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**AUG 18 2017**

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**S.C. SUPREME COURT**

**Certiorari to Richland county  
Honorable G. Thomas Cooper, Circuit court judge**

**Taurus Watts . . . . . Petitioner,**

**v.**

**State of South Carolina . . . . . Respondent.**

**Appellate case NO. 2016-000500**

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**Appellants - Final Brief**

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**DATE: Aug 11, 2017**

Taurus Watts #324820  
**Taurus Watts # 324820  
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Pro se litigant**

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STATEMENT OF ISSUES ON APPEAL

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1. Did the lower court err in failing to find that the Appellant received ineffective assistance of counsel, in that counsel failed to present a defense, failed to move to sever, and failed to question members of the jury on their impartiality?

STATEMENT OF THE CASE

The Appellant was indicted in August 2007 in Richland County, along with Tremain Wray. Indictment. The Appellant was charged with murder (case number 2007-GS-40-5913). Indictment.

On October 5, 2009, the Appellant and Wray proceeded to a jury trial in the Richland County Court of General Sessions before the Honorable J. Michelle Childs. A guilty verdict was returned on October 15, 2009. Verdict. The Appellant was sentenced to a thirty-five year term of incarceration on the same day that the verdict was returned. Judgment.

The Appellant pursued a direct appeal, arguing: (1) the trial judge erred in refusing to declare a mistrial when the prosecutor through improper leading questions, insinuated that the witness was scared to talk with police and told an investigator that they were going to her killed, implying that she was afraid of the Appellant and his co-defendant; and (2) the trial judge erred in refusing to declare a mistrial when a State's witness testified that he saw the co-defendant and the Appellant in the "holding tank" after he had been specifically instructed by the judge not to testify as to seeing the Appellant in a holding cell. Appellant Brief. In an opinion issued on June 1, 2012, the South Carolina Court of Appeals affirmed the lower court (appeal number 2012-UP-381). Opinion, 6/1/12. The remittitur was issued on August 10, 2012. Remittitur.

On May 30, 2013, the Appellant filed an application post-conviction relief in the Richland County Court of Common Pleas. Post-conviction Application. The Appellant argued that trial counsel provided ineffective assistance in failing to present a defense, failing to move to sever, and failing to question members of the jury on their impartiality. Post-conviction Application. An evidentiary hearing was held on December 10, 2015, in which the Appellant testified. The application was dismissed on March 4, 2016.

Appendix p.1843. The court found that Kamelah Wilson, who would have testified that she was at the club on the evening at issue, was not a credible witness. Appendix p.1838. Wilson would have testified that she did not observe the Appellant at the club and that the club owner, Ricky Jacobs, was across the street from the club at the time of the shooting and could not have witnessed the shooting. Appendix p.1838 at 5. At best, Wilson's testimony merely impeached Jacob's testimony. Appendix p. 1838 at 5. Further, counsel was not ineffective in failing to call Deputy Weldon Gregory to testify. Appendix p.1839 at 6. Gregory took Jacobs' statement at the crime scene, with Jacobs stating that two men who were denied entry to the club were driving the white Nissan at issue. Appendix p.1839 Exhibit (1) p.1844. The court found that Jacobs was thoroughly cross-examined, thus alleviating the need for Gregory's testimony. Appendix p.1839. Regarding the failure to move for severance, counsel's post-trial statement that she could have moved to sever was not given credence by the trial court, as the Appellant was not prejudiced by a joint trial. Appendix p.1890. The court found that the claim regarding juror partiality rested on speculation, as no evidence was presented that any other juror overheard Juror Number 36's biased statements regarding the Appellant. Appendix p.1842.

The Appellant filed a timely notice of appeal. Notice of Appeal.

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~~FACTS~~

The events giving rise to this case occurred on June 30, 2007. Transcript, volume 2 at 20-25. On said date, Demuria Hank Johnson was shot in the leg outside of the H&J Club, a night club in Columbia South Carolina. Transcript, volume 2 at 20-25. Johnson died as a result of the gunshot wound. Transcript, volume 2 at 20-25.

Johnson went to the club with Travis Malone, James Goodwin, Stephanie Boston, Verda Roberts, and Charlie Bates. Transcript, volume 2 at 20-25. The group arrived at the club between 1:00 a.m. Transcript, volume 2 at 20-25. At some point, a fight broke out inside the club as two men approached Bates as he danced with Jalicca Lisa Johnson. Transcript, volume 2 at 141. The owner of the club decided to close the club for the evening after the fight broke out. Transcript, volume 3 at 33-35.

