

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Nov 20 2023**

S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Cherokee County

Honorable Daniel D. Hall, Circuit Court Judge  
\_\_\_\_\_

FRANKLIN DOVER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000537  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

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<sup>1</sup> Pages 10-12 (Indictment and sentence sheet) and 36-79 (pages 1-10, 144-175, 477-478 of transcript dated July 15-17, 2019) from the original document have been omitted from the Appendix as they are duplicative.

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Here, trial counsel did not object to Foster's counsel indulging in conjectural inferences that: "there has been no testimony to prove that [his] client had any reason to be angry at the victim. He didn't try to kill him." Id.

The record is clear that there were several witnesses who witnessed the altercation between Foster and the victim prior to the murder. They testified they heard threatening statements made by Foster to the victim just prior to the murder. However, there was no evidence or proof of connection that Applicant was apart of a common scheme or plan or that he commented any overt act to facilitate. Applicant states clearly that that the remote act (if any) disconnected and outside the crime itself cannot be separately proved as conspiracy or to cast bare suspicion as did his alleged co-defendants counsel did.

f.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

When reviewing the denial of a motion for direct verdict, the Appeals Court must apply the same standard and view the evidence and all reasonable inference in the light most favorable to the nonmoving party. "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or resolve conflicts in the testimony or evidence." ESTATE OF CARR EX REL. BOLTON V. CIRCLES S ENTERS., INC., 379 S.C. 31, 39 (Ct.App.2008). The trial court can only be reversed by the Appeals Court when **no evidence** supports the ruling below or when the ruling is controlled by an error of law. LAW V. S.C. DEP'T OF CORR., 368 S.C. 424, 434-435 (2006).

As in PCR Ground (e), supra., at trial, Applicant's counsel moved for a directed verdict regarding that the jury would have to find guilt on suspicion. A more critical error in his motion, he failed to state in rebuttal that the record is silent as to any expression of ill will or bad blood to prove Applicant had any reason to be angry at the victim. In light of Applicant's

X

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PCR Ground (d), supra., Applicant's trial counsel inadequately argued Applicant's motion for a direct verdict because it would have shown a conflict between the two counsel defense; made Applicant's appellate counsel that much more ineffective by the lack of the effective guiding hands of trial counsel.

A case such as Applicant, Applicant counsel denied Applicant an effective Constitutional appeal to address the lower court ruling that was controlled by error of law.

Applicant contends "Suspicion" implies a belief or opinion as to guilt upon facts or circumstances which do not amount to proof." STATE V. PEARSON, 415 S.C. 463, 469-170 (2016) quoting STATE V. CHERRY, 361 S.C. 588, 594 (2004). Applicant contends that his guilt or his conviction cannot stand upon suspicion, nor can the jury found guilt on such.

Applicant also states that his appellate counsel could not properly review the record of the following directed verdict because of trial counsels errors as alleged in his PCR Grounds (b), (c), (d), and (e), when the jury was not allowed to consider alternative hypotheses. Applicant's case here is illustrative. See Relevant Facts, supra.

In TILLMAN, when the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof." STATE V. TILLMAN, 433 S.C. 58 (2021); STATE V. MEDOR, 425 S.C. 625 (2019); UNITED STATES V. JOHNSON, 406 F.SUPP.3d 811 (2018).

Applicant's counsel commented the same error as did his trial counsel. Had Appellate counsel address the Applicant's **"sufficiency of evidence"** correctly, the out-come of Applicant's appeal would have been different. UNITED STATES V. CAPERS, 20 F.4th 105 (2021); UNITED STATES V. JABAR, 19 F.4th 66 (2021); UNITED STATES V. LANDESMAN, 17 F.4th 298, 320 (2021) and Rule 19(a), SCRCrimP.

g.

JASMINE HUDSON

## FORM 5

The state introduced Jasmine Hudson, who was dating Rajshun Foster on June 22nd, 2014. On that very day, Hudson was taking Foster home. As she testified "he (Foster) had spent the night at [her] house." Tr. page 147 at 1. Then go to her friend who lived in Connecticut Village. Id. at 20. Along the way, they stopped at Redwood Store. When Foster entered the store, Foster recognized one of his friends; whom Hudson identified at trial. Tr. page 149 at 4-5. However, after introduction, Foster got back into her car. Foster, then remembered he needed to stop by his house before they went to Connecticut Village.

Upon arrival at Foster's house, Applicant pulled in. Hudson also testified she seen a gun "that was bigger than a handgun" in the Applicant's car. Tr. page 152 at 18. (There was no other discussion introduce by the state). However, Hudson stated that once they arrived, Foster stayed outside to listen to the radio in her car.

On cross by Ms. Racine, Hudson testified that when she looked out the window and "show Slick and Rajshun and two other guys outside." More importantly, Hudson stated that she did not observe any altercation or verbal fight between Rajshun and Slick." Tr. page 164 at 1-4. Hudson also mention that she did not see Applicant or his car there until later. Tr. page 158 at 5-6. This testimony was relied upon the other part of the statement introduce by the state. Hudson further stated that later, Foster and the two other guys had left without her permission with her car. She was ask ... about what other people had said that Foster was arguing with the victim, she responded that its was a surprise to her because that was not "Foster's conduct" or that was "completely out of character between Rajshun and Slick." Tr. page 166 at 9-11. The state objected to that line of questioning. Even Applicant's trial counsel objected because Hudson statement to the police was "protecting Foster interest." Her statement point to "someone else had conflict with Slick;" naming Applicant. See Exhibit #A; Trial record page 167 through 175.

Obviously, Applicant's counsel could not object to this

because Foster and his client are being tried together. See Applicant's PCR Grounds (b), (e) and (f).

Applicant submitted that he was tremendously prejudice by another defense counsel trying to represent its client and Applicant's counsel objected only to that he was unable to "cross examine Hudson's attaching a "motive" to Applicant when Applicant's counsel could not cross-examine Hudson <sup>or Foster</sup> on that prior 'hearsay' statement to the police, violated the confrontational clause. Cf. STATE V. DAVIS, 364 S.C. 364 (2005) citing CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004).

The state conceded, however defended its position that it did not open that door in there case in chief and that "neither Ms. Racine nor Mr. Morin filed a motion to "sever". "We did elect to try them together, but the defense did not appear to have any objection to that and no motion to "sever" was filed and heard before Your Honor on that issue." Tr. page 169, line 12-24.

Applicant submits that the jury cannot speculate:

1. What did Foster and Applicant talked about at Redwood Store or at the home of Foster.
2. Was there prior call from Foster to Applicant to meet.
3. For what purpose Applicant followed Foster to his house.
4. Who were the other two men with Foster, when the record reflected that Applicant drove his own car; bring into question Antron Bonner testimony or the real reason why Bonner testified.

However, the jury knew that after the confrontation, Foster walk over to Applicant's car and they went to the trunk of Applicant's car to look at a " Lebron James jersey," then the Applicant left Connecticut apartments complex by himself.

Appellate counsel was fatally ineffective for not reserching the trial record properly.

h.

#### INSUFFICIENT NOTICE

In GENTRY, an indictment is a "notice" document, albeit one required by our state constitution and statute. See S.C. Const.

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art. I, § 11 and art. V, § 22; S.C. Code Ann. §17-19-10 (2003) "[n]o person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury" except in specified instances." The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. STATE V. GENTRY, 363 S.C. 93 (2005). See also STATE V. MEANS, 367 S.C. 374 (2006); STATE V. FONSECA, 383 S.C. 640 (2008).

Originally, Applicant, see exhibit B, Terence Dion Studyvance, exhibit C, Antron Montrass Bonner, exhibit D, and Rajshun Bernard Foster, exhibit E, were indicted for murder; each as "principal," not as 'along with' or 'conspires.' The state did not try them separately or did trial counsel move to sever the defendant(s) as charged.

On May 13 thru May 16, 2019, proceeded to trial. See exhibit F. However, only Antron "Red" Bonner was not called to answer the charges. At the conclusion of the trial, Terence Dion Studyvance was acquitted.

Special grounds was submitted in arrest of judgment, and principally among them, that the lack of prosecution of two parties against whom the state alleged "theory of accomplice liability" was not charge should have terminated the judgment against the others, and should have operated per se as an acquittal of the last two defendants on trial. STATE V. TAYLOR, 348 S.C. 152 (2001); STATE V. HOLLEY, 3 S.C.L. 35, 1800 WL 267. To state clearly, applicant did not state that the state necessarily end the prosecution nor bar the state from preferring another indictment on the same charge.

Foster and Applicant proceeded to trial again. Applicant contends the indictment did not notify court or him as a "accomplice," but as a principal as charge. However, Applicant proceeded with the same indictment. The indictment did not notify

## FORM 5

Applicant he had co-defendant(s). Trial counsel allowed Applicant to stand trial as a principal, along with Foster highly prejudice Applicant of a fair trial.

i.

Trial counsel was ineffective for failing to investigate Antron "Red" Bonner's mental health issue; his lack of credibility and that he and Rajshun Foster ~~and Rajshun Foster~~ purchasing marijuana "bad act" prejudice Applicant's defense, due process and a fair trial; violating Rule 403, 404 and 404(b), SCRE. See STATE V. LYLE, 125 S.C. 406 (1923) and STATE V. FONSECA, 383 S.C. 640 (2009).

The true purpose of the "bad act" evidence, namely propensity, is not well hidden during trial. At trial, the state purpose of proving the contested elements of "intent" or "accomplice liability," only thinly masked the most logical application of the evidence, namely propensity. See PCR Grounds (c), (d), (e) and (f). Bonner in this case was influenced by the state to testify against the defendant(s); mainly Applicant.

Trial counsel prejudicially allowed the admission of Foster and Bonner's "bad act" that was extremely not probative in helping the jury to determine whether or not that Applicant used, in fact, to confuse all the early facts presented in its case in chief.

The excessive "bad act" evidence introduced in this case was not only irrelevant, but highly prejudicial. Trial counsel failure to investigate Antron Bonner's mental health status and object to "hearsay" testimony blatantly denied Applicant the protection under Rule 404(b), SCRE., "inclusionary rule."

Bonner gave three (3) statements to the police at various times. July 18, 2014 - Exhibit G; July 21, 2014 - Exhibit H and August 7, 2014 - Exhibit I. In none of his statement Bonner stated that Applicant committed murder. In none of his statements Bonner mention that Rajshun picked up Applicant and Terence Studyvance ("T") coming from a path; "they got in the car and applicant was upset, and Rajshun looked at Applicant and asked 'Where did you shoot him?' Tr. page 349. This was an

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extrajudicial statement given later. Tr. page 352 at 2-5.

Among the prejudicial inconsistencies with Bonner's testimony were:

- a. His "time line" was inconsistent with the facts of all other witnesses.
- b. His story of who were in the car and there placement within. His inconsistencies of the description that took place the day of the murder. Tr. page 352 at 10-16.
- c. He never heard any discussion that took place between Foster, Terence Studyvance and Applicant. Tr. page 353 at 6-7.
- d. His lack of observation, that no confrontation or threaten words from Foster to "Slick." However, Bonner cast mere suspicion from Foster to Applicant. See PCR Ground (e); Exhibit G, H, and I. Tr page 353 at 10-18.
- e. He never testified he seen Applicant with a gun in Applicant's after the murder was committed. Tr. apge 345 at 23-25.
- f. His inconsistencies as to who had "ill will" or "bad blood" with the decendent. He cast mere suspicion from Foster to Applicant.
- g. His inconsistencies as to seeing and not seeing Applicant's vehicle at the trailer park and at Connecticut Villiage, and
- h. His inconsistencies in how Applicant fit in as the fourth (4th) person with Foster (whom was driving his grilfriends Kia Soul), and all the testimony of Foster being with two imdividuals. Applicant not being one of them. Applicant drove his own vehicle. See Relevant Facts, supra.

I Don't Remember

The state clearly misrepresented the facts by allowing Bonner to testify that the Applicant was with them. However, the record showed that most of Bonner's testimony was "I don't remember." e.g., Tr. page 340 at 11; Tr. page 342 at 14-15; Tr. page 346 at 18; Tr. page 349 at 20 and Tr. page 352 at 10-16.

- i. Bonner did not even know how he gotten a "life long scar," he had since he was a child. Tr. page 334 at 5-15.
- j. He could not remember where the gun was located in the car. Tr. page
- k. He did not know how much money his own grandmother gave him, in which he used to purchase marijuana. Tr. page 336 at 8-10.
- l. He did not know how he and Foster split the marijuana once they got it. Tr. page 342 at 1-20.

Applicant contends that trial counsel failed him critically in not objecting to Bonner's testifying all together, violated Applicant's Confrontational rights and Due Process in allowing hearsay evidence into trial. Just as in Applicant's PCR Grounds (b) and (g), Applicant could not "confront Foster" in which Jasmine Hudson and Antron Bonner fault heard to case bare suspicion away from Foster to Applicant. STATE V. THOMSON, 420 S.C. 386 (2017); STATE V. STOKE, 381 S.C. 390 (2009) and STATE V. DAVIS, 364 S.C. 364 (2005); USCA Const. Amend VI-Jury Trial.

Bonner's pre-trial and trial testimony was full of contradictions, inconsistencies and inadmissible hearsay. His testimony confused the facts presented by the state. Among the prejudicial effect:

1. The discussion of buying drugs, i.e., Ten (10.00) dollar bag of weed.
2. How much money Foster and Bonner had to purchase it.
3. Who and where they were going to get it, i.e., the decendent in this case. The state did not alleged that it was a robbery. No robbery occurred.
4. After the buy from someone else, Foster "throw it on the front seat," and
5. The discussion of how they split it.

None of this evidence fit within the Rule of 403, 404, SCRE. Nor did it have anything to do with implicating Applicant to murder of the decendent.

