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**RECEIVED**

SEP 08 2014

S.C. SUPREME COURT

September 5, 2014

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Steven C. Briscoe, 312254 vs. State of South Carolina  
2009-CP-18-305

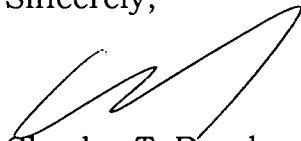
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,

  
Charles T. Brooks, III  
CTB/srw

Enclosed as stated

cc: Walt Whitmire, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Steven C. Briscoe, 312254

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Honorable Edgar W. Dickson, Circuit Court Judge

Case No: 2009-CP-18-0305

Steven C. Briscoe.....Appellant  
S.C.D.C. 312254

v.

The State.....Respondent

**RECEIVED**

SEP 08 2014

**S.C. SUPREME COURT**

NOTICE OF APPEAL

Steven C. Briscoe, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Edgar W. Dickson, August 19, 2014, which I, Charles T. Brooks, III, received on September 5, 2014.



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Attorney for Appellant

Other Counsel on Record:  
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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Honorable Edgar W. Dickson, Circuit Court Judge

Case No: 2009-CP-18-0305

Steven C. Briscoe.....Appellant  
S.C.D.C. 312254

v.

The State . . . . . Respondent

**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 5<sup>th</sup> day of September, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on September 5, 2014, addressed to the following as indicated below:


South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Walt Whitmire, Esquire  
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Steven Briscoe, 312254  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, South Carolina, 29899

Dated: September 5, 2014

  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )  
Steven C. Briscoe, )  
S.C.D.C. No. 312254, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
Case No. 2009-CP-18-0305

**ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 18, 2009<sup>1</sup>. Respondent made its Return on February 4, 2010. An evidentiary hearing into the matter was convened on May 22, 2013 at the Orangeburg County Courthouse. The Applicant was represented by Charles T. Brooks, III., Esq. The Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant and counsel testified.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the October 2005 term of the Dorchester County Grand Jury for murder (2005-GS-18-1100). He was represented by Kevin Kearse, Esq., 'counsel.' On October 31, 2005, the State called its case to trial and the jury found Applicant guilty as indicted. The Honorable Deadra L. Jefferson sentenced Applicant to thirty (30) years imprisonment for murder.

<sup>1</sup> Received by Respondent on January 21, 2010.


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A Notice of Appeal was filed on the Applicant's behalf and was perfected by Joseph L. Savitz, III, Esq., of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion, Op. No. 08-UP-259 (filed on May 14, 2008). The Remittitur was issued on May 30, 2008. A timely PCR application followed.

At the PCR hearing, Applicant moved forward on the following claims:

1. Ineffective assistance of counsel:
  - a. failure to investigate enplanement documents from the grand jury;
  - b. failure to present polygraph evidence of a State witness at trial;
  - c. failure to object to allegedly improper opinion testimony from the State's crime scene investigator;
  - d. failure to object to the State's allegedly improper impeachment of defense witness through an audio recording;
  - e. failure to object to the State's use of impeachment evidence that allegedly constituted a discovery violation;
  - f. failure to object to the State's use of impeachment evidence that allegedly violated Federal Law;
  - g. failure to present evidence to rehabilitate a defense witnesses' credibility;
  - h. failure to object to an allegedly erroneous jury instruction that unconstitutionally shifted the burden of proof to Applicant;
  - i. failure to object to allegedly prejudicial comments made by the solicitor during his closing argument;
  - j. failure to object to comments made by the solicitor during his closing argument that allegedly constituted vouching;
  - k. failure to object to comments made by the solicitor during his closing argument that allegedly were improper references to matters not presented to the jury at trial.