Lisa Johnson testified that she arrived at the club at approximately 3:00 a.m. on the date at issue. Transcript, volume 2 at 239. Johnson knew the Appellant, because he is Johnson's nephew's uncle. Transcript, volume 2 at 235. Johnson was approached at the club by an unknown male known as "T-something." Transcript, volume 2 at 243, Johnson then went to the dance floor, where she was approached by Bates. Transcript, volume 2 at 240-241. Bates and Johnson had previously dated. Transcript, volume 2 at 240-241. "T-something" approached Johnson again. Transcript, volume 2 at 244-246. "T-something" and Bates had a disagreement, and Bates threw a drink on "T-something." Transcript, volume 2 at 244-246. The bar room fight started. Transcript, volume 2 at 244-246.

After the club closed, the club owner, Ricky Jacobs, witnessed the Appellant and co-defendant Tremain Wray approach the club. Transcript, volume 3 at 37-38. The two men returned to a tan Suburban, with Wray in the driver's seat. Transcript, volume 3 39-40. According to the club owner, the Appellant possessed a firearm. Transcript, volume 3 at 40. The vehicle drove toward Farrow Road. Transcript, volume 3 at 46. According to the club owner, shots were fired from the driver's side of the vehicle toward the club. Transcript, volume 3 at 46. Shots were also fired from a white Isuzu Rodeo as it was leaving the club. Transcript, volume 3 at 46-50. Johnson was struck by a bullet, causing his death. Transcript, volume 3 at 255; Transcript, volume 6 at 145.

Shortly after the shooting, officers stopped the Rodeo. Transcript, volume 3 at 207. Inside the vehicle, police found one round of .38 caliber ammunition and several rounds of 9 millimeter ammunition. Transcript, volume 3 at 207. At the hospital, police recovered a fired 9 millimeter bullet from the pants of the deceased. Transcript, volume 3 at 255; Transcript, volume 6 at 145.

In May 2009, Brian Watson, who was incarcerated for committing an armed robbery, claimed to have information regarding the shooting at issue. Transcript, volume 4 at 253. Watson testified that on June 30, 2007, he looked out his back door and saw a truck at his niece's, Rashonda Simpson's, house. Transcript, volume 4 at 253. Jarrell Dansby, Simpson's husband at the time, called Watson and asked him to come to the house. transcript, volume 4 at 253. Dansby showed Watson a bag with a firearm contained therein. Transcript, volume

4 at 253. Watson, Simpson, and Dansby drove to a creek and disposed  
~~of the firearm. Transcript, volume 4 at 257-260.~~

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Dansby testified that on the Saturday before July 4, 2007, his  
cousin, Wray, called and asked if he could leave a firearm at Dansby's  
residence. Transcript, volume 4 at 178. In exchange for Dansby's  
testimony, a warrant was withdrawn charging him with being an  
accessory to murder after the fact. Transcript, volume 4 at 174.

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Issue 1: Is there any evidence of probative value to support the PCR court's determination that trial counsel was not ineffective in failing to call witnesses and submit evidence to support the defense theory?

In the early morning hours of June 30, 2007, Demuria Hank Johnson was shot in the leg outside of the H&J Club, a night club in Northeast Columbia. Johnson died as a result of the gunshot wound. Johnson went to the club with Travis Malone, James Lamont Goodwin, Stephanie Boston, Verda Roberts, and Charlie Bates. The group arrived at the club between 1:00 AM and 2:00 AM. (App. p.242,lines 20-25). At some point a fight broke out inside the club after two men approached Charlie Bates as he was on the dance floor with Jalicca Lisa Johnson. (App. p.311,lines 14-17). The owner of the club, Ricky Jacobs, testified that he decided to close the club when the fight broke out. (App. p.513-515).

