

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Court of Common Pleas
The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No. 2017-001749

LAMAR DONTRAY WILLIAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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RESPONDENT'S QUESTIONS PRESENTED

- I. Is there is evidence of probative value in the record to support the PCR judge's finding that Petitioner failed to demonstrate trial counsel was ineffective for failing to present evidence to support the theory of the case that Petitioner was not present during the commission of the crime?

- II. Is there is evidence of probative value in the record to support the PCR judge's finding that trial counsel was not deficient for failing to call a witness?

STATEMENT OF THE CASE

Procedural History

Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. During its January 2012 term, the Greenville County Grand Jury indicted Petitioner for first-degree burglary (2011-GS-23-2010), murder (2011-GS-23-2011, count 1), possession of a weapon during commission of a violent crime (2011-GS-23-2011, count 2), attempted armed robbery (2011-GS-23-2012), kidnapping (2011-GS-23-2013), and conspiracy (2011-GS-23-2014). Larry H. Cooke, Esquire represented Petitioner. On February 13, 2012, Petitioner proceeded to trial,¹ before the Honorable Carmen T. Mullen and a jury. On February 16, 2012, the jury convicted Petitioner as indicted on all charges. Judge Mullen sentenced Petitioner to concurrent terms of life imprisonment for first-degree burglary, life imprisonment for murder, five years for possession of a weapon during commission of a violent crime, twenty years for attempted armed robbery, thirty years for kidnapping, and five years for conspiracy.

Petitioner filed a notice of appeal and Susan B. Hackett, Esquire of the South Carolina

¹ Petitioner was jointly tried with his co-defendant, Richey Boyd.

Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed Petitioner's convictions and sentences. State v. Boyd, Op. No. 2014-UP-262 (S.C. Ct. App. filed June 30, 2014). The Remittitur was sent on July 16, 2014.

On December 22, 2014, Petitioner filed an application for post-conviction relief. Respondent made its return on June 3, 2015, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 14, 2016, at the Greenville County Courthouse before the Honorable George C. James, Jr. Petitioner was present at the hearing and was represented by J. Falkner Wilkes, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. Thereafter, Judge James denied Petitioner's PCR application by written order filed July 21, 2017.

Petitioner filed a timely notice of appeal. Thereafter, Petitioner filed his Petition for Writ of Certiorari. This Return to Petition for Writ of Certiorari follows.

Factual History

This case involves the October 18, 2010 death of Wallace Cruell, Jr. The state's theory was that five men; Petitioner, Richey Boyd, Jeff Dornberg, Willie Taylor and Scottie Butler, combined to burglarize the victim's home because of a belief that there were a large quantity of drugs and money present.

Shirlene D. Cruell, the mother of the victim, Wallace Cruell, Jr., known as Jay testified as the initial state witness. (App.p.188-204). She stated that her son lived near her home. (App.p.190). In October 2010, Jay was living with his girlfriend and his 2 sons. (App.p.194). She stated that her son's girlfriend would leave around 6:00 a.m. for work. (App.p.195). On mornings when her son's girlfriend had to be at work early, Jay would take the kids to school. He would leave around 7:10 or 7:15 a.m. (App.p.196).

She was home on the morning of October 18, 2010 with her husband. Her husband decided to go hunting for a little while that morning before he went to work. He walked through the woods area near their home. (App.p.196).

Shirlene testified that Jay pulled into his driveway at 7:25 a.m. (App.p.196). At 7:25, she was about to go for a walk when she saw her brother-in-law, Noah Cruell, coming around the front of her house. He didn't have shoes or many clothes on. He had a drop cord around his wrist. All Noah could say was "Jay shot." (App.p.197-198). She stated that she ran down the path and went to her son's back door, which had been torn off the hinges and tilted sideways. (App.p.199). When she entered the home, Jay was on the kitchen floor. She went over to him and shook him. Jay wouldn't answer. She looked for the phone and dialed 911., (App.p.198-199). Nobody else was in the home. (App.p.199). Shirlene testified that she didn't see anyone around the house that morning except for Jay pulling in and her husband leaving to go hunting. (App.p.199). She didn't hear gunshots. (App.p.200). She testified that Noah Cruell has some communication deficiencies and is considered "slow." (App.p.200). At that time, Noah was living with Jay., (App.p.200).

