AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

"Success is all that matters"

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July 10, 2015

Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

Re: Jeremy Wright, #302369 vs. State of South Carolina
Case No.: 2012-CP-17-400

Dear Mr. Shearouse:

Enclosed please find the original and one (1) copy of a Notice of Appeal and Certificate of Service in the above-referenced matter. Please clock and file the originals and return the clocked copies to me in the self-addressed stamped envelope I have provided for your convenience.

Thank you for your assistance in this matter and should you have any questions, please do not hesitate to contact our office.

Sincerely,

Heather L. Harris
Paralegal

HLH/
Enclosures

Cc: South Carolina Appellate Defense
Joshua Thomas, Esq.
Dillon County Clerk of Court
Jeremy Wright, #302369

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DILLON COUNTY
In The Court of Common Pleas

Honorable Eugene C. Griffith, Jr.
Common Pleas Judge of the Fourth Judicial Circuit

Case No.: 2012-CP-17-400

Jeremy Wright, #302369, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable Eugene C. Griffith, Jr., dated June 3, 2015, and received by Petitioner on June 15, 2015.

July 10, 2015

Tristan M. Shaffer, Esq.
AXELROD & ASSOCIATES P.A.
4701 Oleander Drive
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Attorney for Appellant

Respondent's Attorney:
Joshua L. Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DILLON COUNTY
In The Court of Common Pleas

Honorable Eugene C. Griffith, Jr.
Common Pleas Judge of the Fourth Judicial Circuit

Case No.: 2012-CP-17-400

Jeremy Wright, #302369, Petitioner,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Heather L. Harris, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Joshua L. Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Jeremy Wright, #302369
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dillon County Clerk of Court
301 West Main Street
Dillon, SC 29536

Heather L. Harris
Paralegal

July 10, 2015
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF DILLON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Jeremy Wright, #302369,	)	Case No. 2012-CP-17-400
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 10, 2012. Respondent made a timely Return on or about January 18, 2013. The Court convened an evidentiary hearing into the matter on January 21, 2015, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified at the evidentiary hearing. Applicant's trial counsel, Rosalind L. Sellers, Esquire, and Tonya Copeland-Little, Esquire, also testified. The Court also heard testimony from Deputy Solicitor Kernard E. Redmond. The Court had before it a copy of the trial transcript, the records of the Dillon County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. In August 2007, the Dillon County Grand Jury indicted Applicant for murder (2007-GS-17-916) and possession of a weapon during the commission of a violent crime (2007-GS-17-917). Rosalind L. Sellers, Esquire, and Tonya-Copeland-

1/15

Little, Esquire, (collectively, "counsel") represented Applicant. Kernard E. Redmond, Esquire ("the solicitor"), represented the State. On April 24, 2013, Applicant proceeded to trial before the Honorable Thomas A. Russo and a jury. The jury found Applicant guilty as indicted. Judge Russo sentenced Applicant to life imprisonment without the possibility of parole for murder and five years for possession of a weapon during the commission of a violent crime. Judge Russo ordered both sentences to run consecutive to Applicant's federal sentence for being a felon in possession of a firearm.[1]

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 30, 2012. State v. Wright, Op. No. 2012-UP-334 (S.C. Ct. App. filed May 30, 2012). The remittitur was returned to the circuit court on June 15, 2012.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
2. "Prosecutorial Misconduct"
3. "Lack of Evidence"
4. "Tampering with Evidence"
5. "Appellate Counsel Ineffective"
6. "Broken Chain of Custody"
7. "Subject Matter Jurisdiction"
8. "Brady Material"

At the evidentiary hearing, Applicant presented the following grounds for relief:

1. Ineffective assistance of counsel.
    a. Counsel failed to argue the prosecution acted in bad faith by destroying the physical evidence against Applicant.
    b. Counsel failed to object to the solicitor's opening statements.

[1] See United States v. Wright, 594 F.3d 259 (4th Cir. 2010).

2/15

c. Counsel failed to review the witness statements.
d. Counsel failed to retain a ballistics expert.
e. Counsel failed to strike a juror who was related to a witness.
f. Counsel failed to object to testimony regarding a photo identification lineup.

