

# THE BOOZER LAW FIRM, LLC

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November 6, 2017

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

The Honorable James C. Campbell  
Clerk, Sumter County  
215 N. Harvin Street  
Sumter, SC 29150

**RECEIVED**

NOV 08 2017

**S.C. SUPREME COURT**

**RE: Reginald Canty, #347341, v. State of South Carolina  
2015-CP-43-61**

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Canty in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Canty in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Ruston Neely, AAG  
Loriene French, OAD  
Reginald Canty, #347341

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**S.C. SUPREME COURT**

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2015-CP-43-61

Reginald Canty, #347341, .....Petitioner,

v.

State of South Carolina,.....Respondent.

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable D. Craig Brown's Order dated October 5, 2017, and filed October 20, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on November 6, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543

November 6, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 08 2017

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable D. Craig Brown, Circuit Court Judge

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Case No. 2015-CP-43-61

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Reginald Canty, #347341, .....Petitioner,

v.


State of South Carolina,.....Respondent.

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**PROOF OF SERVICE**

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I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Ruston Neely, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 6th day of November, 2017.

  
Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543



RECORDED  
2017 OCT 20 PM 4:08  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

ALAN WILSON  
ATTORNEY GENERAL

October 18, 2017

**RECEIVED**

NOV 08 2017

The Honorable James C. Campbell  
Clerk of Court, Sumter County  
Sumter County Judicial Center  
215 N. Harvin Street  
Sumter, South Carolina 29150

**S.C. SUPREME COURT**

Re: Reginald Canty, #347341 v. State of South Carolina  
2015-CP-43-00061

Dear Mr. Campbell:

Enclosed please find the original **Order of Dismissal** signed by the Honorable D. Craig Brown, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please call me at (803) 734-9603.

Sincerely,

Julie A. Coleman  
Assistant Attorney General

JAC/fvh  
Enclosure

cc: Lance S. Boozer, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Reginald Canty, #347341,	)	2015-CP-43-00061
	)	
Applicant,	)	
	)	
v.	)	<b>ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This Court convened an evidentiary hearing into the matter on March 30, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Garryl Deas (Counsel), Esquire, and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant was true bill indicted at the September 2008 term of the Sumter County Grand Jury for murder and armed robbery (2008-GS-43-993). Applicant proceeded to a jury trial and was found guilty of murder and armed robbery on August 12, 2011. The Honorable W. Jeffrey Young sentenced Applicant to thirty years for murder and thirty years for armed robbery to run concurrent.

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A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction in sentence. State v. Applicant, 2014-UP-208 (Ct. Ap 2014). The Remittitur was issued on June 23, 2014.

## **II. ALLEGATIONS**

Applicant alleged the following grounds in his application:

1. Ineffective Assistance of Trial Counsel
  - a. Failure to investigate
  - b. Failure to object to Belcher instruction
  - c. Failure to request lesser-included charge instructions
  - d. Failure to properly review discovery materials with Applicant
  - e. Failure to question investigator concerning resignation from Sheriff's office
  - f. Conflict of interest, Counsel was formerly forfeiture attorney for the Solicitor's office
  - g. Breaking attorney-client privilege
  - h. Failure to properly argue Batson motion
2. Newly Discovered Evidence
  - a. Codefendant recant trial testimony
3. Prosecutorial Misconduct
  - a. Manipulation of the docket
4. Ineffective Assistance of Appellate Counsel

At the PCR hearing, Applicant withdrew the following allegations:

Failure to properly argue Batson motion,  
Breaking attorney-client privilege,  
Prosecutorial Misconduct,  
Ineffective Assistance of Appellate Counsel, and  
Counsel failed to question Investigator West concerning his resignation.

## **III. SUMMARY OF FACTS**

William Flexon, a pizza delivery man, was killed by two shots on January 12, 2008 at an abandoned trailer at Lot 7, Cherryvale Road in Sumter County. He was lured there by Applicant and co-defendant DeAngelo Jackson in a robbery plot.

