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JOAN GUERRY
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Lee Dell Bradley, SCDC #197170,) Case No.: 2019-CP-08-1676

Applicant,)

v.) **ORDER OF DISMISSAL**

State of South Carolina,)

Respondent.)

The matter is before the Court by way of an application for post-conviction relief (PCR) filed by Lee Dell Bradley (Applicant) on August 23, 2019. On April 16, 2021, an evidentiary hearing convened before the Honorable Judge Diane S. Goodstein. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Benjamin H. Limbaugh represented Respondent. After hearing the testimony and reviewing the records in this case, this Court finds Applicant has failed to meet his burden of proof. Thus, this application is denied and dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In June 2016, the Berkeley County Grand Jury indicted Applicant for murder (2016-GS-08-1249). On July 11, 2016, Applicant proceeded to a jury trial before the Honorable Deadra L Jefferson. Assistant Public Defenders Debra K. Littlejohn and Keisha V. White represented Applicant, and Assistant Solicitors Anne M. Williams and Wilton H. McNeely prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to life imprisonment.

CC: C. MURPHY ; D. DIXON 07/27/2023

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected the appeal and filed a brief arguing the trial court erred in allowing (1) evidence of Applicant's prior conviction and (2) expert testimony that a woman's risk of being murdered increases when she prepares to leave her domestic abuser. The South Carolina Court of Appeals affirmed. The remittitur was sent May 29, 2019.

SUMMARY OF TRIAL TESTIMONY

At trial, Karen Harrington, the Human Resources Manager for the Fruit of the Loom Distribution Center, testified Frances Lawrence (Victim) worked the second shift from 3:00 p.m. until 11:00 p.m. Harrington stated Victim worked on Tuesday, May 20, 2014, and Victim last scanned her work id to leave the building at 12:58 a.m. on Wednesday, May 21st. Victim did not return to work after the morning of the 21st. (R. 48-52).

Dorothy Rivers, Victim's sister, testified Applicant lived with Victim "back and forth." Rivers testified she visited Victim on May 20; Victim was not speaking to Applicant and the mood was "really, really thick." (R. 153-56). According to Rivers, Victim had packed several boxes and was planning to move. (R. 156-58). Rivers did not see Victim again after that day. On May 22, Applicant told Rivers he was moving to North Carolina. (R. 156-59). Applicant told Rivers he and Victim had "a big argument," and Victim was staying with a friend. (R. 59-61).

On May 23, 2014, Applicant called 911 at 8:52 a.m. and stated his girlfriend had fallen on a knife and was dead. He claimed he was on Highway 78, but his cellphone was using a tower near I-95. Applicant hung up before the operator could get a precise location. (R. 23-24; 40-44).

Deputy Stacey Cross was dispatched to the home on the morning of May 23, 2014, and discovered Victim's body in the master bathroom with a stab wound on her chest. Police searched

the home but did not find any blood on knives, any object that could have been the murder weapon, or any signs of struggle. (R. 292-99, 305).

Applicant was apprehended in North Carolina and subsequently gave a statement claiming Victim fell on a knife during a struggle. Applicant later changed his story and said that they both fell and he landed on top of her. (R. 391; 407).

Lily Gallman, a SLED forensic DNA analyst, examined fingernail clippings from Victim's hands; although she developed a mixture of two individuals using an STR test, she was unable to determine the minor contributor. She then performed a YSTR test, which only looks for the Y or male chromosome; the results matched Applicant. (R. 324-27).

Dr. Lee Tormos, the forensic pathologist, opined Victim died from a single stab wound and had been dead for at least thirty-six hours. (R. 338; 345-46; 352). She further opined it was "not very likely" Victim fell on the knife and killed herself due to an individual's natural reflex to extend her arms and brace herself when falling forward. Dr. Tormos stated the wound was inconsistent with Victim falling on the knife, and Victim had bruises on her shoulders and arms that were consistent with struggling and being held down. (R. 342-43).