Trial counsel cannot be "generously" be characterized as ineffective. He not only failed the STRICKLAND test, 104 S.Ct.

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2052 (1984), his performance was so dismal from start to finish that deficiency and prejudice must be presumed, **per se** under CRONIC, 104 S.Ct. 2039 (1984). (Even if prejudice is not presumed there is a reasonable probability that the outcome of the Applicant's trial would have been different if his trial counsel's performance had not been fatally deficient).

IN SUM

This was trial counsel's second representation of the Applicant in the same case so he had plenty of opportunities to finally "get it right." In addition to the facts which follows trial counsel did not even request transcript of the first trial, to adequately prepare for this, second trial. See Applicant's PCR Ground (a).



22CP-110158

CERTIFICATE OF SERVICE

I, Franklin Pierre Dover #380802, hereby certify that I have this date served upon the Cherokee County Clerk of Court, Post Office Drawer 2289, Gaffney, South Carolina 29342, his application for post-conviction relief and attached trial record, exhibits to be filed within this court, by depositing a copy hereof in the United States mail, postage paid, also to the address provided below:

cc: The state of South Carolina  
Officer of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

This 25 day of Feb, 2022.

Respectfully submitted

1s/ Franklin Dover

Franklin Pierre Dover #380802

Applicant

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, SC  
2022 MAR -3 AM 10:51  
BRANDY L. M. HILL

\*

22CP-110158

AFFIDAVIT OF  
Franklin Pierre Dover  
&  
Authentication of Record and Exhibits

I, Franklin Pierre Dover, under the penalty of perjury, that the following statements are true and correct to the best of my knowledge and belief. Pursuant to the rules governing discovery and documents, i.e., pursuant to Rule 34, SCRCivP.; S.C. Code Ann. §17-27-40 and §17-27-50 of the PCR Act.

I have the same knowledge and belief, the record, exhibit attached are true and correct copies of actual documents and affidavit to support.

Respectfully submitted

1s/ Franklin Dover

Franklin Pierre Dover #380802

PCI

430 Oaklawn Road

Pelzer, South Carolina 29669

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, GA  
2022 MAR -3 AM 10:51  
BRANDY W. MOORE

SWORN TO BEFORE ME this 25 day of February, 2022.

Tamara Conwell, My commission expires: September 25, 2023 My Commission Expires

X

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

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Civil Action

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Franklin Pierre Dover

Applicant,

v.

State of South Carolina

Defendant(s).

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APPENDIX

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Franklin Pierre Dover #380802  
Perry Corr. Inst.  
430 Oaklawn Road  
Pelzer, South Carolina 29669

Applicant

FILED IN DEPT. OF  
CLERK OF COURT  
CHRISTOPHER J. MURPHY, CL.  
2022 MAR -3 AM 10:51  
BRANDON W. MOFFITT

## FORM 5

## INDEX

1. Trial record dated July 15-17, 2019, pages 145-175.  
Exhibit A
2. Affidavit- Franklin Pierre Dover, dated July 22, 2014  
Exhibit B
  - A. Indictment for murder. Exhibit B-1 and B-2, filed September 4, 2014, and
  - B. sentencing sheet dated July 17, 2019. Exhibit B-3.
3. Affidavit - Terence Dion Studyvance (No court date stamp).  
Exhibit C
4. Affidavit - Antron Montrass Bonner, dated July 22, 2014.  
Exhibit D
5. Affidavit - Rajshun Bernard Foster dated July 24, 2014.  
Exhibit E
6. Photo copy of Trial record dated May 13 thru 16, 2019.  
Exhibit F
7. Antron "Red" Bonner.
  - a. Voluntary statement #1, dated July 18, 2014  
Exhibit G
  - b. Voluntary statement #2, dated July 21, 2014  
Exhibit H, and
  - c. Voluntary statement #3 dated August 7, 2014  
Exhibit I



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ARREST WARRANT

2014A1110100497

STATE OF SOUTH CAROLINA

County/  Municipality of

Cherokee

THE STATE  
against

Terence Dion Studyvance

Address: Honeysuckle Lane  
Gaffney, SC 29341-

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 5 6 Weight: 158  
DL State: \_\_\_\_\_ DL #: \_\_\_\_\_  
DOB: \_\_\_\_\_ Agency ORI #: SC0110000  
Prosecuting Agency: Cherokee County Sheriff  
Prosecuting Officer: Richard P Burgess - 0007  
Offense: Murder / Murder

Offense Code: 0116  
Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

The accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to  
defendant \_\_\_\_\_  
on \_\_\_\_\_

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
125 E. Floyd Baker Blvd  
Gaffney, SC 29342

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Cherokee )

AFFIDAVIT

Page 2  
12/11/2014  
Attorney General  
11 21, 2003  
SCCA 518

Personally appeared before me the affiant Richard P Burgess who  
being duly sworn deposes and says that defendant Terence Dion Studyvance  
did within this county and state on or about 6/22/2014 violate the criminal laws of the  
State of South Carolina (or ordinance of  County/  Municipality of Cherokee)  
in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

That on June 22, 2014 in the county of Cherokee, one Terence Dion Studyvance did, with malice and aforethought, cause the death  
of victim by shooting the victim. Warrant based on investigation by the Cherokee County Sheriff's Department.

Case Number: 2014-2822

Signature of Affiant

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Cherokee )

Affiant's Address 312 E. Frederick St.  
Gaffney, SC 29340-  
Affiant's Telephone (864)489-4722

ORIGINAL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/22/2014 defendant Terence Dion Studyvance  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of Cherokee) as set forth below

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or  
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as  
soon thereafter as is practicable  
Sworn to and subscribed before me  
on 7/23/2014

Signature of Issuing Judge

Robert Howell

Judge Code: 5882

Judge's Address Cherokee Magistrate's Court  
Gaffney, SC 29342

Judge's Telephone (864)487-2533

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

514

ORIGINAL

ORIGINAL

515

Need to be entered

ARREST WARRANT *Ant*

2014A11101004229-1814

STATE OF SOUTH CAROLINA

County/  Municipality of

Cherokee

THE STATE

against

Antron Montrass Bonner

Address: **Clear Field Drive**  
Gaffney, SC 29340-

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 5 9 Weight: 135  
DL State: SC DL #: \_\_\_\_\_  
DOB: \_\_\_\_\_ Agency ORI #: SC0110000  
Prosecuting Agency: Cherokee County Sheriff  
Prosecuting Officer: Richard P Burgess - 0007  
Offense: Murder / Murder

Offense Code: 0116  
Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to defendant Antron Bonner on 7/17/2014

M. H. Hatcher 3336  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
125 E. Floyd Baker Blvd  
Gaffney, SC 29342

ORIGINAL

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STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Cherokee )

AFFIDAVIT

Page 1515  
ORIGINAL  
12/17/2014  
Form Approved by  
S.C. Attorney General  
April 21, 2009  
SCCA 518

Personally appeared before me the affiant Richard P Burgess who being duly sworn deposes and says that defendant Antron Montrass Bonner did within this county and state on or about 6/22/2014 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Cherokee) in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on June 22, 2014 in the county of Cherokee, one Antron Montrass Bonner did, with malice and aforethought, cause the death of victim by shooting the victim. Warrant based on investigation by the Cherokee County Sheriff's Department.

Case Number: 2014-2822

Signature of Affiant

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Cherokee )

Affiant's Address 312 E. Frederick St.  
Gaffney, SC 29340-  
Affiant's Telephone (864)489-4722

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
BRANDY W. NOBLE  
2014 JUL 22 AM 9:32

ORIGINAL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/22/2014 defendant Antron Montrass Bonner did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Cherokee) as set forth below.

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 7/17/2014

Signature of Issuing Judge

Mike Clary  
Judge Code: 5055

(L.S.)

Judge's Address Post Office Box 336  
Gaffney, SC 29342  
Judge's Telephone (864)487-2533

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

516

ARREST WARRANT *ent*

2014A1110100421 *7-18-14*

STATE OF SOUTH CAROLINA

County/  Municipality of

Cherokee

THE STATE

against

Rajshun Bernard Foster

Address: *[Redacted]* Oakview St

Gaffney, SC 29340-6106

Phone: *[Redacted]* SSN: *[Redacted]*

Sex: M Race: B Height: 6 Weight: 228

DL State: SC DL #: *[Redacted]*

Agency ORI #: SC0110000

Prosecuting Agency: Cherokee County Sheriff

Prosecuting Officer: Richard P Burgess - 0007

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

County/  Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to defendant Rajshun Foster

on 7-21-14

*M. Hatcher 33130*  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
125 E. Floyd Baker Blvd  
Gaffney, SC 29342

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA )

County/  Municipality of )

Cherokee )

Personally appeared before me the affiant Richard P Burgess who

being duly sworn deposes and says that defendant Rajshun Bernard Foster

did within this county and state on or about 6/22/2014 violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Cherokee) in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on June 22, 2014 in the county of Cherokee, one Rajshun Bernard Foster did, with malice and aforethought, cause the death of victim by shooting the victim. Warrant based on investigation by the Cherokee County Sheriff's Department.

Case Number: 2014-2822

Signature of Affiant

*[Signature]*

STATE OF SOUTH CAROLINA )

County/  Municipality of )

Cherokee )

Affiant's Address 312 E. Frederick St.

Gaffney, SC 29340-

Affiant's Telephone (864)489-4722

ORIGINAL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/22/2014 defendant Rajshun Bernard Foster

did violate the criminal laws of the State of South Carolina (or ordinance of

County/  Municipality of Cherokee) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 7/17/2014

*[Signature]* (L.S.)

Mike Clary

Judge Code: 5055

Judge's Address Post Office Box 336

Gaffney, SC 29342

Judge's Telephone (864)487-2533

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

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FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
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BRANDY M. MCGEE

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STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CHEROKEE )

THE STATE OF SOUTH )  
CAROLINA )  
 ) TRANSCRIPT OF RECORD  
-vs- ) 2014-GS-11-00875  
 ) 2014-GS-11-00878  
FRANKLIN PIERRE DOVER ) 2017-GS-11-00834  
AND TERENCE DION )  
STUDYVANCE AND RAJSHUN ) MAY 13, 2019 THRU MAY 16, 2019  
FOSTER, ) GAFFNEY, SOUTH CAROLINA  
 )  
DEFENDANTS. )

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, SC  
2022 MAR -3 AM 10:51  
MICHAEL R. WATTS

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE. ; And a Jury.

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

KIMBERLY LEWIS LESKANIC, DEPUTY ASSISTANT SOLICITOR  
GEORGE MATTHEW KENDALL, ASSISTANT SOLICITOR  
ATTORNEYS FOR THE STATE

MICHAEL D. MORIN, ESQUIRE  
ATTORNEY FOR DEFENDANT FRANKLIN PIERRE DOVER

TRACY RACINE, ATTORNEY AT LAW  
ATTORNEY FOR DEFENDANT RAJSHUN FOSTER

TRAVIS MOORE, ESQUIRE  
ATTORNEY FOR DEFENDANT TERENCE DION STUDYVANCE

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

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CHEROKEE COUNTY SHERIFF'S OFFICE  
312 E. Frederick Street  
Gaffney, S.C. 29340  
(864) 489-4722

CASE NUMBER

### Pre-Interrogation Waiver Form

SCID CARD  
ID# 101628102

Name: ANTRON MONTRASS BONNER Address: [REDACTED]  
Telephone Number: [REDACTED]  
Date of Birth: [REDACTED] Today's Date: 7-18-14 Time: 2:13 P.M. Education: 10<sup>th</sup>

#### STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- AMB (✓) 1. You have the right to remain silent.
- AB (✓) 2. Anything you say can and will be used against you in a court law.
- AB (✓) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- AB (✓) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- AB (✓) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by S/A SPIKE McCRAW

I have read the above rights, and I understand them fully.

Signed Antron Bonner Witness Tim Clark

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY S.C. 2012 MAR AM 10:51

#### WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to

Deputy SPIKE McCRAW + TIM CLARK in reference to MURDER INVESTIGATION

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed Nancy Tatta (stepmother) Witness E.D. "Spike" McCraw  
Antron Bonner

Time Interview Began: 2:30 P.m. Time (Statement/Interview) was completed: 4:34 P.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 3 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 18<sup>th</sup> DAY OF July, 20 14

[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: September 15<sup>th</sup>, 2013

Signed: Antron Bonner  
Witness: Nancy Tatta  
Witness: E.D. "Spike" McCraw

# VOLUNTARY STATEMENT

FILED IN OFFICE OF  
CLERK OF DISTRICT  
COURT  
2022 MAR 31  
BRAND  
PAGE 1 OF  
CASE NUMBER  
AMID:

NAME: ANTRON MONTRASS BONNER

(A) I have asked Spike McEraw to write this statement for me as I have told it to him. This statement is the truth, the whole truth, and nothing but the truth so help me God. I make this statement in the presence of my step-mother, Nancy Tate, and Captain Jim Clark.