Noah Cruell testified that he was living with Jay in October of 2010. (App.p.211). He recalled that on October 18, he woke up to the dogs barking and heard something bust through the door. He then saw two people came in and tied him up. (App.p.211-212). He saw 3 people. He believes these people had guns. They asked him where the money was. (App.p.212-213). He was on the floor of the living room when they came in. after they tied him up, they moved him into a back bedroom. (App.p.213). He was unable to see them searching the house. (App.p.213). He stated that while this was happening, Jay was taking his kids to school. (App.p.213-214). He recalled one person stayed in the bedroom with him. (App.p.214). He said he was still in the

bedroom when Jay returned home. (App.p.214). Noah stated that he didn't want to stay in the bedroom, but they wouldn't let him leave. (App.p.214).

Noah testified that when Jay came home, he heard some scuffling and a gun go off. He heard one gunshot. (App.p.214-215). After the gun went off, the person who was in the room with Noah left. (App.p.215). After they left, Noah said he got up and took the drop cord off and went to Shirlene's house. He then told her what happened. (App.p.215-216). He still had the drop cord hanging off his arm when he went to Shirlene's house. (App.p.216).

Noah testified that when he came out of the bedroom, Jay was laying on the floor. (App.p.216). Noah stated he spoke with the police when they arrived.² They asked him if Jay was involved with drugs. He showed the police areas where Jay kept the drugs in the backyard (App.p.216-217). Noah stated that he didn't know the men who came into the house. They were wearing masks and gloves. (App.p.127). He said that the men did not beat him up. Noah stated he didn't recognize anyone's voice and could not describe them. (App.p.218-220).

When the police arrived, they located the body of the victim lying face down on the floor. (App.p.226) (p.298). The house was messy and appeared to have been ransacked. (App.p.228).

The pathologist testified that the victim died had a single gunshot wound. He opined that it entered his right upper back, passed from his back to his front and from his right to his left, and exited the left anterior chest just below the level of the clavicle. This path included ribs on the back right, right upper lobe lung, the aorta, and out the anterior chest at the level of the second rib. He stated that no bullet was recovered (App.p.271). There was also a laceration on the upper

² Noah Cruell gave him an oral statement to the police. Noah said he was in the house at the time and that three (3) black males came into the house, tied him up, and took him to the back room. One of the men put a gun to the back of Noah's head and asked about the money. One of the men stayed in the back room with Noah while the other two went into another room. Jay came home and Noah heard one gunshot. Then, the three men left. Noah untied himself and went to Jay's parents' house to get help. Supp. (App.p.230-231).

forehead caused by a blunt object. (App.p.273).There was no evidence of gunshot residue on the clothes suggesting that the shooter was at least two to three feet away. (App.p.278-280).It was described as a distant range wound. (App.p.280).

Crime scene investigators for forensics did not indicate finding any blood in the home except for where the victim was found. (App.p.310).No footprints or fingerprints were found in the blood. (App.p.310).The blood had not been disturbed. (App.p.310).. In addition, they did not find shell casings. (App.p.310).While he was still on scene, Investigator Hammett received a call from the coroner about the condition of the body. The wound in the chest area that they thought was an entrance wound was actually an exit wound. In addition, there was another wound found in the right shoulder area of the victim's back. (App.p.310-311).The coroner didn't indicate they had found a projectile. (App.p.312).Investigator Hammett testified that there were some marijuana roaches in an ashtray in the master bedroom. He stated it didn't appear to be part of the struggle between the victim and the suspects. (App.p.315-316).

Investigator Hammett testified that Noah about possible drug use or sale at the house. Noah said narcotics were being sold at the house. They weren't kept inside the house. Noah took them to three different locations in the woods. There was nothing found. Noah told him that Wallace Cruell, Jr. was selling drugs. Noah then led them to an area behind the residence, adjacent to a dog pen in the backyard. In a tree stump, they found a large clear plastic bag with a compressed white substance in it and a significant amount of cash. The white substance was a kilo of cocaine. The money was packaged in small plastic bags rolled into tight bundles (\$14,000). (App.p.316-324).