#### SUMMARY OF TRIAL TESTIMONY

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The State presented evidence that showed: Applicant was convicted for killing the victim in a foiled narcotics transaction. R. North and Turner negotiated the purchase of a substantial amount of cocaine from Turner. Turner and Applicant departed from Virginia and met R. North at a pre-determined location. R. North was accompanied by his confederates. Several witnesses testified that Turner and Applicant traveled in a Pontiac Grand AM that had a Virginia license plate. The State presented evidence that showed Applicant's mother owned a notably similar vehicle. The failed narcotics transaction occurred at a residence occupied by Green. R. North testified that Turner and Applicant were hesitant to enter the residence and appeared nervous. While Applicant was packaging the cocaine, the victim made the fatal decision to attempt to steal a quantity of the product. R. North testified Applicant pulled out a black handgun that appeared to be a Glock or an unspecified .9 mm and shot the victim numerous times before fleeing. R. North identified Applicant as the shooter. Other witnesses, including Turner and T. North, also identified Applicant as the shooter. Turner testified to the sequence of events that surrounded the murder. The State presented phone records that generally corroborated the testimonies of Turner and R. North.

Bullet fragments retrieved during victim's autopsy exhibited "polygimal rifling" unique to four known handguns; one which was a .10 mm Glock. Furthermore, markings on cartridges found at the scene bared markings unique to the Glock brand. SLED Agent Paaval testified that .10 mm Glocks are rare in the industry. Inauspiciously, Applicant reported his accidental discharge of a .10 mm Glock to Virginia police nearly six months prior to the murder. The firearm identified in the Virginia incident belonged to Applicant's mother, Coles.

Applicant presented an alibi defense. He testified that he was in Danville, VA with his girlfriend Graves on July 4, 2003. Applicant detailed his activities that day and testified that he

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shopped at a nearby mall then attended a neighborhood barbecue that night. Graves testified to her interactions with Applicant on July 4, 2003. She testified that she knew all of Applicant's friends and acquaintances in the community. She also testified that she was certain Applicant did not father children with other women during their relationship. She stated, "I don't think we know where everyone is every minute of the day, but [Applicant] knew I was pregnant and, I mean, we just, we've always been close." (Trial Tr. p.691). As a result of Applicant's dishonest testimony, the State presented a recording of a phone call between Applicant and his paramour regarding the paternity of the paramour's child. Applicant also testified that Turner had an alleged motive to falsely accuse him of the murder based upon a long held grudge regarding infidelity. Yet, Applicant testified Turner visited his hometown to see him just two months prior to the murder. Coles testified she drove her Pontiac Grand AM vehicle to the Salem State Fair in Southwest Virginia on July 4, 2003. The State also presented extrinsic evidence to impeach Coles' credibility. Outside of testimony from Graves and Coles, Applicant did not present evidence to corroborate his alibi.

The jury found Applicant guilty as indicted. Prior to pronouncing Applicant's sentence, the trial judge commented:

"It is really unfortunate, the place the defendant finds himself in, because quite frankly, I think if he had simply come to terms with the truth and told it he would be in much – I don't know whether his position would be different but I think at least he will have some peace with himself. But I think he has convicted himself of his own reality of what took place on that evening. And I think he is grappling with the fact that in a split second – and I say, split second relative, because I mean, probably in the span of a week or two he made a decision that has inextricably altered his life and his victim's life, because now a man is dead." (Trial Tr. p.1004).

#### APPLICABLE LAW

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In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject

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convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, the transcripts and documents from the prior proceedings, and legal arguments of the attorneys. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds counsel's testimony more credible than Applicant's testimony. This Court finds counsel's performance concerning the claims presented to have been diligent and constitutionally effective. Counsel testified he met with Applicant on at least six occasions, discussed the State's case and evidence with Applicant, and formulated a theory of the case based on Applicant's version of the facts. This Court finds counsel's testimony here credible. As a result of counsel's investigation of the case and his interviews with police officers and witnesses, counsel presented a competent case at trial. Compelling evidence shows counsel reasonably investigated all relevant matters at the request of Applicant regarding the claims presented. Furthermore, Applicant raises a number of ineffective assistance of counsel allegations for failure to object that are mostly without merit and misguided. Regardless, this Court finds the State presented convincing evidence of Applicant's guilt at trial comparison to Applicant's suspect alibi testimony. Most troubling to Applicant's cause, he lied under oath at trial.