On a Sunday afternoon I walked from my trailer to Brittany Watkins trailer in McEntire Mobile Home Park. The reason I walked over there was because I had seen Frank's car, the black Dodge Calibre, parked there. Once I got there, Frank and Rajshawn "Fawk" Foster and an unknown short, light skin black male were outside talking. "Fawk" and I had talked about going in together to buy a half a sack of weed (\$10.00 worth). Fawk got into his vehicle, a box type vehicle, grayish/silver color, in the drivers seat and I got into the back seat behind him. The unknown male got into the front passenger seat and Frank got into the back seat. Frank got a rifle from his car and got into the rear passenger seat beside me. Frank put the rifle between us. The rifle was black where the metal was and the wood part was brown. "Fawk" drives straight to Connecticut Village. But before we pull into the Village, "Fawk" pulls over to the left side of road, in the grassy part between the road and the sidewalk. There was a trail here that led down to the Village. Frank and the unknown male jumped out and ran down the trail through the woods toward the Village. "Fawk" and I pulled on into the Village and turned left and parked beside a trash dumpster. "Fawk" got out and started talking to "Slick" who was already out there. After two to three minutes, "Fawk" got back in the vehicle and went on into the Village. While "Fawk" was talking to "Slick", I got out one time to throw something (A)

WITNESS: Jim Clark  
WITNESS: Nancy Tate  
E.D. Spike McEraw

Anton Bonner  
Signature of person giving voluntary statement

# VOLUNTARY STATEMENT

PAGE 2 OF 3

CASE NUMBER

NAME: ANTRON MONTRASS BONNER

(AB) in the trash can. "Fawk" stopped after we crossed some speed bumps and talked to some dude I didn't know about buying some weed. The dude threw a bag of weed in the driver's seat and "Fawk" handed him a \$10.00 bill. "Fawk" was outside of the car talking to this dude so I grabbed the bag of weed to look at it. "Fawk" got back into the car and I heard a little boy say that he just heard a loud noise like a motor had blowed. "Fawk" turned the car around and we went out the Village and he stopped at the same place that he let Frank and the unknown black ~~and~~ <sup>AB</sup> male out at. We saw them running through the woods on the trail towards us. At this time, I was in the front passenger seat and both of them jumped into the back seat. When we heard the loud noise, "Fawk" had gotten a call on his cell phone and he was talking on the phone as he was driving out. When they got in the car, Frank was saying, "Dude, Dude, Hurry up get me out of this side of town!" Frank said he had shot the dude in the chest. I learned later when I got back to the trailer park that the ~~AB~~ <sup>(AB)</sup> dude Frank shot was "Slick" from people in the trailer park. Frank told "Fawk" carried Frank and the other dude to "West End" where they jumped out and Frank had the gun with him. "Fawk" dropped me off at the stop sign on Samatt Street across from the trailer park (M<sup>e</sup>Entire's). I walked to Redwood's Mini-Mart right up the street and bought my grandmother some chewing tobacco. I carried the chewing tobacco to my grandmother at her house where I currently live. The next couple of days, Frank and I started hanging around each other and he told me not to say anything about what he had <sup>done</sup> to anyone. I can honestly say (AB)

WITNESS: [Signature]

WITNESS: [Signature]  
E.D. "Spill" McEhew

Antron Bonner  
Signature of person giving voluntary statement



CHEROKEE COUNTY SHERIFF'S OFFICE  
312 E. Frederick Street  
Gaffney, S.C. 29340  
(864) 489-4722

CASE NUMBER

### Pre-Interrogation Waiver Form

Name: ANTRON BONNER Address: 110 CLEARFIELD DR. GAFFNEY, S.C.  
Telephone Number: [REDACTED] Social Security Number: [REDACTED]  
Date of Birth: [REDACTED] Today's Date: 7-21-14 Time: 9:08 A.M. Education: 11TH

#### STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- AB (✓) 1. You have the right to remain silent.
- AB (✓) 2. Anything you say can and will be used against you in a court law.
- AB (✓) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- AB (✓) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- AB (✓) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by S/A SPIKE McCRAW & RICHARD BURGESS

I have read the above rights, and I understand them fully.

Signed x ANTRON BONNER Witness E.D. "Spike" McCraw

#### WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to Deputy S/A SPIKE McCRAW in reference to MURDER INVESTIGATION (BLAIR)

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed ANTRON BONNER Witness E.D. "Spike" McCraw

Time Interview Began: 9:21 A.m. Time (Statement/Interview) was completed: 1:04 P.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 3 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 21<sup>st</sup> DAY OF July, 20 14

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 050321

Signed: x Antron Bonner

Witness: [Signature]

Witness: E.D. "Spike" McCraw

CLERK OF COURT  
2014 MAR -3 AM 10:52  
DANIEL W. HOBBS

### VOLUNTARY STATEMENT

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, GA

2022 JAN 3

PAGE 1 OF 3

CASE NUMBER
3

NAME: ANTRON BOWNER

(PB) I have asked Spike McEwan to write this statement for me as I have told it to him. This statement is the truth, the whole truth and nothing but the truth, so help me God. I make this statement in the presence of my mother, Inji Bowner.

On the day when "Slick" was shot, "Fawk", "Gwop", an unknown light-skinned black male, short, with real short hair or close to bald-headed, and I left Cometicat Village with "Fawk" driving. He drove to Littlejohn Street in Saffray and stopped at the speed bumps at Mary Davis' house. Mary is one of "Gwop's" girlfriends. "Gwop" and the unknown male got out here and walked to or towards Mary's house. "Gwop" had the rifle with him when they got out of the car. There were 2 or 3 cars parked at Mary's house, one was a gray or light gray looking JEEP with 3 rows of seats and a 2 seater car and not sure of the other car. I also remember during the ride over here, "Gwop" and "Fawk" calling the unknown male "T".

This guy is probably in his late 20's or early 30's. I have seen this guy several times before with "Gwop". When "Fawk" let me out at the stop sign on Samatt Street, I walked to the convenience store to get my grandmother some chewing tobacco and walked back home in McEntire's Mobile Home Park and gave it to her. Later on, I walked over to "Gwop's" girlfriend, Brittany Watkins', mother's trailer in McEntire's Mobile Home Park near my grandmother's trailer. Her name is Charlotte Watkins and everyone calls her "Monkey". Her cell phone number is 803-444-0365. I walked to her trailer to smoke some marijuana with her. Later on in the night, when "Monkey" and I were alone, I told her about what had happened at the Village. I told her that "Gwop" had shot "Slick". She just shook her head when I told her. "Gwop" and Mary had supposed to have to Spartanburg and later on I talked to Brittany (PB)

WITNESS: E. J. "Spike" McEwan

WITNESS: [Signature]

X ANTRON BOWNER  
Signature of person giving voluntary statement

## VOLUNTARY STATEMENT

PAGE 2 OF 3

NAME: ANTRON BOWEN

CASE NUMBER

(AB) at her mama's trailer. I also told Brittany that "Gwap" had shot "Slick" and she called him a "Damn fool" and started cussing. "Gwap" was wearing a doctor's like plastic glove on his right hand, it was light yellow looking and he got it from the middle console of his car, the black Dodge Caliber, when he left from "Monkey's" trailer and he had put it on before we left going to the Village. I ended up spending the night at "Monkey's". The next few days when I saw "Gwap" he didn't mention anything about shooting "Slick". But the next time I saw him he told me not to say anything to anyone about the shooting and what he had done because he said he couldn't go down for that. He just told me to be quiet about it. I have ridden (AB) ridden with "Gwap" before in his car when he had guns on him or in his car. He just mostly had pistols until he got jumped on a few weeks ago and he got this rifle and started carrying it around with him. When the unknown male jumped out of the car with "Gwap", he had an automatic pistol with him and when he got out, he pulled the hammer back and "locked it" before they ran down through the woods to the Village.

I have been shown a lineup by Spike McLaw and Richard Burgess and the guy I circled, # 5, is "T" and was the guy that was with us when we went to the Village. He is the one that got out of the car with "Gwap", had a pistol with him when they ran down through the woods towards the Village. I now know his real name to be Terrence Studyance. He is also the same one that got out of the car with "Gwap" near Mary's house. The last time I saw him was Thursday, the day before I came to the Sheriff's Office. I saw him at "Monkey's" trailer and he was with "Gwap" outside (AB)

WITNESS: E. J. "Spike" McLaw

WITNESS: 

ANTRON BOWEN

Signature of person giving voluntary statement



HEROKEE COUNTY SHERIFF'S OFFICE  
112 E. Frederick Street  
Gaffney, S.C. 29340  
(864) 489-4722

CASE NUMBER

### Pre-Interrogation Waiver Form

Name: ANTHONY MONTRIE BENDER Address: [REDACTED]  
 Telephone Number: [REDACTED] Social Security Number: [REDACTED]  
 Date of Birth: [REDACTED] Today's Date: 080714 Time: 15:45 Education: 11TH

#### STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- AB (✓) 1. You have the right to remain silent.
- AB (✓) 2. Anything you say can and will be used against you in a court law.
- AB (✓) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- AB (✓) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- AB (✓) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by Richard Burgess II

I have read the above rights, and I understand them fully.

Signed: ANTHONY BENDER Witness: E.D. "Spike" McCaw

FILED IN OFFICE OF  
 CLERK OF COURT  
 HEROKEE COUNTY, SC  
 2014 AUG -3 AM 10:52  
 DAVID W. HENRI

#### WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to

Deputy Richard Burgess II / SAU MCKAY in reference to MURDER

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed: ANTHONY BENDER Witness: E.D. "Spike" McCaw

Time Interview Began: 15:45 p.m. Time (Statement/Interview) was completed: 16:40 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 2 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

7<sup>TH</sup> DAY OF AUGUST, 20 14  
[Signature]  
 NOTARY PUBLIC FOR SOUTH CAROLINA  
 MY COMMISSION EXPIRES: 050321

Signed: ANTHONY BENDER  
 Witness: E.D. "Spike" McCaw  
 Witness: \_\_\_\_\_

# VOLUNTARY STATEMENT

PAGE

CASE NUMBER

CASE NUMBER
3

NAME: Andrew Matthew Bowler

(FB)

I HAD my step from Nancy Tate contact Detective Spike because I needed to tell him something else. I was going to tell him that since I've been locked up Frank Dover tried to talk to me. When I was first locked up I was in E. Deem Frank was in D Deem. Frank started talking, actually yelling in the rec. yard, trying to get me. Marie Parker was in the Deem with me. Marie answered him for me. Marie told him that I was laying down. He told Marie to tell me to be quiet about the shooting and don't say anything. Marie told him that he would tell me but Marie told me ~~that I would be OK and to go back inside~~ also meant to tell about the night of the shooting. That night me and Brittany Rove were to Spartanburg over to where Frank was. When we got in the car heading that way, Brittany told me, "Go ahead and tell me, cause Frank don't tell me what happened." That's when I told her about the shooting. She just got mad and started cussing. We went over to Frank's cousin's house, Frank was already there. We sat there until in the morning early, probably around 2am. Then me and Brittany left, Frank left with his cousin in a white (Ford Vic. (FB)

WITNESS: [Signature]

WITNESS: E.D. "Spike" McLean

Andrew Bowler  
Signature of person giving voluntary statement

FILED IN OFFICE OF  
 CLERK OF DISTRICT COURT  
 12/1/20

# VOLUNTARY STATEMENT

PAGE 2 OF 2

CASE NUMBER

NAME: ANTHONY MONTANA BONNER

AB Me and Brittany went back to Greeney, but I'm not sure where Frank went. I also know that ~~a couple of days later~~, I was heard Frank and Brittany talking. I heard him say that he sold the coil in Spartanburg that he shot slick with. AB

WITNESS: [Signature]

WITNESS: E.S. "Spike" McGraw

Anthony Bonner  
Signature of person giving voluntary statement

**Effective January 1, 2016**, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

FIRST • CLASS

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STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Franklin Dover, #380802,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-11-0158

**RETURN**

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2022 JUN 27 AM 8:57  
BRANDY W. HCBEE

NOW COMES Respondent, making its return to the post-conviction relief (hereafter “PCR”) application filed on March 3, 2022, by Franklin Dover (hereafter “Applicant”).

Respondent respectfully offers the following in support of its return:

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its September 2014 term, the Cherokee County Grand Jury indicted Applicant for murder (2014-GS-11-00875). Applicant was represented by Michael Morin, Esquire. Kimberly Leskanic and G. Matthew Kendall, Esquires, of the Seventh Circuit Solicitor’s Office prosecuted the case. On July 15, 2019, Applicant proceeded to trial before the Honorable R. Keith Kelly, circuit court judge, and a jury, where he was found guilty as indicted. Judge Kelly sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal on July 26, 2019, that was perfected by Robert Dudek, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Dover*, 2022-UP-060 (S.C. Ct. App. filed Feb. 9, 2022). The remittitur was issued on February

25, 2022.

## II. Statement of Facts

Timothy Blair (“Victim”), known by the nickname “Slick,” was murdered on June 22, 2014, in the Connecticut Village Apartments in Gaffney. The two main perpetrators were Rajshun Foster and Dover, neither of whom lived in Connecticut Village Apartments Complex. The testimony at trial proved that Foster and Dover had been looking for Victim for several days prior to Victim’s death because they believed Victim had stolen something, likely either drugs or money, that belonged to them. Several witnesses testified Foster and Dover were actively looking for Victim in the days leading up to Victim’s murder and had threatened Victim. Foster and Dover had told the witnesses to tell Victim they were looking for him. (ROA. 93-113; 116-24; 128-33; 308-13).

On June 22, 2014, Foster and Dover both drove to the complex in separate vehicles and confronted Victim. Eyewitnesses testified Foster was the instigator of the confrontation and that Victim refused to fight Foster and kept backing away from him. Then two different eyewitnesses heard Dover state out loud to Victim that: “he would get him [Victim] one way or the other.” Victim walked away from the confrontation with the two men with his head down. One eyewitness saw Dover armed with a rifle, standing in the doorway of his vehicle, when he made the verbal threat that he would get Victim one way or the other. (ROA. 177-93; 146-66; 198-207; 207-18; 263-67; 277-92 (Page 293 – Supp. ROA pg. 2); 308-13).

