
7 Mr. Griffith.

8 MR. GRIFFITH: May it please the Court,
9 Your Honor. Mr. Dwyer will withdraw his
10 prosecutorial misconduct from his claim. The other
11 claims would go forward, Your Honor.

12 THE COURT: Mr. Dwyer, is that correct,
13 sir?

14 THE PETITIONER: Yes, sir.

15 THE COURT: Have you talked to your lawyer
16 about doing that, withdrawing that claim?

17 THE PETITIONER: Yes, sir.

18 THE COURT: Is that what you wish to do?

19 THE PETITIONER: Yes, sir.

20 THE COURT: Are you satisfied that's what
21 you want to do?

22 THE PETITIONER: Yes, sir.

23 THE COURT: Is anybody making you withdraw
24 that claim?

25 THE PETITIONER: No, sir.

PW - M. DWYER - DIRECT

1 THE COURT: Do you understand that by
2 withdrawing it you waive that claim and we will not
3 address it, do you understand?

4 THE PETITIONER: Yes, sir.

5 THE COURT: All right. Any other
6 questions you have, Mr. Griffith, for your client
7 about that matter?

8 MR. GRIFFITH: No, Your Honor.

9 THE COURT: All right, I'm ready, sir.

10 Thank you, Mr. Dwyer.

11 MR. GRIFFITH: Your Honor, we'd call
12 Matthew Dwyer to the stand.

13 THE CLERK: Place your left hand on the
14 Bible, take up your right. State your name.

15 THE WITNESS: Matthew Dwyer.

16 WHEREUPON,

17 **MATTHEW DWYER,**
18 having been duly sworn by the Clerk, testified
19 as follows:

20 THE CLERK: Thank you much. Watch
21 yourself up the ramp. State your name for the
22 record and spell your last name please.

23 THE WITNESS: Matthew Dwyer, D-W-Y-E-R.

24 **DIRECT EXAMINATION**

25 BY MR. GRIFFITH:

PW - M. DWYER - DIRECT

1 Q Mr. Dwyer, you are currently incarcerated; is
2 that correct?

3 A Yes, sir.

4 Q And what was the charge?

5 A Murder and possession of a weapon.

6 Q And when were you incarcerated?

7 A February 4th, 2015.

8 Q And how many years were you given? Were you --
9 what was your sentence?

10 A Forty-five for the murder, five years for the
11 possession of a weapon.

12 Q And the five years is to be served concurrent?

13 A Yes, sir.

14 Q Okay, so 45 years?

15 A Yes, sir.

16 Q And when you, you remember being in trial?

17 A Yes, sir.

18 Q And who was your attorney?

19 A John Keffer.

20 Q Was he your only attorney?

21 A Yes, sir.

22 Q How many times do you think you spoke with Mr.
23 Keffer before the trial?

24 A Five to six times.

25 Q Did you have an opportunity to go over all of

PW - M. DWYER - DIRECT

1 your discovery with Mr. Keffer?

2 A No, sir.

3 Q Mr. Keffer represented you at trial. Did he ever
4 talk to you about his theory of the case or what he
5 thought would happen at the trial?

6 A Yes, sir.

7 Q And did you discuss self-defense?

8 A Yes, sir.

9 Q Do you remember talking about a plea offer that
10 came from the State?

11 A That day before the verdict.

12 Q That came before the verdict. Do you remember
13 talking about that with Mr. Keller?

14 A Yes, sir.

15 Q Keffer, I'm sorry. Did you understand that
16 agreement?

17 A No, sir.

18 Q You and I have talked about it since; haven't we?

19 A That's right.

20 Q And so what was that offer?

21 A Thirty years for first degree murder.

22 Q And if you had understood that, would you have
23 accepted that offer?

24 A Probably not.

25 Q Okay. So during the time you were in trial did

PW - M. DWYER - DIRECT

1 Mr. Keffer bring up self-defense?

2 A Yes, sir, on several occasions.

3 MR. GRIFFITH: And Your Honor, we would
4 ask the Court to look at the transcript of
5 Mr. Keffer's opening statement in which he mentions
6 self-defense several times.

7 BY MR. GRIFFITH:

8 Q Did your brother testify during this trial?

9 A Yes, sir.

10 Q Do you remember him mentioning self-defense?

11 A Yes, sir.

12 Q Did Mr. Keffer ask for a hearing about to
13 determine whether or not it was self-defense before
14 the trial started?

15 A Yes, sir, he did.

16 Q Did you have that hearing?

17 A It was a charge conference. I wasn't involved in
18 it.

19 Q So you're not aware of whether or not that
20 happened?

21 A Yes, sir, I am aware.

22 Q And do you have any other claims against
23 Mr. Keffer as far as his representation?

24 A Yes, sir. Ineffective assistance of counsel that
25 he disclosed some information with my mom that I

PW - M. DWYER - DIRECT

1 didn't, I didn't give him the okay to do that.
2 Also, Mr. Keffer is the reason I didn't, I didn't
3 testify. He informed me that my family told me not
4 to testify. He also informed me that he think that
5 that would be the wrong decision to make, and as a
6 result of his advice I chose not to testify.

7 Q And was there anything else, sir?

8 A Yes, sir.

9 Q Go ahead and let us know.

10 A Mr. Keffer only asked me what happened a week
11 before trial. That's the first time he ever asked
12 me what happened. He didn't call not one witness
13 even though I instructed him I had several witnesses
14 for him to put on the stand. And he also failed to
15 object to the testimony of Ms. Jenny Mae Shaw when
16 she blatantly lied and said that she knew me. I
17 never seen her before.

18 Q Did you talk to him ahead of time and let him
19 know that you had never met her?

20 A Yes, sir.

21 Q You have anything else you'd like to let us know?

22 A (No response.)

23 Q You had mentioned in your complaint that your
24 brother was threatened about testifying. Is that
25 true?

PW - M. DWYER - DIRECT

1 A Yes, sir.

2 Q Okay. In what way do you think he was
3 threatened?

4 A They interrogated him for six hours and told him
5 if he don't say the right thing he could be charged

6 —

7 MS. COLE: Your Honor, object to anything
8 the brother was told.

9 THE WITNESS: —with accessory.

10 THE COURT: Sustained.

11 BY MR. GRIFFITH:

12 Q Okay. And so really, mainly you object to the
13 fact that your attorney did not explain to you the
14 possibility of the offer of 30 years to where you
15 understood what you were facing; is that correct?

16 A That's correct, and also the fact that he made me
17 not testify. I wanted to testify. This was a
18 self-defense case. Without my testimony the jury,
19 the jury wouldn't know what happened in the vehicle
20 because me and the deceased was the only two
21 involved and they never got the opportunity to hear
22 my side of the story.

23 Q And so if you think, do you think that if you had
24 testified the result of the trial may have come out
25 differently?

PW - M. DWYER - DIRECT

1 A Yes, sir.

2 Q Had you talked to Mr. Keffer about wanting to
3 testify?

4 A Yes, sir.

5 Q Did the judge talk to you about whether or not
6 you should testify and whether you had the right to
7 testify?

8 A Yes, sir.

9 Q Was it your decision not to testify?

10 A As a result of the advice from my lawyer. The
11 whole week me and him had agreed that I was going to
12 testify. The day my brother testified he told me
13 that he think it would be a bad idea for me to
14 testify because my brother basically testified in my
15 favor, as he put it. I still was gonna testify
16 though. We took a recess. He came back and said he
17 still don't think I should testify and my family
18 told him to tell me not to testify also so I didn't
19 testify. After the trial I talked to my family.
20 They told me they never told him any such thing.

21 Q So he said that your family told you not to
22 testify, but you talked to your family afterward?

23 A Yes, sir.

24 Q And they told you what?

25 A That they never told him that and they felt like

PW - M. DWYER - DIRECT

1 I should have testified because this was a self, my
2 defense was self-defense. And without him calling
3 not one witness, it left me in a position where I
4 couldn't, the jury had, they had no, they had no
5 account of my side of the story.

6 Q Do you remember Mr. Keffer asking the judge if he
7 would instruct the jury about self-defense? Do you
8 remember that?

9 A Yes, sir.

10 Q And do you remember what the judge replied?

11 A The judge say we will respectfully deny your
12 motion 'cause we don't see evidence that support any
13 form of self-defense.

14 MR. GRIFFITH: And Your Honor, I would ask
15 the Court to look at the transcript on page 289
16 where his brother talks about a self-defense and
17 what went on in the car during that testimony,
18 during his brother's testimony.