The incident began at Sambino's owned by Tanya Knudson. Around 8:04 pm that night, Sambino's received a telephone call from a male-like voice ordering three large pizzas. R. 197-98,

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790-91, 793. When asked, Tanya was told the call was being made from a pay phone. R. 198. The delivery was for Lot No. 7, O.C. Mobile Home Park in Cherryvale. R. 202.

The next delivery person scheduled was Al. However, the victim, William "Bill" Flexon, took the order instead. R. 205-06. Sumter County Deputy Sheriff Jennifer Thomas, who was eating at Sambino's, sees Flexon leave with the pizzas. R. 207. Thomas received a call that shots were fired at Cherryvale. R. 207. She left Sambino's, goes to Lot 7 at the O.C. Mobile Home Park and found Bill Flexon's body on the ground. R. 314.

Tanya learned it was her delivery carrier who was shot. R. 208. She left and went to the mobile-home park and got into contact with Sergeant Burnish. R. 209, 218, ll. 18-25. [Tanya records the number for the call as 415-656-1073. R. 201, l. 4; 219, ll. 18-25.] Tanya identified the closest pay phone to Sambino's as the one at Cherryvale Grocery. R. 209, ll. 8-11.

Law enforcement went to the Cherryvale Grocery and spoke with Eugene Mackovitch. R. 266-68. A video from the camera revealed two men came into the grocery store to use the pay phone. R. 267-68. Mackovitch was not able to identify the defendants, although he stated they looked familiar. R. 278. One of them was subsequently identified as co-defendant Daniel Jackson by Anitta Shannon, a grocery employee, after viewing the video. R. 300-02, 309, 825. Applicant was subsequently identified from the video by Investigator Burnish on January 14, 2008. R. 839-40. Mackovitch sold one of the two a "Little Debbie" snack. R. 268-69, 282. The one who purchased the Little Debbie left with it in his right hand. R. 274. After leaving, Mackovitch saw them turn to the right toward the payphone. R. 275-76, 283-84. Mackovitch stated he did not use the pay phone. R. 278. A Little Debbie snack wrapper was found at the scene. R. 276-77, 995. The sell by date on the wrapper is 1/22. R. 276. Cherryvale Grocery receives fresh product in the store. R. 276-77. This exhibit was discovered on the side of the road near the entrance to lot 7. R. 376. It

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was 137 feet away from the victim's body. R. 417-19. There was insufficient ridge detail on the wrapper for positive fingerprint identification. R. 429.

Law enforcement went to the co-defendant's aunt, Andrea Russell. R. 486-87. Jackson was initially there, but fled when the police arrived. R. 485-87. However, when the police left, he returned. R. 488. Andrea Russell subsequently called the Clarendon County Sheriff's Office and advised them she found a rifle under her futon and asked them to come and get it. R. 447. They arrive; retrieved the rifle and a box of bullets she said were not hers. R. 447-451, 490, 843. Russell stated she discovered the rifle while vacuuming that day. In addition, Russell stated she had some peanut butter on the morning in question, nothing but peanut butter was in her jar that morning, but later that evening when she opened the peanut butter jar there was a shell casing in the jar. R. 491-93.

Evidence was presented Jackson called Isaac Boyd's wife on January 13 asking to be picked up from the American Inn in Sumter. R. 507. Boyd is Jackson's uncle. He testified he picked him up and took him to Curtis Wheeler's house to pick something up. While he stayed in the car, Boyd saw Jackson and Wheeler go to an abandoned trailer by the woods. Jackson told Boyd he needed to pick up some clothes. Jackson returned with a clothes basket, but Boyd did not realize there was a rifle in the basket until he got back to Sumter. R. 510-11. At that time, Boyd took Jackson to his aunt's house. This occurred on a Sunday night. However, Boyd claimed Jackson asked him to lie and say it occurred Saturday night. R. 511. Law enforcement searched Applicant's house and found a 30-30 shell casing under his bed, while searching for a weapon in a consent search. R. 630.

