

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUL 10 2017

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2015-002033

GREGORY DANIELS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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¹ 373 U.S. 83 (1963).

RESPONDENT'S QUESTIONS PRESENTED

- I. Did the post-conviction relief (PCR) court correctly find trial Counsel rendered effective assistance in his investigation and preparation of Petitioner's case?
- II. Did the PCR court correctly find trial Counsel rendered effective assistance nor was there prosecutorial misconduct regarding the State's investigation of Gary Bostic in connection with Petitioner's case?

STATEMENT OF THE CASE

The Florence County Grand Jury indicted Petitioner in April 2009 for murder and possession of a weapon during the commission of a violent crime (2009-GS-21-427, Counts 1 and 2). App. 639-40. Jack W. Lawson Jr., Esquire, (Counsel) represented Petitioner.² App. 1. Petitioner proceeded to a jury trial before the Honorable Thomas A. Russo, and on April 16, 2010, a jury convicted Applicant as indicted. App. 641-42. Judge Russo sentenced Petitioner to life in prison for murder with five years concurrent for possession of a weapon. App. 641-42.

Petitioner filed a timely notice of appeal. App. 643. Tristan M. Shaffer, Esquire, and Wanda H. Carter, Esquire, of the Office of Appellate Defense represented Petitioner on appeal. App. 643. The South Carolina Supreme Court³ affirmed Petitioner's convictions on October 10, 2012. State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). The remittitur was returned to the circuit court on October 26, 2012. App. 655.

Petitioner filed his application for post-conviction relief on February 1, 2013. App. 671. Respondent made its Return on September 17, 2013. App. 1170. Petitioner filed an Amended Application on September 19, 2014. App. 694-97. An evidentiary hearing into the matter was convened on April 14, 2015, at the Florence County Courthouse before the Honorable D. Craig Brown. App. 711. The hearing was broken into two days and concluded on April 17, 2015. App. 711. Petitioner was present at the hearing and was represented by Tricia A. Blanchette, Esquire. App. 711. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office. App. 711. At the evidentiary hearing, Petitioner testified on his own behalf and also presented the testimony of Andrew Williams;

² Mr. Lawson is now deceased and was therefore unable to testify at the PCR hearing in this matter.

³ The case was filed in the Court of Appeals, but it was later transferred to the Supreme Court, which heard oral arguments and issued an opinion. App. 753.

Gary Bostic; Petitioner's private investigator, Pete Skidmore, appellate counsel, Tristan Shaffer, Esquire; and Johnny Etheridge, Esquire. App. 1170. The prosecuting solicitor, John Jepertinger, Esquire; Counsel's second chair, Grayson Smith, Esquire; and the lead investigator, Timothy Compton, testified for the State. App. 1170. By order filed June 10, 2015, Judge Brown denied and dismissed Petitioner's application in its entirety. App. 1170. Petitioner filed a timely notice of appeal, followed by a petition for writ of certiorari on February 2, 2017.

STATEMENT OF FACTS

On September 5, 2008, around 5:15 AM, authorities were dispatched to the corner of Dargan and Marlboro Streets in Florence. App. 509. Upon their arrival, authorities discovered the body of Corey Byrd (Victim) lying in the street. App. 104. Tiesha Brown, who was friends with Victim and had been awaiting his arrival at her home, informed authorities that just before she discovered the body, she heard a gunshot and observed a person wearing all black flee the scene. App. 97-98.

The subsequent investigation revealed that both Victim and Petitioner had been at a nearby cookout hosted by Victim's cousin, Shavonne Gass. App. 249-50. During the cookout, Victim and Petitioner got into an argument, prompting Petitioner to try to fight Victim throughout the rest of the night. App. 173-75, 243-44, 249-50. Petitioner, who lived near Gass, left the cookout sometime after midnight. App. 253-54. When Petitioner left the cookout, he was wearing dark, black clothing. App. 175-76, 413-14.