Investigator Hammett testified on October 21, 2010, he received a message from someone named Scott. As a result of his conversation with Scott, he developed the names of

three suspects, Jeff/Jeffrey Dornberg, Scottie Butler, and a man with the nickname "Face." Butler and Dornberg were white males. "Face" was a black male. There were two (2) other unknown black males according to the information. (App.p.332-334).

The investigation led to Scottie Butler who was located at a motel in Laurens. He gave a statement to police. Next, they issued a warrant for Charles Jeffrey Dornberg. (App.p.343).Dornberg was then arrested at a Wal-Mart in Simpsonville when he turned himself in. (App.p.343-344).After meeting with Butler, he developed nicknames for other suspects: Esco and Solo., (App.p.345).Solo was in Greenwood County and is Richey Boyd. (App.p.345-346).Esco was in Greenville County and is Willie Taylor. (App.p.346).

Wendy Bridges testified. Her testimony concerning the trip to Lexington and provided the gun given to her to a person named Glenn is set out within Argument II., (App.p.389-404).

Willie Taylor testified. He stated that he was arrested in November of 2010 as a result of the incident that took place in Travelers Rest involving the death of Wallace Cruell, Jr. (App.p.407).He stated that he had entered a guilty plea to voluntary manslaughter as a part of a plea agreement. He said the other charges against him were dismissed. (App.p.407-408). He has not been sentenced yet. His sentencing is deferred until after this trial. (App.p.408-409). In exchange for his plea agreement, he must give his statement. (App.p.409).

Taylor stated he knows Petitioner through a mutual friend. He knew Petitioner in October of 2010 for about a month and a half. (App.p.409-410). He also knows Boyd through a mutual friend. He knew him in October of 2010 for about a year. He had never been to Boyd's home (App.p.410-411). He stated that Boyd's nickname was (App.p.411). Taylor declared his nickname was Esco. (App.p.412).

Taylor stated that he was present on the morning of October 18, 2010 when Wallace

Cruell, Jr. was killed. He stated he was in the kitchen at the back door when Cruell was killed (App.p.412). Taylor said he was with Face, Solo, J.D., and Scott when they went to Cruell's house that morning. He stated that "Face" is Petitioner. (App.p.412). He stated that it was not the first time they had been to Cruell's house. He had been to Cruell's house with Face and Solo a week before he was killed. Taylor stated that he, Face, Solo, Guatto, and Scott went to the house to check it out in the late afternoon and evening /early evening. They sat and looked at the house. Scott drove the car. J.D. wasn't with them the first time. (App.p.413-414). Guatto wasn't with them the second time they went to the house when Cruell was killed. (App.p.414).

Taylor testified that Petitioner called him the morning Cruell was killed and told him they were on their way so they could go to Cruell's house and rob him. (App.p.415). He stated that they had talked about robbing Cruell the first time they went to the house because they thought he had money. (App.p.415-416). He stated that Face (Petitioner) called him between 11:00 p.m. and 2:00 a.m. and told him that they were on the way to get him. (App.p.416). Taylor stated that Scott was driving and Solo, Face, and J.D. were with him. Taylor stated that he was the last one to be picked up. (App.p.416-417).

Taylor stated that while en route, they stopped at a Spinx convenience store in Greenville and then drove to Cruell's house. (App.p.417). Taylor said four people got out of the car, while Scott stayed in the car. (App.p.418). He stated that the plan was that they were going to wait until Cruell left and then go in the house. (App.p.419). Taylor confirmed that he, Face, and Solo had guns, but J.D. did not. (App.p.419). He said that Face and Solo were wearing gloves and everyone had their face covered. (App.p.419-420). He opine that nobody was really in charge of leading them. (App.p.420). They waited in the woods. (App.p.420).

Taylor stated that the sun had come up by the time Cruell left. (App.p.421). When he left,

everyone went to the back of the house and kicked the door in. Taylor said everybody was in the house by the time he got to the back. When Taylor got there, the door was open. (App.p.421).

When Taylor got he got inside, he saw an old man already tied up on the couch. He said that Face was standing in the living room. Solo was in the bedroom searching through things. They took the old man who was tied up into the bedroom. Face told Taylor to help pick the man up. When he picked him up, J.D. grabbed the man and put him in the bedroom. J.D. stayed in the bedroom with the old man. (App.p.421-422).After they put the old man in the bedroom, Taylor said he went he went back in the room. He found Solo was still searching the house. Face was just watching. (App.p.422-423).