Foster and Dover both left the complex in their respective vehicles and drove to a nearby mobile home park where Dover lived with his girlfriend. The two men talked to Studyvance (aka “T”) in front of one of the homes. Terrance Bonner (aka “Red”) walked up and saw the three men conversing. Bonner asked if anyone knew where they could get some marijuana, and Foster

said yes, to come with them to the complex. Foster, Bonner, Studyvance, and Dover got in Foster's girlfriend's car headed for the complex. Before getting in the car, Dover got his rifle and at least one surgical-type glove out of his own car and got in the back of Foster's girlfriend's car where Bonner was seated in the back seat. Studyvance was also armed with a pistol, seated in the front passenger seat, as the four men traveled to the Apartments with Foster driving. (ROA. pp. 308-400; 93-103; 58-74; 146-66; 277-92 (Page 293 – Supp. ROA pg. 2); 308-13; 314-63).

The four men arrived shortly before 5:00 p.m., on June 22<sup>nd</sup>, in broad daylight. First, the men drove into the complex briefly and then turned around and left the parking lot. Foster drove up a nearby paved road and dropped Dover and Studyvance off at a wooded path that led down to the back of the complex and directly to the back door of Victim's girlfriend's apartment. When he got out of the car, Dover was carrying his loaded rifle and had with him a mask and surgical gloves. Studyvance was still armed with his pistol. Dover then snuck on foot to a location near the Victim's girlfriend's apartment. Studyvance followed Dover. Once at the back of the complex near Victim's girlfriend's apartment, Dover laid in wait for Victim. (R. 93-125; 58-74; 128-42; (page 143 – Supp. ROA page 1); 144-45; 146-66; 177-93; 207-18; 218-44; 245-63; 263-67; 277-92 (Page 293 – Supp. ROA page 2); 314-63; 363-83).

While Dover waited, Foster and Bonner drove back into the complex immediately after dropping off Dover and Studyvance. Once they drove back into the complex, Foster parked the car near a dumpster. Foster got out of the car and confronted Victim again, who was walking through the complex on foot. Several witnesses testified to seeing Foster and Victim have another argument there, Foster being the instigator, Victim walked away. Foster got back in his girlfriend's car and he and Bonner sat in the front seat where they could see Victim. They did not leave. Victim then began walking to his girlfriend's apartment. (R. 58-74; 128-42; (Page 143 –

Supp. ROA page 1); 144-66; 177-93; 198-207; 207-18; 219-44; 263-67; 277-92; (Page 293 – Supp. ROA page 2); 308-13; 314-63; 385-400).

While walking, Victim stopped at another female friend's apartment and told her he was afraid for his life. She told Victim to go to his girlfriend's apartment, get his clothes and personal things, return to her apartment, and she would help him get safely out of the complex. Victim left her apartment to get his things. (ROA. 128-42 (Page 143 – Supp. ROA page 1); 144-45; 207-18; 219-44; 245-63; 263-67; 277-93; 314-63).

Phone records introduced at trial proved between the time Foster and Bonner pulled into the apartment complex parking lot and parked next to the dumpster and when Victim was killed, there were three phone calls between Foster and Dover on their cell phones. (ROA. pp. 58-74; 146-166; 219-244; 245-263; 263-267; 277-292 (Page 293 – Supp. ROA page 2); 314-363; 385-400).

While walking to his girlfriend's apartment, Victim rounded a corner. When he did, Dover shot Victim once through the lungs with the rifle killing him while unarmed. Dover was wearing a mask and gloves when he shot victim. An eyewitness saw Dover, wearing a mask and surgical type gloves carrying a rifle just moments before the fatal shot was fired, lurking around the side of one of the apartment buildings. Police later found a fired 7.62 shell casing near victim's body at the crime scene. After killing the victim, Dover and Studyvance then fled back up the path through the woods where they had been dropped off earlier by Foster. An eyewitness saw two men flee from the area of the shooting up the wooded path immediately after the fatal shot was fired. (ROA. 93-125; 128-42; (Page 143 – Supp. ROA page 1); 144-66; 177-93; 198-267; 270-292; (Page 293 – Supp. ROA page 2); 308-83).

According to co-defendant Bonner, after Victim was shot, Foster received a telephone

call from Dover. Foster and Bonner then left the complex in Foster's girlfriend's car with Foster still driving. Foster drove back to the same location he had dropped Dover and Studyvance out at earlier and picked up Dover and Studyvance, who hurriedly jumped in the back door of the car. As soon as he got in the car, Dover stated to Foster, "get me out of here fast, get me out of here fast." Foster asked Dover where he shot Victim, and Dover stated: "in the chest area." Foster drove the men to the Dover's girlfriend's residence. (R. 58-74; 93-125; 128-142; (Page 143 – Supp. ROA page 1); 144-45; 219-63; 270-93; 308-83; 385-400).

Dover's former girlfriend testified Dover then changed clothes in her house and put the clothes he removed in a shoe box. Dover instructed her to call a friend of his to come and pick up the box. The friend complied. The former girlfriend and Dover drove to Westgate Mall and went inside so Dover could set up an alibi for himself. (ROA. 363-383).

The State proved that Dover's cell phone pinged around the complex at the time of the murder, in his girlfriend's mobile home before the four men left for the complex to commit the crime, and along the path away from the crime scene and back to his girlfriend's home shortly after the crime. (ROA. 58-74; 363-383; 385-400). Cell tower information also showed Dover's phone pinged along I-85 after leaving his girlfriend's mobile home and arriving at Westgate Mall shortly before 6:00 p.m. (ROA. 58-74; 363-383; 385-400).

The State relied on accomplice liability [i.e., "the hand of one is the hand of all"] to prove Foster's guilt because he drove Dover to the scene, knew what Dover was going to do, was complicit and aided and abetted in the murder, and then picked up Dover after the murder. (ROA. 58-73; 93-142 (Page 143 – Supp. ROA page. 1); 144-166; 176-94; 197-267; 269-92; 308-400; 410-28; 451-69).

### III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
  - a. For not requesting the prior trial transcript to hold the state witness to consistency of their prior trial testimony.
  - b. For failure to object to allowing Applicant to be tried with his alleged co-defendant, Rajshun Foster, when a severed trial was required.
  - c. For failure to object to the hand of one hand of all theory of accomplice liability because no evidence supported the charge.
  - d. Failure to argue Applicant's motion properly and conclusively for directed verdict.
  - e. Failure to recognize the State scheme, his co-defendant's counsel scheme to piggyback on Rajshun Foster inference of guilt upon Applicant as third-party guilt, when the state never proved common scheme or plan that Applicant had intent to commit a crime.
  - f. For not making a pretrial motion challenging the sufficiency of the indictment.
  - g. For failing to object to the testimony of Rajshun Foster purchasing marijuana; "bad act" that prejudiced Applicant.
2. Ineffective assistance of appellate counsel:
  - a. For failure to properly address trial counsel's motion for directed verdict when the evidence was insufficient to find Applicant guilty of murder.
  - b. For failure to address a 6<sup>th</sup> amendment violation to the right to confront witnesses, when trial counsel objected to the prejudicial effect of Jasmine Hudson testimony elicited by co-counsel's cross-examination, violated the Confrontation Clause of 6<sup>th</sup> and 14<sup>th</sup> Amendment.

Attached to and incorporated herein are Applicant's Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

### IV. Argument

#### *Ineffective Assistance of Trial Counsel*

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel

does not mean perfect or mistake-free representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “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, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of

representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); see *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant because of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that

course should be followed. *Id.* at 696-97.

***Failure to Properly Impeach Witnesses***

Applicant claims Counsel was ineffective for failure to properly impeach witnesses. However, he failed to explain who these witnesses were, what they should have been impeached upon, why Counsel was deficient, or how Applicant was prejudiced. Accordingly, Respondent contends Applicant likely cannot meet his burden of proof but requests an evidentiary hearing to fully resolve the matter.

***Failure to Sever the Trials***

Applicant claims Counsel was ineffective for failure to sever his and his co-defendant's trials. However, he failed to establish that Counsel did not request a severance, that Counsel was deficient for failing to request or secure the severance, and that Applicant was prejudiced as a result. Accordingly, Respondent contends Applicant likely cannot meet his burden of proof but requests an evidentiary hearing to fully resolve the matter.

***Failure to Object to Hand of One, Hand of All***

Applicant alleges Counsel was ineffective for failure to object to the hand of one hand of all theory. Whether failure to object constitutes deficient performance generally hinges on whether a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Applicant has failed to show why Counsel was deficient or how Applicant was prejudiced on this ground. Thus, Respondent contends that Applicant likely cannot meet his

burden of proof but requests an evidentiary hearing to fully resolve the matter.

***Failure to Properly Argue for Directed Verdict***

Applicant claims Counsel was ineffective for failure to argue Applicant's motion properly and conclusively for directed verdict. Applicant has failed to show what Counsel should have argued, why Counsel was deficient, or how Applicant was prejudiced on this ground. Thus, Respondent contends that Applicant likely cannot meet his burden of proof but requests an evidentiary hearing to fully resolve the matter.

***Failure to Anticipate State's Argument***

Applicant claims Counsel was ineffective for failure to recognize the State scheme, his co-defendant's counsel scheme to piggyback on Rajshun Foster inference of guilt upon Applicant as third-party guilt, when the state never proved common scheme or plan that Applicant had intent to commit a crime. Applicant has failed to state what Counsel should have done concerning the realization, how Counsel was deficient, or how Applicant was prejudiced. Still, Respondent contends that Applicant likely cannot meet his burden of proof but requests an evidentiary hearing to fully resolve the matter.

***Failure to Challenge the Indictment***

Applicant is alleging Counsel is ineffective for failure to challenge the indictment. Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce, and the defendant knows

what he must answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) citing *State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Here, there is no showing that the indictments were flawed or why they should have been challenged. Thus, Respondent contends that Applicant likely cannot meet his burden of proof, but requests an evidentiary hearing be held to fully resolve the matter.

#### ***Failure to Object to Elicitation of Co-Defendant Purchasing Marijuana***

Applicant claims Counsel was ineffective for failing to object to elicitation of testimony concerning Applicant's co-defendant purchasing marijuana. Applicant has failed to show how this impacted him, how Counsel was deficient for failing to object, or how he was prejudiced as a result. Respondent contends that Applicant likely cannot meet his burden of proof, but requests an evidentiary hearing be held to fully resolve the matter.

#### ***Ineffective Assistance of Appellate Counsel***

A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). "Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). Applicant must show appellate counsel's performance was deficient, and he was prejudiced by the deficiency. *Gilchrist v. State*, 364 S.C. 173, 612 S.E.2d 702 (2005); *Anderson v. State*, 354 S.C. 431, 581 S.E.2d 834 (2003); *Thrift v. State*, 302 S.C. 535, 537, 397 S.E.2d 523, 525 (1990).

Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745 (1983). Where the strategic decision to exclude certain

issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Tisdale v. State*, 357 S.C. 474, 476. 594 S.E.2d 166, 167 (2004) (quoting *Jones v. Barnes*, 463 U.S. 745, 754 (1983) (“For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would dissuade the very goal of vigorous and effective advocacy. . .”)).

When a claim of ineffective assistance of counsel is based upon neglecting to file a merits-based brief, Applicant must show that appellate counsel unreasonably failed to discover non-frivolous issues and file a merits brief raising them, and a reasonable probability that, but for his counsel’s unreasonable failure to file a merits brief, he or she would have prevailed on his appeal. *Smith v. Robbins*, 528 U.S. 259, 285 (2000). Applicant must show that a reasonably competent attorney would have found one non-frivolous issue warranting a merits brief, and that the issue identified would have won on appeal. *Id.* at 288.

#### ***Failure to Raise Directed Verdict Issue***

Applicant claims Counsel was ineffective for failure to raise an issue on appeal concerning the directed verdict. However, Applicant does not state why Appellate Counsel should have raised this issue, why this issue was stronger than the other issues raised on appeal, why deciding not to raise this issue was unreasonable, or how that issue would have won on appeal. Thus, Respondent contends that Applicant likely cannot meet his burden of proof, but requests an evidentiary hearing be held to fully resolve the matter.

#### ***Failure to Address Sixth Amendment Violation***

Applicant claims Counsel was ineffective for failure to raise an issue on appeal concerning an alleged Sixth Amendment Violation. However, Applicant does not state why

Appellate Counsel should have raised this issue, why this issue was stronger than the other issues raised on appeal, why deciding not to raise this issue was unreasonable, or how that issue would have won on appeal. Thus, Respondent contends that Applicant likely cannot meet his burden of proof, but requests an evidentiary hearing be held to fully resolve the matter.

**V. Other Allegations Denied**

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

**VI. Assertion of Rights to Notice of Amendments, Experts**

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and

any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCPP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

[conclusion and signature line on following page]

**VII. Conclusion**

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-0386

June 23, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Franklin Dover, #380802

Applicant,

v.

State of South Carolina

Respondent,

) IN THE COURT OF COMMON PLEAS  
) FOR THE SEVENTH JUDICIAL  
) CIRCUIT

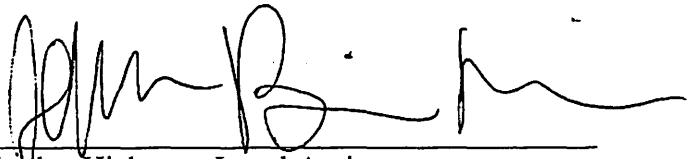
) Case No.: 2022-CP-11-0158

) 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 Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Rodney Richey, Esquire**  
**Richey & Richey, PA**  
**PO Box 10916**  
**Greenville, SC 29603-0916**

DATED this 23<sup>rd</sup> day of June 2022.



\_\_\_\_\_  
Jordan Hickman, Legal Assistant  
For Respondent

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS  
7th JUDICIAL CIRCUIT

3 FRANKLIN DOVER,

4 Applicant,

5 vs. CASE NO. 2022-CP-11-00158

6 THE STATE OF SOUTH CAROLINA,

7 Respondent.

8

9

10 HEARING BEFORE: HONORABLE DANIEL D. HALL

11 DATE: August 8, 2022

12 TIME: 11:02 AM

13 LOCATION: Spartanburg County Judicial Center  
14 180 Magnolia Street  
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,  
17 Registered Professional Reporter

18

19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF  
21 RODNEY W. RICHEY, ESQ.

