

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

DEC 30 2013

Appeal from Horry County

Honorable Larry B. Hyman, Jr., Circuit Court Judge

S.C. Supreme Court

APPELLATE CASE NO. 2013-001577

JIMMY LEE WILLIAMS,

PETITIONER,

v.

THE STATE,

RESPONDENT.

APPENDIX TO PETITIONER'S WRIT OF CERTIORARI

John Mobley, Esquire
THE MOBLEY LAW FIRM, P.A.
925 Calhoun Street
Columbia SC 29201
(803) 933-0010 (telephone)
(803) 931-3044 (facsimile)

ATTORNEY FOR THE PETITIONER

APPENDIX

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WITNESSES

Timothy Troxell Horry County Police Department

DOCKET NO. 2008-GS-26-

1689

The State of South Carolina

County of Horry

Lawrence Filiberto

84848-2

COURT OF GENERAL SESSIONS

May, 2008 TERM

ARREST WARRANT NUMBER

J477050

CDR: 0116 16-03-0010, 0020

DOA: 3/14/2007

THE STATE

VS.

JIMMY LEE WILLIAMS B/M
5419 HENDRICKS SHORTCUT ROAD
CONWAY, SC 29526
DOB: 1986-01-14
SSN: 247736181

ATTORNEY: Taylor, Robert Paul

Indictment for

MURDER

ACTION OF GRAND JURY

TRUE BILL

Charles Hester

Foreperson of Grand Jury

Date:

MAY 15 2008

VERDICT

Gurley

Foreperson of Petit Jury

Date: 11-14-08

Norwood Steele

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT
MURDER


At a Court of General Sessions, convened on May 15, 2008, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Jimmy Lee Williams did in Horry County, on or about March 8, 2007, willfully, feloniously, and intentionally kill the victim, Efrain Rosado, with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about March 8, 2007, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.

INDICTMENT/CASE#: 2008GS2601689

Jimmy Lee Williams

A/W#: J477050

AKA: _____

Date of Offense: 3/8/2007

Race: B Sex: M Age: 22

S.C. Code § : 16-03-0010.0020

DOB: 01-14-1986 SS#: 247-73-6181

CDR Code #: 0116

Address: 5419 HENDRICKS SHORTCUT ROAD
CONWAY, SC 29526

DL#: 100115362 SID#: _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Murder / Murder

in violation of § 16-03-0010, 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. (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State:

ATTEST: [Signature]
Filiberto, Lawrence R. Defendant [Signature] Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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 the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____	
*Fine:	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>3.90</u>
§ 90.11 TP (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
TOTAL	\$ <u>133.90</u>

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 \$ 25.00 beginning 11/14/2008
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Melanie Huggins
Clerk of Court/ Deputy Clerk
Court Reporter: Linda McCall

PRESIDING JUDGE [Signature]
Judge Code: 2 10411
Sentence Date: 11/14/08

SCCA/217 (07/2008)

COUNTY OF HORRY

Jimmy Lee Williams
SCDC# 00331836,

Plaintiff(s)

vs.

State of South Carolina,

Defendant(s)

CIVIL ACTION COVERSHEET

2011 -CP- 25 9990

(Please Print)
Submitted By: John Mobley, Esquire
Address: 925 Calhoun Street
Columbia, SC 29204

SC Bar #: 66470
Telephone #: 803-933-0010
Fax #: 803-931-3044
Other:
E-mail: johnmobley@johnmobley.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | | | |
|---|--|---|---|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim of Easement (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) | | |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) | | |
| <p>Special/Complex /Other</p> <table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) </td> </tr> </table> | | | | <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) |
| <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | | |

FILED
HARRIS COUNTY
NOV 29 2011
CLERK OF COURT
JANE HUGHES

Submitting Party Signature 

Date: 11/29/2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF HORRY</p> <p>Jimmy Lee Williams SCDC# 00331836, Petitioner,</p> <p>vs.</p> <p>State of South Carolina, Respondent,</p>	<p>IN THE COURT OF COMMON PLEAS FIFTHTEENTH JUDICIAL CIRCUIT</p> <p>APPLICATION FOR POST CONVICTION RELIEF</p> <p>20 11 CP26 9990</p>
--	---

1. Petitioner, Jimmy Lee William is an inmate at Lieber Correctional Institution Ridgeview, South Carolina.
2. The Petitioner's sentence was imposed in the Court of General Sessions in Horry County.
3. The Petitioner's co-defendant was Anthony Quenton Scott.
4. On November 14, 2008 in Horry County, Petitioner plead not guilty to the charge of Murder. The Indictment Number was 2008-GS-26-01684.
5. On November 14, 2008, the Petitioner was convicted of Murder and a sentence of 30 (thirty) years was imposed by the Honorable Edward B. Cottingham.
6. The Petitioner filed a subsequent appeal with the South Carolina Court of Appeals. The Court affirmed the appeal on December 14, 2010 in State v. Jimmy Lee Williams There was an Unpublished Opinion, No. 201-UP-532.
7. Petitioner's grounds for relief are ineffective counsel.
8. Petitioner alleges that trial counsel was in effective in at least one of the following particulars:
 - a. Failure to request lesser charges of Aiding and Abetting and Accessory After the Fact.

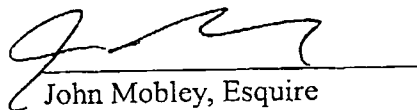
2011 DEC -2 PM 9:10
 ANNE HUGHES-WARD
 CLERK OF COURT
 HORRY COUNTY

- b. Failure to object to improper character evidence.
 - c. Failure to object to an improper jury charge on circumstantial evidence charge.
 - d. Stating in opening statement that Petitioner's defense was self-defense admitting Petitioner's killed the victim, yet presenting no evidence of that self-defense during the trial.
9. Petitioner reserves the right to allege any additional ground for relief that is determined during a hearing on this claim
 10. Petitioner has not filed any petition in a State Court under South Carolina law prior to this application.
 11. Petitioner has not filed any petition in State or Federal Courts for habeas corpus or post-conviction relief.
 12. Petitioner has not filed any petition in the United States Supreme Court for Certiorari.
 13. Petitioner was represented by an attorney at trial, sentencing and the appeal.
 14. The Petitioner was represented at trial by R. Paul Taylor of Axelrod and Associates, 604 Sixteenth Avenue North, Myrtle Beach, South Carolina, 29577.
 15. The Petitioner was represented on Appeal by Joseph L. Savitz of the S.C. Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC, 29201.
 16. Petitioner is not under sentence from any other court that he has not challenged.

WHEREFORE, Petitioner requests the following relief:

1. An Order from the Court granting a new trial.
2. Any other relief the Court or Petitioner may deem appropriate subsequent to a new trial.

Respectfully submitted,
THE MOBLEY LAW FIRM, P.A.



John Mobley, Esquire
925 Calhoun Street
Columbia, South Carolina 29201
(803) 933-0010 Telephone
(803) 931-3044 Facsimile
ATTORNEY FOR PETITIONER

Columbia,, South Carolina

November 17, 2011

201 CP 26 9990

STATE OF SOUTH CAROLINA)
)
County of Horry)

VERIFICATION

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

Jimmy Williams

SWORN to and subscribed before me this 29th
day of November, 2011.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED
Horry County
2011 DEC -7 PM 3:18
MELANIE HUGGINS-WARD
CLERK OF COURT

WITNESSES

Timothy Troxell Horry County Police Department

DOCKET NO. 2008-GS-26- 1689

The State of South Carolina

County of Horry

Lawrence Filiberto

8/1848-2

COURT OF GENERAL SESSIONS

May, 2008 TERM

ARREST WARRANT NUMBER

J477050

CDR: 0116 16-03-0010, 0020
DOA: 3/14/2007

THE STATE

VS.

JIMMY LEE WILLIAMS B/M
5419 HENDRICKS SHORTCUT ROAD
CONWAY, SC 29526
DOB: 1986-01-14
SSN: 247736181

ATTORNEY: Taylor, Robert Paul

Indictment for

MURDER

ACTION OF GRAND JURY
TRUE BILL

Charles Hester
Foreperson of Grand Jury
Date: MAY 15 2008

VERDICT

GUILTY

Forfeiture of Petit Jury
Date: 11-14-08 *November 14, 2008*

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 Jimmy Lee Williams, 331836)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 11-CP-26-9990

ORDER OF DISMISSAL

Horry County
 13 JUN 17 AM 8:17
 MELISSA HUGGINS MARRO
 CLERK OF COURT

This matter is before this Court by way of an application for post-conviction relief (PCR) filed December 2, 2011. The State made a timely Return. A hearing on the matter was convened at the Horry County Courthouse on April 23, 2013. Applicant was present and represented by John Mobley, Esquire. The State was represented by Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His trial counsel, Robert Paul Taylor, Esquire, also testified. In addition, this Court had before it the trial transcript, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. Applicant was indicted in 2008 by the Horry County Grand Jury for murder (2008-GS-26-1684). R. Paul Taylor, Esquire, represented Applicant.