At that point, they heard a car pull up and saw Cruell was in the car. When Taylor heard Cruell getting out of the car, he went back out towards the back door. (App.p.423).When Cruell was coming in the house, Taylor was going out the back door. Taylor stated that he next heard a commotion. Taylor said he heard Face say get on the ground. Taylor came back inside. He stated that he saw Petitioner and Boyd put Cruell on the ground. He said that they were trying to tie Cruell up, but they couldn't. They asked J.D. for help, but J.D. just froze. Cruell tried to get off the ground. Taylor stated that was when he was shot, although he was in the back. (App.p.423-424)(p.438).

Taylor said at that point, they ran out the back door and called Scott. Scott picked them up on the gravel driveway. (App.p.425).When they got to the car, Petitioner stated that he had shot him because he was trying to get up. (App.p.425).

Taylor stated that they dropped him off first. (App.p.426). He had a revolver. He thinks Petitioner and Boyd had the same type of gun. (App.p.426). Taylor said that he had never seen J.D. before and has not seen him since (App.p.426). He stated that he didn't know Scott and had

not seen Scott since. (App.p.427). Taylor stated that when he got home, he put the gun in the attic. (App.p.428). The gun was found when he was arrested. It was the gun he had the day they went to Cruell's house. Taylor stated that he didn't fire his gun. (App.p.428). Taylor stated that Petitioner was the only one to fire a gun. (App.p.429).

Scottie Butler testified similarly. He admitted his involvement in the incident as the driver and was arrested four days after it. (App.p.458). He stated that the other people involved were: Petitioner, a.k.a. Scar Face; Richey Boyd, a.k.a. Solo; Willie Taylor, a.k.a. Esco; and Jeff Dornberg known as J.D. (App.p.461). He said that Dornberg is his fiancée's brother. He had known Petitioner for about a year, but he did not know Boyd beforehand. (App.p.461-462). He had seen Boyd twice before the morning of October 18th. He saw Boyd the other times they went to Cruell's house before October 18th. He said that they went to look at the house so that they could rob it. (App.p.462). Butler stated that he didn't know Taylor before the incident. He had seen him twice before October 18th for the same reasons he saw Boyd. (App.p.463).

Butler testified that he has seen Taylor in jail, but he has not had any conversations with him. He said did not speak to Taylor in between the time of the incident and giving his statement (App.p.463-464).

Butler stated that Petitioner asked him to drive them to Cruell's house the first time. (App.p.465). He said that the first time they went to the house, he, Petitioner, Boyd, Taylor, and Guatto went. Butler said he hasn't seen Guatto since then. (App.p.466). They went to the house for the first time on October 15th in the morning. He pulled over on the side of the road and acted as if the car was messed up. They got out of the car and went into the woods to look at the house. They did that for about 1.5 hours. (App.p.467). Butler said he was driving a blue Toyota Camry which was Dornberg's car. (App.p.467).

He got a call from Petitioner who asked him if he was ready to go back up to the house on October 17th about 6 or 6:30 p.m. He was at the America's Best Hotel when he got the call. Butler stated that he agreed to go back. (App.p.468). The plan was that the next morning, they were going to go to the house, no one was supposed to be home and there was supposed to be money there. He stated that they were going to go in and get the money and drugs. (App.p.468). Butler stated he left America's Best Hotel by himself. First, he went to Cadillac Apartments in Laurens to pick up Petitioner and Dornberg. He let Petitioner drive. They went to Greenwood to pick up Boyd and then went to Greenville to pick up Taylor. Petitioner gave him directions. . (App.p.469-470). Butler stated that he wasn't armed on the 18th, although Petitioner, Boyd, and Taylor had revolvers. (App.p.471).

The next time, Butler stated he drove his fiancée's 1999 Dodge Intrepid, maroon. (App.p.472). He stated that when they got to the house, it was daylight. (App.p.472). He said when they arrived, Taylor, Petitioner, Boyd, and Dornberg went into the woods and waited. Butler said nothing happened because people were in the home. They came back to the car because nobody left. Then, he took everyone home. This was before the 18th, (App.p.473).