Lisa Johnson testified that on June 30, 2007, she arrived at the club at approximately 3:00 AM. (App. p.409,lines 9-16). Johnson knew Petitioner because he is her nephew's uncle. (App. p.405,lines 21-p.406,lines 1-6). Johnson testified that she was approached by an unknown man who made advances toward her. She testified that this unknown man was named "T-something." (App. p.413,lines 5-20). Johnson confirmed that the man named "T-something" was not Petitioner Taurus Watts. (App. p.444,lines 25-p.445,lines 1-5). She testified that she did not continue talking to "T-something," but went to the dance floor. At the dance floor, she was approached by Charlie Bates. Bates and Johnson had dated on and off again for a couple of years. (App. p.410, line 17-p.411,lines 1-3). "T-something" approached her again. At that point "T-something" and Bates had a disagreement. Bates threw a drink on "T-something" and a fight erupted. (App. p.414-416). Lisa Johnson testified that many people became involved in the fight, including Brian Johnson. (App. p.416,lines 16-23). According to Lisa Johnson "T-something" was Brian Johnson's homeboy. (App. p.418,lines 7-13).

Charlie Bates testified that he was on the dance floor with Lisa Johnson when two males approached him and got in his face. (App.p. 314,lines 14-25). Bates testified that his uncle, Travis Malone, Hank and Lamont intervened and then "[e]verything went crazy." (App.p315, lines 1-5). Although Bates denied throwing a drink,(App.p.329,lines 16-17). his aunt, Stephanie Boston, testified that Bates threw a drink. (App.p.282, line 22-p.283,lines 1-2). Verda Roberts is Bates' mom and Travis Malone is his uncle. Hank Johnson and Lamont Goodwin were

friends of Malone.

~~Brian Johnson testified that he got involved in the altercation~~  
at the H&J Club on June 30, 2007, after somebody threw a drink in his friend, Darius White's Face. (App. p. 486, line 23-p.487, lines 1-17). Johnson testified that at some point during the fight inside the club somebody yelled out something about a gun. (App. p. 493-495). The club's owner, Ricky Jacobs confirmed that he saw a man he did not know backing out of the club with a gun in his hand. (App. p.554, lines 1-12).

2 Jacobs was the State's key witness and the sole witness to the shooting that took place outside of the club. Jacobs testified that after the fight started, he stepped outside and saw Petitioner and Wray approaching the club. He told the two men that he was closing the club. (App. p.517, line 1-p.518, lines 1-17). There was no evidence to establish that Petitioner and Wray were involved in the fight inside the club. Jacobs testified that the two men returned to their car, a tan Suburban. (App. p.519, lines 12-18). The co-defendant, Wray, got into the driver's side and Petitioner got into the passenger side. (App. p.519, line 19-p.520, lines 1-3). According to Jacobs, Petitioner was holding a gun. (App. p.520, lines 4-10). Jacobs testified that the tan Suburban drove towards Farrow Road. (App. p.522, lines 13-22). Then, according to Jacobs, shots were fired from the driver's side of the tan Suburban towards the club. (App. p. 526, lines 2-13). Jacobs testified that shots were also fired from a white Isuzu Rodeo as it was leaving the club. (App. p.526-530).

The first officer on the scene after the shooting was Ray Weldon Gregory with the Richland County Sheriff's Department. (App p.1780, lines 18-25). Deputy Gregory was not called as a witness a trial. At the PCR hearing Deputy Gregory testified that he spoke with the owner of the club, Ricky Jacobs, and prepared a report. (App. p.1781, lines 6-18). The report was entered in evidence as Applicant Exhibit #1. (App. p.1781, lines 19-25; pp.1844-1845). Deputy Gregory testified that Jacobs told him that the vehicle involved with the shooting was a white nissan with black stripes down the side. (App. p.1782, line 23-p.1783, lines 1-4). The report lists suspect number two as an unknown black male with close cut hair cut with striped shirt. (App. p.1845). Jacobs told Deputy Gregory that suspect number two fired over the top of the vehicle towards the club. (App. p.1844). when

asked if Jacobs had given the deputy the names of the suspects, would the deputy have listed the names on the report, Deputy Weldon answered, "Probably." (App. p.1782,lines 20-22). Both suspects were listed as unknown.

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At trial, however, Jacobs admitted that he knew both Petitioner and co-defendant Wray. Jacobs admitted that he has known Petitioner for twenty years and Petitioner's mom worked for Jacobs. (App. p.548, lines 13-16;p.568,line 11-p.569,lines 1-14). Jacobs admitted that he has known co-defendant Wray for several years, knew his uncles and knew where he lived. (App. p.614,lines 14-25).