Meanwhile, Victim remained at the cookout with Brown, who had arrived around midnight. App. 90-91. Shortly before 4:00 AM, Victim and Gass left the home to purchase cigarettes. App. 94. When Victim and Gass returned, Victim discovered Brown had left with a friend. App. 95. Victim then called Brown to ask if she wanted to return. App. 95. Brown told Victim she did, and the two agreed to meet at the corner of Dargan and Marlboro Street. App. 95, 97. According to Brown, this conversation took place around 4:15 AM. App. 96.

Following his conversation with Brown, Victim attempted to get a ride to Marlboro Street with Clifton "Ryan" Evans, who had recently arrived at the house. App. 155, 157. Although Evans initially agreed to give Victim a ride, Evans changed his mind because Victim took too long to retrieve a cell phone charger left in Gass's house. App. 157-58, 177. Gabriel Petterson

observed Petitioner, in the area, on his moped late at night, around the time he and Evans left Ms. Gass's house. App. 179-80.

Shortly after Evans and Petterson drove off, Victim began walking towards Dargan and Marlboro to meet Brown. App. 255. Victim called Gass and talked to her as he walked. App. 256. The phone call was placed around 4:53 AM, lasted fourteen minutes and thirty-three seconds, ending at 5:07 AM. App. 333, 493-94. The call ended when Victim's phone went dead. App. 268. Immediately before the line went dead, Victim told Gass, "the n---a I was arguing with at the cookout is behind me, do you want to talk to him?" App. 268. When Gass called back at 5:15 AM, Brown had already discovered Victim's dead body. App. 268-69, 333. Later that day, Petitioner told his associate, Andre Bradley, and Bradley's girlfriend, Jasmine Barrett, that he killed Victim. App. 427-30, 449. Petitioner was arrested for Victim's murder on September 11, 2008. App. 471, 481-82.

At trial, the State theorized Petitioner was paid to kill Victim by one of Petitioner's associates, Gary Bostic, in retaliation for a fraudulent drug deal. App. 423-24. To that end, the State introduced evidence that: (1) approximately a month prior to Victim's shooting, Bostic, who lost \$3,500 as a result of the fraudulent drug deal, offered Petitioner \$1,000 to kill Victim; (2) pursuant to the arrangement, Petitioner would receive \$500 up front and another \$500 after Victim was killed; (3) prior to the murder, Petitioner told Bradley he was going to kill Victim multiple times; (4) Bostic's phone number was in Petitioner's phone by his nickname, "G.A."; (5) the picture assigned to Bostic's number was a stack of money; (6) Bradley believed Petitioner had gone through the first \$500 and killed Victim to receive the additional \$500; (7) in the four days after the murder, Petitioner called Bostic forty-one times; and (8) Petitioner wrote his then-

girlfriend, Nyrena Goodman, from jail and instructed her to contact Bostic on his behalf to raise money for his bond. App. 347-349, 423-26, 490-91, 504-505.

The State also presented testimony from Goodman, explaining on the evening of September 4, 2008, she received a phone call from Petitioner. App. 413. Over the course of the phone call, Petitioner informed Goodman he was at a cookout down near her house, and there was an individual at the cookout who had previously attempted to rob him. App. 413. Goodman explained she did not see Petitioner until approximately 5:30 AM when he and a man she did not know⁴ picked her up in a van, and the trio proceeded to a local hotel.⁵ App. 386-87. Goodman added that after she checked into the hotel, Petitioner briefly joined her in the hotel room before leaving again. App. 388. She further explained that while the two were in the hotel room, Petitioner received a phone call during which he began talking to the other person on the line about “the dude from the cookout[.]” App. 412.

On cross-examination, Goodman, when asked by defense counsel why the couple decided to stay at a hotel that night, explained she felt Petitioner wanted to use her as an alibi. App. 403. This proposition was subsequently corroborated in the form of letters written by Petitioner to Goodman in which he urged Goodman to change parts of her story and tell police he was with her in the hotel on the night in question. App. 498-504.