On the 18th, Butler said he picked up Petitioner and Dornberg, then Boyd, and, finally, Taylor. It was still dark when he picked them up. He picked up Petitioner and Dornberg on October 17th around 6 or 6:30 p.m. he picked up Boyd and Taylor around 10:30 or 11 p.m. (App.p.474-475). After picking everyone up, Butler said they went to a Spinx in between Greenville and Travelers Rest. He thought that they were there for about 10 minutes. (App.p.475). Afterwards, they went to Valley Road. (App.p.475). Petitioner, Boyd, Taylor, and Dornberg went into the woods and then went to the trailer. (App.p.476). They took their guns with them. (App.p.476). Since about 2:30 or 3, they were in the woods. Butler stated that

Petitioner called him on the walkie-talkie and told him they were cold. They came back to the car. (App.p.477).He said they sat in the car for about 30 minutes, then they left again. (App.p.478). Butler got nervous about people seeing him on the road, so he left and went to a church. He was there for about 20 minutes. Then, he went to an Ingles parking lot where he stayed until 7 or 7:30 am., (App.p.478).

Butler stated that he left the Ingles parking lot because there was no signal on the walkie-talkies. He drove up and down the road a couple of times and didn't hear anything. He went back to the church. After 5 minutes, Petitioner called him over the walkie-talkie and told him to hurry up and come get them. (App.p.478).

When Petitioner got in the car, he told Butler that he had shot and killed a man. (App.p.479). Petitioner got in the car first, then Dornberg, Taylor and Boyd got in. (App.p.479). Butler took everybody home. He said he took Taylor home first. He dropped Taylor off a couple of house down from his house. Then, he dropped Boyd off on Blake Road.

Then he took Petitioner to his fiancée's house. When they were about 5 miles away, Butler stated that Petitioner rolled down the window and threw the bullets out one by one. He dropped Petitioner off around 9:30 or 10:00 a.m. Then, he took Dornberg back to Cadillac Apartments. He went back to America's Best Inn. (App.p.479-480). Petitioner called him at 6:30 p.m. that same day. He wanted to meet up and talk about what happened. Dornberg was there too when they met up at America's Best Motel.

Butler stated that they discussed the bullet. He said the bullet went straight through the victim and ended up in Boyd's boots. (App.p.481-482). Butler recalled that Petitioner, Boyd, and Taylor were wearing gloves when they got out of the car. (App.p.482).

He stated that Petitioner wore a "scream" mask, Boyd wore a beanie, and Taylor had a

shirt over his face. (App.p.482). He described Boyd has a gold tooth on the top row of his teeth. (App.p.482). Butler stated that he had not talked to Dornberg since that evening. (App.p.482). He admitted that he was not able to pick Boyd out of a photo lineup (App.p.484).³

Charles Jeffrey Dornberg testified about his involvement in the incident. (App.p.502-538). He said he pled guilty to voluntary manslaughter arising from the incident with sentencing deferred until after this trial. (App.p.504). He stated he was in the home when Wallace Cruell was shot. (App.p.506). He said he was with Butler, Petitioner, Taylor, and Boyd. (App.p.506). He stated that he has known Butler for about 6 or 7 years and has four children with Butler's sister. He said he met Petitioner through a friend and had known him for about a year and a half. He hung out with Petitioner from time to time. He stated he did not know Taylor or Boyd before the incident. (App.p.507). He said that Petitioner introduced him to Taylor and Boyd. (App.p.508). The 18th was the first time he had been to the victim's house. Dornberg stated that he knew the others had been there before. (App.p.508).