At trial Investigator McRae with the Richland county Sheriff's Department testified that Jacobs gave him the first name Taurus and a description at the scene. (App. p.1484,lines 4-15). In a later phone call to the investigator Jacobs provided the last name as Watts or Watson. (App. p.1509,line 19-p.1510,lines 1-10). In this same phone call Jacobs provided more information on the driver but claimed that he only knew the driver's first name as Tremaine. (App. p.1511, lines 13-16).

Shortly after the shooting, Deputy Galinski stopped a white Isuzu Rodeo matching the vehicle identified by Jacobs. (App.p.683,line 3-p.684,lines 1-19). Jacobs initially told Deputy Gregory that the vehicle was possibly a white Nissan. Deputy Galinski testified that ~~a Nissan Pathfinder and an Isuzu Rodeo are very similar in model~~ and style. (App. p.695,lines 2-9). The driver of the Isuzu Rodeo was identified as Luther Centural Landrum, Jr. (App. p.686,lines 7-10;p.699,lines 23-24). The passenger was identified as Earl Jerome Green. (App. p.686,lines 14-17);p.700,lines 3-7). The driver and passenger matched the description that Jacobs gave to Deputy Gregory. They were two black males and the driver had dreads and the passenger had short hair and a yellow shirt with stripes. (App. p.685,lines 5-12). Deputy Galinski found one round of 38 caliber ammunition and some rounds of 9 millimeter ammunition in the white Rodeo. (App. p.687,lines 18-23). At the hospital another officer recovered a fired 9 millimeter bullet from the pants of the deceased. (App. p.734,line 3-p.735,lines 1-12;App. p.1433,lines 4-6;p.1434,lines 5-10). Investigator Collins, an expert in firearms and tool mark examination, testified that the bullet recovered from the hospital and two fired bullet jackets recovered at the scene had all been fired by the same

gun. (App. p.1435,lines 13-17). Investigator Collins also examined ten fired 9 millimeter Luger caliber cartridge cases recovered from ~~the scene of the shooting. (App. p.1433,lines 6-7). Investigator Collins testified that the ten cartridge cases were fired by one~~ gun but he could not say that the same gun fired the cartridge cases and the three recovered bullets because no firearm was submitted for comparison. (App. p.1448,lines 4-17).

Investigator Bouknight conduct GSR tests on the Isuzu Rodeo. The investigator, however, left the GSR kit in his locker for 7 months and when it was tested, it tested negative for gunshot residue. (App. pp.755-773;App. p.1365,lines 12-p.1366,lines 1-4). Five hours following the shooting, GSR tests were conducted on the hands of Landrum and Greene, the driver and passenger of the white Isuzu Rodeo. (App. p.1398,line 22-p.1399,lines 1-7). When Deputy Galinski initially stopped the white Isuzu Rodeo, he did not have paper bags to place on the hands of the stopped subjects to preserve any possible gun shot residue. (App. p.694,lines 6-22). Deputy Galinski was instructed to simply make sure the subjects did not wash their hands. (App. p.694,lines 8-13). Landrum and Greene were finally swabbed for GSR and when the results were examined, not surprisingly, both tested negative for gunshot residue. (App. pp.1327-1331). The State's GSR expert ~~conceded~~ that the fact that the subject's hands were not bagged could effect the reliability of the test. (App. p.1397, lines 1-21). The occupants of the white Isuzu Rodeo were not charged in connection with the shooting. A search warrant was executed on the tan Suburban, and a GSR kit obtained. This test revealed the existence of 16 rounded lead particles in the interior of the Suburban. No weapons or ammunition were located in the Suburban.

During the PCR hearing trial counsel admitted that the main strategy was to try and discredit Jacobs. (App. p.1804,lines 1-17). Jacobs claimed that the only person he talked with on the night of the shooting was investigator McRae. (App. p.602,lines 4-6). Trial counsel did not attempt to impeach Jacobs with Deputy Gregory's report or ask about statements Jacobs made to Deputy Gregory. Trial counsel failed to call Deputy Gregory as a witness to establish critical inconsistencies between Jacobs' trial testimony and his initial report to Deputy Gregory. Deputy Gregory's testimony would have established that Jacobs initially did not identify Petitioner or his co-defendant

by name despite knowing both of them. Deputy Gregory's report would have established that Jacobs initially stated that suspect number ~~two fired over the top of the white SUV toward the club. (App. p. 1844). In contrast, at trial Jacobs claimed that the passenger in the white Isuzu Rodeo sat up on the door of the car and only shot one time up in the air. (App. p.528, line 24-p.529, line 1). There is no mention of a second vehicle firing shots in Deputy Gregory's report.~~

Deputy Gregory's report would have established that Jacobs initially described the suspects involved in the shooting as one unknown black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black strip down the side. In contrast, at trial Jacobs testified that Petitioner and co-defendant Wray in a tan Suburban. (App. p.519, line 12-p.520, lines 1-3). Jacobs testified that Petitioner was wearing a white t-shirt and wore his hair in short dreads or twists. (App. p.524, line 22-p.525, lines 1-16). Jacobs testified that the codefendant was wearing a white T-shirt also. (App. p. 525, lines 17-21).