On November 14, 2008, the Applicant was convicted as indicted and was sentenced by the Honorable Edward B. Cottingham to thirty years imprisonment. Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence on December 14, 2010. State v. Jimmy Lee Williams, 201-UP-532.

ALLEGATIONS

Applicant alleged in his Application for PCR that he is being held in custody unlawfully for the following reasons:

1. "Failure to request lesser charges of Aiding and Abetting and Accessory After the Fact."
2. "Failure to object to improper character evidence."
3. "Failure to object to an improper jury charge on circumstantial evidence charge."
4. "Stating in opening statements that Petitioner's defense was self-defense admitting Petitioner's killed the victim, yet presenting no evidence of that self-defense during the trial."

At the opening of the Applicant's case, his counsel advised the Court that Applicant was waiving the first three claims, and that they were only going forward on the fourth claim of "Stating in opening statements that Petitioner's defense was self-defense admitting Petitioner killed the victim, yet presenting no evidence of that self-defense during the trial." Accordingly, all other claims are deemed waived and denied, and the Court will address Applicant's only remaining allegation.

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. 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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant alleges his conviction at trial is the result of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996).

In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address the allegation of ineffective assistance of counsel:

The defense of self-defense

Applicant alleges that his counsel was ineffective for asserting the defense of "self defense" without presenting evidence of self defense. Applicant did not testify at trial. At the PCR hearing, Applicant and his trial counsel gave sharply divergent accounts on why Applicant

did not testify at trial. Applicant indicated he never intended to testify, whereas trial counsel indicated that Applicant only refused to testify after the State rested its case in chief, surprising counsel. Counsel indicated he was essentially ambushed by a suddenly uncooperative client who expressed that he was terrified of testifying after observing other witnesses testifying. Counsel also indicated that Applicant told him that since in Applicant's opinion the state had failed to prove its case, Applicant felt he didn't need to testify.

It is clear to this Court that trial counsel unequivocally intended to put up evidence of self-defense in the form of Applicant's trial testimony but Applicant surprised his trial counsel by refusing to testify. Applicant by his refusal to testify created the peril for which he now complains and blames trial counsel for.

In the testimony of counsel, he made a discovery request, reviewed the discovery with Applicant, met with Applicant in the course of counsel's investigation and discovered Applicant had made incriminating statements to others who were potential witnesses for the State.

In the course of his investigation counsel discovered there were witnesses who could likely testify that Applicant received a telephone call, that he argued on the telephone with a person believed to be the deceased victim, that Applicant left and then returned and made additional statements which were incriminating involving the death of the deceased victim. The shell casing found in Applicant's car was a ballistic match with a gun found in the woods behind Applicant's house. Counsel for Applicant also testified "[Applicant] told me he fired the gun."

Faced with overwhelming evidence of guilt against his client, counsel realized a trial strategy of self-defense was best course of action. Counsel indicated he believed Applicant could have been convicted based upon the circumstantial evidence.

The record also supports counsel's version of the Applicant's decision not to testify, and casts a shadow over Applicant's testimony. The trial judge announced that as there was no evidence presented on self-defense (as neither co-defendant testified) that the court would not charge self-defense. Once the trial judge made it abundantly clear to Applicant and counsel that unless there was additional evidence he would not permit a charge on self-defense, he gave Applicant another opportunity to testify or put up other evidence. Therefore, counsel indicated at page 298, Line 9-11 that he would once again ask Applicant if he wished to testify. The trial judge indicated he would still permit Applicant to testify at page 298 lines 19-21. Knowing without his testimony supporting the defense of self-defense he would be in an unfavorable position at trial, applicant still refused to testify with full knowledge that it would remove his ability to have the self-defense charge to the jury. Applicant now attempts to blame his trial counsel for his decision to not testify.

This Court finds counsel's version of events credible and Applicant not credible. This Court finds that applicant was aware of the consequences of not testifying, Applicant admitted to firing the shot that killed the victim to his trial counsel. Under these circumstances, Counsel's trial strategy of arguing self-defense was well within the professional norms of competent representation. Applicant's decision to sabotage his own defense is not something he can blame his trial counsel for. This Court further finds Counsel's testimony credible and gives it great weight, finding in particular that Counsel had every expectation of calling Applicant as a witness in support of his self-defense claim.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

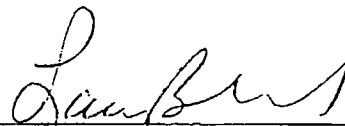
application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of JUNE, 2013.



Larry B. Hyman, Sr.
Presiding Judge
15th Judicial Circuit

Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
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JIMMY LEE WILLIAMS, #331836)
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)
Applicant,)
)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

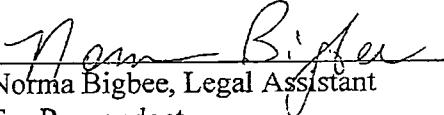
2011-CP-26-9990

AFFIDAVIT 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 filed copy of the Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

John Terrence Mobley, Esquire
925 Calhoun St.
Columbia, SC 29201

DATED this 21ST day of June, 2013.


Norma Bigbee, Legal Assistant
For Respondent

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF Horry) 2011-CP-26-09990

JIMMY WILLIAMS,)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA,)

Defendant.)

Transcript of Record

April 23, 2013

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

John Mobley, Esquire
Attorney for Plaintiff

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(There were no exhibits marked during the hearing.)

1 **(April 23, 2013)**

2 THE COURT: Your Honor, this is Jimmy Lee Williams versus
3 South Carolina. It's 2011-CP-26-9990.

4 THE COURT: Good morning, Mr. Williams.

5 MR. WILLIAMS: Good morning.

6 THE COURT: All right. Okay.

7 MR. JOHNSON: Your Honor, Mr. Williams was indicted for
8 murder. Mr. Paul Taylor represented him on November 14, 2008
9 and he was convicted as indicted and was sentenced by Judge
10 Cottingham to thirty years imprisonment. He filed a timely
11 Notice of Appeal. The Court of Appeals confirmed the
12 conviction on December 14, 2010.

13 He's filed a Post Conviction Relief action with several
14 claims and due to the very nature of the claims at this point,
15 I would turn it over to Mr. John Mobley and ask him to advise
16 the Court and counsel of the claims they're going forward with
17 today.

18 THE COURT: All right, sir.

19 MR. MOBLEY: May it please the Court, Your Honor, for the
20 record, John Mobley, attorney for the Petitioner, Mr. Jimmy
21 Lee Williams. As Mr. Johnson indicated, I did indicate four
22 specific allegations in my claim. Upon review, Your Honor, I
23 don't think I will be proceeding on three of them, Your Honor.
24 I will only be proceeding on the issue as it pertains to the
25 trial counsel's use of self-defense in the trial.

1 THE COURT: Okay.

2 MR. MOBLEY: And to basically summarize the basic facts
3 for the Court, Your Honor, my client and codefendant were both
4 charged with murder involved in a shooting of a victim. There
5 was no direct evidence; there was only circumstantial evidence
6 that was tenuous at best, Your Honor, in that particular case.
7 Trial Counsel in opening statement told the jury -- he
8 admitted to the jury that my client was present at the scene,
9 and fired a shot at the victim in self-defense and basically
10 put his entire trial strategy around self-defense. During the
11 trial, Your Honor, Trial Counsel presented no witnesses. The
12 Defendant did not testify, there was no evidence of self-
13 defense and, of course, based on that, Your Honor, the Trial
14 Judge did not allow him to even argue self-defense in closing
15 arguments since none were presented. And that was a defective
16 and deficit trial strategy, Your Honor, because basically what
17 he did was he took a circumstantial case where there was
18 questionable evidence that my client was even present at the
19 scene and not only admitted that he was at the scene but he
20 admitted my client fired a shot at the victim thereby
21 basically boxing the jury in whereby he admitted murder but
22 providing no real alternative to anything but a guilty
23 verdict. There was no evidence of self-defense. There was no
24 evidence presented of a voluntary manslaughter or lesser
25 charge. He boxes him in for self-defense in the opening

1 statement and once he was not allowed to argue self-defense in
2 closing argument, he just went off on different tangents that
3 were inconsistent with that defense. That prejudiced my
4 client significantly for those reasons, Your Honor. So, based
5 on those reasons and as the Court will hear from the
6 testimony, I would request that the Court vacate the
7 conviction in this case, Your Honor.

8 THE COURT: All right. Call your witness.

9 MR. MOBLEY: Mr. Taylor, please take the witness stand,
10 sir.

11 MR. TAYLOR: Yes, sir.

12 ROBERT PAUL TAYLOR, HAVING BEEN
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION OF ROBERT PAUL TAYLOR BY MR. MOBLEY:

15 Q: Please state your name for the record, sir.

16 A: Robert Paul Taylor.

17 Q: Mr. Taylor, good afternoon.

18 A: Good afternoon.

19 Q: Just briefly, Mr. Taylor, based on the facts as you've
20 heard related to the Court, you were trial counsel for Mr.
21 Williams on this charge for murder, correct?