19 BY MR. GRIFFITH:

20 Q You have anything else that you would like to add
21 to what you've already stated?

22 A Yes, sir. When my brother testified he provided
23 all three elements that supported the fact that I
24 was acting in self-defense. He stated that I told
25 him that I was scared. He stated that I told him

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1 that I knew the victim and that he was ex-military
2 and he knew karate. The evidence, and the trial
3 support it, supported the fact that the vehicle was
4 moving so that support the fact that I had no other
5 way to avoid the danger.

6 Q Okay. Without testifying as to the event, is
7 there anything else you'd like to add?

8 A No, sir.

9 Q I have no further questions. Please answer any
10 questions Ms. Cole has.

11 THE COURT: Ms. Cole.

12 **CROSS-EXAMINATION**

13 BY MS. COLE:

14 Q Good morning, Mr. Dwyer.

15 A Good morning.

16 Q You said you met with your attorney about how
17 many times?

18 A Five or six times.

19 Q And you said you did not go over any discovery
20 with the State, from the State?

21 A No, ma'am.

22 Q Do you recall discussing the possible defenses
23 with your attorney?

24 A Yes, ma'am.

25 Q What were those defenses? What was the plan?

PW - M. DWYER - CROSS

1 A Self-defense.

2 Q Was there ever any other defense strategy that
3 you discussed?

4 A No, ma'am.

5 Q No other strategy? Did you give your attorney
6 leads he could follow or witnesses he could talk to?

7 A Yes, ma'am.

8 Q What were their, who, what did you tell him? Did
9 you give their names?

10 A Yes, yes, ma'am.

11 Q Okay. And who were they?

12 A Janie Mae Shaw, and I can't, I can't think of all
13 the names off the top of my head 'cause I gave him a
14 long list because it's a lot of people that knew
15 this individual; but my strategy was to give him a
16 bunch of character witnesses so they could attest to
17 the fact of the victim's, the victim's, what he was
18 known for.

19 Q Okay. But you claim self-defense?

20 A Yes, ma'am.

21 Q That was your plan. Did you write a letter to
22 Demetrious Cooper at some point?

23 A Yes, ma'am.

24 Q What was the substance of the letter?

25 A I was asking Demetrious Cooper to help me with my

PW - M. DWYER - CROSS

1 trial by lying about where I was the night of the
2 incident.

3 Q And was part of the letter in code?

4 A Yes, ma'am.

5 Q And was the key at the bottom, the key, the
6 decipher of the code at the bottom?

7 MR. GRIFFITH: Your Honor, I object to
8 this line of questioning that she's asking him about
9 things that may be used against him in a subsequent
10 trial. She's asking him to testify now concerning
11 the incident that occurred rather than his purpose
12 for a PCR.

13 THE COURT: Ms. Cole.

14 MS. COLE: Your Honor, the reason why I'm
15 getting into these questions is because, well, one,
16 there's a prejudice component for ineffective
17 assistance of counsel claim, but also to explain as
18 we'll find out from Mr. Keffer why some of the
19 strategies may have changed at trial.

20 THE COURT: I'll allow it.

21 MS. COLE: Okay.

22 BY MS. COLE:

23 Q And so you asked Mr. Cooper to create an alibi
24 for you; is that fair to say?

25 A Yes, ma'am.

PW - M. DWYER - CROSS

1 Q The plea offer, can you explain again the plea
2 offer, or your, what you remember about the plea
3 offer.

4 A Mr. Keffer didn't bring up a plea offer even
5 though I was asking him about a plea offer ever
6 since I got locked up. He said there wasn't no plea
7 offer. He told me about a plea offer the day before
8 trial which was 30 years.

9 Q The day before trial or?

10 A The day before the verdict.

11 Q The day before the verdict, yes. Do you recall
12 discussing, and you mentioned it, but discussing
13 with Mr. Keffer about wanting to testify? You said
14 you wanted to testify?

15 A Yes, ma'am.

16 Q And he explained to you why you should or
17 shouldn't, the pros and cons of that?

18 A Yes, ma'am.

19 Q Okay. Do you remember the judge explaining to
20 you your right to testify?

21 A Yes, ma'am.

22 Q Do you recall the judge explaining this was your
23 decision to make?

24 A Yes, ma'am.

25 Q And you told the judge you understood that,

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1 right?

2 A Yes, ma'am.

3 Q And you had had enough time to think about it?
4 Do you recall telling the judge you had enough time
5 to think about that decision?

6 A I don't recall. If I did it was, it was as a
7 result of my lawyer's advice.

8 Q Okay. So your lawyer advised you to testify, but
9 it was your decision; is that fair?

10 A No, ma'am. Me and the lawyer agreed that I was
11 going to testify. The lawyer convinced me not to
12 testify.

13 Q Okay. Do you — and do you recall certainly
14 Mr. Keffer asking for a self-defense charge —

15 A Yes, ma'am.

16 Q —during the trial?

17 A Yes, ma'am.

18 Q Thank you. No further questions.?

19 MR. GRIFFITH: No redirect, Your Honor.

20 THE COURT: Thank you, Mr. Dwyer,
21 appreciate it.

22 Mr. Griffith.

23 MR. GRIFFITH: Your Honor, I have no
24 further witnesses.

25 THE COURT: Okay.

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1 Ms. Cole.
2 MS. COLE: Mr. Keffer, we call Mr. Keffer.
3 THE CLERK: State your name.
4 THE WITNESS: John S. Keffer.

5 WHEREUPON,

6 **JOHN S. KEFFER,**
7 having been duly sworn by the Clerk, testified
8 as follows:

9 THE CLERK: Thank you much. Step around.
10 State your name for the record and spell your last
11 name please.

12 THE WITNESS: John S. Keffer, K-E-F-F-E-R.

13 THE COURT: Ms. Cole.

14 MS. COLE: Thank you, sir.

15 **DIRECT EXAMINATION**

16 BY MS. COLE:

17 Q Mr. Keffer, where are you currently employed?

18 A I have my own firm, Keffer Law Firm, on Long
19 Range.

20 Q And were you retained or appointed in this case?

21 A I was retained in January of 2015 by Mr. Dwyer's
22 family.

23 Q Had you handled any major felonies at the time
24 you represented Mr. Dwyer?

25 A This is the fourth murder case I've had.

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1 Q Do you, you said you were retained January of
2 2015 before this trial?

3 A That's correct. Shortly after, that's right.

4 Q Okay. Do you recall how many times you talked to
5 Mr. Dwyer?

6 A It was several times. I looked over my notes
7 earlier. I believe he said five or six. It may
8 have been a little bit more than that. Several
9 times.

10 Q Five or six at a minimum?

11 A At least.

12 Q Does that sound fair?

13 A Yes.

14 Q Can you briefly tell us what you recall about the
15 facts surrounding this case. Again, very briefly,
16 we're just...

17 A I met with Mr. Dwyer's mother and as I recall his
18 brother Steven. He had recently been picked up on
19 allegations pertaining to an incident off of 521.
20 He was arrested for murder. And they had explained
21 what their understanding was at that time. I don't
22 recall exactly what they explained. I want to say
23 that Steven had spoken with his brother before the
24 arrest, but I can't tell you what was said between
25 them. The first thing I did in that case was file a

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1 Rule 5 with the State. I also filed a motion to set
2 bond on the case. That motion to set bond was
3 denied. I met with Matthew Dwyer shortly upon being
4 retained. We talked about the case. His, my first
5 recollection was that he had claimed it was in
6 self-defense, that the victim in the case was an
7 alleged sexual offender, that he had known the
8 victim, that the victim had tried to assault him and
9 he was defending himself and he had maintained that
10 pretty much from day one.

11 Based on those allegations we had started
12 to ascertain witnesses and he had given me some
13 names of witnesses. At the same time and almost
14 simultaneously I was receiving Rule 5 material from
15 Mr. Meadors' office. I continued to receive Rule 5
16 material for the next several months. I want to say
17 the trial was in October of that year. That trial
18 date was set firmly the prior term of court.

19 Q Okay.

20 A Actually I think it was supposed to be heard in
21 September; but for whatever reason I was in a
22 different court and I couldn't, we couldn't do it in
23 September so it was set for a date certain in
24 October. I had continued to receive Rule 5
25 throughout. Each time I would receive Rule 5 I

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1 would go to Mr. Dwyer, we would talk about the case.
2 By way of example, the first chunk of Rule 5 I
3 received I went out and met with him and showed him
4 what the State had, what statements they had. There
5 were various search warrants for his cellphone. The
6 cellphone was very important in this case, things of
7 that nature.

8 He, again, had maintained his allegations
9 of self-defense which we vigorously pursued. We had
10 filed a notice with the Court. I had met with the
11 State and Mr. Meadors several times to supplement
12 discovery and to discuss logistics behind trying a
13 case that week. As the court date approached
14 Mr. Dwyer had given me various names of subpoena.
15 There was an individual in Darlington he gave me the
16 name of we could never find; that subpoena was never
17 served. I had met and spoke with various witnesses
18 who were present for the trial either through our
19 subpoena or through the State's subpoena that we
20 intended to call as well. Again, I met with Mr.
21 Dwyer several times. Our intention was to put his
22 defense up, was mentioned in our opening and — we
23 were in constant communication, I will say that. I
24 met either with his family or with him several
25 times.