2. Prosecutorial misconduct.
   a. The solicitor destroyed the physical evidence against Applicant.
3. Due Process Clause violation.
   a. Applicant's conviction violates his right to due process because there is no physical evidence against him.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, to closely pass upon their credibility, and to weigh the testimony accordingly. Generally, the Court finds the testimony of Sellers, Little, and Redmond credible, while finding the testimony of Applicant to be not credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Ms. Little testified she became involved in Applicant's case to assist Ms. Sellers once the case was scheduled for trial. She recalled reviewing the State's evidence. Little testified she met with Applicant two times, and an investigator accompanied her to one meeting. She testified Applicant denied being present at the scene and denied firing an assault rifle. Little recalled the trial strategy based on her investigation was to show the State could not prove Applicant fired the murder weapon. She testified the strategy required them to discredit the witnesses' testimony. Specifically, she recalled attempting to show the owners of the nightclub had a motive to lie because they had a pending licensing issue. However, she recalled the trial judge limiting cross-examination on that issue. Little also recalled making a pretrial motion to restrict the State from presenting photos of the physical evidence based on the fact the physical evidence was lost. She also recalled objecting to the solicitor

8/15

using an assault rifle that was not the murder weapon as demonstrative evidence.

Ms. Sellers testified she met with Applicant at least ten times during the course of her representation. She testified she shared the State's discovery response with Applicant and discussed his version of events. Sellers recalled Applicant initially denied being present at the scene the night of the incident. She testified Applicant eventually admitted to being present, but continued to deny being the shooter or having an assault rifle. Sellers testified Applicant was tried on related charges in federal court prior to being tried in state court, and she reviewed a transcript of the federal proceedings. Sellers recalled the State never recovered the murder weapon. She also recalled witnesses stating they heard multiple guns being shot the night of the incident. She also recalled having an investigator speak to some of the witnesses. Sellers testified her strategy based on the lack of a murder weapon and Applicant's denial was to argue to the jury the State had not met its burden of showing Applicant was the shooter. However, she admitted the eyewitness evidence overwhelmingly indicated Applicant was the only person at the scene with an assault rifle.

Sellers admitted she did not know the physical evidence was lost until immediately before trial. She testified she unsuccessfully moved to prohibit the State from using photos of the evidence as a substitute. She also recalled her unsuccessful objection to the solicitor's use of a substitute assault rifle. Sellers admitted she did not have a ballistics expert review the evidence because the State never recovered the murder weapon. However, she recalled the evidence was tested by the State Law Enforcement Division, and the examiner could not rule out the possibility there was more than one assault rifle at the scene.

Sellers reviewed the solicitor's opening statement and testified she did not find it objectionable at the time. She also reviewed Judge Russo's jury charges and testified he informed the jury the solicitor's arguments were not evidence.

SCMA. 4/15

Applicant testified he only met with counsel a few times. He recalled receiving the witness statements in discovery, but testified he could not read the statements. He also testified the discovery did not contain any information about a witness, Mr. Rowell, viewing a photo lineup as he testified at trial. Applicant admitted he discussed his version of events with counsel and formulated a strategy to deny he was the shooter. Applicant alleged the physical evidence against him was tampered with or destroyed by the State. He stated he asked counsel to argue the State had acted in bad faith by destroying the evidence. He also alleged the State's inability to produce the physical evidence violates his due process rights. Applicant testified trial counsel should have stuck Juror #128 because she was related to the investigating officer.

The solicitor testified he reviewed the record from the federal trial prior to Applicant's trial. He testified the federal authorities used the physical evidence in their trial against Applicant. However, the solicitor could not testify as to exactly what happened to the physical evidence after the trial. He recalled the federal authorities assumed the State would not prosecute Applicant after his federal conviction. The solicitor testified the physical evidence consisted of several shell casings that could be fired from an assault rifle. He testified the SLED agent who examined the shell casings took photos of the evidence, and he introduced those photos in his examination of the agent over counsel's objection.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

5/15

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to make a bad faith argument.

The Court finds Applicant failed to meet his burden to prove counsel ineffective for failing to argue the prosecution acted in bad faith by destroying the physical evidence against him. The record indicates Judge Russo conducted a lengthy pretrial hearing regarding the missing physical evidence, where an agent from the Bureau of Alcohol, Tobacco, and Firearms testified regarding his knowledge of what happened to the evidence after it was used in Applicant's federal trial. (Trial Tr. pp. 43-57). At the evidentiary hearing before this Court, the solicitor testified regarding his understanding of what happened to the evidence after the federal trial. The record contains no evidence the State acted in bad faith in destroying the evidence. See Arizona v. Youngblood, 488 U.S. 51, 58 (1988) ("[U]nless a

SCDH 6/13

criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."). Because there was no evidence of bad faith, counsel could not have reasonably been expected to make such an argument. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (counsel not ineffective for failing to make specific arguments where "it would have been futile for [counsel] to have made such arguments"). Therefore, the Court finds counsel was not ineffective in this regard.