During the autopsy, law enforcement learned there were two bullets removed from the victim. R. 461-62, 838. Tracy Thrower, SLED forensics firearms examiner, determined the bullets

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came from two different firearms. R. 672. He opined one of the bullets came from the rifle located under the futon at Jackson's aunt's home. R. 676-77. He opined the other bullet did not come from the Winchester rifle. He stated the bullet was too large in diameter. R. 678, 697. He also opined the cartridge found in the peanut butter jar was fired from that Winchester rifle. R. 679. Investigator Burnish testified he recovered the 30-30 shell casing from underneath Applicant's bed, had it sent to SLED, received information the shell casing was fired from the rifle and warrants were issued for Applicant. R. 852-53.

Investigator Burnish went to Applicant's front porch and determined he could not see lot 7 from the porch, which is contrary to Applicant's January 25, 2008 statement. R. 861, ll. 4-9. Investigator West stated he could not see Lot 7 from Applicant's porch when they were conducting the search. R. 654. West stated someone sitting on the porch of Applicant's home would not be able to see Lot 7 because of the foliage. R. 629.

On January 13, 2008, law enforcement spoke with Applicant. R. 829-834. In his initial statement, he denied any knowledge of the crime. In his next statement, he stated he was there. R. 836-37. However, in these statements he did not admit he had been asked by his co-defendant to rob the pizza man, R. 837-38. Applicant gave another series of statements to law enforcement. Applicant was 16 years old at the time. In the redacted 10:35 a.m. statement, in pertinent part, Applicant stated:

Tonya Rush, who stayed beside me, she told me to watch her house. I went to the house and got something to drink, sat on the porch, and I saw car lights where lot 7 is. I went-I went to my fence. I saw a white man wrestling with a tall black man over a gun. The black man told him to stop, and then I heard a gunshot. The other person was standing next to the van looking at the guys wrestle. The other guy had a handgun that looked like a revolver. After the gunfire, everyone ran. I ran in the house. I told my moms what I saw later on that night. I wasn't truthful to law enforcement at the beginning because I was nervous and scared because I never saw anyone get killed before.

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R. 557, l. 16 – 560, l. 25.

On January 17, 2008 at 3:34 PM, Applicant made another statement to Investigator West, with his mother, Dorothy Canty, present. R. 564-65. Investigator West stated he had advised Applicant his first statement was inconsistent and he needed to be truthful. R. 573. Investigator West reported this new oral statement, in pertinent part, as follows:

[Applicant] began to say he stood in his yard by the gate and saw a black male struggling with the pizza man and another black male holding a revolver. I asked him how he knew it was a revolver, and it being dark with no lighting on, and he said there was a glare coming from the gun. **He then said-he then stated it was not supposed to happen like that. And I asked him what did he mean by that, and he said that the pizza man was not supposed to get shot. He stated it was an accident.** His mother then asked him how he knew it was an accident, and you said you weren't there. How you knew it was a revolver and it was dark outside. **Reginald then began to cry. He stated that he did not shoot and kill anyone. He kept saying it was a accident, and he kept saying he wasn't there. So, I asked him there is no way you can say it was a accident and you weren't there, and he put his head on the table and continued to cry.** Reginald then stated that the suspects ran away and he ran in the house.

R. 572, l. 24 – 575, l. 25 (emphasis added)

During this meeting, a written statement was prepared. The oral statement was written out onto a written statement form by Applicant and was read by Investigator West aloud. R. 579 -580.

The written statement continues:

Toya left. I then went and sat on my porch until the pizza man came. I saw a silver in color Chrysler van pulled up, and it pulled up to the back where another person was-the other person was. The pizza man stayed in his vehicle for approximately 3 minutes, and he then-and then-he then got out and went to the abandoned residence, lot number 7, and saw the door open and turn around and went back to his vehicle real fast. The pizza man was met by three males with hoodies. Another person was one of the males, and I didn't-and I don't know who the other two were. The pizza man was trying to take the gun rifle away from the black male, and the black male told the pizza man to stop, and then the gun fired. After I saw the man got shot, I ran in the house and told my moms I heard a gunshot.