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1 There was, there's a few things that are
2 odd about this case and the two that really strike
3 me was the fact that his brother had to be
4 subpoenaed to appear on behalf of the State. Now,
5 earlier Steven Dwyer had been questioned by law
6 enforcement, I'm gonna say Chief Dennis. I'm not
7 sure exactly who was all there. Mr. Meadors had
8 given me the transcript of that interview. We had
9 transcribed that interview, and I gave a copy to my
10 client and discussed it with Mr. Dwyer, Steven Dwyer
11 as well. Those statements completely contradicted
12 previous statements that Steven had made to law
13 enforcement and, in effect, had really completely,
14 completely changed the story of what Matthew had
15 told him. That's right, my client. We had known
16 that. As the trial approached Steven was
17 subpoenaed. He did not appear at trial. He had
18 come to my office and I told him I could not quash
19 the subpoena, that he would have to appear. He did
20 not appear. Law enforcement had to pick him up, and
21 he, I think he was locked up during this trial until
22 he testified and it may have been after that.

23 The second thing that was odd about this
24 case was that although we had filed our notice of
25 self-defense, we had our witnesses lined up and we

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1 had, in fact, talked about Mr. Dwyer testifying. I
2 want to say either on the eve of trial or shortly
3 after a jury was impaneled, Mr. Meadors and the
4 State had let it be known to me that my client as
5 early as March of 2015 had written a letter to a
6 Mr. Demetrious Cooper. Now what's interesting about
7 Mr. Cooper is that he was actually present for this
8 trial and I imagine the State had subpoenaed him.
9 Mr. Meadors had given me a letter that was sent by
10 Mr. Dwyer in March 2015, along with a code which
11 basically what the code had said was, I need you to
12 be an alibi, I need you to testify where I was that
13 I got in a fight and how he hurt his hand. On the
14 night of the incident when Steven had picked up his
15 brother at 521 Matthew had a severe laceration, I
16 believe, to his right hand. It was very severe to
17 the point where Steven was going to take him to the
18 hospital, but Matthew told him no. Somehow they had
19 to have that explained and I guess Matthew's only
20 way to explain it was for him to get an alibi. Now
21 up to that point I had no idea about that.

22 Q Okay.

23 A And then based on that, again, I met with Mr.
24 Dwyer, Mr. Matthew Dwyer, showed him the letter and
25 actually spoke with and interviewed Demetrious

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1 Cooper who was here. We met outside the steps of
2 the court. Showed him the letter as well and he
3 confirmed receipt of it. Nobody was quite sure how
4 law enforcement had received that letter. I think
5 there was a, someone in a mall and a local office
6 had, somehow they were led to get that letter. My
7 client did not deny receiving that letter, writing
8 that letter. Mr. Cooper acknowledged receiving it.
9 Mr. Cooper also told me he had, he had no intention
10 of following through with Mr. Dwyer's request.

11 Based on those two things and other things,
12 myself and Matthew had several conversations about
13 him testifying, and I told him that he would be
14 subject to cross-examination based on that letter,
15 if he wanted to testify that was up to him.

16 Q Okay. So that, needless to say that letter
17 changed?

18 A It completely, completely changed the case. I
19 mean, we went from a self-defense to now he's
20 searching for an alibi. You know, he had written
21 this letter in March, never told me. I'm sure he
22 never told his family about it. But based on those
23 things, that's why he didn't testify.

24 Q And you received that fairly later in the
25 proceedings?

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1 A It was very late. It may have been right after
2 we swore the jury. I mean, I'm, I'm not sure, it
3 may have been the day before, I'm not sure, but it
4 was very late.

5 Q Very late. So again, the plan for him to testify
6 certainly took on a different turn when you received
7 this letter?

8 A Absolutely.

9 Q Okay.

10 A And in my mind it absolutely did and in his mind
11 too. I mean, he had, you know, I sat down and
12 talked to him. I said, you're gonna have to explain
13 this letter, you're gonna explain why you wrote this
14 letter. And there was no, he had no answer for
15 that.

16 Q Was it your belief that he certainly understood?

17 A Oh, he definitely understood. There's no — he
18 understood everything that was going on. He
19 understood all the statements against him. He
20 understood all that.

21 Q Okay. What about a plea? Where there any plea
22 negotiations?

23 A The only plea negotiation that I recall was,
24 again, on the eve of trial. You know, now again,
25 you have to understand that as I'm meeting with the

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1 State and Mr. Meadors, we fully intend to put him on
2 the stand, witnesses, and go forward with
3 self-defense. So there wasn't really any plea
4 negotiations before, and if there was, it was 30
5 years to life or whatnot, which I had discussed with
6 Mr. Dwyer and which he decided not to take.

7 Q Not to take?

8 A Uh-huh.

9 Q Okay. And you did request a self-defense charge?

10 A I did, and despite the fact that we, my
11 recollection is we didn't put any evidence up to
12 show self-defense, but nonetheless, the motion was
13 made.

14 Q Now do you, you said you had subpoenaed some
15 witnesses to testify on his behalf?

16 A I tried to. He had — you know, when Mr. Dwyer
17 says that he had given me a list, we did talk about
18 people, individuals. One I can recall was an
19 individual that lived in Darlington, and we tried to
20 personally serve them through our office. At the
21 time I was with Mr. Young's office. And then we had
22 notified the Sheriff's Department and given them the
23 address and paid those fees. Couldn't get them
24 served. There was, and I notice Mr. Dwyer's, when
25 he was testifying said it was just him and the

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1 victim, but that's not what my notes show. My
2 notes, in fact, show that what he had told me was
3 there was two other people in the car with him that
4 lived in Camden; he couldn't recall their names.

5 Q Okay.

6 A So we couldn't subpoena them. There was the, I
7 believe Mr. Dwyer's girlfriend or friend that was in
8 the car with him when he picked up Matthew that
9 evening, we had her address, and there was one other
10 girl that we had spoke to as well. But whatever
11 names he had given me, we tried to find, located
12 subpoena.

13 Q Okay. And so aside from his testimony and why
14 you changed your mind on that, why he changed his
15 mind, was there any other decision not to present
16 evidence, why did you not present any other
17 evidence?

18 A Well, his brother had testified and my
19 recollection was that despite the fact there was
20 contradictory statements I thought his brother had
21 handled, Steven had handled himself fairly well.
22 There wasn't any other witnesses to call though.
23 There wasn't, I couldn't call anyone on Matthew's
24 behalf to establish either an alibi or self-defense.
25 I mean, I just couldn't, we didn't have that

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1 information.

2 Q Did you, what was the understanding about the
3 information you could disclose to his family?

4 A Well, he, I showed him the letter. He told me, I
5 mean, he was okay with that.

6 Q What was he, was there an understanding that
7 generally you were allowed to discuss the case with
8 his family?

9 A Well, absolutely, I mean, that, but even on this
10 particular issue with this letter, I mean he, I
11 mean — yeah, I mean, we talked about that and
12 'cause I told him, I said your family, your entire
13 family is here and I'm gonna have to explain to
14 them certain things. And he said you can explain
15 it, and I did.

16 Q Okay, thank you. That's all.

17 THE COURT: Mr. Griffith.

18 MR. GRIFFITH: May it please the Court.

19 THE COURT: Yes, sir.

20 **CROSS-EXAMINATION**

21 BY MR. GRIFFITH:

22 Q Mr. Keffer, had you asked for a hearing on the
23 self-defense?

24 A I can't re— I know we filed a notice. I can't
25 recall if we actually asked for it specific. I know

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1 we had pretrial hearings, but I can't exactly recall
2 that one.

3 Q So you don't know if there was a pretrial hearing
4 on self-defense or not?

5 A I can't tell you if there was or wasn't. I know
6 that we had several pretrial hearings.

7 Q Okay. Had you had a pretrial hearing on
8 self-defense would you have asked Mr. Dwyer to
9 testify during that hearing?

10 A I would have, I would have asked him to testify
11 regardless and advised him accordingly. I think the
12 question you're asking is what would I have done
13 with that letter because the letter, I mean, the
14 letter fundamentally changed everything. You know,
15 you can't, you can't go forward with a self-defense
16 when at the same time you're asking for an alibi
17 that no one knows about. So I mean, it depends on
18 whether or not I had received that letter before
19 that particular hearing 'cause I would have had to
20 advise him that the State has this letter and that
21 you'd be subject to cross-examination with it so I
22 don't, I mean, it would just depend.