2. Failure to object to opening statements.

The Court finds Applicant failed to meet his burden of proof to show counsel ineffective in failing to object to the solicitor's reference to the jury as "the last bastion of justice." (Trial Tr. p. 89, line 24). The Court finds credible Sellers testimony that she did not find the comment objectionable. In the context of the solicitor's argument, the comment "did not call for the jurors to put themselves in the victim's place and did not rise to the level of a Golden Rule argument." State v. Rice, 375 S.C. 302, 336, 652 S.E.2d 409, 426 (Ct. App. 2007), overruled on other grounds by State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011). Even if the comment was objectionable, counsel need not challenge every objectionable comment made during opening statements. See, e.g. Braithwaite v. State, 572 S.E.2d 612, 615-16 (Ga. 2002); ("Here, Braithwaite's attorney reasonably chose silence, and we will not use hindsight to second-guess that decision on appeal."); State v. Tokar, 918 S.W.2d 753, 768 (Mo. 1996) ("In many instances seasoned trial counsel do not object to otherwise improper questions or arguments for strategic purposes."); United States v. Necoechea, 986 F.2d 1273, 1281 (9th Cir. 1993) ("Because many lawyers refrain from objecting during opening statement and closing argument, absent egregious misstatements, the failure to object during closing argument and opening statement is within the 'wide range' of permissible professional legal conduct."). Therefore, the Court must presume counsel's decision to not object to the solicitor's comments was a strategic one

7/15

Furthermore, Applicant has not shown he was prejudiced by the lack of an objection to the solicitor's comment. The propriety of the solicitor's comment must be reviewed "in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 914-15 (2009) (citing Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). Judge Russo repeatedly admonished jurors that arguments by counsel were not to be considered as evidence. (Trial Tr. p. 83, lines 19-23; p. 380, lines 1-12). See State v. Dawkins, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989) (judge's instruction sufficient to cure error from improper arguments). Furthermore, as will be discussed below, the evidence overwhelmingly established Applicant's guilt. In light of the entire record, the Court finds Applicant was not prejudiced by the solicitor's comments in opening statements.

3. Failure to review witness statements.

The Court finds Applicant failed to meet his burden of proof to demonstrate counsel ineffective for failing to review the witness statements. Regarding this allegation, the Court finds the testimony of Sellers and Little credible, and finds Applicant's testimony not credible. Sellers and Little each testified they independently reviewed the statements provided in discovery. Sellers also testified she reviewed discovery with Applicant. The Court finds not credible Applicant's testimony he could not read the content of the statements.[2] Sellers and Little also testified they had an investigator who interviewed the witnesses. The record demonstrates counsel reviewed all the evidence in the case, including the witness statements, and were not surprised by the testimony at trial. Such preparation

[2] Even if he could not read the content of the statements, the record indicates Applicant was fully aware of the inculpatory nature of the evidence against him. Cf. Hyman v. State, 397 S.C. 35, 46-49, 723 S.E.2d 375, 381-82 (2012) (court unwilling to "assume that the Constitution requires disclosure of Brady evidence to a criminal defendant personally" especially where he "was fully aware of the inculpatory nature of the [evidence]).

SCH 8/15

was reasonable under the circumstances. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)). Furthermore, the record indicates counsel vigorously cross-examined all of the witnesses. Thus, Applicant has not demonstrated how further review of the witness's statements would have changed the outcome of his trial. Accordingly, the Court finds Applicant has not shown deficiency or prejudice from counsel's actions in this regard.

4. Failure to retain a ballistics expert.

The Court finds Applicant failed to meet his burden to show counsel ineffective for failing to retain an independent ballistics expert. The State never recovered the murder weapon in this case. The State's expert testified up to seven different assault rifles could have fired the fatal bullet (Trial Tr. p. 336, lines 3-15). Counsel used this testimony to argue the State could not positively identify Applicant as the shooter. Because the State's expert's testimony was not harmful to Applicant's case in this regard, counsel had no need to retain an independent expert: Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) ("[C]ounsel's decision not to call an expert witness to rebut the state's expert witness was a legitimate trial strategy." (citing McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003))).