CURRENT APPLICATION

In his PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
   a. Counsel failed to object to solicitor's improper statements in closing argument calling Applicant a "liar" (Tr. p. 558, l. 7; p. 559, ll. 12-13; p. 563, ll. 20-22), attacked applicant's character (Tr. p. 561, ll. 21-22).
   b. Counsel failed to object to improper bolstering of the State's case (Tr. p. 565, 11. 8-10).
   c. Counsel failed to object to the State appealing to the passions and prejudices of the jury (Tr. p. 568, ll. 6-10; p. 572, l. 25; p. 574, ll. 15-16; p. 574, l. 24 – p. 575, l. 6).
   d. Counsel failed to object to improper commenting on Applicant's right to not

testify by Solicitor (p. 573, l. 11-12).

e. Counsel failed to object to trial court's improper "intent" required for provocation (Tr. p. 609, ll. 2-4; p. 609, ll. 8-11; p. 620, ll. 17-19; p. 620, l. 25 – p. 621, l. 2).
f. Counsel failed to object to trial court's erroneous instruction on accident (Tr. p. 609, l. 23 – p. 610, l. 11) in which the trial court also used an erroneous hypothetical example using a gun (Tr. p. 610, ll. 4-6), thus negating the fact no gun was used in Applicant's case, but rather it was the victim who was wielding "a knife" and thus the trial court's erroneous accident instruction had a substantia and injurious affect on the juries verdict.

2. "Denial of Due Process"

At the hearing, Applicant proceeded on the following grounds:

1. Ineffective Assistance of Counsel
   a. "Not take the stand – no defense. No evidence presented supported [Applicant's] lawyer's arguments at trial which is not a defense at all."
   b. Failure of Counsel to object Solicitor's comment in closing calling Applicant a liar (R. 472, l. 7) and referring to Applicant as "telling more lies" (R. 473, ll. 12-13).
   c. Failure of Counsel to object to improper jury charge saying "exercise of a legal right is never sufficient provocation for voluntary manslaughter" (R. 523, ll. 8-11).
   d. Failure of Counsel to object to Judge's charge on accident, example with gun going off in self defense. This example did not make sense with the facts (R. 524, ll. 4-11).
   e. Failure of Counsel to object to improper standard for reasonable doubt as "real possibility" charge is improper (R. 520, l. 25 – p. 521, l. 3).
   f. Failure to object to no charge on self defense, as State opened the door for the charge in opening when they argued one of the stories was a tussle for the knife.

SUMMARY OF PCR TESTIMONY

At the PCR hearing, Applicant testified he had been with Victim for a little over eleven years, and they had planned buy a house together. (PCR 12-14). He testified would never hurt Victim but acknowledged they had a verbal argument in 2012 where police were called. (PCR 14-16). Applicant testified he and Victim had planned to get back together. (PCR 16),

Applicant testified he came home on the morning of the incident around 9:15 a.m., and Victim charged him with a knife while he was in the bathroom. (PCR 17-18). Applicant testified

he grabbed Victim's wrists and Victim pulled back, causing them both to fall on the floor. (PCR 19). He stated the only injuries he received was a scratch. (PCR 20). Applicant did not have any witnesses and could not testify to any corroborating evidence that would have been helpful at trial. (PCR 21-22).

Applicant stated he met with trial counsel several times, and they discussed a defense that he was the victim. (PCR 22-23). Applicant testified he did not have any evidence to support his POS (non DSS) [redacted] other than his testimony. (PCR 24). However, he explained he was not very present during trial because he was grieving and had not eaten much. (PCR 24). He testified he did not talk to his attorney much during trial and averred counsel did not have a strategy. (PCR 24, 28).

Applicant claimed he did not stab Victim and had no motive to stab her. (PCR 26-27). He also claimed it was an accident. (PCR 30). Applicant stated Victim attacked him and accidently stabbed herself during the struggle. (PCR 31). He stated he called 911 the Friday morning after the stabbing took place—not thirty-six hours later. (PCR 49-50). Applicant testified he waited to call 911 because he was in shock. (PCR 50-51).

Applicant testified he understood he had a right to testify but decided not to because he was grieving. (PCR 24-25, 27-28). He also testified counsel advised him there was no reason to testify, and it was best for him not to testify due to his condition. (PCR 25-26). Applicant averred he would not have presented well at trial. (PCR 26). He stated he did not have prior convictions that could be used for impeachment. (PCR 28).