At the close of the State’s case, Petitioner moved for a directed verdict on all charges. App. 537-38, 544. The motion was denied. App. 539, 544. Following the charge conference, the defense rested, closing arguments were conducted, and the jury was charged. App. 544-619. Petitioner was subsequently convicted on both counts of the indictment. App. 625-26.

⁴ Goodman testified Petitioner later told her the man was Gary Bostic. App. 387.

⁵ A receipt from the hotel indicated Goodman checked-in at 5:34 AM. App. 352-53.

STANDARD OF REVIEW

In a PCR 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). “This Court gives great deference to the post-conviction relief. . . court’s findings of fact and conclusions of law.” Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). In reviewing the PCR court’s decision, this Court is concerned only with whether any evidence of probative value exists to support that decision. Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006). “This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them, and will reverse the decision of the PCR judge when it is controlled by an error of law.” Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007).

Where the application alleges ineffective assistance of counsel as a ground for relief, the 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.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, an 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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (citing Strickland, 466 U.S. at 690). Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. An applicant must overcome this presumption in order to receive relief. Id. at 118, 386 S.E.2d at 625. 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.” Id. at 117-18, 386 S.E.2d at 625.

ARGUMENT

- I. **There is probative evidence in the record to support the PCR Court’s finding trial Counsel rendered effective assistance in his investigation and preparation for trial, as case law dictates Counsel must be strongly presumed to have rendered adequate assistance and Petitioner presented no evidence which would overcome that presumption.**

Petitioner erroneously contends the PCR court premised its finding that Counsel was not ineffective in regards to his investigation and preparation for trial on an error of law by presuming Counsel made valid strategic decisions even though Counsel was not present to testify at the evidentiary hearing. See PWC, p. 8. Petitioner cites Roseboro v. State, 317 S.C. 292 (1995), and Lounds v. State, 380 S.C. 454 (2008),⁶ for the proposition that “Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness.” PWC, p. 8. Petitioner essentially argues that because Counsel was unavailable to explain a specific strategy or reason for his decision making, the PCR court had no choice but to make a finding of ineffectiveness. This argument is clearly contrary to established case law, and the PCR court did not err in presuming Counsel valid strategy.

“Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466

⁶ In both of the cases Petitioner cites, the court found trial counsel had engaged in *per se* deficient conduct – failure to investigate in Lounds and failure to request an alibi charge when evidence showed the defendant was in a different location at the time of the crime in Roseboro. 380 S.C. at 460, 670 S.E.2d at 649; 317 S.C. at 294, 454 S.E.2d at 313. Therefore, trial counsel had to articulate a valid strategy in order to escape a finding of ineffective assistance. 380 S.C. at 462, 670 S.E.2d at 650; 317 S.C. at 294, 454 S.E.2d at 313. Here, the PCR court found Counsel’s conduct was not deficient, so no explanation of Counsel’s strategic decisions is needed.

U.S. at 690. “The United States Supreme Court has cautioned that ‘every effort be made to eliminate the distorting effects of hindsight’ and evaluate counsel’s decisions at the time they were made. Accordingly, we must be wary of second-guessing trial counsel’s tactics.” Edwards v. State, 392 S.C. 449, 456–57, 710 S.E.2d 60, 64 (2011) (quoting Strickland, 466 U.S. at 689). Additionally, courts should not “insist counsel confirm every aspect of the strategic basis for his or her actions.” Harrington v. Richter, 562 U.S. 86, 109 (2011). Strickland itself recites that there are countless ways to provide effective assistance and even the best lawyers would not defend a particular client in the same way. 466 U.S. at 689. There is a strong presumption that trial counsel’s decisions are based on tactical strategy rather than neglect, and “[t]hat presumption has particular force where a petitioner bases his ineffective-assistance claim solely on the trial record, creating a situation in which a court ‘may have no way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive.’” Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). “It should go without saying that the absence of evidence cannot overcome the ‘strong presumption that counsel’s conduct [fell] within the wide range of reasonable professional assistance.’” Burt v. Titlow, 571 U.S. ___, 134 S.Ct. 10, 17 (2013) (quoting Strickland, 466 U.S. at 689).

