

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

DENTON CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2011-201607

APPENDIX

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1 this crime initially was Dante Carroll, who was
2 your codefendant. It was his gun, his do-rag
3 and his keys that were found at the scene.
4 Without his confession or cooperation, there was
5 no way to involve anyone else. But once he did
6 that, Mr. Carroll implicated three other people,
7 which included you; and then the other two
8 people also testified against you. But, yes, I
9 was aware that there was no physical evidence
10 that linked you to the crime scene other than
11 their testimony.

12 Q. Okay. So why didn't you object to the
13 false evidence that was submitted prior to trial
14 starting?

15 A. Well, there is no evidence submitted prior
16 to trial. The judge determines what evidence
17 comes in and out. They can gather whatever they
18 want to. The determination as to whether it is
19 admissible is up to the judge.

20 My recollection is that I objected to what
21 I thought was objectionable. Kept several
22 pictures out that may have been of an
23 inflammatory nature, things of that nature.
24 What was allowed in, I didn't have any way to
25 keep out.

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1 Q. Okay. So you -- you answered it, but is it
2 fair to say that both SLED Agent Phillip
3 Koonfield, Investigator Todd Avant, didn't state
4 for the record that after doing a thorough
5 investigation of the crime scene that nothing
6 linked Mr. Campbell to this crime scene; that
7 the case rises and falls solely on the
8 credibility of the witnesses here today.

9 A. That's almost verbatim what I had them say,
10 yes.

11 Q. So had you objected to the evidence
12 submitted at the trial and have conducted an
13 investigation, do you feel under your
14 professionalism that the outcome could have been
15 different had the benefits of the State's law
16 been fully applied?

17 A. I really don't understand the question, but
18 I'd answer it 'no.'

19 Q. The answer was no, you say?

20 A. (No verbal response).

21 Q. What I am saying is that had you caught,
22 had you, like, raised the incident reports prior
23 to trial, had you read the investigation reports
24 prior to trial, and had you potentially
25 interviewed some of the witnesses, do you feel

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1 that you could have kept a lot of the perjured
2 testimony and things of that nature off of the
3 stand?

4 A. No. I did read the stuff before trial, but
5 whether I knew what they were going to say or
6 not doesn't mean that I could keep them from
7 saying it. Again, admissibility is a decision
8 for the judge. Credibility is a decision for
9 the jury. Not me. So, no, it wouldn't have
10 made any difference. But I did read it before
11 trial.

12 Q. Okay, I want to ask for the court -- the
13 court's -- prior to that, were you aware of the
14 additional charges of attempted armed robbery
15 and the possession of a gun charge prior to us
16 coming to court?

17 A. Yeah.

18 Q. So by you being aware of it, the question
19 is now why wasn't it objected to this first day
20 of trial, knowing that there was never a warrant
21 served for attempted armed robbery nor
22 possession of a weapon, nor was it directly
23 presented -- under no circumstances. They
24 popped up with the additional two charges and I
25 only had two arrest warrants. I want to know

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1 why is it that you were aware of it but you
2 didn't object to it. By your reason, I want to
3 know what is your reason for why?

4 A. I didn't find it objectionable. They
5 presented it to the grand jury. That's what you
6 were indicted for.

7 Q. But according to law, isn't it fair to say
8 that a warrant must proceed with a charge?

9 A. Not always, in my opinion. That
10 preferable, and that's the way that it is
11 typically done but certainly charge can be
12 enhanced or reduced, you know, based on evidence
13 without research of -- indictments can be
14 amended, things of that nature, so I didn't find
15 that to be particular concerning.

16 Q. When you came and talk to me the day before
17 trial started, did I inform you that there was
18 an alibi witness that could have confirmed my
19 whereabouts at that particular moment and time,
20 due to the fact that I came down here to see my
21 son?

22 A. It's hard for me to specifically recall
23 that long ago, but certainly in your PCR you
24 mentioned that. So I would have no issue with
25 that. If you said that you talked with me about

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1 that, then I wouldn't disagree.

2 Q. Do you happen to have your case file with
3 you? Because --

4 A. I ---

5 Q. --- it's in your case file.

6 A. I do not.

7 Q. And I have a paper here that ---

8 MS. WILLIAMS: Your Honor, if he is
9 going to testify ---

10 THE COURT: You can't testify.

11 APPLICANT: Okay. Okay. All right.

12 Okay.

13 EXAMINATION CONTINUED

14 BY APPLICANT:

15 Q. So would it be fair to say that you had a
16 lot of this information dealing with the alibi
17 witness, dealing that there is no linkage to me
18 in this case, and that by you having that
19 information but failed to inform the court, it
20 could have made a difference in the proceeding?