Dornberg stated he first found out about this when he was driving with Petitioner. Petitioner told him about a "lick," robbery. Petitioner told him there was a lot of drugs and money. Dornberg stated that he agreed to participate in it. (App.p.508). He stated he first got involved on October 17th. (App.p.509). He recalled that Butler picked him and Petitioner up at Cadillac Apartments in Laurens. (App.p.509). Butler was driving Dornberg's sister's car, a Dodge Intrepid. (App.p.509). After they got picked up, they went to Greenwood to pick up Boyd a.k.a. Solo. Petitioner told Butler how to get there. (App.p.509-510). Then, they went to

³ Butler confirmed on cross-examination that on December 1, 2010, he signed a statement saying that Petitioner didn't have anything to do with this incident. ROA 262-263, (App.p.497-498). However, on re-direct Butler stated that he did not actually write that statement, but that Petitioner did. Butler stated that he was in rec court at the Greenville County Detention Center when the statement was written. When he signed, Petitioner was in rec court with him. Petitioner gave him the statement. In exchange for Butler giving his statement, Petitioner was going to sign a statement saying Butler had nothing to do with the incident. Petitioner said he had already given his lawyer that statement. (App.p.499-500).

Greenville to pick up Taylor a.k.a. Esco. (App.p.510). Before they got to Travelers Rest, they stopped at a Spinx. (App.p.511). Butler let them out on a bridge. Butler didn't get out of the car. (App.p.511).

Dornberg stated it was still dark outside when they got there. It was between midnight and 2 a.m. (App.p.512). He said that when they got out of the car, they went into the woods to see what was going on at the house. They were waiting for the people in the house to leave. He didn't know any of the details regarding the house or the people in the house. (App.p.512). He said that they stayed in the woods for about 3 hours. (App.p.512). At one point, they went back to Butler because it was cold. He said they rode around for about 20 minutes and then went back into the woods. Dornberg said he left the car with Petitioner, Taylor, and Boyd. (App.p.513).

Dornberg stated that Petitioner, Boyd, and Taylor had revolvers, but he didn't have a gun (App.p.513). He understood that he was supposed to help with anything. (App.p.513).

He said it was daylight before anything happened. He heard a truck leaving. Then, they went up to the house. (App.p.514). He stated that Petitioner and Boyd wore gloves and all of them had masks on. (App.p.514). He stated that Petitioner popped the back door open; but that he didn't kick it open. (App.p.514). He recalled that Petitioner went in first, then Boyd, then Dornberg, and Taylor was last. Petitioner held his gun at the uncle, tied him up, and put him on the couch. Petitioner had Taylor help the uncle off the couch. Petitioner gave the uncle to Dornberg, and he carried him to the kids' bedroom. (App.p.515). Dornberg stated that he stayed in the doorway of the bedroom. (App.p.515). He stated that Taylor and Boyd were in the master bedroom. Boyd was going through things. (App.p.515).

Shortly, they heard the truck pull up. Dornberg stated that Petitioner stood slightly in front of him. He stated that when the man came in, he saw that Petitioner tried to wrestle him to

the ground. He said Petitioner was trying to time him up, but the man was resisting. When the man got up, he looked like he was trying to run. At that point, Petitioner shot him in the back once. Cruell fell. Then, everybody ran out of the house and got in the car. (App.p.515-517).

The car was waiting because Petitioner had called Butler to get them. (App.p.515-517).When they got in the car, Petitioner said he had to kill Cruell because he was resisting. (App.p.515-517).

They went to the neighborhood where they picked up Taylor and dropped him off. Then, they went to Greenwood to drop off Boyd. They then went to Waterloo where Petitioner's girlfriend lives. Butler dropped him off last at Cadillac Apartments. (App.p.517).

Subsequently, Petitioner and Butler called him and picked him up in Petitioner's girlfriend's car. They rode around town and discussed how the police had no leads. Petitioner said the bullet projectile ended up in Boyd's shoe. (App.p.517-518).

Dornberg stated that he had never met Taylor before the incident. (App.p.518).

Neil Haltiwanger testified that he knew Petitioner from when he dated Petitioner's mother. (App.p.543-544). He said Petitioner came to his home and was looking for information on a computer about a crime that had happened. (App.p.546-547). Petitioner said he knew the two guys. Petitioner did not show him any reports of the crime, but he saw that Petitioner was looking at the crime scene and family. (App.p.546).

On the morning of October 24th, Haltiwanger stated that he had a conversation with Petitioner in Haltiwanger's bedroom. Petitioner asked about how much time he could get for doing something. Petitioner told him that he had gone into the house for the money, around \$10,000. He said that the owner of the house had five guys with him and they all had hoods on and started shooting after he went in with his buddies. (App.p.547-548).