22 A: I was.

23 Q: All right. And have you had an opportunity to review the
24 discovery materials provided to you in the case?

25 A: I did.

1 Q: Okay. And at some point, upon reviewing the materials --
2 and you had a chance to meet with Mr. Williams himself,
3 correct?

4 A: Yes, sir, absolutely.

5 Q: Okay. And at some point, early in the case, you made the
6 determination to use self-defense as a defense at trial; is
7 that correct, sir?

8 A: I felt that he had to given the discovery in the case. No
9 question the weapon was found in the backyard behind where Mr.
10 Williams was found in the wood line. Mr. Williams had made
11 some incriminating statements and there was some -- there was
12 two witnesses that put Mr. Williams at a party where there was
13 a cell phone call that was made from Mr. Williams with the
14 deceased. There was an argument that ensued as a result of
15 that. He leaves upon arguing in front of witnesses at this
16 party and he goes down -- they were arguing because the victim
17 had said and was alleging that Mr. Williams had, had broken
18 into his house and stole his drugs and some money. Mr.
19 Williams and the victim were friends. Basically, my defense
20 of the case was is that he went down there and the victim
21 fired at him and Mr. Williams then returned fire to him and
22 was -- the victim was killed at that time. And that was the
23 whole strategy of my case. There's no -- I mean he placed him
24 -- there was witnesses that placed him going down there. He
25 made statements to guns found, you know, at his location. His

1 cousin is there, he cousin is a witness to the whole thing as
2 well. And so my trial strategy was that the victim had lured
3 him to come down to where he was located in order to kill him.
4 There was a gun in the victim's hand, it was in his right
5 hand. There was blood all over it but I mean there was a gun
6 in his hand. So, my defense was was that the victim had lured
7 him down and the victim -- in order to kill or potentially
8 kill Mr. Williams. That was my whole -- from the point in
9 time that I reviewed the discovery and he said it was
10 definitely a trial, he was not gonna plead to anything, that
11 was the strategy that I took in the case.

12 Q: All right. And I appreciate your candor, sir, and I have
13 some questions to ask you about that.

14 A: Yes, sir.

15 Q: And you agree with me that when you claim self-defense to
16 murder, you're admitting a couple of things, right?

17 A: Sure.

18 Q: You're admitting being present at the scene of the crime?

19 A: Correct.

20 Q: And in this case, you were admitting firing a shot at the
21 victim?

22 A: Correct.

23 Q: And you agree with me, sir, that if you claim self-defense
24 and admit being present at the scene and admit shooting or
25 firing a shot at the victim, that if you are unable to

1 establish self-defense at trial, there's a pretty good chance
2 you'll be convicted of murder?

3 A: Correct. You want me to respond to that or ---

4 Q: Sure.

5 A: Okay. I had to explain -- as Jimmy's attorney, I had to
6 explain why the shell casing that was in Jimmy's car matched
7 the gun that was found at his location. And if I did -- if I
8 had no explanation as to how that shell casing was in his car
9 that matched the gun with the gun that matched the bullet ---

10 Q: I'm sorry. Please be more specific. You're talking about
11 shell casings and things like that.

12 A: Okay. There was a shell casing that was found in Mr.
13 Williams' -- the discovery showed that it was a shell casing
14 in Mr. Williams' car. I had to explain that shell casing
15 because the forensics had matched that shell casing to the gun
16 found at Mr. Williams' house.

17 Q: Okay. Well, was Mr. Williams in the car by himself
18 allegedly or in the car with someone else?

19 A: Well, he is the one that fired the shot.

20 Q: Okay. My question is, the testimony at trial, and I
21 understand you're talking about the discovery says and what
22 you've read and things like that and I understand that, but
23 you know ---

24 A: He told me he fired the gun.

25 Q: Okay. I understand that. But let's talk about the

1 evidence that was presented at trial.

2 A: Okay.

3 Q: Okay. And I understand you had a conversation with your
4 client and the things you review in discovery but at the end
5 of the day, what -- what matters is what evidence is presented
6 at trial, correct?

7 A: Correct.

8 Q: Okay. So, at the trial in this case, once again, in
9 opening statement, you indicated -- you said to the jury that
10 my client, and your client at the time, shot the victim but
11 acted in self-defense basically, correct?

12 A: That's correct.

13 Q: All right. Now, at the trial, did you present any
14 witnesses that saw the alleged victim fire a weapon at my
15 client?

16 A: No, sir. Because your client did not want to take the
17 stand and testify whenever it came time for him to testify.

18 Q: Okay. We'll talk about my client's testimony in a few
19 minutes, okay. But just so we're clear, witnesses other than
20 my client, did you present any testimony from any witnesses
21 that the alleged victim or the victim in the case fired at my
22 client first?

23 A: No, sir, because there were only two witnesses that were
24 there at the scene which was Mr. Williams and his cousin and
25 the deceased.

1 Q: Okay. And at the trial of this case, did you develop any
2 forensic evidence -- when I say forensic, scientific evidence
3 that the victim actually fired at Mr. Williams first and that
4 he fired back in self-defense? Was there any forensic or
5 ballistic evidence to reflect that the sequence of events
6 happened in that sequence?

7 A: No, sir. I would've had to have brought that out in Mr.
8 Williams' testimony.

9 Q: Okay. Or through other forensic -- or through other
10 forensic evidence, correct?

11 A: I would've been able to -- I don't know how I would've
12 been able to show forensic evidence as to which gun was fired
13 first.

14 Q: Did you consult with a crime scene expert?

15 A: No, sir.

16 Q: Okay. Now, you would agree, sir, that there were no eye
17 witnesses that say they saw my client fire a weapon at the
18 victim, correct?

19 A: That's correct, other than your client.

20 Q: Okay. There was no testimony at the trial ---

21 A: Correct.

22 Q: --- to indicate that any witnesses saw my client fire the
23 weapon or any weapon at the victim, correct, sir?

24 A: That's correct.

25 Q: Okay. And there was no testimony at trial that any

1 Q: And the reason was -- I haven't asked you that question
2 yet. Okay, the reason he refused to take the stand was
3 because after, I think you said after he observed other
4 witnesses -- what happened?

5 A: He felt that there was not enough evidence for their --
6 established through the examination, that they did not have
7 enough evidence to convict him, they didn't have anybody that
8 directly linked him to the murder from the standpoint that he
9 went down there with malice aforethought to kill this guy that
10 he had -- that the gun was there in the victim's hand and that
11 that had defended himself and he did not want to take the
12 stand. He was scared to death about taking the stand and that
13 was why he decided not to take the stand.

14 Q: Tell me more about that. What do you mean he was scared
15 to death about taking the stand?

16 A: He just said, I'm not taking the stand; I'm don't want to
17 take the stand and I feel that they don't have enough to
18 convict me.

19 Q: Okay. What did you tell him then? When this new news
20 came to you, hey, I'm not taking the stand. You were sitting
21 right there next to him, what did you tell him?

22 A: I told him that from the standpoint of self-defense, you
23 need to take the stand but I can't force you to take the
24 stand.

25 Q: Did he say anything?

1 A: He said, well, I don't think they have enough to convict
2 me and I'm not taking the stand.

3 Q: What happened next?

4 A: We didn't -- we went into closing arguments and that was
5 the end of the case.

6 Q: All right. So, at any point in time, did he ever tell
7 you, oh yes, I'm eager to testify, I've always been eager to
8 testify, I can't wait to testify, I'm gonna testify.

9 A: I don't think that Mr. Williams at any point in time was
10 eager to testify. I think that he was very scared about this
11 trial. Obviously, he was looking at thirty years to life and
12 he was well aware of what the statute carried. I'd provided
13 it to him. And I think he was scared throughout this entire
14 process.

15 Q: Okay. Please answer any questions Mr. Mobley may have for
16 you.

17 REDIRECT EXAMINATION OF ROBERT PAUL TAYLOR BY MR. MOBLEY:

18 Q: Just a few, Mr. Taylor.

19 A: Yes, sir.

20 Q: First of all, you mentioned that the -- your understanding
21 of the ballistic evidence that the pistol was -- the fragment
22 of the shell casing had been conclusively linked to the
23 weapon?

24 A: It wasn't the -- it was the shell -- yeah, the shell
25 casing had been linked back to the weapon -- I think you

1 witnesses actually even saw my client physically at the scene,
2 correct?

3 A: That's correct.

4 Q: Okay. And so there are no eye witnesses, we're not
5 talking about forensic evidence, was there any forensic
6 evidence at the trial that was presented to reflect that my
7 client even fired a weapon that night, i.e. gunshot residue?

8 A: No, because it'd been too long.

9 Q: Okay. So, just so we're clear, okay, there are no -- at
10 the trial, there was no testimony of any witness that either
11 saw my client fire a shot at the victim or that can place my
12 client at the scene, correct?