21 A. Well, I don't think that I failed to inform
22 the court. I'm not allowed to give testimony.
23 I think I elicited that information through
24 cross-examination.

25 We didn't call any witnesses. My

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1 recollection is that perhaps you had mentioned
2 something about an alibi witness but there was a
3 difference in the timeframe. That she could not
4 account for you at the time that the time had
5 occurred. I don't remember what the specific
6 times were. Understand this has been quite some
7 years ago, but that's my recollection. No, I
8 don't think, given the information and the
9 evidence that we had, that I could have done
10 anything drastically different, or should have
11 done anything drastically different than I did.

12 Q. So you feel that there was never an actual
13 defense as far as an innocence defense or a
14 partial defense that could have been ---

15 A. Well, I think that I did that. I think I
16 argued in my closing argument that they were
17 putting it on the kid that was from out of town,
18 that you didn't have anything to do with that.
19 I just didn't necessarily have any evidence to
20 put into the record to support that, but
21 certainly that was our theory from the beginning
22 of the trial -- that you were innocent.

23 Q. And -- okay.

24 APPLICANT: Your Honor, I have no
25 further questions.

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1 THE COURT: All right. Ms. Williams?

2 CROSS EXAMINATION

3 BY MARY S. WILLIAMS:

4 Q. Mr. Robinson, could you just tell me
5 briefly about your legal experience and your
6 legal practice at this time?

7 A. I practice primarily in Clarendon County.
8 I've been practicing law for a little over
9 fifteen years, have been off and on with the
10 Public Defenders Office, and have been contract
11 since, I think, 2000 or 2001.

12 Q. And is it in that capacity that you came to
13 represent Mr. Campbell?

14 A. Yes.

15 Q. Okay. Tell me just a little bit about the
16 trial strategy, your arguments to the jury in
17 this case.

18 A. Well, basically what happened is that there
19 were four people arrested and charged with this
20 crime. As Mr. Campbell asked me, and he's
21 right, there was never was -- and not to this
22 day -- any physical evidence which links him to
23 the crime scene or anything else. They
24 allegedly went into a gentleman's house at
25 night, robbed him of his -- I believe that it

1 was his Social Security check or some other ---

2 APPLICANT: Your Honor, I would like
3 to object to that. Can he state ---

4 THE COURT: What is your basis?

5 APPLICANT: The basis is that he said
6 "they" -- can he indicate who "they", who went
7 to the house?

8 THE COURT: The question is what was
9 his trial strategy. This is not an actual
10 trial, he can testify as to his ---

11 THE WITNESS: The accusation was
12 that the four defendants went into Mr. Green's
13 home to rob him and that -- I forget whether it
14 was Mr. Moore (phonetic) or one of the other
15 gentlemen knew him, that they had been there --
16 anyway, they came up with a plan to go in and
17 take his money. Thought that he would be passed
18 out or something. Anyway, he woke up, gave
19 chase.

20 According to the other three
21 codefendants, Mr. Campbell shot him and killed
22 him as they were running away from the
23 residence. Now, obviously he was acquitted of
24 the murder charge, so they didn't buy that.

25 But, you know, he had three people that

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1 testified that they were there, saw him do it,
2 and two people that testified that he came to
3 them after the fact and confessed to do it, that
4 his conscience was bothering him. You know,
5 basically our strategy, although we had no
6 witnesses to prove it, was that Mr. Campbell was
7 not there, that he was nowhere around, that
8 these people were making this up, that it was
9 self-serving testimony, that they had all cut
10 deals to get themselves out of trouble. They
11 had all plea-bargained and I think got fifteen
12 year sentences in exchange not to be charged
13 with murder, and tried to pin it on Mr.
14 Campbell. I think -- you know, we argued
15 extensively and brought out through cross-
16 examination that there was nothing other than
17 these three people placing him there, other than
18 their testimony. That there was tangible,
19 physical evidence and links to them, placing
20 them at the scene, but not Mr. Campbell. Their
21 testimony was basically that he was from
22 Connecticut, they were all local, they knew each
23 other well, that they were basically ganging up
24 and putting the -- the major portion of this --
25 they couldn't deny their presence but they

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1 wanted to get somebody else on the hook for the
2 murder.