During the PCR hearing trial counsel admitted that she thought the report made by Deputy Gregory had been made by Deputy Galinski. (App. p.1824, lines 5-12). Trial counsel testified that she used the report mainly because it indicated that the suspect had dreadlocks. (App. p.1824, lines 1-4). During the identification hearing at trial Petitioner testified that at the time of the incident he wore his hair in a low afro. (App. p.142, lines 9-21). In the order of dismissal the PCR judge wrote:

After reviewing the entire record and testimony presented, this Court finds Applicant has failed to establish any deficiency of Counsel in failing to call Gregory. Counsel testified law enforcement officers are not usually helpful to defendants based on her experience. This Court finds Counsel was able to adequately cross examine Jacobs without calling Gregory as a witness. This Court finds Jacobs was thoroughly impeached during his testimony by Counsel and Swerling. This Court finds that Gregory's testimony added very little to the overall presentation and likely would have had no impact on the result of the proceeding. As discussed above, Counsel challenged the State's

eyewitness on virtually every aspect of his recollection. This Court is not convinced that testimony from Gregory would have had any impact on the jury's view of Jacobs or his credibility, much less the result of Applicant's trial. This allegation is denied and dismissed.

(App. p.1839). The PCR judge erred.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052, "Under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Trial counsel was ineffective in failing to call Deputy Gregory as a witness to establish that the State's sole eye-witness Ricky Jacobs, initially did not identify Petitioner or his co-defendant by name despite knowing both of them, and described the suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side, description that matched two other individuals who were stopped shortly after the shooting took place driving a white Isuzu Rodeo SUV in which ammunition consistent with shell casing found at the scene of the shooting were found. There is a reasonable probability that, but for counsel deficient performance, the result of the proceeding would have been different. While counsel challenged statements Jacobs made to Investigator McRae, counsel failed to

has adopted the Strickland standard. See, e.g. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 478 (1986).

"It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests." Frazer v. United States, 18 F.3d 778, 781 (9th Cir.1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of development in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." United States Ex. Rel. Partee v. Lane, 926 F.2d 694, 702 (7th Cir.1991).

Issue 2: Is there any evidence of probative value which supports the p.c.r court's conclusion that counsel was not ineffective for failing to present a defense, in that counsel failed to present Kamelah Wilson as a witness?

As the Supreme Court also recognized in "Strickland," counsel bears a duty to make a 'reasonable' investigation of the law and facts in his client's case. "Strickland, 466 U.S. at 691. Additionally, the ABA standards relating to the administration of Criminal Justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

Standard 4-4-1.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Cobbs v. State, 3605 S.C. 299,408 S.E.2d. 223 (1991). Pre-trial preparation, principally because it provides a basis upon which most of defense case must rest, is perhaps, the most critical stage of a lawyer's preparation. Id. Failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id. "When the defendant claims the counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded." Sikes v. State, 323 S.C. 28,30,448 S.E.2d. 560,562 (1994).

In the instant case, former counsel's investigation into potential

defenses was so deficient that he failed to recognize the obvious facts necessary to support the Appellant's claim of innocence. Specifically, ~~counsel failed to call Kamelah Wilson as a witness. Wilson would have testified that she was at the club at the evening at issue, and did not see the Appellant therein. Appendix Transcript, 33 Wilson would have testified that Jacobs was across the street from the club at the time of the shooting, and could not have seen the shooting from his vantage point. Appendix Transcript, 35 Obviously, Wilson's testimony casts doubt as to Jacob's testimony. Jacobs was the only witness who testified that the Appellant was armed. Transcript, volume 3 at 40. Jacobs was the only witness who stated that the tan Suburban was involved in the shooting. Transcript, volume 3 at 46 if Jacobs testimony would have properly been portrayed as being incredible, a conviction would not been obtained herein.~~

Former counsel's actions with respect to the presentation of a defense in this case were objectively unreasonable, and resulted in significant prejudice to the Petitioner, in that he was convicted upon testimony that was not credible. Therefore, counsel was ineffective in violation of the Petitioner's Sixth Amendment rights. Unfortunately, the lower court disagreed with this assessment.