22 ATTORNEYS FOR THE DEFENDANT  
23 CHELSEY F. MARTO, ESQ.

24

25

## FRANKLIN DOVER vs. STATE OF SOUTH CAROLINA

1	I N D E X		
2		DIRECT	CROSS
3	WITNESS/EXAMINATION		
4	<u>FRANKLIN DOVER</u>		
5	BY MR. RICHEY	4	--
6	BY MS. MARTO	--	10
7			
8	MICHAEL MORIN		
9	BY MR. RICHEY	17	--
10	BY MS. MARTO	--	22
11			
12	CERTIFICATE OF REPORTER Page 26		
13			
14			
15	E X H I B I T S		
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17	(No Exhibits Proffered)		
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FRANKLIN DOVER vs. STATE OF SOUTH CAROLINA

1 THE COURT: Thank you, Ms. Marto. Call your case.

2 MS. MARTO: Yes, Your Honor. May it please The  
3 Court.

4 We're here today on the case of Franklin Dover  
5 versus the State of South Carolina, docket number  
6 2022-CP-11-0158. He is presently confined in the South  
7 Carolina Department of Corrections.

8 In September 2014, he was indicted for murder. He  
9 was represented by Mr. Michael Morin. Kim Leskanic and Matthew  
10 Kendall prosecuted the case.

11 On July 15, 2019 he proceeded to trial before the  
12 Honorable R. Keith Kelly and a jury, where he was found guilty  
13 as indicted and sentenced to life imprisonment.

14 The Applicant filed a timely Notice of Appeal on  
15 July 26, 2019, which was perfected by appellate counsel, Robert  
16 Dudek, who filed an Anders brief.

17 The South Carolina Court of Appeals dismissed the  
18 appeal, and a remittur was issued February 25, 2022.

19 THE COURT: Hold on just a second. Is Mr. Dudek  
20 going to appear virtually?

21 MS. MARTO: My understanding they're waiving.

22 MR. RICHEY: No, sir.

23 THE COURT: Go ahead.

24 MS. MARTO: The PCR application was filed March 3,  
25 2022, and the return was made June 23, 2022. With that I'll

FRANKLIN DOVER DIR BY MR. RICHEY

1 turn it over to Mr. Richey.

2 MR. RICHEY: Thank you, Your Honor. We'll call  
3 Mr. Dover.

4 THE COURT: Mr. Dover, would you place your left  
5 hand on the Bible, raise your right hand.

6 FRANKLIN DOVER  
7 being first duly sworn, testified as follows:

8 THE COURT: Thank you. Be seated.

9 DIRECT EXAMINATION

10 BY MR. RICHEY:

11 Q. State your name, please.

12 A. Franklin Dover.

13 Q. Mr. Dover, are you currently in the Department of  
14 Corrections?

15 A. Yes, sir.

16 Q. Are you in there for a charge of murder?

17 A. Yes, sir.

18 Q. Did you have a plea or go to trial? Which one?

19 A. I went to trial.

20 Q. Who represented you in that case?

21 A. Mr. Michael Morin.

22 Q. You filed an application for post-conviction relief  
23 because you believe he ineffectively represented you; is that  
24 correct?

25 A. Yes, sir.

FRANKLIN DOVER DIR BY MR. RICHEY

1           Q.    You're asking This Court to vacate your conviction  
2 and order that you have a new trial; is that correct?

3           A.    Yes, sir.

4           Q.    And one of the issues that are raised in your case  
5 is that The Court in your trial issued oral jury charges;  
6 correct?

7                    You had jury charges in your trial. At the end of  
8 your trial, the judge charged the jury; is that correct?

9           A.    Yes, sir.

10          Q.    One of the issues you have in this case is the  
11 judge charging the use of a deadly weapon; is that correct?

12          A.    Yes, sir.

13          Q.    And those charges, that charge appears on page 460  
14 to 461 on the trial transcript; on the appellate records 458  
15 and 459. The judge charges the use of a deadly weapon rises to  
16 inference of malice. It's your position your lawyer should've  
17 objected to that charge; is that correct?

18          A.    Yes, sir.

19          Q.    And you are aware that The Court issued a ruling in  
20 State versus Burdette; right?

21          A.    Yes, sir.

22          Q.    And this ruling made this charge improper; is that  
23 correct?

24          A.    Yes, sir.

25          Q.    And you understand that The Court ruled on that

FRANKLIN DOVER DIR BY MR. RICHEY

1 opinion on July 31, 2019; correct?

2 A. Yes, sir.

3 Q. And you filed your appeal on July 26, 2019;  
4 correct?

5 A. Yes, sir.

6 Q. And so because you filed your appeal within that  
7 time frame, you believe that you should have the benefit of  
8 that case; correct?

9 A. Yes, sir.

10 Q. And you believe that Mr. Morin should've objected  
11 just to preserve that issue for you; correct?

12 A. Yes, sir.

13 Q. And you believe that Mr. Morin also didn't  
14 effectively represent you; correct?

15 A. Yes, sir.

16 Q. And those issues are failing to properly examine  
17 the witnesses; correct?

18 A. Yes, sir.

19 Q. What do you believe in that? You had two trials;  
20 correct?

21 A. Yes, sir.

22 Q. And you believe that the testimony changed from  
23 trial one to trial two; correct?

24 A. Yes, sir.

25 Q. And you believe -- can you explain that.

FRANKLIN DOVER DIR BY MR. RICHEY

1           A.    In my note?

2           Q.    Yes.  You believe that he should've filed a motion  
3 to sever so you wouldn't be tried with your co-Defendant;  
4 correct?

5           A.    Yes, sir.  First one was trial counsel was  
6 ineffective for allowing questioning of prior trial transcript  
7 because the State witnesses sit together at a prior trial.

8           Q.    Speak into that mike so we can hear you.  You  
9 believe that he should've reviewed the prior transcript to hold  
10 the witnesses to their prior testimony; correct?

11          A.    Yes, sir.

12          Q.    And that prior transcript, do you know whether he  
13 had that in his possession?

14          A.    No, sir.

15          Q.    Did you have the prior transcripts?

16          A.    No, sir.

17          Q.    Do you have it now?  You have it now; right?

18          A.    Yes, sir.

19          Q.    Where did you get it from?

20          A.    When I had wrote -- when I was in prison, I had  
21 wrote, asked for my complete file transcript.  And I got it  
22 then.

23          Q.    So he gave you the transcript?

24          A.    Yeah.

25          Q.    Do you know whether he had that transcript at the

FRANKLIN DOVER DIR BY MR. RICHEY

1 time of trial?

2 A. (Witness moves head from side to side).

3 Q. You have to answer yes or no, sir.

4 A. No, sir.

5 Q. You don't know whether he had it or not?

6 A. No, he didn't have it. Didn't have it in the  
7 courtroom.

8 Q. Go ahead.

9 A. State versus McMullin established the principle --

10 Q. No, I need you to tell me what he did and what he  
11 did not do. We understand the law. Tell me what he did and  
12 did not do with these witnesses.

13 A. Then, well, in like the first trial, several of  
14 them said certain stuff. In the second trial -- like, it was  
15 the first trial they didn't even say my name. It wasn't until  
16 the second trial when they said my name. If we had that  
17 transcript from the first trial, we could've --

18 Q. When who said your name?

19 A. Terra Bonner. Terra Bonner.

20 Q. Who was that?

21 A. She was a state witness. She the one that  
22 testified that Rajshun came by her house, Rajshun Foster came  
23 to her house. The second trial, she said Rajshun when I got  
24 found guilty on the second trial.

25 Q. Let me go back. This was a shooting supposedly

FRANKLIN DOVER DIR BY MR. RICHEY

1 done in an apartment complex?

2 A. Yes, sir.

3 Q. And the State alleged that you -- this is what they  
4 allege -- that you shot the guy at the apartment complex,  
5 right? Not meaning you did it. That's what they said,  
6 allegedly; right?

7 A. Yes, sir.

8 Q. And there were witnesses out there who gave various  
9 different stories to what happened; correct?

10 A. Yes, sir.

11 Q. And it's your position those statements those  
12 witnesses gave changed from trial one to trial two?

13 A. Yes, sir.

14 Q. And you believe that Mr. Morin was ineffective for  
15 not pointing that out?

16 A. Yes, sir, and investigating.

17 Q. Investigating the case.

18 And you believe that he should've made pretrial  
19 motions; is that correct?

20 A. Yes, sir.

21 Q. What motions do you believe he should've made?

22 A. To tell the truth I don't --

23 Q. Let me do it this way. You believe he should've  
24 made a pretrial motion not to be tried with the co-Defendant;  
25 correct?

FRANKLIN DOVER CROSS BY MS. MARTO

1 A. Yes, sir.

2 Q. Second motion, you believe he should object to the  
3 indictments?

4 A. Yes, sir.

5 Q. That's two of them.

6 And the third one he should have objected to the  
7 State using a prior bad act by Mr. Foster; correct?

8 A. Yes, sir. The theory of the hand of one is hand of  
9 all.

10 Q. You got to speak in the mike.

11 A. I said the theory of the hand of one -- should've  
12 object to the hand of one is hand of all theory. No evidence  
13 in support of the charge.

14 Q. You believe he should have done that at the  
15 directed verdict motion?

16 A. Yes, sir. I was going to say properly address the  
17 direct verdict case law or something.

18 MR. RICHEY: Answer the questions the Attorney  
19 General has.

20 THE COURT: Ms. Marto.

21 MS. MARTO: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. MARTO:

24 Q. Good morning, sir.

25 A. Good morning.

FRANKLIN DOVER CROSS BY MS. MARTO

1           Q.    Concerning the jury charges, the case Mr. Richey  
2 said came out after your trial concluded; correct?

3           A.    Yes, ma'am.

4           Q.    And the Notice of Appeal was filed; correct?

5           A.    Yes, ma'am.

6           Q.    What exactly did you want counsel to cross-examine  
7 these witnesses on?

8           A.    What I wanted him to cross-examine them on?

9           Q.    Yes, sir.

10          A.    I don't understand the question.

11          Q.    What exactly did you want counsel to bring out  
12 during cross-examination that he didn't? Is it just that one  
13 identification with Ms. Bonner?

14          A.    I don't understand.

15          Q.    Are you saying the witnesses changed their stories?

16          A.    Yes, ma'am.

17          Q.    Is the only example you have that Ms. Bonner  
18 identified you at the second trial?

19          A.    She identified me at the second trial. She  
20 testified, said that she didn't have -- she did never get the  
21 chance to tell that Rajshun had come by her house, looking for  
22 her. When she testified at the trial, she said she talked to  
23 him right before she left out the apartment complex. She was  
24 just, I mean, just wasn't a credible witness. They had trouble  
25 out there the whole time she was on the stand.

FRANKLIN DOVER CROSS BY MS. MARTO

1 Q. Your counsel did talk about how Ms. Bonner didn't  
2 identify you immediately at the second trial; correct?

3 A. Say it again.

4 Q. Did your counsel cross-examine Ms. Bonner about how  
5 she didn't identify you at your second trial?

6 A. Yes, ma'am.

7 Q. There were a lot of, I guess, witnesses that lived  
8 in the complex or were at the complex at that time; correct?

9 A. Yes.

10 Q. And they all testified at trial?

11 A. In my second trial, Susan Crawford, she didn't  
12 testify. Said that she was out or something. She was a good  
13 witness. And she testified that someone was saying that I  
14 supposed to have said something to them like aiding or  
15 something. She testified that I didn't.

16 In my second trial, she wasn't even there. They  
17 didn't have her there. They just had somebody reading her  
18 testimony, so we couldn't really cross-examine her.

19 Q. They said that she was sick and so they read into  
20 the record what she said at the first?

21 A. Yeah. We couldn't cross-examine her.

22 Q. You cross-examined her at your first trial; right?

23 A. Yes.

24 Q. And there was an individual that was in the car  
25 with you that testified at trial; correct?

## FRANKLIN DOVER CROSS BY MS. MARTO

1           A.    Who?

2           Q.    Mr. Antron Bonner was in the car with you at the  
3 time; correct?

4           A.    He was in the car with Rajshun Foster.

5           Q.    Did he say he was in the car with you?

6           A.    That's what he said.

7           Q.    You're denying that?

8           A.    Yes, ma'am.

9           Q.    He said that you were the one that got out of the  
10 car with the gun; correct?

11          A.    Yes, ma'am.

12          Q.    He said that you got back in the car and said that  
13 you shot him in the chest?

14          A.    That's what he said, yes, ma'am.

15          Q.    What exactly about these indictments did you think  
16 counsel should've objected to?

17          A.    I feel like -- I feel like could've objected to  
18 Antron Bonner, any testimony period.  It's clear on the record  
19 that he says that supposed to be after they heard the shot or  
20 whatever.  All the eyewitnesses said they seen them park out  
21 there, park by a trash can.  He wasn't a credible witness  
22 neither.

23                   Also, he had mental issues, like nobody never --  
24 they never attacked any of the mental issues, none of that in  
25 court.  He was testifying just for a plea.  They gave him some

FRANKLIN DOVER CROSS BY MS. MARTO

1 kind of deal or something they gave him, just get up there and  
2 tell all kind of lies.

3 Q. You're saying that about Mr. Bonner?

4 A. Yes, ma'am. It's clearly in the record. Like,  
5 they had a lot of problem with him, too. Like, he was saying  
6 one thing and witnesses saying another thing. He's saying a  
7 whole another thing.