13 A: That's not correct.

14 Q: Okay. So, you're saying at trial there was a witness that
15 said they saw Jimmy Williams at the scene?

16 A: Not at the scene, it was circumstantial as to ---

17 Q: Okay. Now, I'm asking you about eye witnesses that
18 actually saw my client at the scene at the time the victim was
19 shot, so ---

20 A: No, sir. I can clear that up. The only people that were
21 at the scene were the victims and the two codefendants; that
22 was it. There was nobody else.

23 Q: Okay. Just so we're clear, I want to hear about the
24 testimony. Okay, you can -- and just so we're clear, I
25 understand that you read the discovery and you talked to my

1 client and that your information is based on a culmination of
2 all of your knowledge about the case. I understand that, sir,
3 okay. But when I ask you question, for my purposes or these
4 purposes, I'm asking you about the testimony at trial. Okay?
5 Not what you tuned together based on all the information,
6 okay?

7 A: Okay.

8 Q: Thank you, sir. So, just so we're clear, were there any
9 eyewitnesses that actually physically say they saw Jimmy
10 Williams at the scene on the day the victim was shot, at the
11 time he was shot?

12 A: No.

13 Q: Okay. So, no one places him there, no one says they saw
14 him shoot a gun definitely. And you say there was no type of
15 gunshot residue or forensic test to indicate that Mr. Williams
16 actually fired the weapon that night, correct?

17 A: That's correct.

18 Q: Okay. And you say a firearm was found in the case?

19 A: In the wood line behind the house where he was located.

20 Q: Okay. Well, let's talk about that. Just so we're clear.
21 The firearm that was found, it was never actually found in
22 Jimmy Williams' actual possession, correct?

23 A: That's correct.

24 Q: Okay. And it wasn't found in his home, correct?

25 A: No, it was found in the wood line behind his house.

- 1 Q: Okay. So, was it -- it wasn't found in his car?
- 2 A: No.
- 3 Q: It was found in the woods?
- 4 A: In the wood line.
- 5 Q: Okay. Now but he lived -- there were other houses in the
6 area, correct?
- 7 A: Of course there was.
- 8 Q: Okay. So, it wasn't just behind his house, it was in an
9 area in the woods behind several houses, correct?
- 10 A: You know, there -- yeah, there are numerous houses in the
11 area but it was found within a close distance behind his
12 house.
- 13 Q: Okay. It was found in the woods behind several houses,
14 though. Did you make ---
- 15 A: If you want to look at it that way.
- 16 Q: Well, I mean, I'm not trying to look at it that way -- did
17 you measure the distance to his house, sir?
- 18 A: No, I didn't measure the distance of it.
- 19 Q: Okay. So, you didn't measure -- did you measure the
20 distance from the gun to his house versus any other house?
- 21 A: No, sir.
- 22 Q: Okay.
- 23 A: I rode by where the house was located and I looked but I
24 didn't take a measurement. I went -- I went to see the
25 location of where the house was found. I went to the location

1 of where the Defendant -- I mean, the victim was found but I
2 didn't measure with a tape measure, no, sir.

3 Q: Okay. So, you can't say -- you can't sit here and testify
4 that -- the distance between the firearm and my client's home
5 was any closer or any further than any other house up in that
6 area, correct?

7 A: That's correct; I didn't measure it.

8 Q: Okay. So, basically, the firearm was found in the woods
9 behind some houses.

10 A: Correct.

11 Q: And his house is one of the houses?

12 A: That's correct.

13 Q: All right. And are you aware that -- from the trial
14 testimony that the way that weapon was found was based on an
15 anonymous tip, correct?

16 A: That's correct.

17 Q: Okay. And ever -- did you ever at any point determine who
18 made that anonymous tip?

19 A: No, sir. Nobody knew.

20 Q: Okay. So, someone who you can't identify, who law
21 enforcement could never identify, who my client could never
22 identify made some calls saying, hey, there's some guns behind
23 the woods, in the woods behind some houses.

24 A: Yes, sir.

25 Q: Okay. And they found that gun and just so we're clear,

1 there was no conclusive ballistic evidence to reflect that
2 that was the gun that actually fired -- that shot the victim;
3 isn't that correct?

4 A: As far as I can recall; again, it's been five years since
5 I handled this case. As I can recall from the discovery, and
6 the prosecutor is sitting in the room that handled this case,
7 as I can recall from, again, my memory of the case, was that
8 inside of Mr. Williams' car, they executed a lawful search
9 warrant which I could not suppress and they found in that car,
10 that was his, a shell casing of a .22 long rifle. The .22
11 long rifle shell casing was sent to SLED along with this
12 firearm and the SLED expert matched that shell casing to the
13 gun found behind his house, which led me to my self-defense
14 claim because although it was not a direct -- there was nobody
15 else directly there at the scene, there was circumstantial
16 evidence and in my opinion I thought that was direct evidence
17 of the shell casing found in his car linking to the gun who
18 was linked to the murder.

19 Q: But wasn't there someone else supposedly in his car at the
20 same time?

21 A: His cousin.

22 Q: Okay. Well, did you have any evidence to exclude the
23 possibility or the probability that instead of Mr. Williams
24 making the -- firing that shot, his cousin fired that shot?

25 A: No, because my client told me he fired the shot.

1 Q: Okay. Let's talk about the testimony at trial, okay,
2 because I mean what I'm hearing from you is your client told
3 you this, your client told you that, but these are not things
4 that are in the record in the testimony, okay. These are not
5 things that served as a basis for the jury decision, correct,
6 sir?

7 A: That's correct.

8 Q: Okay. Now, so, just so we're clear ---

9 MR. JOHNSON: Objection, Your Honor, objection. He's
10 asking, if I understand him, about his trial strategy not what
11 -- if he's asking about what the jury heard, these are direct
12 appeal issues which are not proper for PCR. If he's asking
13 about what was the foundation for his trial strategy, then
14 it's -- then I withdraw the objection but right now it appears
15 to be ---

16 THE COURT: Well, that's what I understood him to be
17 doing.

18 MR. JOHNSON: If there are matters appropriately directed
19 for direct appeal, they're inappropriate questions.

20 MR. BOAN: These are not matters directly -- I mean,
21 related to direct appeal, Your Honor. I mean, he can have a
22 trial strategy but it's got to have some kind of rationale
23 basis in the testimony and the evidence and trial, which is
24 what the decision is based on.

25 THE COURT: All right. I'm gonna let you go ahead.

1 BY MR. MOBLEY:

2 Q: So, during the trial, I mean, was there any testimony or
3 any legitimate basis that you could have excluded the
4 possibility that the second person in the vehicle fired that
5 shot?

6 A: No.

7 Q: Okay. And during the trial, was there any testimony or
8 even in the discovery, was there any testimony that Jimmy
9 Williams actually owned that firearm?

10 A: No.

11 Q: Okay. And I understand once again that you had a number
12 of discussions with your client but at the trial in the case,
13 was there ever any testimony that Jimmy Williams actually
14 admitted to firing a shot at the victim?

15 A: No, he did not take the stand.

16 Q: Okay. Well, and no one testified that he admitted that,
17 correct?

18 A: Correct.

19 Q: Okay. During the trial of the case, was there any
20 testimony that Jimmy Williams even admitted being present at
21 the scene? Again, I know he didn't testify but any other
22 witness testify to that that he admitted to being present at
23 the scene at the time the shots were fired, sir.

24 A: Not that he was being, not specifically that he was being
25 present.

1 Q: Okay. So, basically, based on your conversations with Mr.
2 Williams, you decided early on -- and just so we're clear, I
3 understand why you would consider a self-defense claim, I'm
4 not saying that that's not something unreasonable to consider
5 as a or one of many or one of various potential viable
6 defenses. I understand that. But I guess -- but there are
7 other issues that you did not explore at the trial. You
8 didn't -- based on the transcript, you -- and you've seen the
9 transcript of the trial, I mean, you've read it, but your
10 defense going into it was self-defense and because you were
11 going and proceeding on a self-defense defense, you didn't
12 develop other theories or other viable theories of defense,
13 correct?

14 A: Well, whenever I'm trying the case and in response to
15 that, I come up with a strategy of how I'm going to present
16 the case. And unless something differs in that, I stick with
17 that. Otherwise, I don't want to get, you know, a third into
18 the trial and then I completely go in a different direction,
19 then I'd look like I don't know what I'm doing. I mean, I --
20 I figured that this is the strategy I'm going to take and I
21 stick with it as long -- until I hit a wall where I need to go
22 somewhere else. And the case was presented in the way that it
23 was presented because I thought that was the best way to
24 present it.

25 Q: Okay. But you understand in this case, it was a very

1 circumstantial case, correct?

2 A: I think the entire case was circumstantial other than the
3 fact that the shell casing that was found in his car was
4 direct -- linked him to the -- his car is at the house with a
5 shell casing in it, there's a gun found out back, shell casing
6 in his car matches the gun found out back at the house.