He said that Petitioner left and came back into his bedroom about 10 minutes later. (App.p.548). This time Petitioner told him he shot the guy. He said the bullet casing went in his shoe., (App.p.548). He said he told Petitioner to turn himself in. Petitioner said he didn't want to because he wouldn't get a fair trial and he didn't trust the Greenville police. (App.p.548-549).

Petitioner didn't ask for his help in eluding the police. Petitioner asked for help getting money. He asked Haltiwanger to collect some money from a friend of Petitioner. Haltiwanger told him no and told Petitioner to turn himself in. Petitioner said the police would have to catch him. Petitioner talked to him about going to Arizona or Virginia. (App.p.549). Haltiwanger stated that he heard Petitioner on the phone that same morning. He heard him state "We need to get rid of her because of talking." (App.p.550).

Haltiwanger stated that Petitioner told him he gave the gun to a friend so that he could melt it. He said that he also gave his clothes to his friend so that he could burn them. (App.p.550).

The defense called Michael A. Williams as their initial witness. " He met Mr. Cooke about 2 weeks ago. His lawyer was present during the meeting. They met at the law enforcement center. He spoke with Mr. Cooke about this case with his lawyer's permission. (App.p.574-576). He told Mr. Cooke that he knew Petitioner. He is not related to Petitioner. He was on the same hall as Petitioner. (App.p.574-576). He stated that he knows Dornberg from jail. They were in the same dorm. He socialized with Dornberg a little bit. (App.p.575). The witness stated that about two or three months ago, he had a conversation with Dornberg about the murder of Cruell. He stated that Dornberg told him that he shot somebody, but everyone was saying Face did it. He stated that Dornberg said he was going to let Face get blamed for it, when Face wasn't even there. Dornberg told him what kind of weapon he used and that the bullet fell in his friend's

shoe. (App.p.578). He stated that he doesn't know Butler or Taylor. (App.p.578-580). He claimed that Petitioner didn't put him up to this. (App.p.578-580). He asserted that Dornberg sounded confident. (App.p.578-580).

Jennifer Burnette testified that she had known Dornberg since she was 12 or 13., (App.p.583). She stated that in the Fall of 2010, Dornberg went to her grandmother's house. She wasn't there when he got there. He was waiting in the car for her when she got back. (App.p.584-585). She stated that Dornberg told her that he was the one that shot "the guy." (App.p.585). When Dornberg left, he told her not to say anything. (App.p.585). She talked to Dornberg the next day. He wanted to talk to her. She asked him if he remembered what he told her the night before. He said he was "BS'ing." (App.p.586). She stated that she told the police. (App.p.586).

Kristine Sterling testified that she knows Petitioner since they met at the convenience store she was working at. (App.p.590). She stated that she began dating Petitioner in 2008 and Petitioner was living with her in 2010 and at his apartment at Cadillac Apartments. Her mother was also living with her. (App.p.591). She stated she and Petitioner broke up on October 11, 2010. She told him he couldn't be at her house when her grandmother was in town. (App.p.592). She stated that he would occasionally visit her at work at the Wal-Mart. (App.p.593).

She saw Petitioner on October 17th and that he spent the night with her. She stated that on the 18th, they woke up around 8:30 am or after and left the house around 9:15 or 9:30 a.m. She stopped at an ATM at a Hot Spot in Laurens. She withdrew \$20. Then, they went to the bonds office in Laurens and paid \$100 on Petitioner's bond. Then, they went to the social security office. There were there for about 15 or 20 minutes. They left because Petitioner didn't have his ID. (App.p.593-594). Counsel shows her 2 pictures. The picture of her dog and Petitioner on the couch was taken after the left the social security office. (App.p.594). After they left the social

security office, they went back to her house. Petitioner couldn't find his ID. She claimed that they stayed in and watched TV. (App.p.594-595). She stated that photos have dates on the back, December 3, 2010 and October 18, 2010. According to her, the photo with Petitioner and her dog is from October 18, 2010. (App.p.595-596). She claimed Petitioner was with her the entire night and morning on October 17, 2010. (App.p.596).