Regardless, Applicant also has not shown any prejudice from trial counsel's decision to forego an independent expert. Counsel thoroughly cross-examined the State's expert to show the State could not prove a single gun was used in the shooting. Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) (no prejudice from failing to consult independent expert where counsel thoroughly cross-examined State's expert (citing Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991))). Furthermore, Applicant presented no expert testimony at the evidentiary hearing before this Court. Id. at 530, 657 S.E.2d at 776-77 (applicant must present allegedly favorable expert testimony at the evidentiary hearing to prove prejudice (citing Dempsey, 363 S.C. at 369, 610 S.E.2d at 814)). Therefore, the Court

FCM. 9/15

finds Applicant has not demonstrated counsel's actions in failing to retain an independent expert were deficient or that he was prejudiced by these actions.

5. Failure to strike Juror #128.

The Court finds Applicant has not demonstrated counsel was ineffective in failing to strike Juror #128. "[J]ury selection is a process that inherently falls within the expertise and experience of trial counsel." Palacio, 333 S.C. at 517, 511 S.E.2d at 68; see also Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014), cert. denied (Jan. 15, 2015) ("Conversely, decisions primarily involving trial strategy and tactics may be made by trial counsel [including] 'which jurors to accept or strike[.]'" (citations omitted)). Thus, giving appropriate deference to the presumption counsel exercised discretion in selecting jurors, Applicant must present "credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." Palacio, 333 S.C. at 517, 511 S.E.2d at 68. Applicant has failed to present any such evidence here. Juror #128 affirmed her relationship[3] to former police officers would not affect her ability to be fair and impartial. Applicant presented no evidence the juror did not follow her oath in this regard. State v. Lindsey, 372 S.C. 185, 194, 642 S.E.2d 557, 562 (2007) (court "will not presume a juror engaged in misconduct"). Accordingly, the Court finds Applicant failed to demonstrate counsel's decision to sit Juror #128 prejudiced his right to a fair trial.

6. Failure to object to testimony about a photo lineup.

The Court finds Applicant failed to meet his burden to show counsel ineffective in failing to object to Rowell's testimony regarding a photo lineup. (Trial Tr. p. 215, line 24-p. 216, line 4). The record indicates these questions were actually asked by Sellers in her cross-examination of Rowell. The testimony indicates Sellers was fully aware Rowell previously viewed a photo lineup and

[3] The Court notes Applicant alleged Juror #128 was related to the lead investigator in the case. He presented no evidence to support this allegation other than his own testimony, which the Court finds not credible.

RAJ 10/15

identified Applicant as the shooter. She used his previous identification – where he identified Applicant as the shooter – to impeach his trial testimony that he did not see Applicant shooting any guns. (Trial Tr. p. 216, lines 5-9). Keeping in mind counsel's strategy to discredit the witnesses in this case, the Court can discern no ineffectiveness in counsel's actions regarding this information about a photo lineup.

C. Prosecutorial Misconduct

The Court finds Applicant failed to demonstrate the State committed prosecutorial misconduct by destroying the physical evidence against him. See Alabama v. Smith, 490 U.S. 794, 799-899 (1989) (applicant bears burden to prove actual prosecutorial misconduct (citing Wasman v. United States, 468 U.S. 559 (1984))). Initially, the Court notes this issue is not properly raised in post-conviction relief. Counsel had a lengthy pre-trial motion hearing regarding the missing physical evidence. (Trial Tr. pp. 43-57). Applicant had an opportunity on direct appeal to challenge the Court's determination that the evidence was not intentionally destroyed, and he cannot re-litigate that claim on collateral review. See S.C. Code Ann. § 17-27-20(b) (Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

Regardless, the Court also finds Applicant has not demonstrated the State acted in bad faith in losing the evidence. See Youngblood, 488 U.S. at 58 ("[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."). The Court finds credible the solicitor's testimony at the evidentiary hearing that the evidence was not intentionally destroyed. Furthermore, Applicant has not

Sept. 11/15

demonstrated the lost evidence would have changed the outcome of his trial if it had been presented at trial. Because no murder weapon was recovered, there was no way to use the physical evidence to show someone other than Applicant was the shooter or to discredit the eyewitnesses. Applicant cannot merely rely on the fact the evidence was not physically present at trial to invalidate his conviction. See Giglio v. United States, 405 U.S. 150, 154 (1972) ("We do not, however, automatically require a new trial whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict" (citations omitted)). Accordingly, the Court finds Applicant has not demonstrated the State engaged in prosecutorial misconduct.

D. Due Process Violation

The Court finds Applicant failed to demonstrate his conviction without the presence of the physical evidence violates due process. Initially, the Court finds this issue is not properly addressed in post-conviction relief. As previously noted, counsel had a lengthy pretrial motion hearing regarding the missing physical evidence. (Trial Tr. pp. 43-57). Applicant had an opportunity on direct appeal to challenge the Court's determination that the evidence was not intentionally destroyed, and he cannot re-litigate that claim on collateral review. See S.C. Code Ann. § 17-27-20(b); Simmons, 264 S.C. at 423, 215 S.E.2d at 885.