A.

Applicant failed to meet his burden to prove counsel was ineffective for failing to investigate empanelment documents from the grand jury. "An indictment is a "notice document," albeit one required by our state constitution and statutes." Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005). Applicant failed to present relevant evidence to even make a *prima facie*

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showing that his due process rights were allegedly violated by the composition of the grand jury or by the manner in which he was indicted for murder. Furthermore, the record shows that Applicant was on adequate notice of the murder charge prior to trial. During the sentencing phase of the trial, Applicant apprised the trial judge that he labored over every fact and piece of evidence during his sixteen month pre-trial detention. (Trial Tr. pp.994-95). Regardless, Applicant's insinuation that the grand jury was unconstitutionally empaneled rested on mere speculation. Therefore, this allegation is denied and dismissed

B:


Applicant failed to meet his burden to prove counsel was ineffective for failing to adequately present evidence of T. North's polygraph results. "Our supreme court has often held the results of polygraph examinations are generally not admissible because the reliability of the tests is questionable." State v. Council, 335 S.C. 1, 23-24, 515 S.E.2d 508, 519-20 (1999). Counsel brought the matter before the Court in a pre-trial motion, and then abandoned it during the course of trial. (Trial Tr. pp.117-18; p.398). This Court finds Applicant has failed to meet his burden to produce credible evidence in support of the allegation. See Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983) (The law does not require counsel to raise every available nonfrivolous defense.). Applicant proffered an exhibit purported to be T. North's polygraph; this Court finds the exhibit to be inadmissible because a lack of authentication. See Rule 901, SCRE. Applicant did not produce the examiner to explain his finding and establish the reliability of polygraph test. In addition, Applicant failed to make a *prima facie* showing of prejudice where the matter constituted cumulative impeachment evidence. Counsel impeached the witness during cross-examination and elicited testimony that the witness provided prior dishonest statements to police. See State v. Merriman, 287 S.C. 74, 79-80, 337 S.E.2d 218, 222

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(Ct.App.1985) ("Admission of the results of Hogg's polygraph examination would have been merely cumulative to the other evidence impeaching his credibility."). In the alternative, Applicant failed to prove how the matter would have constituted admissible evidence of third party guilt. See State v. McLeod, 362 S.C. 73, 82, 606 S.E.2d 215, 220 (Ct. App. 2004) ("Evidence offered by a defendant as to the commission of the crime by another person is limited to facts which are inconsistent with the defendant's guilt."). Therefore, this allegation is denied and dismissed.

C.

Applicant failed to meet his burden to prove counsel was ineffective for failing to object to allegedly improper opinion testimony from Lt. Asbell regarding his investigation of the crime scene. "The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined prior to determining the reliability of the testimony." State v. Tapp, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012). Lt. Asbell testified to his investigation of the crime scene. Applicant claimed this witness' testimony regarding "blood splatter" was inadmissible because the solicitor did not move to qualify him as an expert. Applicant posited that the splatter might not have even been the victim's blood. Counsel testified at the PCR hearing that Lt. Asbell was qualified to testify on the matter. Counsel testified that he was aware of Lt. Asbell's experience and training at the South Carolina Criminal Justice Academy. This Court agrees with counsel's assessment where the record shows that the witness had fourteen years of experience in crime scene investigation and over twelve years of continued training in blood splatter analysis. (Trial Tr. p.455; pp.463-64). See Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 580, 560 S.E.2d 624, 629 (Ct.App.2001) ("Any

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defect in the education or experience of an expert affects the weight and not the admissibility of the expert's testimony.").