Petitioner’s primary contentions as to Counsel’s ineffectiveness are (1) Counsel failed to discuss with Petitioner the full extent of the evidence the State was planning to introduce against him – namely the letters he wrote to Nyrena Goodman⁷ and the statements of Andre Bradley and Jasmine Barrett that they heard Petitioner admit to the murder – and he would have testified on his own behalf to refute that testimony if he had known; (2) Counsel failed to perform an independent investigation of the case, including a failure to interview and call favorable

⁷ Since it is undisputed Petitioner is the author of the letters, Petitioner clearly had notice of their existence prior to trial.

witnesses for trial and a failure to argue third-party guilt; (3) Counsel did not appropriately challenge the admission of Petitioner's statement during the Jackson v. Denno hearing.

Petitioner contends he would have testified on his own behalf to refute the statements of Andre Bradley and Jasmine Barrett as to his admission that he had committed the murder and to give context to the statements contained in the letters he wrote to Nyrena Goodman. App. 804. Petitioner, however, did not make the decision not to testify until after the State had presented its entire case, including all of the above-mentioned evidence and testimony. App. 542. Counsel informed the trial court he needed more time to discuss the issue with Petitioner, and Petitioner was given until the next morning to make his final decision. App. 540. Additionally, the trial court engaged in a thorough colloquy with Petitioner regarding his decision not to testify, and at no point did Petitioner indicate he needed additional time to make the decision or to speak with his attorney about the decision. App. 542-43.

Petitioner further alleges Counsel failed to conduct an independent investigation and specifically, Counsel failed to interview two favorable witnesses, Andrew Williams and Gary Bostic⁸, who Petitioner contends should have been called to testify on Petitioner's behalf at trial. "So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. . . . In any ineffectiveness case, a particular decision not to investigate must be

⁸ Petitioner's allegations regarding Gary Bostic are addressed in detail in section II, *infra*.

directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Strickland, 466 U.S. at 690-91.

In this case, Petitioner's co-counsel testified he was "sure" one of the investigators employed by the Public Defenders' Office, Frank White, met with Petitioner in jail; he observed Counsel reviewing the witnesses' audio statements on multiple occasions; and he had specific recollections of Counsel working on the case and reviewing the file at least a month prior to trial. App. 294, 306. Further, the lead investigator on the case, Investigator Compton, testified he met with both investigators from the Public Defenders' Office as well as Mr. Lawson prior to trial. App. 1049. The solicitor who prosecuted the case testified to Counsel's extensive experience trying criminal cases and specifically his observations of Counsel thoroughly reviewing discovery and evidence with clients when he and Counsel practiced together. App. 990-92.

Regarding the testimony of Mr. Williams, he was present and testified at the evidentiary hearing, though the extent of his testimony was to say he was never in the hotel room alone with Nyrena Goodman, Petitioner was not acting out of character the day after the murder, and Counsel never contacted him prior to trial. App. 950-52. Mr. Williams's testimony, however, is irrelevant since it is undisputed his contact with Petitioner occurred hours after the murder, and the State introduced independent evidence confirming Mr. Williams rented a Ford Taurus at approximately 11:30 am on the day after the murder, which Andre Bradley saw Petitioner driving later that day. App. 437, 487. Indeed, Mr. Williams himself confirmed he rented the Taurus for Petitioner. App. 950. His testimony, therefore, is at best merely cumulative to other evidence. In any event, it is not so obviously favorable to Petitioner as to establish prejudice sufficient to warrant relief. "This Court has repeatedly held a PCR 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. . . .” Bannister v. State, 333 S.C. 298, 303, 509 S.E. 2d 807, 809 (1998). However, “where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel’s failure to bring it forward.” Edwards, 392 S.C. at 459, 710 S.E.2d at 66.