Applicant testified he had no witnesses or other evidence to support self-defense or accident besides his testimony. (PCR 29). He later testified he believed testimony from "the family" would have benefited him. (PCR 32). The family lived near Victim, and he speculated they could have testified they never saw him and Victim argue. (PCR 32). However, Applicant

stated no one witnessed the incident. (PCR 33). Applicant understood that to argue self-defense, he would have to testify he stabbed Victim in response to her attack; however, he maintained he never stabbed Victim. (PCR 30-31). He did not recall if counsel requested a self-defense charge. (PCR 31-32).

Trial counsel testified her strategy was to rely on the defense of accident. (PCR 35). However, she explained that Applicant waited 36 hours before calling police, which was a hard fact to explain at trial. (PCR 42-43). Trial counsel testified she hired an expert, but the expert concluded the stabbing was not an accident. (PCR 44-45). Trial counsel testified the jury heard Applicant's story two or three times through the 911 call, his interview, and through a jail call. (PCR 46). She explained her strategy was to point out the consistencies in Applicant's story, but the State could point out inconsistencies if Applicant testified. (PCR 46-47).

Trial counsel recalled discussing Applicant's right to testify with him, and she testified it was Applicant's decision to not testify. (PCR 35). Trial counsel testified the judge advised Applicant twice during trial of his right to testify. (PCR 36-37). Trial counsel stated Applicant was in shock and grieving at trial. (PCR 44). She also expressed concern that Applicant's prior convictions of forgery could be used for impeachment. (PCR 45-46).

Trial counsel testified she could not pursue self-defense because Applicant was adamant he did not stab and would never stab Victim. (PCR 36). Trial counsel testified Applicant would have to admit to stabbing Victim to receive a self-defense charge. (PCR 48).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the records of the Berkeley County Clerk of Court of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and

the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel, the applicant must prove "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 v. Washington, 466 U.S. 668 (1984).

In evaluating claims 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. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, an attorney's performance is measured by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," Butler, 286 S.C. at 442, 334 S.E.2d at 814, and the applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, a PCR applicant must prove that counsel's deficiency 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.

Not presenting a defense / Advising Applicant not to testify

Applicant first contends counsel was ineffective for advising him not to testify and for not presenting a defense. Applicant has failed to prove counsel was ineffective in this regard.

This Court finds Applicant understood he had a right to testify, and it was his decision not to testify. Applicant testified multiple times during the PCR hearing he chose not to testify because he was grieving and would not have presented well. Likewise, counsel credibly testified she reviewed Applicant's right to testify with him, and it was Applicant's decision. Additionally, the court advised Applicant of his right to testify. (R. 359, 361-63). Ultimately, it was Applicant's decision not to testify, and he has not shown counsel was ineffective in this regard.

Likewise, Applicant did not prove counsel's advice to him about testifying was ineffective. Initially, this Court finds credible counsel's testimony that she discussed Applicant's right to testify with him, and it was Applicant's decision not to testify. (PCR 35). Both counsel and Applicant expressed concerns about Applicant's ability to testify due to his grief at trial. In fact, Applicant recalled "[Counsel] asking me did I want to take the stand. But, it's like, just like I said, I was really grieving." Applicant also testified, "I wouldn't been no good on the stand, I know I wouldn't have." (PCR 24-26). This Court finds counsel's concerns about Applicant testifying to be reasonable under prevailing professional norms. Counsel testified that even though Applicant did not testify, the jury heard Applicant's story through his interview with police and jail calls. (PCR Tr. 46). This Court finds Applicant did not present any testimony or other evidence showing counsel advised him not to testify or that the advice given by counsel conveyed erroneous law that induced him not to testify. Thus, he has not met his burden of proof in this regard.

Finally, Applicant has not shown counsel was ineffective for not presenting other evidence to support a defense. This Court finds credible counsel's testimony that she hired an expert, but

the expert concluded the evidence did not support a defense of accident. In light of this, counsel's decision not to call the expert was reasonable under prevailing professional norms. Applicant did not present any other evidence at the PCR hearing (other than his own testimony) to support a defense and repeatedly stated he did not have any evidence to support his claim of accident other than his own testimony. Although he averred a "family" could have testified that he and Victim did not argue, Applicant acknowledged that family did not witness the incident. Thus, their testimony would not have supported a defense of accident, and Applicant has not shown counsel was deficient for not calling them as witnesses. Finally, and critically, Applicant did not present the testimony of this family or any other witness at the PCR hearing (other than himself) and thus did not prove any resulting prejudice from counsel's failure to present additional evidence.