8 Q. And your girlfriend said that she saw you after the  
9 incident allegedly occurred; correct?

10 A. As far as Mary?

11 Q. Yes.

12 A. Yeah, she said she saw me afterwards, but in her  
13 statements, it's saying that I came by her house at 12:00. I  
14 said did she want to go to Spartanburg.

15 Q. She testified that you, I guess, took all your  
16 clothes off and put it in a bag?

17 A. I asked her did she want to go to a cook out. So  
18 she told me, yes, she want to go to a cook out. So when I went  
19 to her house, I change my clothes so we could go to the cook  
20 out. Ain't no change my clothes -- they tried to make it seem  
21 like I change my clothes because of murder or something like  
22 that. That's not why.

23 I asked her did she want to go to Spartanburg. She  
24 said in her statement that I asked her did she want to go to a  
25 cook out.

FRANKLIN DOVER CROSS BY MS. MARTO

1           At my second trial, they had her, I guess, to say  
2           that I just had came by her house, supposed to have been after  
3           the incident had happened. That's what she testify to. In her  
4           statement, you can see in her statement where she got and said  
5           that I came by her house at 12:00. When they cross-examined  
6           her, she said that she only seen me a couple minutes before --  
7           well, after that.

8           Q.    She testified you took your clothes off and put it  
9           in, like, a bag; correct?

10          A.    A bag that I had brung them in. The bag that I had  
11          brung them in. I came to her house walking. They had  
12          testified that I put them in a shoe box or something. I don't  
13          know where that come from.

14          And in the first trial, the lawyer asked her was  
15          that a false statement? And she said yeah.

16          She said yes.

17          Who had them transcripts on the second trial, they  
18          could've pointed that out to the jury.

19          Q.    Did you discuss a motion to sever with Mr. Morin?

20          A.    Huh?

21          Q.    Did you discuss the motion to sever the trial with  
22          Mr. Morin?

23          A.    I mean, when they had Rajshun girlfriend testify,  
24          that was going to be a conflict. That was going to be a  
25          conflict-computation. That was going to be a

FRANKLIN DOVER CROSS BY MS. MARTO

1 conflict-computation anyway. It supposed to be separate trial.  
2 I couldn't attack him. I couldn't put him on the stand to  
3 question him 'cause we was in a joint trial. So I feel like I  
4 have a better trial with just my own trial.

5 Q. You wanted your own trial so that you could call  
6 and question Rajshun?

7 A. No, ma'am. I wanted my own trial. If I had my own  
8 trial, then it's like I couldn't, I couldn't, I couldn't push  
9 him at our trial. We had, we had a joint trial. But a  
10 separate trial should've been, should've been filed. They even  
11 said that during the trial. A separate trial should've been  
12 filed. The Solicitor said nobody never, nobody never asked for  
13 a separate trial. If you're defending me, you trying to get me  
14 home, that's what we should've went for, a separate trial.

15 Q. Did you ask your attorney for one?

16 A. At that time, I didn't, I didn't really know we  
17 were going to a joint trial. It took like a couple days for,  
18 for my trial. And we were having a joint trial.

19 Q. What was the prior bad act you wanted excluded?

20 A. The part -- you said about the bad act?

21 Q. Yes.

22 A. The part about where they were questioning Antron  
23 about them going into the village, buying drugs. That didn't  
24 have nothing to do with me.

25 Q. You wanted the discussion about buying weed to be

FRANKLIN DOVER CROSS BY MS. MARTO

1 excluded?

2 A. I mean, we in a joint trial. That only had to do  
3 with Rajshun. That didn't have nothing to do with me. That's  
4 bad act on my part.

5 Q. Are you saying that hand of one, hand of all isn't  
6 applicable in this case? Is that your contention?

7 (A pause transpired).

8 BY MS. MARTO:

9 Q. Sir, are you saying that the hand of one is the  
10 hand of all is not applicable in your case?

11 A. No. I was saying that trial counsel was  
12 ineffective for not objecting to the hand of one, the hand of  
13 all theory because there was no evidence to support that  
14 charge.

15 Q. Is it fair to say the theory of the trial is that  
16 you were the shooter?

17 A. That's what they were saying.

18 MS. MARTO: No further questions.

19 MR. RICHEY: No other questions.

20 THE COURT: Thank you. You can step down.

21 (The witness exited the stand.)

22 MR. RICHEY: We call Michael Morin.

23 MICHAEL MORIN

24 being first duly sworn, testified as follows:

25 DIRECT EXAMINATION

MICHAEL MORIN DIR BY MR. RICHEY

1 BY MR. RICHEY:

2 Q. Sir, can you state your name, please.

3 A. Michael Morin.

4 Q. Mr. Morin, do you recall representing Mr. Dover?

5 A. Yes, I do.

6 Q. Did y'all have a jury trial in this case?

7 A. We had two jury trials.

8 Q. And let me go to the issue. You were in the  
9 courtroom when I read the jury charge as to the use of a deadly  
10 weapon gives rise to a permissive inference of malice. That  
11 charge, you were in the courtroom when I read that charge?

12 A. Yes.

13 Q. Is that an improper charge at this point?

14 A. Today?

15 Q. Yes.

16 A. Yes.

17 Q. And your case you tried on -- let me get the date  
18 correct for you -- July 26, 2019. You are aware that, at that  
19 point, that charge was not invalid based off of State versus  
20 Burdette; correct?

21 A. Correct.

22 Q. And that case was heard after your case? Was  
23 decided after your case?

24 A. Decided a week or two weeks after our case.

25 Q. And you filed a notice in this case on July 26,

MICHAEL MORIN DIR BY MR. RICHEY

1 2019. That's kind of when that notice was filed?

2 A. I believe that's correct. I usually do it right  
3 away. The longer I wait -- it's better to take care of it when  
4 I'm thinking about it.

5 Q. That's within the ten days?

6 A. Yes.

7 Q. I don't know if you're aware of the case law that  
8 says that all -- that the holding in the Burdette case applies  
9 to all cases that are pending or not yet final. At that point,  
10 Mr. Dover's case was not final under that?

11 A. You mean final as in it still had a pending appeal?

12 Q. Pending appeal, pending on direct review or not yet  
13 final; his case was pending on review; correct?

14 A. Yes.

15 Q. Because it had been appealed?

16 A. Right.

17 Q. Do you believe that, if that is the case, that he  
18 should be entitled to a new trial, if that's the case? Not  
19 based on your understanding of the law at the time, but your  
20 understanding of this case or the case law now.

21 A. I can tell you what it is. Whether that entitles  
22 him to a new trial...

23 Q. That is a good outline of what happened?

24 A. Time line, yes. He was tried, and it was pending  
25 appeal. His appeal was pending when Burdette was announced or

MICHAEL MORIN DIR BY MR. RICHEY

1 published.

2 Q. I'm going to go to some of these issues with you  
3 raised by Mr. Dover. One, do you believe that a motion to  
4 sever this case would've been granted or proper?

5 A. No.

6 Q. Can you tell me why.

7 A. We had already tried the case one time. And one of  
8 the co-Defendants was acquitted. There was a third  
9 co-Defendant got acquitted. Then we came to the second one. I  
10 believed that we were in a better position to argue that he's  
11 not the shooter, that somebody else is the shooter, and the  
12 jury can see and hear that.

13 We never discussed it because -- and I'm quite  
14 certain once one was acquitted, he and his co-Defendant were  
15 both mistried on the first time, that we were making progress.

16 Q. Did you object to the hand of one, hand of all  
17 theory or charge?

18 A. I did not.

19 Q. Can you tell me why.

20 A. I think that's valid law.

21 Q. Why would that be valid in this circumstance?

22 A. Well, the allegation by the State is that they went  
23 over there to shoot this fellow. And they went together with  
24 that purpose. And that's what Bonner, I believe, testified to.

25 Q. Do you believe that the indictments -- were there

MICHAEL MORIN DIR BY MR. RICHEY

1 issues with the indictments pretrial?

2 A. I don't believe there is any issue with the  
3 indictment.

4 Q. Do you believe you should object to the testimony  
5 of Rajshun Foster about them going over there to purchase  
6 marijuana, drugs?

7 A. Now that part I'm not really -- I don't recall.  
8 Can you -- there was an ongoing thing about that's why they  
9 were over there. That's why they were seen earlier in the day.  
10 It went back and forth, which wouldn't have been unusual for  
11 that housing development, for those kinds of things to occur.  
12 I can't say...

13 Q. Did you have the prior transcript of the first  
14 trial?

15 A. I had the transcript of all the people who  
16 testified. I had ordered that. In my trial notebook -- I was  
17 just looking at it -- I put their transcript on top of their  
18 statements. When they were testifying, I had access to both of  
19 them.

20 Q. Did you tell Mr. Dover you had that at the time of  
21 trial?

22 A. I don't remember if I told him I had it.

23 Q. You said to him -- he made a request for his file.  
24 You sent him those transcripts?

25 A. Right, because that was on top. Everything that

MICHAEL MORIN CROSS BY MS. MARTO

1 was in that trial notebook, he got, which would've included  
2 that.

3 Q. So do you think this is a case where a directed  
4 verdict should've been granted?

5 A. I mean, I think if you're going by the light most  
6 favorable to the State that had a witness, two witnesses that  
7 identified him as the shooter, I think that it would've been  
8 hard to get one granted.

9 MR. RICHEY: Answer questions the Attorney General  
10 has.

11 THE COURT: Ms. Marto.

12 MS. MARTO: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. MARTO:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. Can you give us a brief description of what  
18 evidence existed in this case.

19 A. Well, Antron Bonner claims that he was with  
20 Mr. Dover in a car with two other people. Claims that  
21 Mr. Dover and, I think, another gentleman got out and went down  
22 a pathway with a fairly large rifle. The rifle -- the autopsy  
23 indicated that it would have been a large rifle.

24 There was a witness who claimed that she saw him or  
25 what he was wearing or something to that effect, that lived in

MICHAEL MORIN CROSS BY MS. MARTO

1 the complex. I hired an investigator to come out there with me  
2 and walk through that and talk to her. I felt I had done a  
3 fairly good job of discrediting her I.D. Antron Bonner was a  
4 problem for Mr. Dover in this case.

5 Q. He identified Mr. Dover as the shooter; correct?

6 A. Uh-huh. He identified him as having the firearm,  
7 leaving and coming.

8 Q. Do you recall him saying anything about what he  
9 said to Mr. Foster?

10 A. I do remember him saying -- Bonner saying that  
11 Mr. Dover had said or there was conversation in there about  
12 Mr. Dover making some sort of incriminating statement.

13 Q. Do you recall if Mr. Bonner claimed he was a part  
14 of the murder?

15 A. It's hard to say. Bonner was all over the place  
16 from the first trial to the second trial. He did have charges  
17 pending and that kind of thing.

18 Q. Do you recall if he claimed he got in the car so  
19 that he could make a pot purchase or purchase some weed?

20 A. I think he might've said that. I can't recall.

21 Q. Do you think a motion to sever would've been  
22 successful in this case?

23 A. I don't think so. I don't know what basis there  
24 would've been, especially since we already had a joint trial  
25 the first time.

MICHAEL MORIN CROSS BY MS. MARTO

1 Q. Was it your opinion that not severing would've been  
2 more advantageous to Mr. Dover?

3 A. I would say that now. I don't think it was even  
4 considered then 'cause that's what we were doing.

5 Q. What was your general strategy when it came to  
6 cross-examining the lay witnesses?

7 A. You got to try and do your best to discredit  
8 Mr. Bonner, the other woman that identified him. I had a  
9 photograph that I took -- we took out there but the State put  
10 in a very similar photograph that I thought was not very  
11 effective and tried to explain Mr. Dover. No one really can  
12 put him there. If it's not him, it might be the other fellow.  
13 It wasn't him.

14 Q. Was part of that strategy pointing out  
15 inconsistencies in prior statements?

16 A. Yes.

17 Q. Safe to say that this case was out of your hands  
18 when Burdette was decided; correct?

19 A. Yes.

20 Q. You couldn't object because, at the time, there was  
21 no objectionable basis; is that fair?

22 A. The law supported the charge at that time.

23 MS. MARTO: No further questions.

24 THE COURT: Mr. Richey.

25 MR. RICHEY: No questions.

MICHAEL MORIN CROSS BY MS. MARTO

1 THE COURT: Mr. Morin, you can step down.

2 THE WITNESS: Thank you, Your Honor.

3 (The witness exited the stand.)

4 MR. RICHEY: No other witnesses, Your Honor.

5 MS. MARTO: No witnesses.

6 THE COURT: I'll issue my ruling by the end of two  
7 weeks.

8 (The hearing was concluded at 11:31 a.m.)

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MICHAEL MORIN CROSS BY MS. MARTO

CERTIFICATE OF REPORTER

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I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 3rd day of May, 2023 at Spartanburg, Spartanburg County, South Carolina.



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Lora L. McDaniel,  
Registered Professional Reporter  
My Commission expires:  
August 9, 2026

**RECEIVED**

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHEROKEE )

IN THE COURT OF COMMON PLEAS )  
 FOR THE SEVENTH JUDICIAL CIRCUIT )

APR 04 2023

Franklin Dover, #380802, )  
 Applicant, )

Case No.: 2022-CP-11-0158 )

S.C. SUPREME COURT  
 FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2023 MAR 15 A 11:36  
 BRANDY W. MOBLE

v. )

**ORDER OF DISMISSAL** )

State of South Carolina, )  
 Respondent. )

This matter comes before this Court by way of Applicant's post-conviction relief application filed March 3, 2022. Respondent made its return on June 23, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 8, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Michael Morin also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its September 2014 term, the Cherokee County Grand Jury indicted Applicant for murder (2014-GS-11-00875). Applicant was represented by Michael Morin, Esquire. Kimberly Leskanic and G. Matthew Kendall, Esquires, of the Seventh Circuit Solicitor's Office prosecuted the case. On July 15, 2019, Applicant proceeded to trial before the Honorable R. Keith Kelly, circuit court judge, and

a jury, where he was found guilty as indicted. Judge Kelly sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal on July 26, 2019, that was perfected by Robert Dudck, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Dover*, 2022-UP-060 (S.C. Ct. App. filed Feb. 9, 2022). The remittitur was issued on February 25, 2022.