Petitioner also contends Counsel should have called him as a witness during the Jackson v. Denno⁹ hearing so Petitioner could deny he gave Investigator Compton a second statement on September 11. App. 841-42. Further, Petitioner testified he would have wanted to explain he was not told he was a suspect in the murder investigation, he would not have talked to police if he had known that information, and that he told Investigator Compton he would only speak to him about the cookout, not the murder. App. 838-39. However, Investigator Compton testified both during the Jackson v. Denno¹⁰ hearing and in front of the jury that Petitioner was not told he was suspect in the murder, Petitioner repeatedly stated his intention only to discuss the cookout not the murder, and Petitioner testified he did voluntarily speak to Investigator Compton on September 10 regarding the events at the cookout. App. 51-52, 53-55, 472, 476-78, 837. Indeed, at the evidentiary hearing, Petitioner acknowledged Compton’s testimony to the fact that Petitioner was not aware he was being investigated for the murder at the time of their first interview on September 10. App. 837. Furthermore, Investigator Compton testified at length as to why there was no signed waiver of rights form or audio recording of Petitioner’s second statement on September 11, which was corroborated in the Jackson v. Denno hearing by a second detective who was present for that interview. App. 51-53, 482-84.

Although Petitioner testified extensively regarding his disagreement with Counsel’s tactics, such decisions are Counsel’s to make. “[D]ecisions primarily involving trial strategy and

⁹ 378 U.S. 368 (1964).

¹⁰ Id.

tactics may be made by trial counsel. . . . Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.’” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations omitted). Even though Counsel is no longer available to articulate all of the strategic choices he made during the course of his representation of Petitioner, under the Strickland standard Counsel is entitled to a strong presumption he rendered effective assistance. 466 U.S. at 689 (“[J]udicial scrutiny of counsel’s performance must be highly deferential.”) Additionally, as discussed above, the record reflects Counsel did conduct an investigation and suggests various legitimate bases for the strategic decisions Counsel made.

Furthermore, Petitioner failed to present any evidence of prejudice resulting from Counsel’s allegedly deficient performance other than to suggest prejudice should be presumed because he was convicted based solely on circumstantial evidence. PWC, p. 15. This argument is plainly contrary to the well-established rule that “[t]he law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.” State v. Logan, 405 S.C. 83, 96, 747 S.E.2d 444, 451 (2013) (quoting State v. Grippon, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997)). Therefore, because Petitioner has failed to show either deficiency or prejudice, the petition should be denied.

II. The PCR Court correctly found Counsel rendered effective assistance despite not interviewing or calling as a witness the man who allegedly paid Petitioner to commit the murder, Gary Bostic, because Bostic's testimony was not credible and self-serving. The PCR Court also correctly found the State did not commit a Brady¹¹ violation in regards to its investigation of Bostic because Petitioner introduced no evidence to show either the solicitor or the police investigators ever interviewed Bostic or otherwise obtained a statement from him.

Mr. Bostic is the only person who testified he was questioned by police regarding the murder of Victim, and the trial court found his testimony not credible. App. 1195. Mr. Bostic could not pinpoint a precise date for the interview to establish it occurred prior to trial, except to say he thinks it took place sometime in 2010. App. 777. Both the solicitor and Investigator Compton testified they never interviewed Mr. Bostic. App. 989, 1049. Petitioner introduced a letter written by his attorney, Mr. Etheridge, which shows Investigator Compton was attempting to set up a meeting with Mr. Bostic, but the subject line of the letter indicates the meeting was in reference to an "ABWIK" charge, and Mr. Bostic wanted the meeting to take place in Mr. Etheridge's office. App. 1151. Further, Mr. Etheridge testified he was not present at any meeting between Mr. Bostic and law enforcement, and he only had Mr. Bostic's word that the meeting took place, which Bostic claimed happened not at Mr. Etheridge's office, but at the police station. App. 771, 781-83. Mr. Etheridge also testified he did not remember Petitioner's name being mentioned, and remembered only that law enforcement wanted to interview Mr. Bostic about a "violent crime." App. 782. Even after seeing the letter and hearing Mr. Bostic's testimony, Investigator Compton maintained he was never able to interview Mr. Bostic because the two of them could never "get up." App. 1049, 1054, 1072. Additionally, as the solicitor pointed out, Mr. Bostic's testimony denying he paid Petitioner to murder Victim or had any involvement in the murder, is exactly what they expected him to say, and they had no reason to