3 EXAMINATION CONTINUED

4 BY MARY S. WILLIAMS:

5 Q. Kind of a scape goat defense?

6 A. Yeah. Absolutely.

7 Q. All right. And tell me about anything that
8 you recall about investigations, meetings with
9 Mr. Mr. Campbell, uh, how did you all go about
10 preparing the case?

11 A. That was a long time ago. Certainly I was
12 prepared before trial started. I don't remember
13 how many times that I met with Mr. Campbell.

14 I think trial even started on a Monday or a
15 Tuesday and I spent the majority of the weekend
16 before, I know, with Mr. Campbell, going through
17 everything.

18 There was never really a situation --
19 certainly a plea came up, but it was a trial
20 because of the murder charge. They really
21 hadn't made us any type of significant offer.
22 You know, life in prison, he didn't really have
23 anything to lose by going forward with a trial.

24 So -- the standard kind of situation where
25 you get your Rule 5, go through and talk about -

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1 - talk the officer as much as he will allow you
2 to.

3 All of the other codefendants had
4 attorneys, so I couldn't really contact them or
5 have any meaningful discussions. I did have
6 their statements. I think one of them -- I
7 don't recall which one that it was -- changed
8 his statement four times, including his
9 testimony there at trial.

10 I thought that we were fairly well
11 prepared. There were no big surprises. Mr.
12 Campbell wasn't going to testify. That was a
13 decision that he had confirmed at trial. We had
14 talked about that early on, so there wasn't a
15 lot of witness preparation to do with him. It
16 was more or less me being familiar with the
17 State's case, trying to find reasonable doubt.
18 Again, we didn't really have any evidence to
19 offer in support of -- it was more like making
20 the State prove their case, showing where they
21 had fallen short of proving the murder.

22 Q. Do you feel like he understood the
23 strategy, the tactic that you all were going to
24 take with this case?

25 A. I would certainly think so.

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1 MARY S. WILLIAMS: I believe that's
2 all that I have.

3 THE COURT: Any redirect, Mr.
4 Campbell?

5 APPLICANT: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY APPLICANT:

8 Q. Mr. Robinson, is it true that the
9 eyewitness, Ms. Moultrie (phonetic), stated in
10 her incident report the night of that she
11 couldn't identify any suspects; then stated on
12 the stand, the second day of trial, which would
13 have been on the 15th, that she'd never seen me,
14 Mr. Campbell, a day in her life besides coming
15 into this courtroom?

16 A. That's the lady that said somebody ran into
17 her car after she said that she heard gunshots?
18 I think that's correct. I don't remember her
19 testimony verbatim but I believe that's correct,
20 that she didn't know you and didn't identify
21 anybody specifically. She just said that she
22 saw two subjects running away and that one of
23 them ran into her car, fell on her car or
24 something like that.

25 APPLICANT: Now, I would like to know

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1 if the Court has the transcript.

2 THE COURT: I do.

3 APPLICANT: Your Honor, I would like
4 you, if you don't mind, ---

5 THE COURT: I you want to impeach
6 him, you may proceed.

7 APPLICANT: All right, so the
8 transcript pages are not necessary?

9 THE COURT: Direct your questions to
10 him.

11 APPLICANT: Okay. Can he have a copy
12 of the transcript?

13 THE WITNESS: I've got one, let me
14 get that.

15 REDIRECT EXAMINATION CONTINUED

16 BY APPLICANT:

17 Q. Transcript Page 205, Lines 5 through 8.

18 A. Okay.

19 Q. If you don't mind ---

20 THE COURT: Let him have an
21 opportunity to read it.

22 APPLICANT: Yes, sir, that's what I
23 was about to say, if you don't mind, Judge, I'll
24 let him read it.

25 THE WITNESS: (Upon review), okay.

1 REDIRECT EXAMINATION CONTINUED

2 BY APPLICANT:

3 Q. Mr. Robinson, Page 205, Lines 5 through 8,
4 can you just read for the court what that says?

5 A. (Reading):

6 Q. Okay. Did they have anything on
7 their heads or their faces?

8 A. Their face wasn't covered. I'm not
9 sure if they had something on their heads.

10 Q. Okay, that would be correct with the
11 incident report that she gave that night, right,
12 stating that she could not identify any of the
13 suspects; right?