7 Q: And once again, you're using -- with all respect to you,
8 Mr. Taylor, you're using a lot of broad terms, you say behind
9 the house, because the way you're -- when you conclude ---

10 A: Out back behind his house.

11 Q: The way you talk, you say it's behind his house but you
12 also conceded that it was in the woods behind several other
13 houses and you also -- when you talk about -- having to
14 explain the shell casing found in the car, you also could
15 concede that someone was definitely, alleged in the car at the
16 time the shooting took place, which means somebody had access
17 to the vehicle or was present in addition to my client
18 potentially. So, and what I'm hearing you say, sir, is that
19 this was a circumstantial case. There were no eye witnesses
20 that placed Mr. Williams at the scene. There's no testimony
21 of any eye witnesses that put my client at the scene. There
22 was no testimony of any admissions that Mr. Williams made
23 about being at the scene, let alone firing a shot at the
24 victim. There is -- the gun was not found in his actual
25 possession, it was not found in his house, it was found in the

1 woods. There was someone else in the car that might've
2 planted the shell casing. They couldn't even -- honestly,
3 they had a difficult time even proving Jimmy Williams was
4 there, yet you go in opening statement and admit to the jury
5 not only that he was there but he fired a shot, things that
6 they arguably had a very difficult time proving.

7 A: Well, that's not exactly the case.

8 Q: That's not -- okay, what part about that, sir, was not
9 accurate?

10 A: There were three witnesses that testified that Jimmy was
11 at a house in the trailer park where the victim was at, where
12 the victim was killed; that Jimmy had an argument with the
13 deceased on the phone and, again, concerning this break-in to
14 his house; and that he leaves that trailer, which is in the
15 same trailer park, and goes within a very short distance
16 within the same trailer park and then comes back with his
17 cousin, who is his codefendant. And whenever they come back,
18 they're armed. They come into the place armed and that
19 they're out of breath and somebody asks what's going on and he
20 says, in an explanative that I can't say here in court,
21 concerning the deceased and then he leaves. There's a --
22 whenever they find the deceased in the trailer park, as far as
23 they start interviewing people as to what's happened, well,
24 they interview these people which links and says, well, Mr.
25 Williams here had had an altercation with him concerning the

1 break-in to his house and they have not one, two but they have
2 three witnesses which put him there.

3 Q: You say put him there, using broad -- you say put him
4 there, define put him there, sir.

5 A: Okay. Put him -- okay, put him within the possibility of
6 being a suspect in the situation given the fact that he'd had
7 an altercation over the phone with the deceased within a very
8 short time period of his death.

9 Q: And I understand the possibility of being a suspect and
10 conversation ---

11 A: Those people testified at trial.

12 Q: And I understand all of that but ultimately that's not any
13 different -- my question had to do with any direct evidence,
14 that any eye witnesses actually placed him at the scene and
15 the answer to that is still no, correct?

16 A: I think that's a difference of opinion.

17 Q: So, you're saying there was testimony by -- I mean, it
18 wasn't an opinion, an eye witness either sees somebody at the
19 scene or not. I don't -- I mean, how is that ---

20 A: It puts -- it's circumstantial evidence that links him as
21 possibly, as being a suspect which is the police end up at his
22 house, and then I think that what you and I maybe -- as far as
23 direct evidence, that they find a shell casing ---

24 Q: Okay. Let's forget about the whole direct/circumstantial
25 distinction. We can argue about that. The question is this,

1 just so we're clear. There were no eyewitnesses at any time
2 that testified that they saw my client at the scene at the
3 time of the shooting, correct?

4 A: Correct.

5 Q: Okay. And although there were no eyewitnesses that placed
6 my client at the scene at the time of the shooting, although
7 there was no testimony at the trial about him admitting being
8 at the scene or involved in the shooting, although there was
9 no gunshot residue test reflecting that Mr. Williams even
10 fired a weapon, although they didn't actually find the weapon
11 on his person or in his car or in his house, you got up in
12 opening statement and the first thing you said or one of the
13 first things you made clear was that your client was at the
14 scene and he fired the fatal shot or he fired a shot at the
15 victim.

16 A: True. My opening statement said that the victim lured him
17 there in order to kill him.

18 Q: That's correct, but you admitted in your opening statement
19 that Mr. Williams was at the scene, correct?

20 A: I did.

21 Q: You admitted that he was at the scene and fired a shot?

22 A: I did. I told him that -- I told the jury that he had the
23 right to protect himself and defend himself.

24 Q: All right. Thank you, sir. And you never argued the lack
25 of the State's ability to prove Mr. Williams was at the scene,

1 correct?

2 A: I'm sorry?

3 Q: And you never argued the questionable evidence, you know,
4 that the State had that Mr. Williams even went to the scene,
5 correct?

6 A: No, it did -- I did not argue that.

7 Q: Okay. And you did not argue that even if they establish
8 he was at the scene, they could not establish that he was the
9 shooter; you never argued that either, did you?

10 A: I didn't argue that -- well, he admitted that he was the
11 shooter because ---

12 Q: No, was there any testimony at the trial that he was the
13 shooter? Did he admit to you that he was the shooter?

14 A: No, he didn't take the stand.

15 Q: Okay. So, there was no testimony at the trial of that and
16 you never argued, hey, there's no testimony, there's no
17 evidence, the State can't prove that Mr. Williams was even at
18 the scene. There's no evidence that -- you know, that State
19 can't prove that even if he was at the scene cause he was --
20 he was the shooter, correct? You didn't make those arguments,
21 correct? Because those would be inconsistent with you saying
22 he shot at him in self-defense.

23 A: I did not argue that because of what the State had as far
24 as -- I think that that would've contradicted the evidence
25 that was against him and I think that his best defense, the

1 strategy that I took was his best defense that he was
2 defending himself. No different than anybody else defends
3 himself when somebody unlawfully shoots at them.

4 Q: And you never argued, even if he was present at the scene
5 and even if he was with someone else who shot, fired the fatal
6 shot, you never argued the State would need to prove some
7 evidence that he went there with the knowledge that a crime
8 was gonna be committed or with the intent to commit some
9 unlawful act; you never argued that either did you?

10 A: I argued that he went there because he knew the guy and
11 they were friends and that he went there to try and tell his
12 friend that I'm not the one that broke into your house; that
13 was what I argued.

14 Q: Okay. That's all I have, Mr. Taylor; thank you very much.

15 A: Yes, sir.

16 Q: Very nice to talk to you.

17 A: Yes, sir.

18 THE COURT: Just a second.

19 A: I'm getting ahead of myself; sorry, Judge.

20 MR. JOHNSON: I've got a few questions.

21 CROSS EXAMINATION OF ROBERT PAUL TAYLOR BY MR. JOHNSON:

22 Q: Mr. Taylor ---

23 A: Yes, sir.

24 Q: You've just talked extensively about your trial strategy
25 and decisions that you made in defending Mr. Williams. And I

1 guess what I want to get into is the reasons that you chose
2 that strategy. And specifically, I want to ask you, it'll be
3 a little bit of a repeat and I'll try not to do that ---

4 A: That's fine.

5 Q: --- but I want to ask you, what evidence, testimonial or
6 circumstantial, any evidence at all, did you feel would have
7 been used against Mr. Williams that you had to combat, that
8 you had to oppose?

9 A: Well, I explained to Mr. Williams the difference between
10 what circumstantial and direct evidence was and explained to
11 him that even with circumstantial evidence a person can be
12 convicted of a murder, no different than a man who argues with
13 his wife at dinner and says in front of other people, I'm
14 gonna cause harm to you and then later on something that links
15 him to the murder weapon is found within is car, like in the
16 situation in this case here. We -- I chose the self-defense
17 argument because I had to explain -- the victim had a gun in
18 his hand and that was to Mr. Williams' benefit and I argued,
19 you know, from the standpoint of that, self-defense, because
20 they knew each other and he went down to try and explain to
21 this guy went by the street name of Zar (spelled
22 phonetically). He was gonna argue to Zar to try and recoup
23 their friendship because Zar was thinking that he broke into
24 his trailer, stole his drugs and money. And that whenever Zar
25 got him down there, he fired at Jimmy and then Jimmy, in his

1 defense, fired back.

2 Q: And so going into the trial, before the trial occurred,
3 you knew that there were three potential witnesses who could
4 testify that he was ---

5 A: Yes. I was provided audio interviews of two men and a
6 female that were involved in this case.

7 Q: Now, and today, looking back, reading the transcript of
8 the trial, knowing exactly what the State, the Solicitor put
9 up as evidence is one thing but prior to trial, in preparing
10 for it and going into it, you don't have the benefit of
11 hindsight, do you?

12 A: No. I looked at the evidence that I had before me and I
13 thought what would I do if I was the prosecutor and it was
14 very straightforward. I had people that had Mr. Williams
15 arguing on the phone with the deceased. He goes down to where
16 the deceased is because he says he leaving to go talk to him.
17 He comes back to the trailer and he's carrying a gun, his
18 cousin is carrying a gun. The gun is found in the wood line
19 behind his house, although I didn't measure it. There is a
20 shell casing inside of his vehicle and he admit -- I mean, he
21 made incriminating statements regarding linking himself to --
22 as I could recall from the discovery, to -- to the gun. I had
23 to explain all of that. I had to explain how the shell casing
24 got there. What am I going to do, sit here and tell the jury
25 that the shell casing that is scientifically linked back to

1 the -- forensically is linked back to the gun which is found
2 behind his house? I had to come up with a reason why the gun
3 was there. The victim has a gun in his hand. He doesn't
4 appear to be a nice guy and I attacked his -- him pretty badly
5 throughout the trial about what kind of person he was. I had
6 to explain that the deceased lured Jimmy down there to kill
7 him.