R. 580, l. 19- 581, l. 10.

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On January 25, 2008, Investigator West talked with Applicant again with his mother present. R. 584-87. At this time, Applicant wrote out another statement:

When we got home, another person went to the back of the trailer, and he wait at the back for the pizza man to come. When the pizza man came, they started to rob the man. The pizza man was trying to take the gun from another person, and this person said stop. And after he said stop, he shot the pizza man. It's a-then he stayed there for a second. Then he ran. It looked like it was another person running away with the other person around the car.

R. 586, l. 25- 583, l. 9.

Investigator West also spoke about his interview with co-defendant Jackson on January 16, 2008 at 9:03 PM. R. 593. Investigator West stated he gave Jackson his Miranda rights which Jackson waived. At that point, West served Applicant with a murder and armed robbery warrant. After being served with the armed robbery warrant, Jackson said "how could I be charged with armed robbery if I didn't steal anything from pizza man." R. 595, ll. 1-2.

#### IV. SUMMARY OF TESTIMONY

Counsel testified around half of his experience as an attorney, since 1997, was in criminal defense. He felt comfortable handling Applicant's case and had handled a few attempted murder cases before. The death penalty was never on the table for either of the defendants. There were no aggravating factors. Counsel discussed trial strategy, potential defenses, and discovery in detail with Applicant. He hired an investigator to independently review the case. He did not discuss the case with the solicitor's office. Only contact with the solicitor's office regarding Applicant's case was negotiating for plea deals. Every plea offer was contingent on Applicant testifying against his co-defendant. Applicant was adamant he would not testify against his co-defendant. There was no evidence of self-defense, accident, or anything to support a lesser-included charge. Applicant

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maintained his complete innocence. His trial strategy was to show Applicant did not take any action that would make him an accomplice and was merely present.

Applicant claimed he spoke with Counsel three or four times, but Counsel never discussed trial strategy with him. The State offered him a plea offer for 30 years' incarceration for murder. He stated Counsel was inexperienced and didn't know the law he should have. He claimed Counsel wouldn't file his speedy trial motion after Counsel gave Applicant the discovery. He admitted Counsel hired an investigator, Applicant told the investigator he was on a porch the whole time. Applicant testified it was only supposed to be a robbery and his co-defendant wasn't supposed to shoot anyone. Applicant testified he didn't know how the shell casing or rifle got into his house.

Daniel Jackson, Applicant's co-defendant in a joint trial, claimed Applicant was never part of the armed robbery. He claimed Applicant never agreed to aid or assist in the crime. Jackson admitted there were no potential consequences for his testimony at the hearing because his appellate process was finished. He also claimed he wanted to take the witness stand at his own trial so he could admit he committed the crime and Applicant was not involved, but was scared of getting the death penalty. Jackson gave no explanation for the rifle under Applicant's bed, the shell casing in the peanut butter jar in Applicant's house, or Applicant's inconsistent statements to law enforcement.

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

This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's representation was deficient or that he was prejudiced by Counsel's alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 1985. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 1984. The proper measure of performance is whether Counsel provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant’s testimony lacked credibility. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel’s actions were deficient. Applicant also failed to prove he was prejudiced by Counsel’s alleged deficiencies. This Court finds Counsel properly prepared for Applicant’s trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant’s application for the reasons set out below:

**A. Ineffective Assistance of Counsel**

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 1989. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels’ deficient performance must have prejudiced Applicant such that

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“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. “[E]very effort be made to eliminate the distorting effects of hindsight” and to evaluate counsel’s decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel’s tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Failure to investigate.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant’s assertion Counsel should have hired an investigator sooner and investigated further is purely speculative. Applicant did not prove what Counsel would have found if he had hired an investigator sooner or done further investigation. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. “The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” State v. Glover, 318 S.C. 496, 498–499, 458 S.E.2d 538, 540. “Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel’s lack

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of investigation such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