14 A. Yes.

15 Q. Okay. So now I would like you to turn to
16 Page 206, Line 25.

17 A. Okay.

18 Q. I will let you read that to the court.

19 A. (Reading):

20 A. Well, I'd never seen him until I
21 came in here, but...

22 Q. And 207 would finish her statement, Page
23 207, Lines 1 through 7.

24 A. (Reading):

25 A. "... but it is about his height.

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1 Q. Okay, so you have never seen Mr.
2 Campbell before, is that right?

3 A. Who?

4 Q. Mr. Campbell. Denton Campbell.
5 You've never seen him before?

6 A. No.

7 Q. And that would be the eyewitness, is that
8 correct?

9 A. She was an eyewitness. If I remember
10 correctly, she was the one that said that she
11 heard a gunshot, looked out her window and saw
12 two black males running across the yard and one
13 of them ran into her car.

14 Q. Correct. And the incident report, if ---

15 THE COURT: Wait a minute. You asked
16 him what the transcript said.

17 APPLICANT: But the question -- the
18 incident report is going to -- I am giving him a
19 chance to ---

20 REDIRECT EXAMINATION CONTINUED

21 BY APPLICANT:

22 Q. If you have a copy of the incident report,
23 at the bottom of the incident report, the night
24 of the incident, is going to indicate what she
25 just testified to, which is also going to go in

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1 the question -- that's a part of the question
2 that I am asking.

3 MARY S. WILLIAMS: So the point is
4 that she testified consistently with her ---

5 APPLICANT: With her incident report.

6 And the question is ---

7 THE COURT: What was the testimony?

8 APPLICANT: She answered in the
9 incident report that it was three individuals,
10 males, that she seen when she first pulled up at
11 twelve o'clock. The question that I am asking
12 him is going to go in reference to this, because
13 he keeps saying two.

14 THE COURT: If you want to ask the
15 question, you can ask the question.

16 APPLICANT: If you want a copy --
17 because she says that she doesn't have a copy.

18 THE COURT: You can bring a copy up
19 here, please. Let him read over what he is
20 going to question him on.

21 APPLICANT: (Tendering), that part
22 right here where it starts at "The next door
23 neighbor..." -- she mentions to ---

24 THE COURT: Wait a minute!

25 THE WITNESS: (Upon review), okay.

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1 THE COURT: You may ask a question
2 now.

3 REDIRECT EXAMINATION CONTINUED

4 BY APPLICANT:

5 Q. The question is, after you read her
6 testimony, is it consistent with the incident
7 report, of mentioning that she never -- when she
8 answered the question about that she'd never
9 seen Mr. Campbell before the day she come into
10 this courtroom is that consistent with the
11 incident report by her stating that she could
12 not identify any of the suspects?

13 A. Yes.

14 Q. Okay. Now I'd like for you to turn to Page
15 322, Lines 5 through 21. I would like for you
16 to read for the court.

17 A. Okay, (reading):

18 Q. *The keys, the lock, the keychain,*
19 *the key and the do-rag are basically the only*
20 *physical evidence that you have in this case?*

21 A. *That's correct.*

22 Q. *And the person that those items*
23 *link is Dante Carroll.*

24 A. *That is correct.*

25 Q. *So without testimony from somebody*

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1 *else saying that they saw something, the only*
2 *person that would be implicated in this, based*
3 *on the physical evidence, would be Dante*
4 *Carroll; wouldn't it?*

5 A. *That would be correct, on the*
6 *physical evidence.*

7 Q. *So this case basically rises and*
8 *falls on the credibility of the witnesses that*
9 *have testified placing Denton Campbell at the*
10 *scene and saying what he did. Is that right?*

11 A. *That's correct.*

12 Q. *And who was that of?*

13 A. *That was of Todd Avant, the lead*
14 *investigator for the sheriff's department.*

15 Q. *Now, the last question -- not the last*
16 *question but the last page that I'd like for you*
17 *to turn to in the transcript is Page 361.*

18 A. *All right. (Upon review), okay.*

19 Q. *And I would like for you to read 2 through*
20 *22 to the court.*

21 A. *Okay, (reading):*

22 Q. *Okay. In your investigation of*
23 *Mr. Green's home, the physical evidence that was*
24 *recovered by you would have been the keys on the*

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1 lanyard and the white bandana; is that right?