¹¹ 373 U.S. 83 (1963).

spend time and resources tracking him down when they knew he was not likely to confess his involvement. App. 989.

In Edwards v. State, this Court held that “[a] witness’s credibility and demeanor is crucial to an attorney’s trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions.” Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011). The trial court found Mr. Bostic’s testimony “extremely difficult to believe” and deemed it to be not credible. App. 1195. Most tellingly, Petitioner himself testified he lied about Mr. Bostic driving him and Ms. Goodman to the hotel on the night of the murder because he and Mr. Bostic were involved in other illegal activities together, and he did not want his association with Mr. Bostic known to the police. App. 945. Given Petitioner’s admission he was involved in illegal activities with Mr. Bostic, Counsel had a valid strategic reason for declining to call Mr. Bostic as a witness. Furthermore, Mr. Bostic’s testimony at the evidentiary hearing was extremely brief and entirely self-serving, and did nothing to exculpate Petitioner as the shooter, so Counsel could have reasonably concluded the risk posed by calling Mr. Bostic was greater than the reward. App. 768-79.

Petitioner also alleges the State’s failure to disclose law enforcement’s interview of Mr. Bostic is a violation of the Brady rule. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). “Determining whether evidence withheld by the state is ‘material’ under Brady turns on whether

the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280–81 (2006).

As discussed above, Petitioner has failed to establish the State was in possession of *any* evidence it failed to disclose to Counsel, because Petitioner cannot prove the alleged meeting ever actually took place and a statement was taken, much less that it occurred prior to trial. Even if this Court finds such a meeting did occur, Mr. Bostic’s statement is neither favorable to Petitioner nor material to the question of Petitioner’s guilt because it is unlikely to have changed the outcome at trial. The State introduced multiple witnesses who saw and heard Petitioner attempt to bait Victim into a fight at the cookout, and Ms. Gass testified Petitioner told her that day Victim had robbed him before. App. 173-75, 243-44, 249-50, 252. Mr. Bostic’s testimony does nothing to take the gun out of Petitioner’s hand, regardless of whether the shooting was done without direction from Mr. Bostic. Additionally, Mr. Bostic’s testimony is self-serving and insignificant given the amount of evidence against Petitioner – namely the letters he wrote to Nyrena Goodman attempting to persuade her to change her story and establish an alibi for him, the statement of Victim to Ms. Gass immediately preceding the shot that the person he had argued with at the cookout was behind him, and the testimony of Andre Bradley and Jasmine Barrett that Petitioner admitted to the murder to them.

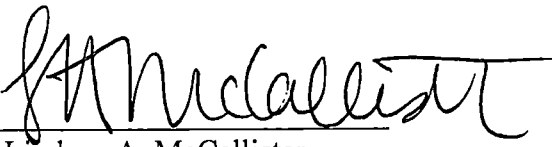
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issues discussed above.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

Appellate Case No. 2015-002033

GREGORY DANIELS,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
P.O. Box 2147
Leesville, SC 29070

This 5th day of July, 2017


DEONNA ROGERS
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

July 5, 2017

RECEIVED

JUL 10 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Gregory Daniels v. State of South Carolina
Appellate Case No. 2015-002033
Lower Court Case No. 2013-CP-21-280

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General
SC Bar No. 79054

LAM/dgr
Enclosures

cc: Tricia A. Blanchette, Esquire (2 copies)
Trisha Allen, Victim Services