2. Failure to object to Belcher instruction.

Where no evidence that would reduce, mitigate, excuse or justify the killing is presented, malice can be inferred from the use of a deadly weapon. See State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 n. 9 (2009). Here, Applicant did not assert any evidence that would reduce, mitigate, excuse, or justify the victim's murder. Applicant's final statement to law enforcement and his asserted defense at trial was he was merely present and saw the murder take place from a nearby porch. Therefore, the Belcher charge was appropriate.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to object. This Court also finds Applicant failed to prove he was prejudiced by the Belcher instruction such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

3. Failure to request lesser-included jury instructions.

There was no evidence presented at trial indicating Applicant was guilty of a lesser-included offense. "If there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense. A judge is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Gilmore, 396 S.C. 72, 76-77, 719 S.E.2d 688, 690 (Ct. App. 2011) (internal cites omitted). Applicant's second to last statement to law enforcement insisted he was not there, while also insisting the shooting was an accident.

[H]e said that the pizza man was not supposed to get shot. He stated it was an accident. His mother then asked him how he knew it was an accident,

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and you said you weren't there. How you knew it was a revolver and it was dark outside. Reginald then began to cry. He stated that he did not shoot and kill anyone. He kept saying it was an accident, and he kept saying he wasn't there. So, I asked him there is no way you can say it was an accident and you weren't there, and he put his head on the table and continued to cry. Reginald then stated that the suspects ran away and he ran in the house.

R. 572, l. 24 – 575, l. 25

However, Applicant never placed himself at the scene, with a gun, or as part of the robbery. Further, there was no evidence presented to show legal provocation or the shooting was accidental. Therefore, Applicant's statement that the shooting was an accident was not evidence from which voluntary manslaughter or involuntary manslaughter could have been inferred where he denied involvement and denied having a firearm. Applicant's final statement to law enforcement and his asserted defense at trial was he was merely present and saw the murder take place from a nearby porch.

Therefore, there was no evidence in the record that would have allowed the trial judge to give a jury instruction for a lesser-included offense. This Court finds Applicant has failed to prove Counsel was deficient for failing to request a lesser-included charge. This Court also finds Applicant failed to prove he was prejudiced by the lack of a lesser-included charge such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

4. Counsel failed to properly review discovery with Applicant.

Applicant failed to prove Counsel did not speak with him often enough or review discovery with him thoroughly enough to properly prepare for trial. "This court has held that the brevity of time spent in consultation, without more, does not establish that counsel was ineffective. Therefore, it is not enough to merely show that counsel only met with [applicant] twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly

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familiar with the facts of the case and the law applicable to the case.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (cites omitted). “[Applicant] did not offer any evidence or argument as to how counsel’s alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel’s alleged deficient performance was prejudicial to [applicant].” Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). Applicant claimed Counsel never discussed trial strategy with him. Applicant admitted he did relate his side of the story to Counsel and Counsel hired an investigator. Counsel testified he spoke with Applicant several times and hired an investigator to explore Applicant’s version of the facts. Counsel testified they discussed trial strategy, potential defenses, and discovery in detail during their meetings. This Court finds Counsel’s testimony credible. This Court also finds Counsel appropriately met with Applicant and was prepared for trial. This Court also finds Applicant has failed to prove he was prejudiced by Counsel’s failure to meet with him more often.

Accordingly, this Court finds Applicant failed to prove Counsel should have spoken with Applicant more often or in more detail. This Court also finds Applicant has failed to prove he was prejudiced by Counsel’s failure to speak with him more often such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

5. Conflict of interest.

Applicant failed to prove Counsel had a conflict of interest. Applicant produced a print out of a web page from Counsel’s website. The web page noted Counsel formerly worked as the drug forfeiture attorney for the third circuit solicitor’s office. It is axiomatic that many defense attorneys were formerly employed as solicitors or worked for the State. “Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional

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predicate for a claim of ineffective assistance of counsel arising from multiple representation.” Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (internal cites omitted). “The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction.” State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005). Applicant has failed to show how Counsel’s employment for the State created a conflict of interest.