Failure to object to Solicitor's comments

Applicant alleges counsel was ineffective for not objecting to improper comments by the solicitor during closing argument. Specifically, he contends counsel should have objected when the solicitor called him a liar (R. 472) and referred to him as "telling more lies" (R. 473). This Court finds Applicant has not shown counsel was ineffective in this regard.

"A solicitor's closing argument must not appeal to the personal biases of the jurors. In addition, the argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence

of the defendant's guilt." Id. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Id. "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

During closing argument, the solicitor argued, "Let's look at the statements of the investigators, look at his demeanor. It's—it's almost impossible to keep up with all of the lies that he tells us in his statement. You need to rewatch it—please do. The story keeps evolving." (R. 468). After discussing several inconsistencies between Applicant's statements and the evidence, the solicitor argued,

> He also tells detectives for some reason—[Rivers], remember, goes by Ann. That he called her. And I don't know why he makes that up. It's just one more in the stack of lies. But she testified that he never called her. Because I think they said, well, did you call anyone? Did you call her family? He said, Oh, yeah, I called Ann. Not true.

(R. 471). Later, the solicitor argued,

> Over and over again, [Applicant] talked about how crazy [Victim] was acting. At one point, he said she was psychotic. And we have no objective evidence, the autopsy. There's no drugs in her system except for hypertension. There's no alcohol in her system, although in his statement to police he said they were both drinking a lot. He has to say that because he has to sort of explain why she's acting so crazy. He's a liar. I didn't say he was a smart liar, but he obviously hasn't thought it through to the point where, you know, the blood work is going to show whether she had the alcohol in her system. But she had no alcohol in her system.

(R. 471-72). At the PCR hearing, counsel averred these comments were not so egregious as to infect the trial with unfairness, referencing State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997).

This Court finds Applicant failed to show counsel was ineffective in this regard. Solicitors

are permitted to argue reasonable inferences from the evidence, and this Court finds the foregoing statements by the solicitor were reasonable inferences based on the evidence. See Vasquez, 388 S.C. at 458, 698 S.E.2d at 566 ("A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony."). These comments were made while the solicitor pointed out inconsistencies in Applicant's statements. Specifically, the solicitor referenced inconsistencies between Applicant's statements to law enforcement and statements in jail calls, and Applicant's claim that Victim was high and drunk during the attack even though the autopsy showed no drugs or alcohol in her system. The solicitor meticulously detailed the inconsistencies between Applicants statements and other testimony and evidence presented at trial and pointed out contradictions between the multiple stories given by Applicant. The solicitor's comments were reasonable inferences based on the evidence and did not so infect the trial with unfairness as to make the resulting conviction a denial of due process. See Vasquez, 388 S.C. at 458, 698 S.E.2d at 566 ("The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process."). This Court finds counsel's assessment that these comments were not so egregious as to warrant an objection was reasonable under prevailing professional norms; thus, Applicant did not prove deficiency.

Additionally, Applicant did not prove prejudice. Because the foregoing argument contained reasonable inferences from the evidence, it is not reasonably likely any objection would have been sustained. This Court also finds that none of these comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Applicant has not shown a reasonable probability the outcome would be different had counsel objected to these comments and thus has not shown prejudice. Thus, this allegation is denied.

Failure to object to voluntary manslaughter charge

Applicant alleges Counsel was ineffective for failing to object to the court's voluntary manslaughter charge. Specifically, he contends counsel was ineffective for not objecting to the judge's instruction that "exercise of a legal right is never sufficient provocation for voluntary manslaughter." (R. 523). Applicant has not shown counsel was ineffective in this regard.