23 Q And so you were aware that Mr. Dwyer was very
24 concerned about this case, right?

25 A He's facing life. He's, he is absolutely very

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1 concerned; and honestly, he was very cooperative
2 with me right up to the time I found that letter.

3 Q He was scared; wasn't he?

4 A He should — yeah, he was scared, he should have
5 been scared.

6 Q And in his position he was willing to do a lot of
7 things in order to try to avoid this trial or being
8 convicted; isn't that right?

9 A The only thing I can say to that is despite the
10 fact that his family had retained private counsel,
11 had paid for private counsel, that he had met with
12 private counsel and had gone over Rule 5 and the
13 case extensively, if what you're getting at is that
14 somehow he was justified into writing that letter
15 with a code and asking for an alibi, I'm not sure
16 I'm gonna go to that extent because and I've never
17 seen that in 18 years. As a matter of fact, I've
18 never seen a letter coded like that so I was very
19 shocked when Mr. Meadors gave me that letter as I'm
20 sure Mr. Meadors would attest to because our whole
21 case was built on what my client had told me and it
22 turned out what he had told me wasn't necessarily
23 the truth so. If that's, if what you're trying to
24 say is that he was so scared he did that, I don't
25 know, you have to ask him, but to me that's a bit

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1 drastic.

2 Q Did you consider that he may be, was very
3 frightened and may have written that out of fear?
4 Did you consider that in your —

5 A Not at all. When I showed him the letter he
6 acknowledged it and told me he had written it, told
7 me about the code, where he got the code, why he was
8 writing it, and all those things so no, my answer to
9 that would be no. He knew exactly what he was doing
10 when we wrote that letter.

11 Q Well, he knew what he was doing, but was he
12 scared?

13 A I don't know what he was when he wrote that
14 letter, I can't tell you.

15 Q And so —

16 A I know that he didn't tell me about that letter
17 when he wrote it; and despite the fact that I met
18 with him, as he said, five, six, seven, eight times,
19 not one time did he discuss that letter with me.

20 Q So during your times of talking with Mr. Dwyer
21 did you go over the discovery with him in detail?

22 A Extensively, to the extent that we had even
23 discussed, and I'll — another example — the
24 cellphone records. This case dealt primarily with
25 cellphone records because law enforcement had found

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1 a cellphone about 20 feet in the woods off of 521
2 across from that turf place. When they found it
3 they did a search on it, and they found out and
4 discovered, in fact, it was Mr. Dwyer's phone or
5 the victim's phone, I'm not sure. I think it was
6 the victim's phone. Then they went back and they
7 had to get a search warrant on the towers and
8 compare that to Matthew's phone. We had all that
9 information and I showed him all that. Then I
10 showed him what the search warrants meant and that
11 basically their theory of the case was that because
12 of the pinging nature of his cellphone and the
13 numbers that were called on the victims that he was
14 in the general location of where that phone was
15 found; and he knew that, we went over that.

16 Q How many times do you think you went over
17 discovery with him?

18 A Every single time I met with them that I had
19 discovery I went over it with him. And so for
20 example, I would receive discovery, in this case and
21 typically cases like these, sometimes you get things
22 piecemeal. Every time I received something I went
23 over it with him.

24 Q Wouldn't you say that he is not a sophisticated
25 person?

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1 A How do you define sophisticated?

2 Q Would you say that it's possible he didn't
3 understand all the discovery?

4 A No. I sat there and explained everything to him.
5 As I said in detail with these cellphones, it took a
6 while to explain to him about what was going on with
7 the cellphones, but he understood that. And he
8 understood what statements were and whatnot. I'm
9 not saying he's an expert on DNA or anything like,
10 but we went over it to the point where he understood
11 what the State's case was.

12 Q As to the offer, Mr. Dwyer testified that he
13 received that offer just before the verdict. Is
14 that your recollection?

15 A I believe that he's probably true with that; but
16 there was one before trial as well, it never
17 changed, never changed. It was the same offer that
18 Mr. Meadors had made once we started that case. It
19 never changed one bit.

20 Q Well, the way I understand it, before trial you
21 testified that before trial there was an offer of 30
22 to life?

23 A That's right.

24 Q And that Mr. Dwyer testified that at the verdict
25 you were given an offer of 30, not 30 to life, is

PW - J. KEEFER - CROSS

1 that the case?

2 A No, it was always the same. What Mr. Meadors had
3 told me from day one is the same thing that was
4 offered at verdict so Mr. Dwyer might be mistaken on
5 that. It wasn't, it wasn't a set 30 years. It was
6 basically a plea straight up.

7 Q Did you have an opportunity to talk to Mr. Dwyer
8 about what that offer meant and what his possibility
9 was?

10 A Absolutely. We met in one of the rooms out here.

11 Q During the trial during your opening statement
12 you mentioned self-defense; isn't that right?

13 A It's in the transcript, I did.

14 Q So it was your intention also to continue to
15 pursue self-defense during his trial?

16 A It was.

17 Q During the trial, as I recall, when you
18 questioned Steven Dwyer, —

19 A Okay.

20 Q —the brother, that you, he testified about
21 Mr. Dwyer, Matthew Dwyer's defending himself; isn't
22 that correct?

23 A At one point he did. At one point based on what
24 he had — see, Steven had given a few statements.
25 He gave one to law enforcement initially and then

PW - J. KEFFER - CROSS

1 when he was investigated — once we had the
2 transcript I should say, the transcript several
3 pages long and I believe it's part of the record —
4 at some point he did mention, he did mention that,
5 in one of those, I forget which one.

6 Q And at the end of the testimony you asked the
7 judge to include in the instructions to the jury
8 self-defense as you recall?

9 A I did, tried, uh-huh.

10 Q And the State opposed that. Do you remember the
11 judge denied your motion?

12 A Oh, yeah. It was Judge Maite Murphy —

13 Q Do you remember — I'm sorry.

14 A —on those cases, yeah, yeah.

15 Q Do you remember why the judge denied it or what
16 he said?

17 A I believe what she said was that there was, she
18 found no evidence whatsoever to substantiate a claim
19 for self-defense. And if I could explain myself a
20 little bit, that whole self-defense was gonna be
21 based on what he would testify to. He didn't
22 testify. That's why it was mentioned in the opening
23 statement. I didn't know if he was going to testify
24 or not when we received that letter. But he had
25 maintained that it was self-defense, that's why it

PW - J. KEFFER - CROSS

1 was mentioned in the opening statement. At the same
2 time I didn't have any witnesses to call to
3 substantiate that, and then ultimately he didn't
4 testify.

5 Q Well, if it were true that they were the only two
6 in the car, whether or not they were, if it were
7 true, then you wouldn't have had any witnesses that
8 could say, yeah, it was self-defense; isn't that
9 correct?

10 A But Mr. Griffith, he had maintained there was two
11 other individuals in the car too so while I
12 understand your question, at the same time I'm still
13 trying to locate two other people that he told me
14 were in that car with him traveling to Camden
15 throughout this whole case. And it wasn't until the
16 eve of trial where it was, well, I don't know --
17 well, to me what he said was he didn't know the
18 names of those two people, that he had met them at a
19 store where he had cut his hand. He got in a fight
20 with one of them and that they were going to 521.
21 That's just what Mr. Dwyer told me. At trial that
22 doesn't appear to be the case 'cause the State
23 didn't offer anybody else that was in the vehicle
24 and then he didn't testify so I, you know. I
25 understand your question, you know, if it's true.

PW - J. KEFFER - CROSS

1 Well, I mean, I don't know if it's true or not
2 'cause he told me one thing and then, you know,
3 something else came.

4 Q But there was no evidence given to you by the
5 State that there were any other people in the car;
6 isn't that correct?

7 A No, there wasn't. There wasn't any evidence that
8 no other people were in the car either. And when my
9 clients tell me there's two other people but he
10 doesn't know their names, and he — according to him
11 he was scared of them at some point that maybe they
12 were gonna pull a gun on him, or something like
13 that, and that's, these are things that he told me.
14 In one of our meetings he told me that.

15 Q Well, so even though he had told you those things
16 prior to the beginning of the trial you were still
17 pursuing self-defense.

18 A That's what he told me to do. That's what he
19 wanted to do. His intention was to testify; but
20 again, this is before that letter was received.

21 Q Now wasn't there testimony during the trial that
22 it was self-defense is my real question, my real
23 question.

24 A I don't recall any testimony — if you're trying
25 to go say that based on Steven's, I guess, I mean, I

FW - J. KEEFER - CROSS

1 suppose. But I mean, then again, there's different
2 statements that Steven had made, I mean.