2 A. That's correct, keys and the
3 lanyard.

4 Q. Keys and the lanyard and the white
5 bandanna?

6 A. Yes, sir.

7 Q. Have you interviewed any of the
8 witnesses or potential witnesses in this case?

9 A. No, sir.

10 Q. Is that -- that's not going to be
11 your job determination?

12 A. That's correct.

13 Q. Okay. In your testing and
14 analyses and work with this crime scene, would
15 you tell the jury what physical evidence that
16 you have that links Denton Campbell to this
17 crime.

18 A. Every evidence that we tested was
19 of no value for us to use.

20 Q. So you basically don't have any
21 physical evidence that links Denton Campbell to
22 the crime scene?

23 A. That's correct.

24 Q. Now, the question to you is, possession --

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1 is possession nine-tenths of the law?

2 A. No.

3 Q. Okay. Doesn't evidence support a charge as
4 far as physical circumstantial, wouldn't that be
5 incorrect to say that that is insufficient to
6 support a charge that you have to prove beyond a
7 reasonable doubt?

8 A. That evidence should support a charge?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. Did you get a chance to read the
12 incident reports that Mr. Avant took and had,
13 assisted by Mr. Burgess?

14 A. I'm sure that I read them before trial,
15 yes.

16 Q. Did you -- were you aware from the
17 investigation reports that both of them came to
18 the conclusion of setting out that probable
19 cause was that of another individual, and that
20 hearsay was all that was in the incident -- that
21 was in the report that they took up about the
22 investigation?

23 A. I don't know if I would characterize it as
24 hearsay but, yes, there was evidence based on
25 what somebody had told them.

1 Q. Did you get the complete Brady file?

2 A. I hope I did.

3 Q. Did you happen to see an ATF report from a
4 deal that Terrell Cothran (phonetic) and Mr.
5 Gamble (phonetic) took on prior to trial?

6 A. Was that one of the other codefendants, Mr.
7 Gamble?

8 Q. No, one of the State's witnesses that
9 testified the day of the trial. The day of the
10 trial.

11 A. Is that the one that was represented by
12 Shaun Kent?

13 Q. Yes.

14 A. I don't know if I saw the letter but I was
15 aware of the deal that came out of his cross-
16 examination.

17 Q. So my question is, why wasn't his
18 particular testimony objected to -- because the
19 transcript doesn't indicate that he came out and
20 told that he had the deal?

21 A. Because I can't object to the credibility
22 of his testimony. The fact that he's cut a deal
23 with the State doesn't mean that his testimony
24 is inadmissible. I think that I went into that
25 on cross-examination, about bias, motive and all

1 that good stuff, that -- that it just so
2 happened that the day before your trial he
3 voluntarily came to the police after he'd talked
4 with his lawyer and gave this statement that was
5 very damning towards you and bad for you. That
6 he just happened to have some pending charges.
7 I don't recall if I was aware of the deal, but I
8 basically got that out and for him to admit that
9 he was trying to help himself out.

10 Q. Okay. So my last question is, is it fair
11 to say that from the eyewitness to the three
12 codefendants and the other individuals that
13 testified that day that had you had a little bit
14 more time to prepare that the outcome could have
15 been different, as far as putting the evidence
16 together and getting more information from me?

17 A. Honestly, no. I don't think it was a time
18 issue. If I had been allowed to conduct
19 depositions and interrogate and interview and
20 all of those things, perhaps. But that's not
21 what happened. The State doesn't necessarily
22 have a duty to make witnesses -- if they want to
23 talk to me, they can. If they don't, there is
24 no real way for me to make them -- other than to
25 review the Rule 5 information, which in -- in

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1 reality they don't have to always provide me
2 until prior to their testimony.

3 Q. You just said that it is not a requirement
4 to interview witnesses?

5 A. The State does not have to allow me to
6 interview their witnesses, if a witness doesn't
7 want to talk to me. That's correct.

8 Q. Did you try to talk to any witnesses prior
9 to trial?

10 A. I probably -- I don't know if I contacted
11 any witnesses. I may have asked the officers.
12 I knew the three codefendants I was not going to
13 be able to talk to because they had attorneys.

14 Q. Is it fair to say that a criminal defense
15 attorney has a duty to perform a reasonable
16 investigation of facts and circumstances and
17 that, at a minimum, he has a duty to interview
18 potential witnesses like you said. Is that
19 true?

20 A. To interview potential witnesses that he
21 can interview, yes.

22 Q. Okay. Did they -- Miss Paul Thompson was
23 the judge.

24 THE COURT: Thomas.

25 APPLICANT: Paula Thomas.

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1 THE WITNESS: Yes.