The court found that Wilson was not credible witness, though no reason is offered to support this conclusion. Appendix p. 1838. Further, the court found that Wilson's testimony would only have served to ~~impeach that of Jacobs. Appendix p. 1838~~ Such is often the purpose of defense witnesses. After all, as Jacobs was the only witness who testified as to the Appellant's alleged involvement in this matter, rendering Jacobs an unbelievable witness would seem to be the only viable defense strategy. Clearly, impeachment of Jacobs is at the crux of this case. The Appellant submits that impeachment rarely can be done by examination of the witness at issue, as the witness is unlikely to admit that he is lying. It was only through the testimonies of Wilson and Gregory, and only via cross-examination of Jacobs, that Jacobs could have been impeached, counsel's failure to take such steps rendered his performance ineffective.

This court is free to decide questions of law - in this case whether the lower court incorrectly denied the Appellant's post-conviction motion - with no particular deference to the lower court. See S.C. Const. art. V. §§5 and 9; S.C. Code Ann. §§14-3-320 and -330 (1976&Supp. 1999); S.C. Code Ann. §§14-8-200 (Supp.1999); Moriarty

v. Garden Sanctuary Church of God, 341 S.C. 320,534 S.E.2d. 672 (2000).

The Appellant submits that he received ineffective assistance of counsel during trial proceedings. The Sixth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the assistance of counsel in presenting their defenses. U.S. Const. amend. VI; see also S.C. Const., Art. I, §14. The Sixth Amendment is applicable to the states through the Fourteenth Amendment of the United States Constitution. U.S. Const., amend. XIV; State v. Mizzell, 349 S.C. 326,563 S.E.2d.315 (2002). The Supreme Court has stated, "[t]he right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." Kimmelman v. Morrison, 477 U.S. 365,374 (1986). Further, the Supreme Court has recognized that "the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759,771 (1970).

To determine whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the Sixth Amendment to the Constitution, a two prong test must be met. In Strickland v. Washington, 466 U.S. 668,688-694(1984), the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors: (1) counsel's performance must have fallen below an objective standard of reasonableness; and (2) there must be a reasonable probability that, but for counsel's errors, the results of the proceedings would probably have been different. South Carolina has adopted the Strickland standard. See, e.g. Cherry v. State 300 S.C. 115,386 S.E.2d. 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 478 (1986).

"It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests." Frazer v. United States, 18 F.3d.778,785 (9th Cir.1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decision to be made; conduct a reasonable pre-trial investigation, which should include

contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." United States Ex. Rel. Partee v. Lane, 926 F.2d.694,702 (7th Cir.1991).

Issue 3: Is there any evidence of probative value which supports the P.C.R court's conclusion that counsel was not ineffective for failing ~~to move to sever the Appellant's trial from that of co-defendant Wray?~~

~~Where the offenses charged in are "of the same general nature~~ involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." State v. Simmons, 352 S.C. 342,350,573 S.E.2d. 856,860 (Ct.App.2002). "Offenses are considered to be of the same general nature where they are interconnected." State v. Jones, 325 S.C. 310,315,479 S.E.2d. 517,519 (Ct App.1996)." Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." Id.

"A severance should be granted only when there is a serious risk that a joint trial would comprise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt." State v. Walker, 366 S.C. 643,657,623 S.E.2d. 122,129 (Ct App.2005). An example of a specific trial right that may be prejudiced from a joint trial is the constitutional right to cross-examination when one co-defendant's confession expressly implicates another co-defendant but, the confessor does not take the witness stand. Burton v. United States, 391 U.S. 123,135-37,88 S.Ct. 1620,20L.Ed.2d 476 (1968).