3 Q Steven never testified there was anyone else
4 there; is that correct?

5 A Not that I recall, huh-uh.

6 Q Steven wasn't there, was he?

7 A No, he was not.

8 Q So Steven made statements concerning what
9 Mr. Dwyer had told him that supported self-defense;
10 isn't that correct?

11 A If you're referring to hearsay, yeah.

12 Q On the stand.

13 A On the stand, in statements to law enforcement,
14 and in his transcription to Sheriff Anthony Dennis.

15 Q And the judge heard all that information; isn't
16 that correct?

17 A I'm assuming she did.

18 Q And the, your motion, you asked for the motion.

19 I mean, I'm sorry, you asked for an instruction —

20 A I know.

21 Q —for self-defense.

22 A I sure did.

23 Q So you did that, but it was denied by the judge.

24 A That's correct.

25 MR. GRIFFITH: I have no further

RW - J. MEADORS - DIRECT

1 questions, Your Honor.

2 THE COURT: Ms. Cole.

3 MS. COLE: Your Honor, the State would
4 call John Meadors.

5 THE COURT: Thank you, Ms. Cole.

6 THE CLERK: State your name.

7 THE WITNESS: John Meadors.

8 WHEREUPON,

9 **JOHN MEADORS,**

10 having been duly sworn by the Clerk, testified
11 as follows:

12 THE CLERK: Thank you much. State your
13 name for the record and spell your last name please.

14 THE WITNESS: John P. Meadors,
15 M-E-A-D-O-R-S.

16 **DIRECT EXAMINATION**

17 BY MS. COLE:

18 Q Mr. Meadors, where are you currently employed?

19 A Third Circuit Solicitor's Office for the
20 Honorable Ernest A. "Chip" Finney, III, and also at
21 McWhirter, Bellinger & Associates.

22 Q And you were the prosecutor for Mr. Dwyer's
23 trial?

24 A Yes, ma'am.

25 Q And how did you get assigned to be in this case?

RW - J. MEADORS - DIRECT

1 A Solicitor Finney hired me seven-and-a-half years
2 primarily to handle violent offenses and I was
3 assigned this case.

4 Q Okay. Do you remember turning over the discovery
5 and the Rule 5, all the rule 5 Brady material?

6 A I know it was turned over. We document it and
7 the Defense counsel or someone from his office signs
8 that they received it so I know that was done in
9 this case, yes.

10 Q Can you discuss the plea negotiations that were
11 involved in this case, if there were any.

12 A This was one of those cases that really, I mean,
13 he could plead straight up to murder or 30 to life.
14 That was pretty much the extent of it. It was never
15 an offer of less than murder so it was a 30 to life
16 if he wanted to plead straight up so. Whether you
17 consider that a plea offer or not, I don't know.

18 Q And was it your impression he declined, that he
19 was, Mr. Dwyer was aware of it and had no interest
20 in accepting?

21 A I assume he was aware of it through his attorney;
22 but again, he would have, never got an indication
23 that he wanted to plead straight up to murder.

24 Q Can you explain briefly about why Steven Dwyer
25 was important?

RW - J. MEADORS - DIRECT

1 A The brother, correct?

2 Q The brother, the brother, uh-huh.

3 A I mean, he picked — and again, I have not had a
4 chance to review the transcript, but he picked his
5 brother up in close to Rembert shortly after this
6 murder. There were cellphones that, actually
7 cellphones that put the defendant and the victim,
8 kind of tied them together. Then there were
9 cellphones leading back to the brother between
10 Matthew and Steven. And the brother saw him right
11 after this incident. We thought he was just, he
12 was — he wasn't an eyewitness to it, but he picked
13 him up shortly after the murder.

14 Q And did you subpoena the brother to testify?

15 A Yes, ma'am.

16 Q And did he ultimately testify?

17 A Yes, ma'am.

18 Q The self-defense charge, you recall Mr. Keffer
19 requesting a self-defense charge at trial?

20 A Yes, ma'am.

21 Q Can you explain as best you can recall why this
22 was, why a self-defense charge was not appropriate
23 in this case?

24 A First of all, the judge decided it wasn't based
25 on the facts so obviously I wouldn't second guess

RW - J. MEADORS - DIRECT

1 the judge but. There was no direct or
2 circumstantial evidence of that the defendant was in
3 danger or suffering serious bodily injury or death
4 or that his life was in danger. It did come out
5 through his brother I believe, and again, I haven't
6 reviewed it but, perhaps some statements what his
7 brother had said. But I believe during cross really
8 kind of, I just felt it wasn't an issue at all about
9 self-defense after a direct and cross of the brother
10 Steven Dwyer who said several different things about
11 his brother and his actions and his feelings and
12 he'd given statements to law enforcement to Sheriff
13 Dennis which contradicted some of the things that he
14 had said his brother said. So I really don't think
15 there was, in my opinion, any competent evidence
16 that a judge could find that a charge of
17 self-defense was appropriate.

18 Q Okay. And do you recall the State's case
19 consisted of cellphone records?

20 A Cellphone records tying the victim and defendant
21 together, cellphone records tying Steven Dwyer with
22 Matthew Dwyer. I believe there was another witness
23 who several days after the incident — I can't
24 remember her name now — said she got a call from
25 the defendant, basically said I messed up, I'd be

RW - J. MEADORS - DIRECT

1 going away for a while. We called her. She backed
2 up a little bit on that on the stand, but the gist
3 of it was there. There was the defendant's blood
4 was on the socks of the victim, and the testimony of
5 the victim had come from a poker game and he always
6 put his money in his socks and so we believe that
7 the defendant hurt his hand and was bleeding from
8 the gun and that's where the blood came from his
9 hand to the sock of the victim. And I'm trying to
10 think what else. Of course, the letter which I, my
11 memory is we found that before trial and gave it
12 over to Mr. Keffer prior to the trial.

13 Q Do you have any memory of why it might have been
14 turned over a little later than the other discovery?

15 A 'Cause I didn't have it. I think what happened,
16 maybe a friend of Miss Cooper found the, Mr. Cooper
17 found the letter. I believe this individual was a
18 female, was in the mall, saw a security guard, gave
19 the letter to the security guard. The security
20 guard then gave it to somebody with the City, Sumter
21 City. Of course, this was a Sheriff's Department
22 case so, I don't think it, it was every tied
23 together until we started preparing. And somehow
24 this information came to light. When it did we got
25 the letter. We got the code which basically showed

RW - J. MEADORS - DIRECT

1 how to read the letter where it was requesting
2 Mr. Cooper to provide him an alibi, provide
3 Mr. Matthew Dwyer an alibi and explain also how he
4 hurt his hand. As soon as we got that we turned it
5 over to Mr. Keffer and I think it was on
6 October 12th, 2015. I found written notes when I
7 was sitting back there now where it says one letter
8 from Matthew Dwyer to Demetrious Cooper, and it's
9 handwritten additional discovery, that I handwrote
10 myself, and Mr. Keffer's signature.

11 Q Okay, thank you, sir. No further questions.

12 A Thank you.

13 THE COURT: Mr. Griffith.

14 MR. GRIFFITH: Please the Court, Your
15 Honor.

16 THE COURT: Yes, sir.

17 **CROSS-EXAMINATION**

18 BY MR. GRIFFITH:

19 Q Mr. Meadors, do you recall whether or not
20 Mr. Keffer had asked for a hearing to determine
21 self-defense?

22 A What type of hearing are you talking about?

23 Q A hearing to determine what, pretrial hearing
24 motions before the trial as to the self-defense.

25 A You trying to say a Castle doctrine hearing?

1 Q Yeah.

2 A No, and I don't think that was, I don't know any,
3 I don't see any reason why he should have.

4 Q So you don't recall that he ever asked for a
5 hearing to determine self-defense or not?

6 A Requested a Castle doctrine hearing, no, I don't
7 know.

8 Q During the trial you recall Mr. Meadors asking
9 the judge for an instruction to the jury for
10 self-defense?

11 A Mr. Keffer asking —

12 Q Mr. Keffer. Did I say that?

13 A I have no reason to dispute that he didn't, yes.

14 Q Do you recall the judge's reply?

15 A I believe he denied it, yes, sir.

16 Q But do you remember why?

17 A Again, I would assume, and I think there was no
18 competent evidence that defendant was, that the
19 elements of self-defense had been presented enough
20 for the judge to determine that it should be
21 presented to the jury and I think the judge made the
22 correct, I think she made the correct decision.

23 Q But you recall that his brother Steven did
24 testify at least to some extent that Steven had told
25 him that it was in self-defense?

1 A I don't, again, I haven't reviewed this since it
2 happened; but my memory of Mr. Steven Dwyer's
3 testimony was that it changed several times, no
4 disrespect but I'm, he'd given a statement to law
5 enforcement, said some things his brother said and
6 then it got, it changed a little bit so. I don't
7 think that self-evidence was established through
8 Steven Dwyer's testimony regarding what his brother
9 told him, no, sir.