Furthermore, this court agrees with counsel that the allegedly improper opinion testimony was inconsequential to Applicant's case. Here, Applicant's claimed an alibi defense. Thus, the identification of blood splatter was immaterial in the context of defense theory of the case. Again, counsel demonstrated effective performance in cross-examining the State's witnesses in eliciting testimony that there was no forensic evidence that placed Applicant at the scene. Compare State v. Ellis, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001) (citing Fordham v. State, 254 Ga. 59, 325 S.E.2d 755 (1985) (An officer's improper opinion which goes to the heart of the case is not harmless.)). Therefore, this allegation is denied and dismissed.

D.

Applicant failed to meet his burden to prove counsel was ineffective for failing to object to the admissibility of Det. Van Doran's audio recording of an interview with Coles as extrinsic impeachment evidence:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

State v. McLeod, 362 S.C. 73, 80-81, 606 S.E.2d 215, 219 (Ct. App. 2004) (citing Rule 613(b), SCRE). "Generally, where the witness has responded with anything less than an unequivocal admission, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement." State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229-30 (Ct. App. 2010). This Court finds Applicant failed to present credible evidence or justification that the audio recording

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in question constituted inadmissible extrinsic evidence. During the defenses' case-in-chief, Coles testified she owned a .10 mm Glock handgun that Applicant accidentally discharged from the January 2003 incident. (Trial Tr. p.700). She testified she transferred possession of the gun to her former lover, Wilson, prior to July of 2003 as collateral on a personal loan. When cross-examined on why she told Det. Van Doran a different story on the matter, she testified that she mistakenly disclosed information on a different handgun. She posited that Det. Van Doran did not specifically inquire about the .10 mm Glock handgun in question. Thus, the State presented an audio recording of Det. Van Doran's interview in its rebuttal case. This Court finds an objection to its admissibility lacked merit. Therefore, this allegation is denied and dismissed.

Applicant allegation that counsel was ineffective for failing to preserve his Rule 5, SCrimP, discovery objection regarding the matter is without merit. Det. Van Doran's audio recording of his August 2004 interview with Coles was solely presented as extrinsic impeachment evidence. See Rule 5(c), SCrimP. Therefore this allegation is denied and dismissed.


Applicant's allegation that counsel was ineffective for failing to make a suppression argument on the matter and object to the admission of the audio tape based on alleged violation of the Federal Wire Tap Act is similarly without merit. Applicant has no standing to assert privacy interest of a third party witness. See State v. Crane, 296 S.C. 336, 340, 372 S.E.2d 587, 589 (1988) ("In order to have evidence suppressed on constitutional grounds, appellant "must establish that his own Fourth Amendment rights were violated."). Regardless, Applicant's testimony on the matter was illogical. See State v. Whitner, 399 S.C. 547, 565, 732 S.E.2d 861, 870 (2012) ("[O]ne party to a protected communication has no expectation of privacy under the

Wiretap Act if the other party consents to recording or disclosure.”). Therefore, this allegation is denied and dismissed.

Last, Applicant entirely failed to meet his burden to prove counsel was ineffective for failing to present all the Coles’ sales records from ‘Carter’s Guns and Ammo’ to rehabilitate her credibility. Applicant’s claim rests entirely on speculation. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (“A PCR applicant cannot show that he was prejudiced by counsel’s failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.”). Applicant proffered an exhibit purported to be ‘Sales Receipt No. 4839, January 30, 2001 record from Carter’s Guns and Ammo.’ This Court finds the exhibit to be inadmissible as a result of foundation and authentication. See Rule 901, SCRE. Applicant did not produce a custodian of record from the Virginia vendor nor did he produce Coles as a witness at the PCR hearing. Regardless, any prejudice claim was tenuous at best where Coles was impeached on her inconsistent statements to police; not whether she had proof of ownership of more than one handgun. Therefore, this allegation is denied and dismissed.

E.