Nevertheless, the Court would find Applicant has not demonstrated a due process violation in this case. Although a conviction may be unconstitutional when it rests upon no evidence at all, Thompson v. City of Louisville, 362 U.S. 199 (1960), Applicant's conviction was based on both direct and circumstantial evidence. His only allegation is that a due process violation occurred from the failure of the State to introduce at trial the physical evidence recovered from the crime scene. In determining whether this failure constitutes a due process violation, the Court must consider the "lack of evidence of bad faith on the part of the State in the destruction of the evidence, the importance of

SCM 12/15

the missing evidence in light of the availability of evidence of comparable value, and the overwhelming sufficiency of the other evidence produced at the trial to sustain [Applicant's] conviction[.]" State v. Hutton, 358 S.C. 622, 633, 595 S.E.2d 876, 882 (Ct. App. 2004). As noted above, the record does not contain any evidence the State exercised bad faith in losing the evidence. In light of the availability of photographs of the evidence, coupled with the inability of the State's expert to link the evidence directly to Applicant, Applicant had sufficient access to evidence of comparable value. Finally, as will be discussed below, the overwhelming evidence of Applicant's guilt militates against a finding of a due process violation. Accordingly, the Court finds Applicant has not met his burden of proof on this allegation.

E. Overwhelming Evidence of Guilt

Independent of the above analysis, the Court finds Applicant has not demonstrated he was prejudiced by the actions of counsel or the State because there is overwhelming evidence of Applicant's guilt. Applicant, after being asked to not enter the nightclub, stated that he would make sure no one else could party if he could not party. Applicant entered the nightclub anyway, becoming involved in a fight with an individual inside. Once removed from the nightclub, Applicant went to the trunk of his car removed an assault rifle. Several witnesses identified the type of assault rifle Applicant possessed. Applicant cocked the assault rifle, walked to the door of the nightclub, and pointed it inside before turning and shooting into the parking lot. Investigators later recovered twenty-two 7.62x39mm shell casings, the same caliber ammunition fired by the type of assault rifle witnesses identified. Applicant then fled the scene. After he left, witnesses discovered the victim's dead body. Several minutes later, witnesses reported that other individuals began firing guns. Witnesses collectively agreed the victim's body was discovered before these other shots were fired. Bullet fragments recovered from the victim's body were determined to be most consistent with a 7.62x39mm

13/5

bullet. This evidence presented at trial overwhelmingly indicates Applicant was the individual who shot the victim. Accordingly, the Court finds Applicant cannot demonstrate any of the above alleged errors contributed to his conviction. See Brown v. State, 383 S.C. 506, 518, 680 S.E.2d 909, 916 (2009) (no prejudice where there exists overwhelming evidence of guilt); Franklin v. Catoe, 346 S.C. 563, 574, 552 S.E.2d 718, 724 (2001) (same); Giglio, 405 U.S. at 154 (no prosecutorial misconduct or due process violation where there is no likelihood of a different outcome at trial).

F. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes 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.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

FCM 14/15

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3rd day of June, 2015.

EUGENE C. GRIFFITH JR.
Presiding Judge

Newberry, South Carolina

FILED
GWEN T. HYATT
2015 JUN 11 AM 10:03
CLERK OF COURT
DILLON COUNTY

A CERTIFIED
TRUE COPY

CLERK OF COURT
DILLON COUNTY

15/15

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DILLON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 17 00400

Jeremy Wright #302369

Applicant

State of South Carolina

Respondent

Submitted by: Respondent	Attorney for : ☐ Applicant ☐ Respondent or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a) SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
GWEN T. EVATT
2015 JUN 11 AM 10:05
CLERK OF COURT
DILLON COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	CERTIFIED TRUE COPY	$
		$
	CLERK OF COURT DILLON COUNTY, S.C.	$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2154
Judge Code

06/05/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF DILLON

IN THE COURT OF COMMON PLEAS

JEREMY WRIGHT, 302369,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Tristan M. Shaffer, Esquire
Axelrod & Associates, PA
4701 Oleander Drive
Myrtle Beach SC 29577

This 12th day of June, 2015.

Joshua L. Thomas
Assistant Attorney General
Attorney for Respondent

SWORN to before me this 12th day of June, 2015.

Notary Public for South Carolina.
My Commission Expires: May 14, 2024

2012-CP-17-0400