10 Q Okay.

11 MR. GRIFFITH: I have no further
12 questions, Your Honor.

13 THE COURT: Ms. Cole.

14 MS. COLE: No more witnesses, Your Honor.

15 THE COURT: Thank you, sir.

16 Ms. Cole, anybody else, any further
17 witnesses, Ms. Cole?

18 MS. COLE: No, Your Honor. Would you like
19 a brief closing?

20 THE COURT: I was just reflecting upon
21 that, ma'am. I've taken lots of notes, listened
22 carefully to what you said. I will certainly for
23 the benefit of Mr. Dwyer welcome any brief highlight
24 orienting comments, Mr. Griffith, and then from Ms.
25 Cole.

1 MR. GRIFFITH: Thank you, Your Honor.
2 Mr. Dwyer, of course he was frightened during that
3 whole time, but he had emphasized over and over from
4 the beginning that it was self-defense. And
5 according to Mr. Dwyer, he had told his attorney
6 that many times. He had also, the Court also heard
7 from witnesses who testified that it's his brother,
8 looking at the transcript, that Mr. Matthew Dwyer
9 was frightened during this time and that he was
10 acting in self-defense, he was scared for his life.
11 And so, Your Honor, when the judge denied
12 Mr. Keffer's motion that a jury charge of
13 self-defense be included, I believe Your Honor, that
14 the judge made an error in that he did not take that
15 into consideration. The appeals court, of course,
16 heard that and said it wasn't judicial error;
17 however, under the PCR I believe that it was a
18 misinstruction to the jury in that that they were
19 not instructed that they could consider
20 self-defense.

21 Also, Your Honor, to sum up, Mr. Matthew
22 Dwyer also says he didn't understand the offers of
23 made before trial for a plea, he didn't understand
24 his discovery. Your Honor, his biggest thing, of
25 course, is that the judge could have and should have

1 instructed to the jury that they could offer
2 self-defense. That would have changed the outcome
3 of the trial. And of course, had the outcome been
4 self-defense the entire trial and his sentence would
5 not be as it is now.

6 THE COURT: All right. But did Mr. Keffer
7 ask for that?

8 MR. GRIFFITH: Mr. Keffer did ask for an
9 instruction to the jury, yes, Your Honor, in the
10 transcript.

11 THE COURT: Okay. Ms. Cole.

12 MS. COLE: Your Honor, the issue about the
13 self-defense instruction was litigated on direct
14 appeal and the Court of Appeals found that it was
15 preserved and that it was no trial court error and
16 declined to give the self-defense charge because the
17 evidence didn't support it so that is a direct
18 appeal issue. It was handled and would not be
19 appropriate to raise on a post-conviction relief.

20 As for Mr. Dwyer's ineffective assistance
21 of counsel claims, certainly Mr. Keffer testified
22 that this letter changed everything. It threw their
23 whole self-defense strategy into disarray I think is
24 a reasonable way to put it. And there was not much
25 he could do with a self-defense claim if one was

1 seeking an alibi from another witness and there are
2 no other witnesses there, although given the change
3 in testimony he wasn't sure how much of this case he
4 could prove as the testimony was developed.

5 As for the plea negotiations, I think the
6 testimony was consistent that the plea was always 30
7 to life straight up for murder, and I believe Mr.
8 Dwyer testified he wouldn't have taken it anyway
9 even though he was offered the plea. So we don't
10 think Mr. Dwyer has met his burden to show any
11 deficiency whatsoever. There's certainly no
12 prejudice given the State's case. Thank you, sir.

13 THE COURT: All right. Mindful of these
14 guiding cases of Strickland and Cherry,
15 Mr. Griffith, despite your best efforts I find for
16 the State here. I don't think Mr. Dwyer met his
17 burden. Just to reiterate the appeal issue, the
18 whole time I'm listening to all this testimony about
19 that was that it already went to the Court of
20 Appeals, they talked about it. Mr. Keffer did ask
21 for it; that's not disputed. This letter that came
22 up about, in my opinion it certainly did change the
23 dynamics of Mr. Keffer's strategy. So, therefore,
24 with all respect to Mr. Dwyer — and truly I say,
25 sir — and you, Mr. Griffith, I deny his relief,

1 sir.

2 MR. GRIFFITH: Thank you, Your Honor.

3 THE COURT: Thank y'all very much.

4 MS. COLE: Your Honor, would you like me
5 to prepare —

6 THE COURT: Yes, ma'am.

7 UNIDENTIFIED PERSON: That man killed
8 Aaron Abraham.

9

10 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 7th day of March, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2018 NOV 30 AM 9:02

Mathew C. Dwyer,

JAMES C. CAMPBELL
CLERK OF COURT C/A No. 2018-CP-43-934
SUMTER COUNTY, S.C.

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2018. The State made its return on July 26, 2018. An evidentiary hearing was convened on November 16, 2018, before this Court at the Sumter County Courthouse. Applicant was present and represented by Timothy Griffith, Esquire. Assistant Attorney General Susannah Cole represented Respondent. Testimony was taken from trial counsel, John Keffer, Solicitor John Meadors, and Applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the hearing, this Court finds applicant has failed to establish any constitutional violations and denies the PCR application with prejudice.

PROCEDURAL HISTORY

A Sumter County Grand Jury indicted Applicant, Mathew C. Dwyer, in July of 2015 for the possession of a weapon during a violent crime and the murder of Johnny Singleton. On October 19, 2015, Applicant's case was called to trial before the Honorable Maite Murphy. Applicant was represented by John S. Keffer, Esquire ("Counsel"). Assistant Solicitor John P. Meadors represented the State. At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. Judge Murphy sentenced Applicant to forty-five years' imprisonment

for murder and a concurrent term of five years' imprisonment for the weapons charge. Thereafter, Applicant filed a timely notice of appeal.

Appellate Defender David Alexander, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed the Final Brief of Appellant on March 27, 2017. In his brief, Applicant presented the following issue on appeal:

Whether the trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared?

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Mathew C. Dwyer*, Unpublished Opinion No. 2017-UP-449 (Ct. App. December 6, 2017). The Remittitur was issued on December 27, 2017, by the South Carolina Court of Appeals.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

On the morning of January 27, 2015, emergency medical personnel responded to the scene of a crashed vehicle located off S.C. Highway 521 in Sumter County. (T. p. 79, lines 7-20.) EMS workers found the vehicle in a ditch, with the rear of the car resting against an embankment. (T. p. 80, lines 1-3.) In the back seat of the vehicle, a dead man was in a seated position. (T. p. 80, lines 8-12.) The victim's legs were draped across the center console. (T. p. 81, lines 19-22.) The rear window was broken out, the front passenger window was down, and the driver's window was broken. (T. p. 82, lines 19-23.) The man had dried blood by his left ear, on his pants near his left ankle, on his pants near the right back pocket, and by the right front pants' pocket. Blood was also on the victim's jacket, passenger side front seat, passenger side front door frame, and on the rear seat. (T. p. 82, line 23 – p. 83, line 3.) EMS noted brain matter on the rear seat below the window on the right side of the car and a wound to the back of the man's head. (T. p. 83, lines 4-7.) The vehicle was in reverse gear. (T. p. 81, lines 3-11.)

Investigator Michael McCauley, a crime scene investigator with the Sumter County Sheriff's Department, responded to the scene that morning. (T. p. 90, line 13 – p. 92, line 17.) The investigating officers were suspicious of the victim's placement inside the car and the blood and bodily fluids surrounding the body. (T. p. 93, lines 1-11.) The victim's head was resting over the back seat, just before the rear window. (T. p. 95, lines 21-24.) Blood found on the victim's pants leg and on the passenger side headrest was more consistent with a transfer pattern than with high velocity spatter from an injury to the back of the head during a car crash. (T. p. 97, lines 7-23, p. 99, lines 18-24.) McCauley also found blood on the outside of the passenger door. (T. p. 100, lines 1-5.) The victim's phone was found in the woods behind the ditch and embankment in which the car was located. (T. p. 118, line 18 – p. 119, line 7.)

Dr. Janice Ross, the State's pathologist, performed the autopsy on the man identified as Johnny Singleton on January 28, 2015. (T. p. 180, line 13 – p. 181, line 16.) Ross found the victim had a gunshot wound to the back of the head and a bruise inside his upper lip but appeared to have no other external injuries. (T. p. 183, lines 2-8.) Dr. Ross believed the injury to the upper lip occurred near the time of death. (T. p. 183, line 22 - p. 184, line 2.) The gunshot wound to the back of the victim's head indicated the bullet traveled from the back, right side of the head through the brain and toward the front left of the head into the left sinus cavity. (T. p. 184, line 15 - p. 185, line 9.) Dr. Ross opined the gun was at least two feet away from the victim when it was fired. (T. p. 187, lines 18-24.) The victim's dentures were intact and in place at the time of his death, and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.)