2 REDIRECT EXAMINATION CONTINUED

3 BY APPLICANT:

4 Q. Is it true that you ---

5 MARY S. WILLIAMS: Your Honor,
6 could he ask questions that are not leading.

7 THE COURT: Yeah. What -- what is
8 the question here?

9 APPLICANT: The question is, ---

10 REDIRECT EXAMINATION CONTINUED

11 BY APPLICANT:

12 Q. Did you make the intent prior, besides the
13 officers, to try to contact any of the witnesses
14 -- not the three but the other four that
15 testified?

16 A. I am not sure that I understand.

17 Q. Meaning -- you said that you couldn't talk
18 to the three because they had attorneys. Right?

19 A. (No verbal response).

20 Q. Okay. The other four individuals that
21 testified, did you have a chance to speak with
22 any of their attorneys, or did they have
23 attorneys, or did you -- did you get to
24 investigate them, the reasons why they were
25 coming to testify?

Denton Campbell v. State of South Carolina
Case No. 08-CP-14-0367
Hearing of April 28, 2011
before The Honorable W. Jeffrey Young

31

1 A. Two of the other -- two of the three of
2 them were law enforcement, worked for SLED or
3 were sheriff deputies. The only two -- if
4 you're speaking of the one that said that you
5 came to them and confessed after the crime, I
6 think that I talked to you about that. One of
7 them was your cousin. They were friends of
8 yours. Obviously you had had contact with them
9 and you said 'you don't need to worry about
10 them, they're not going to say that.' That's my
11 recollection. It's been a long time ago but
12 that's what I recall.

13 APPLICANT: Your Honor, there's
14 nothing else.

15 THE COURT: Thank you. Any recross?

16 MARY S. WILLIAMS: No, Your Honor.

17 THE COURT: Thank you, you may step
18 down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Any further evidence or
21 any further witnesses?

22 APPLICANT: No, sir.

23 THE COURT: Does the State ---

24 MARY S. WILLIAMS: Nothing from the
25 State, Your Honor.

1 THE COURT: I will take this matter
2 under advisement and I will inform the parties
3 when I -- Mr. Campbell, what is a good address
4 where we can reach you at to inform you about
5 the ruling?

6 APPLICANT: 990 Wisacki Highway,
7 Bishopville, South Carolina 29010.

8 THE COURT: You at the Lee's
9 Correctional Center?

10 APPLICANT: Yes, sir.

11 THE COURT: All right. Thank you.

12 (HEARING CONCLUDED)

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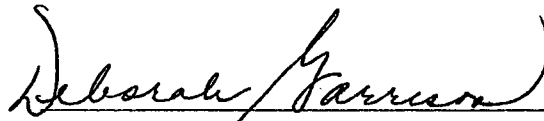
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable W. Jeffrey Young on
April 25, 2011, as prepared from the audio notes
of Margaret Sullivan, assigned court reporter;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
April 10, 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
)
 Denton Campbell, #308351,)
 Applicant,)
))
 v.)
))
 State of South Carolina,)
))
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT²

2008-CP-14-0367

ORDER OF DISMISSAL

BEULAH G. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, SC
 11/18/11 9:20 AM

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 17, 2008¹. The Respondent made its Return on or about September 1, 2009. An evidentiary hearing into the matter was convened on Thursday, April 28, 2011, at the Sumter County Courthouse. The Applicant was present at the hearing and proceeded *pro se*. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, Applicant's trial counsel, Scott L. Robinson, Esquire ("Counsel") testified. This Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. Applicant was indicted at the January 2005 term of the Clarendon County Grand Jury for (1) Murder, (2) Burglary in the First Degree, (3) Attempted Armed Robbery, and (4) Possession of a Weapon During the Commission of a Violent Crime (2005-GS-14-0062). Scott

¹ Application was not received by Respondent until June 24, 2009
 1 of 8

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 9/26/11
Beulah G. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

Robinson, Esquire, represented Applicant on the charges. On March 15, 2005, Applicant proceeded to jury trial before the Honorable Paula Thomas, at which Applicant was acquitted of Murder and the lesser included Voluntary Manslaughter, but was convicted of First Degree Burglary, Attempted Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime. Applicant was sentenced on March 16, 2005, to twenty (20) years imprisonment for First Degree Burglary, fifteen (15) years imprisonment for Attempted Armed Robbery and five (5) years for Possession of a Weapon, all sentences to run concurrently.