8 Q: So, besides the theory of self-defense, was there any
9 other theory that would've explained the shell casing, the gun
10 found behind his house, the three witnesses that would've said
11 that he was there in the vicinity of the trailer park where
12 the victim was found? Was there any other theory that you
13 could've utilized that would have been an unifying theory
14 explaining all of those things in a nice package other than
15 self-defense?

16 A: I don't think so.

17 Q: And so is this why you chose the theory of self-defense?

18 A: I had to explain that shell casing within his car and the
19 gun outback behind his house.

20 Q: Did you discuss this with Mr. Williams?

21 A: I did.

22 Q: What did he tell you?

23 A: He agreed with me and we prepared the case in that
24 fashion. It was a self-defense case throughout -- from the
25 time that I reviewed the discovery and went out to see him at

1 the jail. It was always a self-defense case.

2 Q: Did he ever tell you, no, I don't want to claim self-
3 defense; I want them to prove everything. I want you to make
4 them prove that I fired the shot using forensics. I want you
5 to make them prove that the gun was mine, that the casing was
6 mine, that I shot the victim and I want you to make them --
7 did he ever tell you that?

8 A: No, he told me that it was his gun. He told me he fired
9 the gun.

10 Q: All right. But my question is, Did he ever say let's not
11 use this self-defense route? Instead, let's just sit back and
12 make them prove it all?

13 A: No, he agreed with me whenever we went through and I went
14 through what his defense was gonna be.

15 Q: All right. Now, theorize with me just a little bit. What
16 if, let's do a what if -- and I hate to do that because Monday
17 Morning quarterbacking on something that you did five years
18 ago is always unrealistic. But, the Applicant wants to do
19 that so let's do that.

20 A: Okay.

21 Q: Let's go back and I want you to theorize that -- your
22 theory in this case would've been one where you just sat back
23 and make the State prove everything. What would the outcome
24 have been in that case?

25 A: I think it would've made Jimmy look worse because I

1 believe that the jury was gonna see that he was linked to this
2 murder from the shell casing, from the gun out back, from the
3 statements which I, you know, had from the witnesses. I
4 thought that Jimmy would look bad unless he just came from the
5 beginning and said, I defended myself. I did -- I acted
6 lawfully in this matter. I went down there, I knew him, and
7 he fired at me and I fired back. No different than a guy
8 that's robbed and mugged at a gas station, whenever the police
9 get there and there's a dead guy, if he's left the scene and
10 they come to his house and they find the gun that he used to
11 kill the guy that was gonna mug him, I don't think he's gonna
12 say, well, prove it. He's gonna say, well, the guy tried to
13 rob me and I shot him. I left because I was scared but I shot
14 him in self-defense. I think that you have to -- in my
15 opinion, I thought that it was the best way to go to defend
16 him in claiming self-defense.

17 Q: Did you discuss Mr. Williams' potential testimony and any
18 potential problems that may have arisen from his testimony,
19 credibility or otherwise?

20 A: He has to testify if it's self-defense; he has to explain
21 what's gonna happen.

22 Q: And what did he tell you?

23 A: When it came time for him to testify, he wanted no part of
24 testifying and thought that they didn't have enough evidence
25 to prove his guilt and that they'd not put in the gun was an

1 appealable issue. That was an issue that we had whenever the
2 State rested. We thought that the gun had been used and
3 demonstrated to the jury whenever they brought it in but they
4 actually never marked it as an exhibit in the case. The
5 Court, Judge Cottingham ruled against us on that. Whenever we
6 had motions at the end of the trial when the State was resting
7 or after they had rested but the Judge ruled against us so
8 then it became our time to present our case and Mr. Williams
9 did not want to testify nor did his codefendant want to
10 testify.

11 Q: Now, this was new to you, was it not?

12 A: Well, we'd prepared his case for him to testify for self-
13 defense the entire time. I'd had his case for close to a
14 year.

15 Q: So, his not testifying took away your ability to do what?

16 A: Well, I can't testify.

17 Q: Right. I mean, his failure to testify, refusal to testify
18 changed the nature of the case in what significant way?

19 A: We were presenting a self-defense argument.

20 THE COURT: Let me get real clear here. I understand the
21 trial strategy.

22 A: Yes, sir.

23 THE COURT: Self-defense. And that certainly is
24 reasonable in this case. Are you telling me that when the
25 trial began you intended to make your case, make your defense

1 by putting the Defendant up?

2 A: Yes, sir.

3 THE COURT: And after the State rested, the Defendant
4 said I'm not gonna testify?

5 A: Yes, sir. He basically -- I think the anxiety of getting
6 in this seat in front of a jury, he wanted no part of that.

7 THE COURT: Gentlemen, let me ask you this. On direct
8 appeal was the issue of Judge Cottingham's refusal to even
9 charge self-defense taken up?

10 MR. MOBLEY: No, Your Honor.

11 THE COURT: Then does anyone take issue with the
12 correctness of this -- his order in that regard?

13 MR. MOBLEY: I do take issue with the correctness of that
14 order, Your Honor, that is correct.

15 THE COURT: You take the position that it was incorrect?

16 MR. MOBLEY: Well, you know, I think I'm in that position
17 where, you know, I've got to.

18 THE COURT: I just wonder why it was not addressed on
19 appeal, direct appeal?

20 MR. MOBLEY: And I do think that, you know, Cottingham
21 did explain at the trial level that, you know, with all the
22 different elements, there was no testimony about no other
23 options besides what ---

24 THE COURT: I understand what his ruling was. I've read
25 that part of the transcript. I quite frankly have often

1 wondered when you charge it and when you don't charge it. And
2 that seems to be the issue here. The issue in this case, as I
3 see it, it's not whether trial counsel strategized to use
4 self-defense. I think that was under the circumstances of
5 this case since the victim had a gun in his hand. That was
6 absolutely the way to go. The question becomes whether or not
7 the defense counsel had a plan to present that evidence. If
8 he had none and Judge Cottingham is correct in his refusal
9 based on that to charge self-defense, then I see it one way.
10 However, if trial counsel says I was more or less ambushed by
11 my client who after we had set up this defense refused to
12 testify and then Judge Cottingham got us by refusing to give
13 us a charge on it, I see this case an entirely different way
14 because that's where I think it swings, right there, right
15 there. That's why I asked counsel about this particular
16 issue.

17 Counsel, go on with your cross examination. I just
18 threw that out so y'all know how I'm thinking about this.

19 BY MR. JOHNSON:

20 Q: I think I'm about through, Your Honor. And it's
21 established that you had a trial strategy and I think my last
22 question was regarding Mr. Williams' refusal to follow through
23 with the plan that you and he had come up with. I think he
24 testified that he refused to take the stand.

25 A: That's correct.

1 mentioned the shell casing and the fragment?

2 Q: Correct.

3 A: I don't think that the shell fragment itself had been
4 linked to the weapon. Again, it's been five years since I had
5 this discovery, but the shell casing itself had been linked.

6 Q: Okay. And you talked about in the discovery an alleged
7 statement that Mr. Williams made to law enforcement that you
8 were concerned about getting in that -- where he admitted
9 being present.

10 A: I think it was as to the gun and to the argument regarding
11 the deceased.

12 Q: All right. And but that statement was not presented at
13 trial, correct?

14 A: No, that was not submitted at trial, which I don't know
15 why but it wasn't.

16 Q: But even still, even notwithstanding that, you didn't make
17 a pretrial motion to challenge that statement on the grounds
18 of voluntariness, correct?

19 A: That's correct, because it wasn't submitted.

20 Q: Okay. But once again, you didn't know, you didn't know it
21 was not gonna be submitted until they didn't submit it; do you
22 understand what I'm saying?

23 A: Well ---

24 Q: I mean, you normally make those motions pretrial, pretrial
25 motions are gonna be a Jackson v. Denno to challenge the

1 voluntariness of the statement and determine whether or not
2 there is an effective waiver of right to counsel and it was
3 voluntary and Miranda Rights are given. You do that pretrial,
4 correct?

5 A: I did but the prosecutor had not told me that he was gonna
6 submit it. He had not made it a big issue of his case and I
7 think if I had made that motion it would've kind of prodded
8 him along to know to submit it and it would've been submitted.

9 Q: To know to submit an admission by the Defendant to being
10 at the crime scene?

11 A: Well, and then he would have submitted it at court, which
12 he didn't.

13 Q: So, it's your belief, sir, just so we're clear, that it is
14 your belief that in a murder trial, the prosecutor in this
15 case has an admission by the Defendant being at the scene
16 firing a shot at the victim in a circumstantial case but he
17 would not have the foresight to try to admit that statement
18 unless you somehow reminded him by requesting a Jackson v.
19 Denno hearing; is that what your testimony is, sir?