Accordingly, this Court finds Applicant failed to prove there was a conflict of interest. This Court also finds Applicant has failed to prove he was prejudiced by any potential conflict of interest such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

**B. Newly Discovered Evidence**

Daniel Jackson’s, Applicant’s co-defendant at their joint trial, testimony was not newly discovered evidence. “[T]o obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014).

Further, this Court finds Jackson’s testimony was completely unreliable and lacking in credibility. At the PCR hearing, Jackson claimed Applicant was never part of the armed robbery. He claimed Applicant never agreed to aid or assist in the crime. Jackson admitted there were no potential consequences for his testimony at the hearing because his appellate process was finished. He also claimed he wanted to take the witness stand at his own trial so he could admit he committed the crime and Applicant was not involved, but was scared of getting the death penalty. Jackson gave no explanation for the rifle under Applicant’s bed, the shell casing in the peanut butter jar in

DJA  
8/14/16

Applicant's house, or Applicant's inconsistent statements to law enforcement. Jackson's change of heart from pleading not guilty and proceeding to trial to testifying he wanted to plead guilty and testify that Applicant was innocent is, in essence, a recantation. "[R]ecantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." State v. Wright, 269 S.C. 414, 421, 237 S.E.2d 764, 768 (1977).

Jackson faced no potential consequences for his testimony. Jackson's testimony he wanted to take the stand to admit his guilt and testify Applicant was innocent is incongruous with his assertion of his right to a trial. During Jackson's first trial, he was tried jointly with Applicant and found guilty by the jury along with Applicant. On appeal, Jackson's case was remanded for a new trial. After remand, Jackson again asserted his innocence and his right to a trial. After five days of trial, Jackson pleaded guilty and was sentenced to 30 years' incarceration. Applicant presented no evidence Jackson's testimony would have a reasonable probability the result of the trial would have been changed. Jackson's testimony did not relieve the damning evidence found in Applicant's home or the multiple conflicting statements he gave to law enforcement. Therefore, Applicant failed to show Jackson's testimony would probably have changed the result of the trial.

Therefore, this Court finds Applicant has failed to prove he should be granted a new trial based on his co-defendant's recantation. Accordingly, this Court dismisses this allegation.

## **VI. CONCLUSION**

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

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See


DJB  
8-13-2014

Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5 day of October, 2017.

  
D. CRAIG BROWN  
Presiding Judge  
3<sup>rd</sup> Judicial Circuit

Florence, South Carolina

*D.C.B.*  
*10/16/17*

STATE OF SOUTH CAROLINA  
COUNTY OF

Reginald County # 347341

RECORDED  
IN THE COURT OF (Select one.)  
 COMMON PLEAS  FAMILY COURT

JUDICIAL CIRCUIT  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.  
2015 JAN 26 PM 4:37  
CASE NO. 2015-CP-45-61

APPOINTMENT OF COUNSEL OR GAL  
(Select one.)

Plaintiff(s),  
-vs-  
State of South Carolina  
Defendant(s).

ORDER  
 AMENDED ORDER

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

DEPUTY CLERK OF COURT  
SOUTH CAROLINA

TYPE OF CASE/PROCEEDING: (Check one.)

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption                  | <input type="checkbox"/> Juvenile          |
| <input type="checkbox"/> SVP case  | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change                                   | <input type="checkbox"/> Other:                    |  |

It appears that <sup>Reginald</sup> County, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: \_\_\_\_\_
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained \_\_\_\_\_, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: Lance Bozeman  
1331 Park St.  
Columbia, SC 29201

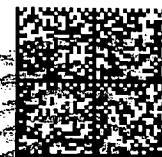
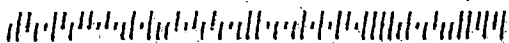
counsel  lead counsel (if capital PCR case)  guardian ad litem

Therefore, it is ordered that <sup>Bozeman</sup>, hereby is appointed as (Select one.)  
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that \_\_\_\_\_, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 26 DAY OF Jan, 20 15 .



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**THE BOOZER LAW FIRM, LLC**

1400 Laurel Street, Suite 4A  
Columbia, SC 29201

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211