Janie Mae Shaw testified she played cards with the victim on a daily basis. (T. p. 150, lines 4-8.) On the night of January 26, 2015, Johnny Singleton ate some food and took a nap at Ms. Shaw's house before playing cards with four other people. (T. p. 150, line 19 – p. 151, line

8.) Singleton left between 9:30 and 10:00 pm that night. (T. p. 151, lines 9-16.) As was his custom, Singleton hid his cash of approximately \$500 from the evening's card game inside his sock. (T. p. 151, line 17 - p. 152, lines 1-5.) Singleton was angry as he prepared to leave because someone was calling him repeatedly. (T. p. 153, lines 20-23.) Ms. Shaw also recognized Applicant as a visitor to her house, but not the night Singleton died. (T. p. 154, line 17 - p. 156, line 8.)

Phone logs from the victim's phone revealed multiple calls made to and received from the victim's phone by Applicant. When investigators called Applicant's phone and identified themselves, Applicant claimed to be Novian Sinclair, a prior roommate of his. (T. p. 360, line 17 - p. 364, line 4.) Applicant maintained he had no information about the death of Johnny Singleton, and he claimed he was not with the victim on the night of his death. Applicant did not attempt to explain why his cell phone records showed calls from his phone to the victim's. (T. p. 338, lines 1-9.) The officers executed a search warrant for Applicant's residence, obtained a DNA sample from Applicant, and questioned him about the death of the victim. (T. p. 212, line 10 - p. 216, line 14.) Applicant continued to deny having any knowledge or involvement in the victim's death. (T. p. 242, line 16 - p. 243, line 20.)

Phone records revealed Applicant also called his brother, Stephen, multiple times on the night of the shooting. In his statement to law enforcement officers with the Sumter County Sheriff's Department, Stephen Dwyer said Applicant called him to come pick him up around 10:30 pm off on Hwy 521. (T. p. 285, lines 2-10.) Stephen asked his brother what happened, and Applicant said, "I F'd up." (T. p. 285, lines 7-8.) Stephen, who needed to give a friend a ride to her place of work, agreed to pick his brother up along the way. (T. p. 285, lines 12-22.) Applicant told Stephen he had been shot and asked him to hurry. (T. p. 286, lines 2-4.)

When Stephen found Applicant, he was near a club off of Hwy. 521, walking toward Sumter. (T. p. 285, line 23 - p. 286, line 1.) Applicant's hand was bleeding and was wrapped with something like a shirt. (T. p. 286, lines 5-6.) Applicant told his brother he did not want to go to the hospital. (T. p. 286, lines 6-8.) After Stephen dropped his friend off at her workplace, he drove Applicant to his house. Stephen asked Applicant what happened to his hand, and Applicant told him he cut it. (T. p. 286, lines 9-14.) Applicant would not give his brothers any details about the victim that night. (T. p. 286, lines 14-21.)

The day after the shooting, Stephen, who had seen the news that morning, deduced his brother was involved in Singleton's death. (T. p. 287, lines 6-12.) Stephen stopped by his brother's house again on his way home from the gym. (T. p. 287, lines 6-8.) Applicant told Stephen he and the victim were fighting in the car, and the man was ex-military and knew karate. Applicant told his brother he was scared and shot the victim in the head, but he did not mean to shoot him in the head. (T. p. 287, lines 12-17; State's Ex. 75.) Applicant told Stephen "that the dude saw the gun. They were in the car when they were tussling. And after he shot him, the car was wrecked and hit a tree. (T. p. 287, lines 17-20; State's Ex. 75.) Applicant took the victim's wallet and money and threw the victim's phone into the woods. (T. p. 287, lines 21-22.) Applicant also told his brother he hid the gun in the back of a truck at the club off of Hwy. 521. (T. p. 289, lines 7-21.) The following day, when Stephen asked his brother again if he killed Johnny Singleton, Applicant told his brother he did not and claimed he was "just playing" and made up the story he told him earlier. (T. p. 288, lines 1-7.)

The case later took an unusual turn. One day during March of 2015, a security guard at Sumter Mall was approached by a woman he did not know and asked if he was a real cop. (T. p. 142, lines 1-221.) The woman wanted to remain anonymous, but told the guard she had

information that might help a case. (T. p. 142, line 24 – p. 143, line 2.) The woman handed him a letter and asked him to give it to the police. (T. p. 139, line 12 – p. 140, line 3; p. 143, lines 2-4.) The letter said “Mathew Dwyer” on the top of the envelope (T. p. 145, lines 17-19), and it was addressed to Demetrius Cooper. The guard handed the letter over to Detective Mathew Yates with the Sumter Police Department. (T. p. 140, lines 3-20.)

The Sumter Police Department, determined the subject of the letter was unrelated to a city case, but discovered the county had a pending case to which the letter was relevant. (T. p. 172, line 17 – p. 174, line 21.) Demetrius Cooper, who was Matthew Dwyer’s friend, testified for the State. (T. p. 194, lines 7-16.) Cooper said he received an encoded letter from Dwyer. However, the letter also contained a key code so that Cooper could decipher its contents. (T. p. 196, lines 1-17.) In the letter, Dwyer thanked Cooper for “everything you are doing for me.” (T. p. 199, lines 12-18.) Dwyer also told Cooper he needed an alibi for January 26th. (T. p. 200, line 15 - p. 201, line 5.) Dwyer told Cooper the story he wanted Cooper to fabricate about his activities that night if anyone asked him. (T. p. 200, line 1 - p. 207, line 14.) Cooper forgot about the letter, but he was later surprised that the letter fell into the hands of law enforcement. (T. p. 208, lines 10-21.)

ALLEGATIONS

In his initial Application, Applicant alleged he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel;
 - 1. Failure to advise right to testify and closing argument;
 - 2. Failure to inform of plea offer;
 - 3. Failure to keep attorney/client privilege;
 - 4. Failure to prevent Applicant from addressing court;
 - 5. Failure to call Sheriff as a witness;
 - 6. Failure to request a mistrial;
 - 7. Failure to present evidence in defense;

8. Failure to request continuance;
 9. Failure to object to hearsay;
- b. State misconduct and presentation of false evidence;
1. Stephen Dwyer was threatened with prosecution if he did not testify;
 2. State failed to disclose exculpatory information;
 3. State used improper procedure to obtain DNA;
 4. State failed to inform jury victim was a sex offender;
 5. State tampered with evidence;
 6. State presented witness who was victim of prior assault;
 7. State treated the testimony of the witnesses as fact;
- c. The trial court erred in refusing to charge self-defense;
1. Evidence clearly showed that Applicant and decedent got into a fight;
- d. Violation of my 14th amendment/due process;
- e. Biased jury/ biased testimony; and
- f. Hearsay.

At the beginning of the hearing, Applicant indicated he was withdrawing his claims related to prosecutorial misconduct and due process violations. This Court questioned Applicant on his intention to withdraw these claims and explained the consequences of doing so. Applicant indicated he still wished to withdraw the claims. Accordingly, this Court dismisses with prejudice the prosecutorial misconduct and due process claims. Applicant then proceeded on only a few of his remaining allegations, specifically, ineffective assistance for failure to explain the details of a plea offer, ineffective assistance of counsel for advising his client not to testify, and trial court error for failing to instruct the jury on self-defense. Therefore, to the extent any allegations in the initial application are not explicitly denied in this order, they are dismissed with prejudice as Applicant was unable to present sufficient testimony to meet his burden of proof with respect to those claims. *See* Rule 71.1(e), SCRCP (providing the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony. As a matter of general impression, this Court finds Counsel's testimony and the solicitor's testimony were credible and persuasive on all matters, while also finding Applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of facts and conclusions of law based on the probative evidence presented.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, an applicant must prove counsel's performance was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at

690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by applicant:

Failure to advise Applicant of plea offers

Applicant claims Counsel did not explain to him about any available plea offers from the State. Counsel, the solicitor, and Applicant all testified about this issue at the evidentiary hearing. Applicant testified he did not discuss any plea offers with counsel until the night before the verdict, when he was offered a term of thirty years' imprisonment if he pled to murder. When asked if he would have taken the plea, Applicant said he would not. The testimony of both counsel and Solicitor Meadors was consistent on this issue, however. There were no plea offers other than a straight up plea to murder for thirty years to life. That offer was made before trial and just before the verdict. Counsel testified Applicant rejected the deal because he had nothing

to lose by going to trial. There was some disagreement whether Applicant was offered thirty years or thirty years to life. Counsel and Solicitor testified it was a "straight up" plea to a sentencing range of thirty years to life. Applicant believed it was thirty years. This Court finds Counsel and the solicitor's testimony credible on this point.