Application’s allegation that counsel was ineffective for failing to object to an allegedly improper jury instruction on malice is wholly without merit. “In reviewing jury charges for error, we must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial.” State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003). “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” Id. at 318, 577 S.E.2d at 464. This Court finds the trial judge’s instruction on malice constituted a valid pre-State v. Belcher instruction. See State v. Belcher, 385 S.C. 597,

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613, 685 S.E.2d 802, 810 (2009) (“Our ruling, however, will not apply to convictions challenged on post-conviction relief. See generally Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).”). Therefore, this allegation is denied and dismissed.

F.

Applicant failed to meet his burden to prove counsel was ineffective for failing to object to various alleged improper comments made by the solicitor during State’s closing argument. “[S]olicitor’s closing argument must be carefully tailored so as not to appeal to the personal biases of the jury.” State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. Id. “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). However, “[s]olicitors are bound to rules of fairness in their closing arguments.” State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.

Applicant’s allegation that counsel was ineffective for not objecting to the solicitor’s comment that the inconsistent testimony from eye-witnesses created an inference that they did not act in concert to fabricate a consistent story is without merit. (Trial Tr. p.938). The comment constituted a permissible inference on evidence presented at trial. The solicitor’s comments that the crime scene photographs that detailed where evidence was retrieved showed a

straightforward case on how the victim died was also permissible. (Trial Tr. p.923). Therefore, the allegation is denied and dismissed.

The solicitor's comment that the eye-witnesses testified to the best of their recollection did not constitute vouching. First, the record shows the eye-witnesses had been drinking alcohol and smoking marijuana at the time of the offense. Second, the eye-witnesses took an oath to testify truthfully. (Trial Tr. p.939). Regardless, this Court finds counsel offered a valid trial strategy for not objecting. Counsel stated that the solicitor's comments on inconsistent testimony from his witnesses accentuated Applicant's case. In addition, counsel testified that solicitor's comments here placed him in a bad light in front of the jury. Therefore, this allegation is denied and dismissed. The solicitor's comment that the mother of Applicant's daughter has a motive to testify in a matter that does not result in Applicant's incarceration was permissible. (Trial Tr. p.947). Therefore, this allegation is denied and dismissed.

Applicant's accusation that the solicitor's comment, "You got to see everybody on the stand, and how they reacted. Because I guarantee you," constituted vouching is without merit. (Trial Tr. p.939). This Court finds the inchoate statement, "because I guarantee you" lacked a predicate phrase. (Trial Tr. p.939). The solicitor's previous statement, "you got to see everyone on the stand, and how they reacted," indicates the solicitor's closing argument could not be construed in any matter to have improperly invaded on the province of the jury as the sole finders of fact. Thus, this Court disagrees with counsel's assessment that this comment constituted vouching. See U.S. v. Eyman, 313 F.3d 741, 743 (2d Cir. 2000) (citing Chandler v. U.S., 218 F.3d 1305, 1316 n. 16 (11th Cir. 2000) (en banc) ("A counsel's admission of ineffectiveness is not determinative.")). Therefore this allegation is denied and dismissed.

Last, the Applicant's allegation that counsel was ineffective for failing to object to the solicitor's comments of alleged evidence that was not presented at trial. "Arguments must be confined to evidence in the record (and reasonable inferences therefrom), although failure to do so will not automatically result in reversal." State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). The solicitor stated: "These phone records led us to Smoke, Jason Turner. And you can look at this, you can follow it. You go to page -- let me get the right page -- you can go to page six of nine, if you look at the top, and you can follow. You can see the phone records, the phone calls, you can look through all this thing..." (Trial Tr. p.929). The solicitor made further comments to the general location of the towers that picked up the calls. An itemized billing from Turner's mobile phone was admitted through a Verizon Wireless records custodian. (Trial Tr. p.452). The comments addressed State's Exh. 11. Furthermore, the exhibit was cumulative to the testimonies of R. North and Turner. Therefore, this allegation is denied and dismissed.

G.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

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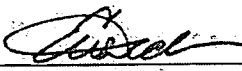
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 19<sup>th</sup> day of August, 2014.

  
EDGAR W. DICKSON  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina

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COLUMBIA

05 SEP 2004



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