A notice of appeal was filed, followed by the submission of an Anders brief on Applicant's behalf. Applicant withdrew the appeal before a decision was rendered and an order granting Applicant's request to dismiss his appeal was entered on August 14, 2008.

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

1. Ineffective assistance of counsel.
2. Due Process Violations

Applicant then filed an amended application in which he cited the following additional grounds for relief:

1. Ineffective assistance of counsel:
 - a. "failing to challenge Applicant's arrest. See investigative report."
 - b. "failing to hire a private investigator prior to trial"
 - c. "failing to do an independent investigation of the facts and circumstances of applicant's case when records show there was a lack of probable cause to warrant an arrest."
 - d. "failing to quash single indictment with multiple offenses when applicant only received arrest warrants for two (2) out of the four (4) offenses and it was never filed with the Clerk of court. See indictment."

- e. "failing to reinforce applicant's statements to support the facts that applicant was denied a substantial right to preliminary hearing"
- f. "failing to investigate state's witnesses prior to trial"
- g. "failing to request an in court camera to be conducted by the trial court during applicant's trial regarding State's eye witness M. Boultrie"
- h. "failing to properly challenge the material variance between the charge and the proof"
- i. "failing to request a severance due to the improper joinder of said defendants in one indictment"
- j. "for not objecting to improper instructions of jury charge and re-charge, when applicant was only one indicted on one indictment, under one indictment (#) number. (When all charges stemmed from one murder, so without the jury finding the Applicant guilty of the most serious it kills the indictment in its entirety)"
- k. "failing to interview applicant's alibi witnesses prior to trial"
- l. "failing to subpoena applicant's witnesses when asked. When witness was at applicant's trial all three (3) days waiting to be called upon."

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e),

SCRCPP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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.

Ineffective Assistance of Counsel

At the PCR hearing, Applicant alleged that counsel was ineffective in failing to interview the state's witnesses prior to the start of trial, in failing to investigate alibi witnesses, in failing to move to quash the indictments and to challenge the admissibility of evidence against Applicant.

Counsel testified that, although he did not independently interview the State's witnesses, he thoroughly reviewed the co-defendant's statements during his preparation for trial and spoke in depth with the investigators involved in the case. Counsel went on to testify that he believed his investigation into Applicant's case was reasonable and adequately prepared him to represent Applicant at trial. Further, counsel articulated that based on his investigation, Applicant's version of the facts did not match the version given by police, but that he did elicit from police that there was no physical evidence linking Applicant to the crime. Rather, the three co-defendants' statements implicating Applicant as the shooter were the main pieces of evidence against Applicant. Counsel went on to say that he did not recall Applicant ever mentioning potential alibi witnesses to interview or investigate, but that it was possible Applicant had mentioned some potential alibi witnesses. Counsel stated that, in regards to objecting to the admissibility of any evidence used at trial against Applicant, he did make several objections during the course of the trial, but ultimately it was up to the trial judge to determine the admissibility of all evidence. Additionally, counsel stated that he chose not to challenge the admissibility of the co-defendant statements after seeing counsel for a co-defendant challenge the admissibility of a statement four different times, each time ending with the statement being admitted. In regards to quashing the indictment, counsel made it clear that he was aware of the additional charges of attempted armed robbery and possession of a weapon early on, and stated Applicant's allegations regarding the indictments/warrants are without merit as the lack of a warrant would not make these charges/indictments invalid. Counsel articulated that he was well prepared for trial and that his trial strategy was to show that Applicant was not present during the commission of these crimes,

but rather that he was an out-of-town kid that had been used to pin the crimes on. Finally, counsel finished by testifying that there was no part of his representation in this case that he believed he should have done differently and that he felt he had adequately represented Applicant at trial.

Based on the testimony presented at trial and a review of the record in its entirety, I find that Applicant has failed to carry his burden in proving counsel was ineffective in his representation on these charges. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including reviewing all discovery materials and co-defendant statements with Applicant. Additionally, counsel performed sufficient investigation into Applicant's case to adequately prepare a reasonable trial strategy which counsel effectively developed and implemented at trial, resulting in Applicant being acquitted of both a murder and a lesser included voluntary manslaughter charge. Counsel gave Applicant all the information and advice necessary to make an intelligent and voluntary decision on whether to proceed to trial and whether to testify at trial. Applicant has failed to prove by a preponderance of the evidence that counsel was ineffective in any portion of his representation. Therefore, I find that counsel's representation fell within the range of competence demanded of attorneys in criminal cases based on professional norms and Applicant's allegations to the contrary are without merit.