20 A: He had not made an issue with it during my discussions --
21 I had numerous discussions with him.

22 Q: And it was clear -- so you're saying that you think that
23 somehow he would've forgot to do that and you would risk
24 reminding him to do that by requesting a Jackson v Denno
25 hearing and but for your requesting a Jackson v. Denno hearing

1 he might remember to introduce a statement by the Defendant
2 admitting to being at the scene?

3 A: He did forget to submit it.

4 Q: Did he -- I mean, my point is this, though -- I mean, this
5 is my point, Mr. Taylor, you're saying that on one end you
6 want to say, well, that statement was part of your trial
7 strategy and you weren't -- you didn't realize it wasn't gonna
8 get in but the point is you made no attempt to even exclude
9 it. So, you didn't realize it wasn't gonna get in until he
10 just didn't put it in at the end of the trial?

11 A: I guess you can look at it that way.

12 Q: Yeah. Well, that's exactly what happened. Okay. And you
13 talked about self-defense and how it was the defense partially
14 because -- and self-defense was one defense, but it was not
15 the only defense, correct?

16 A: I guess you could've come up with any defense that you
17 wanted to but it was the defense that I took.

18 Q: Okay. I understand that. We talked about the lack of eye
19 witnesses, the lack of the weapon being found in his
20 possession, you know, the lack of intent, proving he was at
21 the scene, you know, even if he was at the scene, it's
22 establishing he knew there was a crime that was gonna take
23 place and had an unlawful intent, him being the shooter versus
24 the codefendant. I mean there are a number of issues that
25 could've been raised that ---

1 MR. JOHNSON: Your Honor, objection. I think this is way
2 beyond the scope of cross. He's getting back to his original
3 argument.

4 MR. BOAN: No, Your Honor. If the Court will give me
5 some latitude, my point is ---

6 THE COURT: I'm gonna give you some latitude.

7 MR. MOBLEY: Thank you.

8 BY MR. MOBLEY:

9 Q: But you're saying that you chose self-defense as opposed
10 to considering those as the most viable, did you discuss with
11 your client, Mr. Williams that the law of self-defense
12 requires that a person has the duty to retreat prior to using
13 deadly force? Isn't that an element of self-defense, sir?

14 A: It is an element of self-defense but he was retreating
15 because he never got out of his car.

16 Q: Okay. Do you understand, sir, just -- and I want to
17 clarify my question.

18 A: Yes, sir, I understand the law of self-defense.

19 Q: I understand that. But let me -- I want to make sure you
20 understand my question, not the law, my question. Okay? The
21 law requires in self-defense that a person has a duty to
22 retreat prior to using deadly force, correct?

23 A: Correct.

24 Q: And what you just said was, well, he did try to retreat.
25 Well, I understand he tried to retreat but the law requires

1 that a person has a duty to retreat prior to using the deadly
2 force. So, if he fired a weapon without trying to retreat,
3 then that would negate self-defense, correct?

4 A: That's not what happened. He was retreating because
5 whenever he went to pull up, Zar started shooting at him and
6 he fired back as he was leaving in his car.

7 Q: Okay. And you explained that to your client, the duty to
8 retreat prior to using deadly force?

9 A: And what Jimmy told me was was that whenever he pulled up,
10 Jimmy had a .22 long rifle, not a pistol in his car. It was
11 sitting in the driver -- in between him and his cousin.
12 Actually -- I'm sorry, it was not -- it was sitting in the
13 floorboard in the back and that whenever Zar started shooting
14 at him, as he was turning away, he pulled it out and stuck the
15 rifle out and started firing as he was turning. So, he was
16 retreating and I believe that that got around his duty to
17 retreat.

18 Q: All right.

19 A: A person also has the duty to defend himself when someone
20 is firing a rifle or a pistol at them.

21 Q: All right. Did you also discuss with your client that in
22 order to have a valid claim of self-defense, you've got to be
23 -- have no fault in bringing upon the difficulty; did you
24 discuss that with Mr. Williams?

25 A: Yeah, but that was easy enough to get down because the

1 parties knew each other and he was simply going there to talk
2 to him about, I didn't break into your house, it's not me.

3 Q: Well -- okay. Did you also discuss with your client that
4 the victim on his own property had absolutely no duty to
5 retreat prior to using deadly force?

6 A: Yes, sir, but he also did not have a right to fire at
7 Jimmy.

8 MR. MOBLEY: All right. That's all I have from this
9 witness, Your Honor. And I'd like to call Mr. Williams to the
10 witness stand unless there's any further cross examination by

11 ---

12 MR. JOHNSON: Nothing.

13 THE COURT: You may step down.

14 MR. MOBLEY: Thank you, Mr. Taylor.

15 MR. TAYLOR: Yes, sir.

16 MR. MOBLEY: All right. At this time, I'd call the
17 Petitioner Jimmy Lee Williams to the witness stand, Your
18 Honor.

19 JIMMY LEE WILLIAMS, HAVING BEEN SWORN,

20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION OF JIMMY LEE WILLIAMS BY MR. MOBLEY:

22 Q: Please state your name for the record, Mr. Williams.

23 A: Jimmy Williams.

24 Q: All right. Just so we're clear, the gentleman that just
25 testified, Mr. Taylor, was that your trial counsel for the

1 murder charge for which you were convicted?

2 A: Yes, he was.

3 Q: All right. And I'm gonna ask you to speak up into the
4 microphone to make sure the court reporter can hear you. So,
5 please, do that, okay, sir?

6 Now, in preparation for your defense on this charge, did
7 Mr. Taylor provide you with the opportunity to review the
8 discovery material in your case?

9 A: We did.

10 Q: Did you look at them or discuss the evidence with him?

11 A: I have, once I received them myself.

12 Q: Okay. Once you reviewed the evidence in the case, did you
13 have a discussion with Mr. Taylor about trial strategy
14 defenses?

15 A: Yes.

16 Q: Okay. Now, I'm gonna ask you to speak up again, sir,
17 because you're speaking a little bit low. Okay?

18 A: All right.

19 Q: And did you have a discussion with Mr. Taylor about using
20 self-defense at the trial?

21 A: Yes.

22 Q: Okay. Please explain to the Court the nature of those
23 discussions and what transpired.

24 A: Well, he brought it to my attention that we should go
25 forth with self-defense but after I seen the motion of

1 discovery, I brought it to his attention that I don't think we
2 need to go self-defense based on the evidence that was -- that
3 was set forth in the motion discovery.

4 Q: Okay. Elaborate, what do you mean based on the evidence?
5 Did you feel that they had enough evidence or strong evidence
6 to implicate you of the crime?

7 A: No, I didn't.

8 Q: I mean, and for example, did you see that there was no eye
9 witnesses to put you at the crime scene?

10 A: Yes, I seen that so I knew that -- that's what made me let
11 him know that we shouldn't go through self-defense.

12 Q: And you were also aware that the firearm that they believe
13 was used in the shooting was not found in your actual
14 possession, correct?

15 A: Yes.

16 Q: It wasn't found in your car?

17 A: Yes.

18 Q: Or in your house?

19 A: Yes.

20 Q: You understood it was found in some woods in your
21 neighborhood, correct?

22 A: Yes.

23 Q: All right. And you discussed that with Mr. Taylor?

24 A: Yes.

25 MR. JOHNSON: Your Honor, we're gonna object to leading

1 questions of this witness.

2 THE COURT: Please don't lead your witness.

3 MR. MOBLEY: Thank you, Your Honor.

4 BY MR. MOBLEY:

5 Q: And just so we're clear, had there been strong evidence
6 that the State ---

7 MR. JOHNSON: Your Honor, we're gonna object to any
8 leading questions of this witness.

9 MR. MOBLEY: That's not a leading question, Your Honor, I
10 ---

11 THE COURT: It was about to be, but I'll let you ask it.

12 BY MR. MOBLEY:

13 Q: If there was any strong evidence that you believe that the
14 State could firmly put you at the scene of the crime and find
15 a weapon, would your opinion on self-defense have been
16 different?

17 A: Yes.

18 Q: Okay. Explain why?

19 A: Because I felt that that would be the only way for me to
20 go.

21 Q: Okay. But in this case, once again, explain to the Court
22 why you do not believe it was the only way to go.

23 A: Because of the evidence that was presented and the motion
24 of discovery was not enough to have me convicted of murder.

25 Q: Okay. And did you discuss that with your attorney?

1 A: Yes.

2 Q: Okay. When you discussed that with your attorney, what
3 was his position?

4 A: The same position he stated here today, it's self-defense.
5 That's the only thing he -- that's the only defense that he
6 wanted to towards was self-defense.

7 Q: Did he discuss with you making arguments regarding the
8 State's lackability to put you at the scene of the crime?

9 A: No, he didn't.

10 Q: Did he discuss with you arguments about the lack of
11 identification or connection to you and the gun, the firearm?