#### **Summary of Relevant Facts**

Timothy Blair ("Victim"), known by the nickname "Slick," was murdered on June 22, 2014, in the Connecticut Village Apartments in Gaffney. The two main perpetrators were Rajshun Foster and Dover, neither of whom lived in Connecticut Village Apartments Complex. The testimony at trial proved that Foster and Dover had been looking for Victim for several days prior to Victim's death because they believed Victim had stolen something, likely either drugs or money, that belonged to them. Several witnesses testified Foster and Dover were actively looking for Victim in the days leading up to Victim's murder and had threatened Victim. Foster and Dover had told the witnesses to tell Victim they were looking for him. (ROA. 93-113; 116-24; 128-33; 308-13).

On June 22, 2014, Foster and Dover both drove to the complex in separate vehicles and confronted Victim. Eyewitnesses testified Foster was the instigator of the confrontation and that Victim refused to fight Foster and kept backing away from him. Then two different eyewitnesses heard Dover state out loud to Victim that: "he would get him [Victim] one way or the other." Victim walked away from the confrontation with the two men with his head down. One eyewitness saw Dover armed with a rifle, standing in the doorway of his vehicle, when he made

the verbal threat that he would get Victim one way or the other. (ROA. 177-93; 146-66; 198-207; 207-18; 263-67; 277-92 (Page 293 – Supp. ROA pg. 2); 308-13).

Foster and Dover both left the complex in their respective vehicles and drove to a nearby mobile home park where Dover lived with his girlfriend. The two men talked to Studyvance (aka "T") in front of one of the homes. Terrance Bonner (aka "Red") walked up and saw the three men conversing. Bonner asked if anyone knew where they could get some marijuana, and Foster said yes, to come with them to the complex. Foster, Bonner, Studyvance, and Dover got in Foster's girlfriend's car headed for the complex. Before getting in the car, Dover got his rifle and at least one surgical-type glove out of his own car and got in the back of Foster's girlfriend's car where Bonner was seated in the back seat. Studyvance was also armed with a pistol, seated in the front passenger seat, as the four men traveled to the Apartments with Foster driving. (ROA. pp. 308-400; 93-103; 58-74; 146-66; 277-92 (Page 293 – Supp. ROA pg. 2); 308-13; 314-63).

The four men arrived shortly before 5:00 p.m., on June 22<sup>nd</sup>, in broad daylight. First, the men drove into the complex briefly and then turned around and left the parking lot. Foster drove up a nearby paved road and dropped Dover and Studyvance off at a wooded path that led down to the back of the complex and directly to the back door of Victim's girlfriend's apartment. When he got out of the car, Dover was carrying his loaded rifle and had with him a mask and surgical gloves. Studyvance was still armed with his pistol. Dover then snuck on foot to a location near the Victim's girlfriend's apartment. Studyvance followed Dover. Once at the back of the complex near Victim's girlfriend's apartment, Dover laid in wait for Victim. (R. 93-125; 58-74; 128-42; (page 143 – Supp. ROA page 1); 144-45; 146-66; 177-93; 207-18; 218-44; 245-63; 263-67; 277-92 (Page 293 – Supp. ROA page 2); 314-63; 363-83).

While Dover waited, Foster and Bonner drove back into the complex immediately after

dropping off Dover and Studyvance. Once they drove back into the complex, Foster parked the car near a dumpster. Foster got out of the car and confronted Victim again, who was walking through the complex on foot. Several witnesses testified to seeing Foster and Victim have another argument there, Foster being the instigator, Victim walked away. Foster got back in his girlfriend's car and he and Bonner sat in the front seat where they could see Victim. They did not leave. Victim then began walking to his girlfriend's apartment. (R. 58-74; 128-42; (Page 143 – Supp. ROA page 1); 144-66; 177-93; 198-207; 207-18; 219-44; 263-67; 277-92; (Page 293 – Supp. ROA page 2); 308-13; 314-63; 385-400).

While walking, Victim stopped at another female friend's apartment and told her he was afraid for his life. She told Victim to go to his girlfriend's apartment, get his clothes and personal things, return to her apartment, and she would help him get safely out of the complex. Victim left her apartment to get his things. (ROA. 128-42 (Page 143 – Supp. ROA page 1); 144-45; 207-18; 219-44; 245-63; 263-67; 277-93; 314-63).

Phone records introduced at trial proved between the time Foster and Bonner pulled into the apartment complex parking lot and parked next to the dumpster and when Victim was killed, there were three phone calls between Foster and Dover on their cell phones. (ROA. pp. 58-74; 146-166; 219-244; 245-263; 263-267; 277-292 (Page 293 – Supp. ROA page 2); 314-363; 385-400).

While walking to his girlfriend's apartment, Victim rounded a corner. When he did, Dover shot Victim once through the lungs with the rifle killing him while unarmed. Dover was wearing a mask and gloves when he shot victim. An eyewitness saw Dover, wearing a mask and surgical type gloves carrying a rifle just moments before the fatal shot was fired, lurking around the side of one of the apartment buildings. Police later found a fired 7.62 shell casing near

victim's body at the crime scene. After killing the victim, Dover and Studyvance then fled back up the path through the woods where they had been dropped off earlier by Foster. An eyewitness saw two men flee from the area of the shooting up the wooded path immediately after the fatal shot was fired. (ROA. 93-125; 128-42; (Page 143 – Supp. ROA page 1); 1446-66; 177-93; 198-267; 270-292; (Page 293 – Supp. ROA page 2); 308-83).

According to co-defendant Bonner, after Victim was shot, Foster received a telephone call from Dover. Foster and Bonner then left the complex in Foster's girlfriend's car with Foster still driving. Foster drove back to the same location he had dropped Dover and Studyvance out at earlier and picked up Dover and Studyvance, who hurriedly jumped in the back door of the car. As soon as he got in the car, Dover stated to Foster, "get me out of here fast, get me out of here fast." Foster asked Dover where he shot Victim, and Dover stated: "in the chest area." Foster drove the men to the Dover's girlfriend's residence. (R. 58-74; 93-125; 128-142; (Page 143 – Supp. ROA page 1); 144-45; 219-63; 270-93; 308-83; 385-400).

Dover's former girlfriend testified Dover then changed clothes in her house and put the clothes he removed in a shoe box. Dover instructed her to call a friend of his to come and pick up the box. The friend complied. The former girlfriend and Dover drove to Westgate Mall and went inside so Dover could set up an alibi for himself. (ROA. 363-383).

The State proved that Dover's cell phone pinged around the complex at the time of the murder, in his girlfriend's mobile home before the four men left for the complex to commit the crime, and along the path away from the crime scene and back to his girlfriend's home shortly after the crime. (ROA. 58-74; 363-383; 385-400). Cell tower information also showed Dover's phone pinged along I-85 after leaving his girlfriend's mobile home and arriving at Westgate Mall shortly before 6:00 p.m. (ROA. 58-74; 363-383; 385-400).

The State relied on accomplice liability [i.e., "the hand of one is the hand of all"] to prove Foster's guilt because he drove Dover to the scene, knew what Dover was going to do, was complicit and aided and abetted in the murder, and then picked up Dover after the murder. (ROA. 58-73; 93-142 (Page 143 – Supp. ROA page. 1); 144-166; 176-94; 197-267; 269-92; 308-400; 410-28; 451-69).

### Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of trial counsel:
  - a. For not requesting the prior trial transcript to hold the state witness to consistency of their prior trial testimony.
  - b. For failure to object to allowing Applicant to be tried with his alleged co-defendant, Rajshun Foster, when a severed trial was required.
  - c. For failure to object to the hand of one hand of all theory of accomplice liability because no evidence supported the charge.
  - d. Failure to argue Applicant's motion properly and conclusively for directed verdict.
  - e. Failure to recognize the State scheme, his co-defendant's counsel scheme to piggyback on Rajshun Foster inference of guilt upon Applicant as third-party guilt, when the state never proved common scheme or plan that Applicant had intent to commit a crime.
  - f. For not making a pretrial motion challenging the sufficiency of the indictment.
  - g. For failing to object to the testimony of Rajshun Foster purchasing marijuana; "bad act" that prejudiced Applicant.
2. Ineffective assistance of appellate counsel:
  - a. For failure to properly address trial counsel's motion for directed verdict when the evidence was insufficient to find Applicant guilty of murder.
  - b. For failure to address a 6<sup>th</sup> amendment violation to the right to confront witnesses, when trial counsel objected to the prejudicial effect of Jasmine Hudson testimony elicited by co-counsel's cross-examination, violated the Confrontation Clause of 6<sup>th</sup> and 14<sup>th</sup> Amendment.

At the PCR hearing, Applicant proceeded forward on the following:

1. Ineffective Assistance of Counsel.
  - a. Failure to object to the charge that malice could be inferred from use of a deadly weapon.
  - b. Failure to effectively impeach witnesses with prior testimony offered at the mistrial.

- c. Failure to move to sever the trial from his co-defendant's.
- d. Failure to object to the indictments.
- e. Failure to effectively move for a directed verdict.
- f. Failure to object to prior bad acts evidence concerning an alleged drug deal.
- g. Failure to object to hand of one hand of all charge.
- h. Failure to properly cross-examine the State's witnesses.
- i. Failure to object to Bonner's testimony concerning a deal in exchange for testimony.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

### Summary of the Testimony

#### *Applicant Testimony*

Applicant stated he was represented by Counsel at trial. He stated he thought Counsel was ineffective and that he wants a new trial as a result. He stated that jury instructions were provided at the end of his trial. He stated that the Court charged that malice can be inferred from use of a deadly weapon. He stated that he thought Counsel should have objected on this basis. He stated that he was familiar with the appellate court's decision in *Burdette* that rendered the charge given at his trial improper. He stated that his trial occurred before the case came out, but that he wanted the case to benefit him because his direct appeal was pending when this decision was released.

Applicant testified that he had two trials. Applicant stated that he thought the testimony changed from one trial to the other and Counsel should have reviewed the previous transcript to hold witnesses to their previous testimony. Applicant testified that he wanted a motion to sever his trial from his co-defendants. Applicant stated that he only now has his prior transcript because he asked for complete file transcript and Counsel gave it to him while he was in prison. Applicant also alleged that he wanted Counsel to file pre-trial motions to not be tried with his co-defendants, motion for a directed verdict, make objections to indictments, an objection to State

using prior bad acts by co-defendant, and an objection to the charge “hand of one hand of all” due to lack of supporting evidence. On cross-examination, Applicant insisted that witness Bonner was not a credible witness because she didn’t identify him immediately.

Applicant acknowledged that many witnesses from the complex testified, and mentioned a woman named Susan testified at the second trial but had not done so at the first. Applicant also acknowledged that a passenger in the car with him testified as well, Rajshun Foster, but he believed that his testimony was false. Applicant stated that he also believed Counsel should have raised objection to Bonner’s testimony and that he received “some kind of deal” in exchange for him “telling all kinds of lies”. Applicant testified to seeing his girlfriend after the incident and changing his clothes so that they could attend a cook-out. Applicant stated the transcript regarding a “shoe box” that his clothes were deposited in was a false statement and that he actually had his clothing in a bag.

Applicant stated that he wanted the trial to be severed and he thinks he would have had a better outcome if he had his own trial. Applicant stated that he didn’t know that it was a joint trial until a few days beforehand. Applicant answered that the bad act that he wanted to be excluded was the reference to going to the site of the incident to buy drugs, and any discussion of weed had nothing to do with him.

#### *Counsel Testimony*

Counsel testified that Applicant proceeded to two jury trials, the first of which was a mistrial. He stated that he heard the jury instructions given at Applicant’s second trial and stated that the instruction is improper today. However, Counsel testified that the case was tried a week or two before the case rendering the instructions incorrect came out. Counsel stated that he filed the notice of appeal on July 26, 2019, and that he typically files it right away.

Counsel testified that he did not think a motion to sever would have been granted or proper. He testified that one of Applicant's co-defendants were acquitted at the first trial. He stated he thought Applicant was in a better position than the remaining co-defendant because Applicant was not the shooter. He stated that he never discussed a severance with Applicant, but thought they made progress after the mistrial and Applicant's co-defendant was acquitted.

Counsel testified that he did not object to the accomplice liability charge, but stated he thought it was a valid charge because the State's allegation was that the defendants went there to shoot the victim. He stated that Bonner testified to this. Counsel testified that he did not see any issues with the indictments. Counsel testified that he did not recall testimony from Rashad concerning his decision to buy marijuana but stated that there was evidence that they went to the apartment complex to buy marijuana, which is not unusual for that housing development.

Counsel testified that he had portions of the mistrial transcript where people testified. Counsel testified that he placed the transcript portions on top of their statements in his trial notebook so that he could compare them as they testified. He did not recall whether he informed Applicant of this.

Counsel testified that he sent everything in Applicant's file to him, including the mistrial transcript. He stated that he did not think the directed verdict should have been granted because the State had two witnesses that identified Applicant as the shooter.

Counsel testified that Applicant's co-defendant, Mr. Bonner, claimed that he was with Applicant and two others in a car and that Applicant, and another man left the car and went down a pathway with a large rifle. He testified that a witness claimed she saw a man whose clothes matched Applicant's at the complex. He stated that he hired an investigator who went with him to walk the complex and talk to eyewitnesses. He stated he thought he discredited her

identification, but Bonner's identification was fatal. Specifically, Bonner stated that Dover had the gun going from and to the car. He also testified that Bonner said that Dover made an incriminating statement. He testified that Bonner's testimony fluctuated wildly and that he had pending charges at the time of the trial. He stated he thought Bonner testified he became involved because he thought they were going to buy weed.