Further, Applicant has failed to carry his burden in proving any prejudice resulted from the alleged deficiency in representation by counsel. Applicant alleges counsel failed to adequately investigate his case prior to proceeding to trial, but has failed to prove prejudice from that supposed failure. (Failure to conduct independent investigation does not constitute ineffective assistance of

counsel when the allegation is supported only by mere speculation as to the result. Whitehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).) With regard to Applicant's contention that counsel failed to investigate supposed alibi witnesses, Applicant has failed to set forth any evidence of prejudice as a result of this alleged deficiency. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant failed to present testimony of any alleged alibi witness at the PCR hearing, thereby failing to prove prejudice from this perceived deficiency. Therefore, I find Applicant has failed to prove any prejudice resulted from any alleged deficient performance by counsel, and therefore, this application must be denied and dismissed with prejudice.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented at the hearing to support them.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not

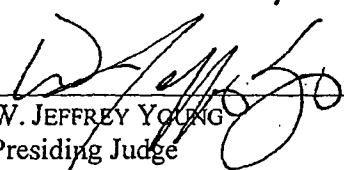
established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

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 18 day of Sept, 20 11.



W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

INDICTMENT FOR
MURDER
BURGLARY 1ST DEGREE
ATTEMPTED ARM ROBBERY
POSSESSION OF WEAPON DURING A VIOLENT
CRIME

At a Court of General Sessions, convened on JANUARY 27, 2005,
the Grand Jurors of CLARENDON County present upon their oath:

COUNT ONE - MURDER

That **DENTON N. CAMPBELL, JR., IVORY WARREN, CORTNEY FLEMING AND DANIEL DONTE CARROLL**, did with malice and forethought, in Clarendon County on or about June 04, 2004, kill one Alonza Green by means of shooting the victim, and the said victim did die as a proximate result thereof, in violation of Code Section 16-03-0010 of the South Carolina Code of Laws.

COUNT TWO - BURGLARY FIRST DEGREE

That **DENTON N. CAMPBELL, JR., IVORY WARREN, CORTNEY FLEMING AND DANIEL DONTE CARROLL**, did in Clarendon County on or about June 04, 2004, knowingly and willfully enter the residence of Alonza Green in the nighttime, without consent, and with intent to commit a crime therein, and caused physical injury to Alonza Green, in violation of Code Section 16-11-311, South Carolina Code of Laws, as amended

COUNT THREE - ATTEMPTED ARM ROBBERY

That **DENTON N. CAMPBELL, JR., IVORY WARREN, CORTNEY FLEMING AND DANIEL DONTE CARROLL**, did in Clarendon County on or about June 04, 2004 attempt to feloniously take from the person or presence of Alonza Green, by means of force or intimidation, goods and/or money and doing this while armed with a deadly weapon, in violation of Code Section 16-11-0330, Code of Laws of South Carolina.

COUNT FOUR - POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That **DENTON N. CAMPBELL, JR., IVORY WARREN, CORTNEY FLEMING AND DANIEL DONTE CARROLL**, did in Clarendon County on or about June 04, 2004, possess or visibly display a weapon, to wit: a gun, during the commission or attempted commission of a violent crime in violation of Code Section 16-23-490, South Carolina Code of Laws, as amended.

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

C. Kelly Jackson

SOLICITOR

WITNESSES

CCSO

R. T. AVANT

SLED

MARK CREECH

ARREST WARRANT NO.

H431817, H431818, H431768, H431769

H431819, H431820, H170467, H170468

ACTION OF GRAND JURY

Issue Bill

Spencer G. McDavitt

Foreman of Grand Jury

1-27-05

VERDICT

Foreman of Petit Jury

Date:

2005-GS-14-0062

DOCKET NO.

The State of South Carolina,

County of CLARENDON

COURT OF GENERAL SESSIONS

JANUARY

TERM 2005

THE STATE

vs.

DENTON N CAMPBELL, JR.

AND

IVORY WARREN

AND

CORTNEY FLEMING

AND

DANIEL DONTE CARROLL

Indictment for

MURDER

BURGLARY 1ST DEGREE

ATTEMPTED ARM ROBBERY

POSSESSION OF A WEAPON DURING A VIOLENT CRIME