12 A: No.

13 Q: Okay. And were you aware of how they even found the
14 firearm, how they got the gun?

15 A: Yeah, during the trial.

16 Q: And how was that?

17 A: They got a phone call.

18 Q: Did they ever find out from who?

19 A: No, they didn't.

20 Q: And did you ever discuss your Fifth Amendment right to
21 testify or not testify with your trial counsel?

22 A: No.

23 Q: I mean, when you discussed self-defense, you didn't
24 discuss that with him?

25 A: Yeah, he brought it up but as I told him, I didn't want to

1 go that route, so I'm not gonna get on the stand if I know
2 that's not the route that I wanted to go.

3 THE COURT: All right. Let me ask you something. Are you
4 telling me that you told your attorney you were not going to
5 testify because you did not agree with his choice to go
6 forward with self-defense defense?

7 A: Yes, because prior before us even coming in this trial, I
8 had told him that I don't want to go self-defense.

9 THE COURT: Okay. So, you were not going to cooperate
10 with that defense?

11 A: If I had no other choice I would've.

12 THE COURT: But you didn't?

13 A: No, I didn't.

14 THE COURT: All right.

15 BY MR. MOBLEY:

16 Q: Did your attorney advise you -- when you had to make the
17 final decision to testify or not testify, did your attorney
18 say, hey, wait a minute, I just got up in opening statement
19 and told the jury you shot this guy in self-defense. If you
20 don't testify, you're gonna kill my case?

21 A: No, he didn't.

22 Q: Did you have any discussion with him about that?

23 A: No, we didn't.

24 Q: And was it ever your intent to testify at the trial?

25 A: No, sir.

1 Q: All right. Is there any other issue that I've not raised
2 that you believe the Court needs to consider in making this
3 decision to grant you a new trial, sir, regarding your
4 attorney's performance or others?

5 A: No.

6 Q: That's all I have, Your Honor. Thank you. Thank you, Mr.
7 Williams.

8 THE COURT: Counsel?

9 CROSS EXAMINATION OF JIMMY WILLIAMS BY MR. JOHNSON:

10 Q: You were in the courtroom when Mr. Taylor testified a few
11 minutes ago, weren't you?

12 A: Yes.

13 Q: All right. And you heard his testimony that he did
14 discuss that you would need to testify in order to meet the
15 burden of proof of a self-defense defense? You heard him
16 testify to that?

17 A: Yes.

18 Q: And your testimony is that that did not happen, that you
19 never talked with him about the need to testify prior to the
20 trial?

21 A: Yes.

22 Q: So, you never talked with Mr. Taylor prior to the trial
23 about how you would need to testify if they were -- if you
24 were gonna pursue that defense?

25 A: No.

1 Q: Now, when you did talk with Mr. Taylor about testifying,
2 what did you tell him?

3 A: That was -- that was months before even dealing with this
4 trial when I told him that I don't want to go self-defense.

5 Q: Okay. My question goes to your discussions with Mr.
6 Taylor about testifying.

7 A: What exactly -- we didn't discuss about me testifying
8 before the trial.

9 Q: Okay. So, you're saying he didn't bring it up but did you
10 bring it up?

11 A: I just said, we did not discuss it.

12 Q: I'm just trying to understand how you, as a Defendant, at
13 some point or another, you're gonna probably ask yourself, I'm
14 gonna have to testify in this. Did that ever happen?

15 A: What if but that's not the way we were going.

16 Q: Did you ever ask yourself, I wonder if I'm gonna have to
17 testify in this trial?

18 A: Yes, I did.

19 Q: And then did you say, well, I'll just ask my lawyer? Did
20 you ask him?

21 A: No, I didn't.

22 Q: So, you wondered whether you would have to testify but
23 you're telling the Court, you never asked Mr. Taylor, am I
24 gonna have to testify in this?

25 A: No, I didn't.

1 Q: All right.

2 THE COURT: Did you have any other reason for not wanting
3 to testify, like a criminal record, or anything like that?

4 A: No, sir. I didn't have a criminal record. I'd never been
5 in trouble before.

6 THE COURT: Was there any other reason for you other than
7 you were not gonna cooperate with that defense? Is there any
8 other reason for you not to testify in this trial.

9 MR. MOBLEY: Your Honor, with all respect to the Court's
10 choice of words, I don't think the Court meant the failure to
11 cooperate with the defense is more the Court's words ---

12 THE COURT: That's the exact question I asked him earlier
13 and he said that he was not going to cooperate with that
14 defense; is that correct? You weren't gonna go along with it?
15 Self-defense, I'm talking about?

16 A: I mean, as far as if I had to testify?

17 THE COURT: Yes.

18 A: No, I -- I wouldn't have went with it.

19 THE COURT: Well, the question I have is, is there a --
20 is that the reason you didn't testify?

21 A: Because of ---

22 THE COURT: You weren't gonna go along with that defense?

23 A: No, that's not the reason, I mean, but ---

24 THE COURT: I might be confusing you some and I apologize
25 if I am but whenever a person has -- is tried, you know that

1 you have the right not to testify, you understand that? And
2 Judge Cottingham explained that to you, didn't he?

3 A: Yes.

4 THE COURT: Okay. And you made the decision that you
5 would not testify and different people have different reasons.
6 Some people won't testify because they might have a criminal
7 record that could be used against them. You tell me that's
8 not the case with you. And there could be other reasons for
9 not testifying. You tell me you didn't want to testify
10 because you didn't want to go along with that defense. Is
11 there some other reason also?

12 A: Also, that there wasn't -- I felt that there wasn't
13 enough, there wasn't enough evidence to have me convicted.

14 THE COURT: All right. Thank you. Go ahead.

15 BY MR. JOHNSON:

16 Q: You said something earlier and I tried to write it down
17 exactly as you said it. Tell me if I've written it down
18 wrong. But I think you said, in response to a question either
19 by Mr. Mobley or the Court about would you have testified,
20 your answer was, if I had no other choice, I would have. And
21 I wanted to give you a chance to ask you what you meant by
22 that and perhaps explain it. What did you mean by that? If I
23 had no other choice I would have.

24 Q: Yes, I mean, if he would've told me that that was the only
25 way for us to really present our case in a self-defense, then

1 I would have had no other choice but to testify.

2 Q: But he says he did tell you that?

3 MR. MOBLEY: Your Honor, object, he's trying to pit the
4 witnesses.

5 THE COURT: Well, I'm gonna let him ask that.

6 A: Okay. Now, say that again.

7 BY MR. JOHNSON:

8 Q: You were here during Mr. Taylor's testimony and he says he
9 did tell you that?

10 A: He say he didn't tell me that?

11 Q: He said he did tell you that you would need to testify.

12 A: No, he didn't.

13 Q: I asked him several questions and ---

14 MR. MOBLEY: He's asked the question -- he asked and
15 answered the question, Your Honor.

16 THE COURT: Okay. He's answered it; he said he didn't
17 tell him.

18 MR. JOHNSON: I don't think I have no further questions
19 of this witness, Your Honor.

20 THE COURT: All right. You may step down. You can step
21 down, Mr. Williams.

22 I want you each to submit orders to me, proposed orders
23 on this PCR and I want you to focus on the Defendant's choice
24 not to testify. The Judge's decision to not charge or allow
25 argument on self-defense and particularly the burden of

1 proving or disproving self-defense and the State's duty to
2 charge it. I am really surprised that this matter did not go
3 up on that particular issue. It was my understanding that the
4 Defense is no longer required to prove it as an affirmative
5 defense, put up evidence of it or if evidence of it is put up,
6 then it should be charged and the elements charged and let the
7 jury determine whether or not the State has disproved it. The
8 burden is on the State to disprove it beyond a reasonable
9 doubt. So, I don't know about that but that's what I want you
10 to look at. I find that to be the seminal issue in this
11 matter as to whether or not Defense counsel knew or should
12 have known they would not be allowed to argue self-defense.
13 That's what it comes down to, arguing self-defense, whether
14 they were ambushed by their client when their client refused
15 to cooperate. Those are all the issues I want addressed. I
16 want to know -- that's where I want to focus. Okay?

17 MR. JOHNSON: Yes, Your Honor.

18 MR. MOBLEY: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

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(Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the PCR hearing held in the case of Jimmy Williams versus State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on April 23, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson, CVR
Official Reporter

September 24, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

Honorable Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO: 2013-001577

THE STATE,

RESPONDENT,

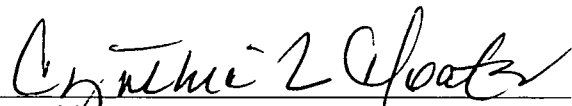
v.

JIMMY LEE WILLIAMS,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 30th day of December, 2013, a copy of the *Appendix to Petitioner's Writ of Certiorari* in the above-referenced case has been served upon Joshua Thomas, Esquire, of the SC Attorney General's Office, Post Office Box 11549, Columbia, South Carolina, 29211, by depositing same in the U. S. Postal Service receptacle, with sufficient postage affixed thereto.


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Columbia, South Carolina
December 30, 2013.