Counsel stated that he did not consider a severed trial because the last trial was joint. He stated that his trial strategy was attaching Bonner's and the other woman's credibility by pointing out inconsistent statements. He stated that the law supported the jury charge at the time of trial.

#### **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 and arguments presented at the PCR hearing. Before this Court are the Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

#### ***Ineffective Assistance of Counsel***

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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, 686 (1984):

*Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

#### ***Jury Instructions – Inferring Malice***

Applicant claims Counsel was ineffective for failure to object to jury instructions stating they could infer malice from use of a deadly weapon. If failure to object constitutes deficient performance generally hinges on whether a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Counsel has never been required “to be clairvoyant or anticipate changes in the law which were not existent at the time of trial.” *Gilmore v. State*, 314 S.C. 453, 456, 445 S.E.2d 454, 457 (1994), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). *See generally e.g. Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993) (citations omitted); *Robinson v. State*, 308 S.C. 74, 417 S.E.2d 88 (1992); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992); *Kirkpatrick v. State*, 306 S.C. 359, 412 S.E.2d 389

(1991).

In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution. *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 740 (2009). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

Here, Counsel was not deficient because *State v. Burdette*<sup>1</sup> was not decided until after this trial was held. Accordingly, the controlling law was *State v. Belcher*,<sup>2</sup> which permitted an implied malice instruction so long as there was no evidence of mitigating circumstances presented. The charge given at Applicant's trial was appropriate at the time and this fact was recognized on direct appeal by Applicant himself. (R. 400-477) (See also FBOA, p. 10, ll. 2-5) ("Trial counsel could not have known that the court [the South Carolina Supreme Court] would rule on this issue mere days after trial. At the time of trial, they were following the jurisprudence laid out in *Belcher* which allowed implied malice, so long as there was no evidence of mitigating circumstances presented. The jury instruction as issued on that day was appropriate."). Counsel is not deficient for failing to object to the jury instruction that were both appropriate at the time and where Counsel never could have anticipated the change in law. *See e.g. Thornes*, 310 S.C. at 309-10, 426 S.E.2d at 765-66 ("[t]his court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of trial."). Counsel acted reasonably in refraining from objecting to good and current law at the time and, accordingly,

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<sup>1</sup> 427 S.C. 490, 502-03, 832 S.E.2d 575, 582-83 (2019).

<sup>2</sup> 385 S.C. 597, 685 S.E.2d 892 (2009).

should not be found deficient.

Furtherance, no prejudice has been established because any alleged error in the instructions was harmless. This is the case for three primary reasons. First, Applicant's case does not present a concern of possible jury confusion because there is no evidence that Applicant was entitled to a lesser-included offense instruction or that a relevant defense, such as self-defense or defense of others, was applicable.

This runs counter to *Burdette*, where there was evidence reducing the crime from murder to voluntary or involuntary manslaughter and instructions on both lesser-included offenses were given. The Supreme Court found in *Burdette* that the instruction there was not harmless because the trial court failed to instruct the jury that voluntary manslaughter was an intentional killing without malice, so it was impossible to tell if the jury relied on the permissive inference or not when it convicted the defendant of voluntary manslaughter. *Id.*

Here, that did not occur. There was no instruction on any lesser-included offense. (R. 451-69). Foster and Dover either committed murder or they were innocent, and no lesser-included offense or defense instructions were requested or given.

Second, the trial judge gave two alternative definitions of "malice" that support a conclusion that the killing was malicious:

Now, each of these defendants is charged with murder. And in order to prove this crime, the State must prove each defendant killed another person with malice afore-thought, either expressed or implied.

Malice has been defined as hatred, ill will, hostility to another. It is the intentional doing of a wrongful act without justification or excuse and with an intent to kill that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant before and at the time the act was committed. Therefore, there must be a combination of previous evil intent and the act itself.

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice, but merely the means and manner in which malice may be shown to exist. It is either by direct evidence or by inference from the facts and circumstances.

Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person.

Malice is wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. It is the doing of a wrongful act intentionally without just cause or excuse.

Intent means intending the result which actually occurred and not accidentally or involuntarily.

Intent may be shown by acts and conduct of each defendant and other circumstances from which you may naturally and reasonably infer intent.

Evidence of the character of the act, the character of the instrument used, the manner in which was used, the purpose to be accomplished and resulting wounds or injuries, may be considered in determining intent.

(R. 459-60).

The above definitions are supported by South Carolina case law. *See, e.g., Margolis v. Telech*, 239 S.C. 232, 238, 122 S.E.2d 417, 419-20 (1961) ("Malice is the deliberate, intentional doing of a wrongful act without just cause or excuse"); *Id.* at 238, 122 S.E.2d at 420 ("Malice 'is implied where it shows a disregard of the consequences of the injurious act, without reference to any special injury which he may inflict on another', and 'in doing some illegal act for one's own gratification or purposes, without regard to the rights of others or the injury he may inflict on another'"); *State v. Murphy*, 86 S.C. 268, 68 S.E. 570, 570 (1910) ("Malice is a term of art, implying wickedness, and excluding a just cause or excuse. It is implied from an unlawful act, willfully done, until the contrary be proved." It has also been defined to be the willful or intentional doing of a wrongful act, without just cause or excuse"); *McBride v. Sch. Dist. of*

*Greenville Cty.*, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2010) (“malice is ‘the deliberate intentional doing of a wrongful act without just cause or excuse’”) (quoting *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982) (internal quotation omitted)); *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006) (“malice may be implied where the evidence reveals a disregard of the consequences of an injurious act, without reference to any special injury that may be inflicted on another person”); *State v. Young*, 238 S.C. 115, 124-25, 119 S.E.2d 504, 509 (1961), *overruled on other grds.*, *State v. Torrence*, 305 S.C. 45, 60-69, 406 S.E.2d 315, 323-28 (1991) (Toal, J., (concurring in result) (abolishing in *favorem vitae* review). *See also, e.g., State v. Cottrell*, 421 S.C. 622, 644, 809 S.E.2d 423, 435 (2017) (finding trial judge properly instructed jurors that malice could be inferred from conduct showing a total disregard for human life); *State v. Oates*, 421 S.C. 1, 20, 803 S.E.2d 911, 921 (Ct. App. 2017) (“Malice can be inferred from conduct [that] is *so reckless and wanton as to indicate a depravity of mind and general disregard for human life*”) (emphasis in original); *State v. Mouzon*, 231 S.C. 655, 662, 99 S.E.2d 672, 675 (1957); *In re Tracy B.*, 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010). Each definition above fits the facts of this case because there was both express malice and inferred malice in this case. There were threats made to Victim and there was “lying in wait” for Victim and there was a clear intent to kill or injure Victim. Thus, the instructions given were appropriate and fit the facts of the case.

Third, the charge was harmless because of the facts of this case because the evidence of malice was overwhelming. Therefore, the permissive inference of malice from a deadly weapon instruction was harmless. *See Stanko*, 402 S.C. 252, 264-65, 741 S.E.2d 708, 714-15 (erroneous instruction of permissive inference of malice arising from the use of a deadly weapon was harmless where there was overwhelming evidence of malice and given the entire jury instruction

including definition of malice); *State v. Brooks*, 428 S.C. 613, 627-33, 837 S.E.2d 236, 241-44 (Ct. App. 2019)(permissive inference of malice instruction was harmless beyond a reasonable doubt after considering jury instruction as a whole and other evidence of malice independent of the use of a deadly weapon)(citing *Stanko, supra*).

In short, there was overwhelming evidence of malice and of a premeditated plot to kill or wound Victim. Foster and Dover searched for Victim for several days before finding him under the belief that Victim stole something from them. They had told more than one witness to tell Victim they were looking for him. (R. pp. 93-113; 116-124; 128-133; 308-313). There were threats communicated to Victim heard by witnesses. Foster dropped the shooter off before and picked up the shooter after the murder. The shooter laid in wait for Victim wearing a mask and gloves. (R. 58-74; 93-125; 128-142; (Page 143 - Supp. ROA page 1); 144; 145; 146-66; 177-193; 198-207; 207-218; 219-244; 245-263; 263-267; 270-76; 277-292; (Page 293 – Supp. ROA page 2); 308-313; 314-363; 363-383; 385-400). The challenged instruction could not have impacted the jury's verdict. *Stanko*, 402 S.C. at 264-65, 741 S.E.2d at 714-15; *Brooks*, 428 S.C. 613, 627-33, 837 S.E.2d 236, 241-44. Because there was overwhelming evidence, the result at trial and on direct appeal was not impacted by the instructions given, even if the Court finds them erroneous. Applicant still would have been found guilty at trial had different instructions been given. The Court had no duty to provide different instructions because they were legally correct at the time. Additionally, Applicant would not have met his burden of proof on direct appeal because of the overwhelming evidence, rendering the same result as was reached, even if the issue was preserved. Accordingly, no prejudice has been established and relief is denied on this ground.

***Jury Instructions - Hand of One Hand of All Charge***

Applicant claims Counsel was ineffective for failure to object to the jury instructions regarding hand of one hand of all. However, Counsel credibly testified that he did not object because he thought that the instructions were proper. Counsel is not ineffective for failure to launch frivolous objections. Additionally, even if he objection, there is no evidence supporting the fact that the objection would have been sustained or the change in instructions would have changed the outcome at trial. Accordingly, relief is denied.

#### ***Impeach and Cross-Examine Witnesses***

Applicant claims Counsel was ineffective for failure to properly cross-examine and impeach the State's witnesses. Counsel credibly testified he obtained the mistrial transcript and attached each witness's testimony at the mistrial to the section in his trial binder, so he had it readily available during cross-examinations. The transcript reflects that Counsel impeached witnesses when he could do so. This Court declines to find anything unreasonable in Counsel's approach when cross-examining witnesses. Further, this Court finds nothing Counsel could have done that would have resulted in a different outcome at trial. Accordingly, relief is denied.

#### ***Move to Sever***

Applicant claims Counsel was ineffective for failure to move to sequester the trial. Counsel credibly testified that he did not think a sequestered trial would have made a difference concerning the results of the proceedings. Accordingly, relief is denied on this ground.

#### ***Indictments***

Applicant is alleging he is entitled to PCR relief because there were "flaws in the indictment process." Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003).

*overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) *citing State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

This Court has been provided with no evidence that the indictments were deficient. This is substantiated by Counsel's credible assertion that he saw no issues with the indictments. Further, even if issues existed, challenges to the indictment have been waived. Accordingly, relief is denied on this ground.

#### ***Directed Verdict***

Applicant claims Counsel did not effectively move for a directed verdict. The record clearly reflects that Counsel moved for a directed verdict based upon the uncertainty surrounding the identity of the shooter, claiming that the jury would have to speculate concerning guilt. (Tr. 401-02). This was a reasonable argument. Additionally, there has been no showing that another argument could have been successful. Accordingly, relief is denied.

#### ***Prior Bad Acts***

Applicant claims Counsel was ineffective for failing to object to Foster's prior bad acts. This Court finds any alleged failure was non-prejudicial because of the strength of the State's evidence against him. This Court finds this especially true, given the fact that the bad acts pertained to his co-defendant, not him. Accordingly, relief is denied on this ground.

#### ***Bonner Testimony Concerning Deal***

Applicant claims Counsel was ineffective for failing to object to Bonner's testimony as being induced by his cooperation with the State. Testimony about this witness hoping the State would take his cooperation into account during sentencing was elicited at trial. (Tr. 351-52, 360-61). Thus, any failure on Counsel's part to raise this issue or objection is non-prejudicial because the jury was well informed of these biases at the trial anyway. Accordingly, relief is denied.

**Conclusion**

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. 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 appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

**IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 13<sup>th</sup> day of March 2022

Yock, South Carolina.

DANIEL D. HALL  
 Presiding Judge  
 Seventh Judicial Circuit

BRADLEY W. MCBEE

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHESTER COUNTY, S.C.  
 2022 MAR 15 A 11:37

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DOCKET NO. **14-GS-11-00875**

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JUL 26 2019  
SC Court of Appeals

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CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2019 SEP 4 AM 10 09  
BRANDY W. MOBEE

WITNESSES

Cherokee County Sheriff's Office

*[Signature]*

ARREST WARRANT NUMBER

2014A1110100420

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury

Date: 9-4-14

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: July 17, 2019

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 04 2014

TERM

THE STATE

vs.

Franklin Pierre Dover

Indictment for

**MURDER**

SC Code: 16-03-0010, 0020

CDR CODE: 116

CLASS: FEL-EXM

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on SEP 04 2014, the  
Grand Jurors of Cherokee County present upon their oath:

Murder

That Franklin Pierre Dover, did in Cherokee County on or about June 22, 2014, feloniously, willfully, and with malice aforethought, kill one Timothy Blair by shooting the victim, and the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

**RECEIVED**

JUL 26 2019

SC Court of Appeals

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

Kimberly D. Bokanic  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 601

COUNTY OF Cherokee
STATE VS.

Franklin Pierre Dover

AKA:

Race: BLACK Sex: M Age: 33

DOB: SS#: 4

Address:

City, State, Zip:

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 30 years - LIFE

INDICTMENT/CASE#: 2014GS1100875

A/W#: 2014A1110100420

Date of Offense: 6/22/2014

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

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SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0010; 16-03-0020 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.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: LASKANIC, KIM SCB16837 SC Bar# Defendant Michael David Korta SCB65094 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Life 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:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Rows include §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 (Public Def/Probation) \$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, 3% to County (if paid in installments)

TOTAL \$

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, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Court Reporter: (Signatures)

Presiding Judge Judge Code: Sentence Date: July 17, 2019