Herein, defense counsel failed to sever the Appellant's trial from that of co-defendant Tremaine Wray, a failure that counsel admitted was a mistake. severance should have been requested, as the defense of the Appellant and Wray were inherently antagonistic. Wray and the Appellant entered a vehicle with Wray being the driver. Transcript, volume 3 at 39-40. Jacobs testified that the shots fired from said vehicle were fired from the driver's side. Transcript, volume 3 at 46. Later, it was Wray who was involved with the disposal of the firearm at issue. Transcript, volume 4 at 178. With Wray acting as the assailant herein, and no evidence linking the Appellant to the murder other than mere presence, it is clear that the Appellant was painted by the jury with the same broad brush of guilty as applied to Wray. Accordingly counsel should have moved to sever the Appellant's trial that of wray. **The failure to do so rendered counsels assistance ineffective.**

This court is free to decide questions of law - in this case

whether the lower court incorrectly denied the Appellant's post-conviction motion - with no particular deference to the lower court.

See S.C. Const. art. V, §§ 5 and 9; S.C. Code Ann. §§ 14-3-320 and -330 (1976 & Supp. 1999); S.C. Code Ann. §§ 14-8-200 (Supp. 1999); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d. 672 (2000).

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To determine whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the Sixth Amendment to the Constitution, a two prong test must be met. In Strickland v. Washington, 466 U.S. 688, 688-694 (1984), the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors: (1) counsel's performance must have fallen below an objective standard of reasonableness; and (2) there must be a reasonable probability that, but for counsel's errors, the results of the proceedings would probably have been different. South Carolina has adopted the Strickland standard. See, e.g. Cherry v. State, 300 S.C. 115, 386 S.E.2d. 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 478 (1986).

"It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interest." Frazer v. United States, 18 F.3d 778, 785 (9th Cir. 1994). "Defense counsel must

do his utmost to bring his legal acumen to bear on behalf of the defendant; ~~keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made;~~ conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause. United States Ex. Rel. Partee v. Lane, 926 F.2d. 694,702(7th Cir. 1991).

Issue 4: Is there any evidence of probative value which supports the P.C.R court's conclusion that counsel was not ineffective for failing to move to question members of the jury on their impartiality?...

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The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to trial by an impartial jury. U.S. Const., amend VI. The right to a trial by an impartial jury lies at the very heart of due process. Irvin v. Dowd, 366 U.S. 717, 721-722, 81 S.Ct. 1639, 1641-1642, 6 L.Ed.2d. 751 (1961). "Our Commn-law heritage our constitution, and our experience in applying that constitution have committed us irrevocably to the position that the criminal trial has one well-defined purpose—to provide a fair and reliable determination of guilt." Estes v. Texas, 381 U.S. 532, 565, 85 S.Ct. 1628, 1644, 14 L.Ed.2d 543 (1965) (Warren, C.J., with whom Douglas and Goldberg. JJ., joined, concurring). That purpose simply cannot be achieved if the jury's deliberations are tainted by bias or prejudice. Therefore, a defendant is entitled to a jury that will decide the charge according to the evidence presented in court and a jury that is free of outside influences. Sheppard v. Maxwell, 384 U.S. 333, 351, 86 S.Ct. 1507, 1516, 16 L.Ed.2d 600, 613 (1966). An impartial jury consists of nothing more than jurors who will conscientiously apply the law and find the facts. Lockhart v. McCree, 476 U.S. 162, 106 S.Ct. 1758, 90 L.Ed.2d. 137 (1986). According to research on jury verdicts intended to present a comprehensive review of the empirical research on jury decision-making published between 1955 and 1999.

The model of decision making endorsed (at least implicitly) by most courts is one in which jurors are assured to pay complete attention, withhold judgment until all of the facts are in, discard any information that the judge so instructs, and carefully weigh a host of intangible facts. Several decades of research on human cognition suggest that model rarely, if ever, holds in the real world. Instead, decisions are based on past experience in the form of scripts, schemas, stereotypes, and other cognitive mechanisms as well as personal beliefs and values about what is right, wrong, and fair.. For instance, jury verdicts are influenced by the exposure of their jurors to pretrial publicity and inadmissible evidence (e.g., Carrette Moreland, 1983; R.W. Davis, 1986; Kerr et al., 1999; Kramer et al., 1990; Padawer-Singer & Barton,

1975; Thompson et al.,1981),and defendants with prior felony convictions are more likely to be found guilty (Blanck. 1985; Borgida & Park,1988; Hans & Doob,1976) or sentenced to death(Baldus et al .,1983; Barnett,1985). Jurors also do not keep things separate as they are expected to..