The trial judge gave the following charge on voluntary manslaughter:

> To prove voluntary manslaughter, the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion, based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Sudden heat of passion may, for a time, affect a person's self-control and temporarily disturb a person's reasoning. The sudden heat of passion must be the type that would make an ordinary person unable to fully reflect on his actions and would produce an uncontrollable impulse to do violence. Sufficient legal provocation must be the type that would make a person of ordinary reason and caution become enraged, and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however, vulgar or insulting, are not enough to be legal provocation. Where death is caused by a deadly weapon, the words must be accompanied by some overt threatening act which could have produced the heat of passion. *The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter.* If the heat of passion had cooled, or if there was enough time between the provocation, if any, and the killing, for the passion of a reasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off, you should consider all the circumstances surrounding the killing. You may consider the nature of the provocation, if any. The defendant's mental and physical state, and the circumstances, and relationship between the parties.

(R. 522 -523). At the PCR hearing, trial counsel testified this was the standard charge for voluntary manslaughter, and the clause "exercise of a legal right" referred to self-defense. (PCR 38-39).

This Court finds Applicant has not shown counsel was ineffective for not objecting to the voluntary manslaughter charge. Viewed as a whole, this charge constitutes an adequate and proper statement of law. Further, the court's instruction that "The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter" is a proper statement of law. See State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) ("Neither the exercise of a legal right nor a victim's attempts to resist or defend himself from crime constitute sufficient legal provocation."). Because this charge was proper, Applicant has not shown counsel was deficient for failing to object. Likewise, Applicant has not shown prejudice. Thus, this claim is denied.

Failure to Object to Accident Charge

Applicant alleges counsel was ineffective for failing to object to the court's accident charge. Specifically, Applicant avers counsel should have objected to the judge's example of a gun going off to describe defense of accident because the example did not conform with the facts. This Court finds Applicant has not shown counsel was ineffective in this regard.

"A trial judge's refusal to provide specific jury instructions is not reversible error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved." State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), overruled on other grounds by Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). "The failure to provide specific jury instructions is not error where the instructions given convey the proper test for determining the issues before the jury." Id.

In Hughey, our Supreme Court examined whether the trial court erred in denying the defendant's request to charge specific examples of legal provocation to include

> pulling a knife on a defendant, pointing a gun at a defendant, spitting in a defendant's face, assault of a family member, sudden mutual

> combat where one of the participants is killed by the other without a previously informed intention to do so, finding one's spouse in the act of adultery, or the deceased having molested a defendant's minor child.

Id. The Court found the requested examples constituted a "direct charge on the facts" because Hughey alleged a knife was pulled on him, the victim spit in his face, and there was sudden mutual combat. Id. at 457, 529 S.E.2d at 728. The Court further found the refusal of the requested examples did not constitute reversible error because the examples elevated the specific facts of Hughey's case and would be an instruction on the facts rather than on the law if given. Id.

Here, the trial court provided the following charge on accident:

> The defendant has raised the defense of accident. And that may be excused on the ground of accident if it is shown that the act was unintentional, that he was acting lawfully, and that reasonable care was used by the defendant in the handling of the weapon. For example, if a person is lawfully armed in self-defense, and a gun accidentally discharges, the defense of accident would apply. The burden is on the State to prove beyond a reasonable doubt that -- that the act was not an accident, but was caused by the negligence or carelessness on the part of the defendant in the handling of a dangerous instrumentality, or by unlawful activity by the defendant.

(R. 523-24). At the PCR hearing, trial counsel testified she did not believe the example of using a gun was improper merely because the judge didn't use a knife in the example. (PCR 39). Trial counsel stated she normally used different facts from a case when explaining concepts to her clients, and it would have been improper for the judge to use facts that mirrored the facts in Applicant's case. (PCR 39-40).

This Court finds Applicant has not shown counsel was ineffective. Initially, counsel articulated a valid reason for not objecting to this charge or requesting an illustration of using a knife rather than a gun. Counsel testified she did not feel the charge was improper and averred that using facts that mirrored Applicant's case would have been improper. Counsel's performance

in this regard was reasonable under prevailing professional norms, and Applicant thus has not shown deficiency. Moreover, the judge used an example that gave the proper test to the jury to determine the issues. Thus, it is not reasonably likely the outcome would have been different had counsel objected to the charge, and Applicant thus has not shown prejudice.

Failure to object to reasonable doubt charge

Applicant contends counsel was ineffective for not objecting to the reasonable doubt charge. Specifically, he contends counsel should have objected to the court's language that the jury must find Applicant not guilty if it believes "there is a real possibility" he is not guilty. Applicant argues this language conveyed an improper standard. Applicant has not shown counsel was ineffective in this regard.