This Court finds Counsel adequately and reasonably advised Applicant as to the plea offers. Plea agreements rest upon contract principles. *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994). The plea agreement exists only as an "offer" until the defendant accepts by entering into a court-approved guilty plea; until which point neither the State, the defendant, nor the court are bound by the plea agreement. *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). This Court finds there was no deficiency of counsel for failure to advise of the plea offers because Applicant was aware of the only offers made by the solicitor. Furthermore, given Applicant's acknowledgement he would not have taken a term of thirty years, he has not shown prejudice. Accordingly, Petitioner has not met his burden to show either prong of *Strickland*. This allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel for advising Applicant not to testify

Applicant argues trial counsel was ineffective for advising him not to testify because he needed to provide some evidence of self-defense to warrant a self-defense charge to the jury. This Court does not find this argument compelling.

Applicant testified he met with counsel five or six times after his family retained Counsel to represent him. Applicant said he did not review the discovery material with counsel, but he did give counsel the names of some witnesses who could assist in his defense. Applicant said his defense was solely based on self-defense and the he wanted to testify at trial. However, Applicant recalled the judge asking him if he wanted to testify and he acknowledged he told the

judge he did not. Applicant said counsel advised him not to testify so he did not do so. Applicant claimed the outcome of the trial would have been different had he elected to testify. On cross-examination, Applicant also admitted he wrote a letter to a witness asking the witness to lie for him and create an alibi for the night of the murder.

Trial counsel's credible testimony at the evidentiary hearing before this Court was that the strategy all along was to claim self-defense. Counsel also testified the letter changed everything about their trial strategy. Counsel said he received discovery from the State, which he discussed with Applicant and his family extensively. Counsel said the cell phone records placed Applicant and the victim in contact with each other on the night of the murder. The records also implicated Applicant's brother, who picked up Applicant near the scene of the crime shortly after the victim was killed. Because it was clear Applicant was present with the victim, the strategy was to argue self-defense. Counsel said Applicant understood the State's case against him and initially gave him the names of two witnesses he claimed were in the car with him on the night of the murder. Despite his efforts, Counsel was never able to locate those witnesses. Counsel said another hurdle to the defense was that Applicant's brother gave inconsistent statements to police about what Applicant told him happened with the victim. Nevertheless, Counsel and Applicant agreed the only viable defense was to claim self-defense.

Counsel said he received notice of the letter just before the trial began, and the letter compromised their entire defense. Counsel said Applicant never told him about the letter, although he admitted writing it when Counsel asked him about it. Counsel said he nevertheless continued to search for witnesses who could testify about the shooting, but he could not find those witnesses. Counsel said he advised Applicant it was too risky for Applicant to take the stand and attempt to explain why he wrote the letter asking a witness to lie for him and give him

an alibi. Counsel said Applicant understood the risks of testifying and they both agreed he should not testify. Counsel said he hoped the testimony of the brother would be sufficient for a charge on self-defense, which he requested from the trial court. Although he properly made the request to charge self-defense from the trial court, that request was denied.

Solicitor Meadors said he turned over everything that was discoverable as he came into possession of the information. Meadors said he turned over the letter to counsel when he received it, which was just before trial began. Meadors summarized the state's case with the following: they had cell phone records placing Applicant with the victim the night of the murder, there were blood transfers on the victim's pants and socks, indicating he was robbed by Applicant, the statements from Applicant's brother were inconsistent but also inculpatory of Applicant, and the letter from Applicant to a witness to create an alibi was more evidence of Applicant's guilt.

This Court finds Applicant cannot meet his burden on this claim. Counsel articulated a strategic reason for advising Applicant he should not testify because he thought the jury would not accept Applicant's explanation for why he wrote the letter soliciting a false alibi. Therefore, because counsel had a valid, strategic reason for advising Applicant not to testify to preserve his credibility as best he could, his performance was reasonable. "When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court will not second guess counsel's trial tactics and finds his strategy reasonable. See *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)) (holding courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for

employing such strategy, such conduct is not ineffective assistance of counsel). Moreover, this Court must make "every effort" to "eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689. Counsel said he believed the brother's statements were enough to request a self-defense charge. This Court does not find Counsel deficient for his advice to Applicant in this matter.

Counsel also credibly testified Applicant understood that risk of testifying and agreed with the new strategy. The record of the trial reveals the trial judge court engaged in a lengthy colloquy with Applicant wherein his rights were explained to him, he had a short conference with trial counsel, and he chose not to testify. (T. p. 406-408.) Given Applicant would have admitted to the jury he attempted to commit a fraud upon the court, he cannot show how the outcome of the trial would have been different had he elected to testify. Because of this, Applicant has failed to prove Counsel was deficient or that he was prejudiced by any alleged deficiency. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Trial court error for declining to give a self-defense charge

Lastly, Applicant argues the trial court erred in refusing to instruct the jury on self-defense because he presented sufficient evidence of self-defense through the testimony of his brother. This issue was properly preserved by Counsel at trial and presented to the South Carolina Court of Appeals in Applicant's direct appeal of his convictions.

Post-conviction relief is not a substitute for, nor does it affect, any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. *See* S.C. Code Ann. § 17-27-20(b); *see also Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an

appeal."). This allegation was raised in applicant's direct appeal. Therefore, this claim of trial court error for refusing to instruct the jury on self-defense is dismissed with prejudice.

CONCLUSION

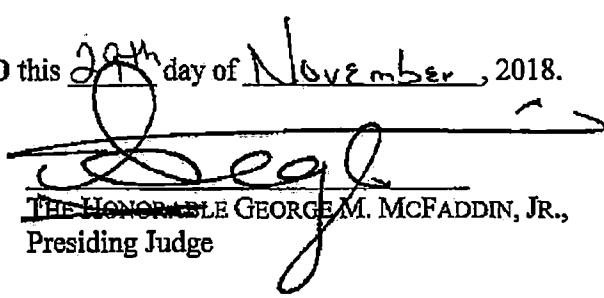
Based on the foregoing, this Court finds applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.

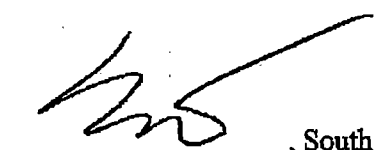
The Court notes the applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an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

IT IS THEREFORE ORDERED:

1. The PCR application is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 29th day of November, 2018.


 THE HONORABLE GEORGE M. MCFADDIN, JR.,
 Presiding Judge


 _____, South Carolina

WITNESSES

D. Miller Sumter County Sheriff

T Pann Sumter County Sheriff

Sgt. T. Mays

ARREST WARRANT NUMBER

2015A4310200183 2015A4310200184

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: *7-9-15*

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-43-0623

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

July TERM 2015

THE STATE

vs.

MATTHEW CORY DWYER

Indictment for

Murder
Possession of Weapon During a Violent Crime

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Murder
 Possession of Weapon During a Violent Crime

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
R. Allen
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

At a Court of General Sessions, convened on July 9, 2015 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE MURDER

That Matthew Cory Dwyer did in Sumter County, on or about January 26, 2015, willfully, feloniously, and intentionally kill the victim, Johnny Singleton, with malice aforethought, either express or implied, by means of shooting him in the head, with a firearm, and the victim did die as a proximate result thereof, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Matthew Cory Dwyer did in Sumter County, on or about January 26, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

Solicitor

Edward A. Frazier III

622

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Matthew Cory Dwyer

AKA:

Race: Black Sex: M Age: 22

DOB: -1993 SS#: [REDACTED]

Address: Murphy St

City, State, Zip: Sumter, SC 29150

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-43-0623

A/W#: 2015A4310200183

Date of Offense: 1/26/2015

S.C. Code §: 16-03-0010

CDR Code #: 0116

CERTIFIED TRUE COPY
OF ORIGINAL FILESENTENCE SHEET
DEPUTY CLERK OF COURT
SUMTER COUNTY☒ CONVICTED OF SOUTH CAROLINA LAWS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Meadors, John P

SC Bar# 10429

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015 GS 43 0623
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2164

Sentence Date: 10/23/15

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

623

COUNTY OF
STATE

Sumter

VS.

Matthew Cory Dwyer

AKA:

Race: Black Sex: M Age: 22

DOB: -1993 SS#:

Address: Murphy St

City, State, Zip: Sumter, SC 29150

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John P. Meadors

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015 GS 4306 23☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 2500
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 500
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 3.90
3% to County (if paid in installments)		\$ 133.90
TOTAL		

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2166

10/23/15