Jury Decision making: 45 years of empirical research on deliberating group, psychology, public policy, and law March 2000 vol. 7, No.3,622-727. The research was based upon 206 distinguishable studies involving deliberating juries (actual or mock) were located and grouped into 4 categories on the basis of their focal variables:(2) procedural characteristics,(b) participant characteristics,(c) case characteristics and (d) deliberation characteristics. Id.

Clearly, jurors are susceptible to outside influences, such as were present herein. Juror Number 36 was over heard stating that he would convict the Appellant, prior to the jury being instructed to deliberate. Number 36 was questioned, and removed from jury. Defense counsel did not move to question the remaining jurors regarding whehter juror number 36's comments had been overheard. Such renders counsel's conduct below any objective standard of reasonableness, as counsel had a duty to protect the Appellant fundamental constitution right to an impartial jury. The Appellant was prejudiced by such unreasonable conduct, in that he was convicted by a biased jury, not upon the facts in this case.

In denying this claim, the lower court found that the questioning of juror number 36 was sufficient to alleviate any concern that other jurors over hears his biased comments. Clearly, such is faulty reasoning. How juror number 36 can be aware of what every other juror heard is a mystery. Juror number 89, who reported Juror number 36's malfeasance, obviously heard the biased comments. Absent questioning of the remainder of the jurors, it is unknown how many jurors heard the comments at issue, and how such comments affected the jury.

As counsel failed to move to question the jurors, and failed in the above put forth manners, the Appellant submits that the decision of the lower court denying his application for post-conviction relief must be vacated, and this matter must be remanded for rehearing consistent with the findings of this court and the constitution

principles of fair play and substantial justice.

~~This court is free to decide question of law-in this case whether the lower court incorrectly denied the Appellant's post-conviction motion-with no particular deference to the lower court. See S.C. Const. art. V, §§5 and 9; S.C. Code Ann. §§14-3-320 and -330(1976 & Supp. 1999); S.C. Code Ann. §§14-8-200(Supp.1999); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d. 672(2000).~~

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Ex. Rel. Partee v. Lane, 926 F.2d. 694,702(7th Cir.1991).

### CONCLUSION

For the reason stated, this Court should reverse the Judgment  
of the Circuit Court.

Respectfully submitted,

Taurus Watts #324820  
Taurus Watts #324820  
BRCI/Wateree Dorm  
4460 Broad River Rd.  
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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AUG 18 2017

S.C. SUPREME COURT

Taurus Watts, . . . . .Petitioner,

v.

State of South Carolina . . . . .Respondent.

Case NO. 2016-000500

CERTIFICATE OF SERVICE

I, Taurus Watts, # 324820, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Final Brief that I know the contents thereof, that it includes every fundamental Law of this state that guarantee the offense to me for correcting setting aside or vacating the conviction and sentence attacked in this Final Brief; and that the matter and allegations therein set fourth are true. That I have served copies of the same documents upon the below party upon this same date.

Enclosed The Supreme court of South Carolina

cc: The Honorable Daniel E. Shearouse,

Clerk of Court

Post Office Box 11330

Columbia, SC 29211

Sworn to and subscribed before me  
this 13<sup>th</sup> day of August 2017

*[Signature]*  
\_\_\_\_\_  
Notary Public For South Carolina

My Commission Expires:

JANELLE T. SPEARMAN  
Notary Public-State of South Carolina  
My Commission Expires  
August 26, 2025

SI Taurus Watts 324820

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Date: Aug. 11, 2017

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

Dear Mr. Shearouse:

Enclosed please find for filing and processing with your office.  
A Final Brief of Certiorari, that is already on file with your  
office. Please file the original copy of this motion and return  
a copy of the same to me with file date stamped thereof.

Respectfully Submitted,

S/ Taurus Watts 324820  
Taurus Watts, # 324820  
Broad River Corr. Inst.  
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Columbia, SC 29210

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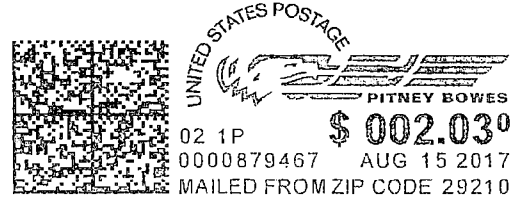
S.C. SUPREME COURT

WATTS #324820

(Bright 166)

Dodd River Rd.

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LEGAL MAIL

THE SUPREME COURT OF SOUTH CAROLINA  
DANIEL E. SHEAROUSE, Clerk of Court  
Post Office Box 11330

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