In State v. Darby, 324 S.C. 114, 116, 477 S.E.2d 710, 711 (1996), our supreme court held the "real possibility" language in a reasonable doubt charge did not dilute the State's burden of proof when it was preceded by language "requiring that the juror be 'firmly convinced' of the defendant's guilt." The court further found "there is nothing in this language to suggest the defendant himself bears any burden of proof." Id.

Here, the trial judge gave the following reasonable doubt charge:

> The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is

not guilty, you must give the defendant the benefit of that doubt and find him not guilty.

(R. pp. 520-521). At the PCR hearing, trial counsel testified she was aware of case law that allowed this language in a reasonable doubt charge. (PCR 40).

This Court finds Applicant did not prove counsel was ineffective for not objecting to this charge. The court's charge was consistent with the charge in Darby.[1] Like Darby, this charge contained preceding language requiring the jury to be "firmly convinced" of Applicant's guilt. Because this charge was proper, counsel was not deficient for not objecting. Likewise, and for the same reason, Applicant was not prejudiced by counsel's failure to object. Thus, this claim is denied.

Failure to object to court's failure to charge self-defense

Applicant alleges counsel was ineffective for not objecting to the court's failure to charge self-defense when the State opened the door for this charge during its opening argument by arguing one of the stories was a tussle for the knife. This Court finds Applicant has not shown counsel was ineffective in this regard.

At trial, counsel requested a charge on self-defense, arguing Victim attacked Applicant and Applicant was without fault in bringing on the difficulty. (R. 441-442). The Court asked, "Are you saying that you're going to argue to this jury that your client killed [Victim]?" (R. 442).). The trial court concluded Applicant would have to concede he stabbed Victim to argue self-defense, but that concession would eliminate his accident defense. Ultimately, counsel asked for her request for a self-defense charge to be stricken. (R. p. 443).

This Court finds Applicant did not prove counsel was ineffective in this regard. Although trial counsel could not recall this specific instance during the PCR hearing, a review of the trial

[1] In fact, this charge is almost identical to the charge in Darby.

transcript suggests trial counsel made a strategic reason to withdraw the self-defense request when she was told the court would not instruct accident if it instructed self-defense. Because counsel's trial strategy centered on the defense of accident, counsel's decision here did not fall below prevailing professional norms. Thus, counsel was not deficient.

Further, Applicant has not proven prejudice from counsel's withdrawal of the request to charge self-defense because no evidence supported the charge. See State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003) (providing a jury charge must be supported by evidence). In his application, Applicant points to the solicitor's opening argument as support for this charge. However, statements and arguments by attorneys are not evidence. Further, Applicant himself never presented any evidence that the killing was intentional or that he was acting in self-defense. See State v. Owens, 427 S.C. 325, 831 S.E.2d 126 (Ct. App. 2019) (providing a defendant must "admit an intentional killing" for a self-defense charge to be proper the defendant). Because no evidence supported this charge, Applicant did not show prejudice from counsel's withdrawal of the request for self-defense. Thus, this claim is denied.

CONCLUSION

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Thus, this Court denies relief on all allegations and dismisses this action with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. If an applicant

wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant's application is denied and dismissed with prejudice; and

2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 25 day of July, 2023.

DIANE S. GOODSTEIN
Presiding Judge
Ninth Judicial Circuit

Georgetown, South Carolina

State of South Carolina
The Circuit Court of the First Judicial Circuit

DIANE SCHAFER GOODSTEIN
JUDGE

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July 25, 2023

Berkeley County Clerk of Court
PCR Department
Post Office 219
Moncks Corner, SC 29461

Re: Lee Dell Bradley, SCDC #197170 v. State of SC
Case No.: 2019-CP-08-01676

Dear Sir or Madam:

I have enclosed the original Order of Dismissal in regards to the above referenced PCR matter. Her Honor has requested that you serve all parties a stamped copy for their notice.

Thank you for your assistance in this matter. Please do not hesitate to give me a call should you have any questions.

Sincerely,

Karen "Kaye" M. Parker
Administrative Assistant to
Judge Diane S. Goodstein

Enclosure