She said that they went to Reliable Bonding on Clinton Highway around 9:30 or 10 a.m. He saw Iesha there. (App.p.597). She claimed that they got a receipt from the bond company that Petitioner had paid \$100 on his bond on October 18, 2010. (App.p.598-607).

On cross-examination, it was noted that the pictures don't have times on them. (App.p.598).

Iesha Scruggs testified that she works at Reliable Bail Bonding Agency. She has worked there since 2006. (App.p.610). She stated that she knows Petitioner. She stated that she saw Petitioner on October 18, 2010 and stated that he came in to make a payment. She said that she received the payment and wrote him a receipt. (App.p.610). She said that the receipt was written on October 18, 2010 for \$100. (App.p.611). She stated that no one came inside with him. He came in and paid by himself. (App.p.611). She stated that Petitioner paid between 8:30 and 10:00 a.m. It was the first payment she received that day. She said that they opened at 8:30. (App.p.612).

She testified that Petitioner was in the office alone. She stated that they didn't have anyone come in after 10:00 a.m. that day because they had a training session. (App.p.613).

STANDARD OF REVIEW

The standard of review in post-conviction relief (PCR) cases depends on the specific issue before the reviewing court. It will defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them; but will review questions of law de novo, with no deference to trial courts. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). In a PCR proceeding, the petitioner bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 441, 334 S.E.2d at 814.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. An applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel, and both prongs must be established by an applicant to receive relief. Strickland, 466 U.S. at 687. 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, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, at 688. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. 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.

ARGUMENT

- I. There is evidence of probative value in the record to support the PCR judge's finding that Petitioner failed to demonstrate trial counsel was ineffective for failing to present evidence to support the theory of the case that Petitioner was not present during the commission of the crime.

Petitioner argues trial counsel was ineffective for failing to investigate, obtain and present evidence to support the theory of the case that it was impossible for Petitioner given he was somewhere else. However, this argument is without merit as Petitioner has failed to demonstrate the outcome of his trial would have been different with additional witnesses testifying.

During the evidentiary hearing Petitioner called two witnesses, Paula Taylor and James M. Stewart, who testified concerning travel/time issues. They testified they reviewed the trial testimony of Butler and Dornberg to develop the path of travel between the murder scene at 49 Valley Road in Travelers Rest and 7742 Neeley Road in Laurens, where Butler and Dornberg claim Petitioner was dropped off by Butler some hours after the murder. Relevant trial testimony indicated that the murder occurred between 7:15-7:25 a.m. and that Petitioner was dropped off on Neeley Road in Laurens before 10:00 a.m. The trial testimony of Butler and Dornberg established a path of travel from Valley Road in Travelers Rest to High Valley Road in Greenville to Blake Street in Greenwood to Neeley Road in Laurens. (App.p.)

PCR witness James Stewart testified that he was retired from law enforcement and that he has been qualified as an expert witness in accident reconstruction and that he is a certified accident reconstructionist. Mr. Stewart testified that he obtained Scottie Butler's path of travel from Butler's trial testimony and then consulted Google Maps to determine the shortest path of travel from the murder scene on Valley Road in Travelers Rest, to High Valley Road in Greenville, to Blake Street in Greenwood, and then to Neeley Road in Laurens. He testified that he rode as a passenger while Ms. Taylor drove the Google route. He testified it was a one

hundred and eight mile trip and that it took him and Ms. Taylor three hours and two minutes to make the trip. He calculated that in order to make the trip from 7:25 a.m. to 10:00 a.m., one would have to travel at ninety miles per hour and catch all fifty six traffic lights on green. (App.p.6).

Trial counsel testified at the PCR hearing that he did not consider calling a witness such as Mr. Stewart regarding the time it would take to drive the route described by Scottie Butler. Trial counsel testified that he did argue the point to the jury in his closing argument. Therein, he stated to the jury:

Now you tell me, you tell me how [Petitioner] could have killed Mr. Cruell up in the upper part of Greenville County at 7:30 in the morning, and by the testimony of the State's own witnesses dropped somebody off on White Horse Road, dropped off some other guys over in Laurens, and then drove [Petitioner] back to his house, and he was still able to go to the bail bonding company between 8:30 and 10:00 and make a payment. Does that make any sense? You cannot drive-- it's my contention that cannot drive from the upper part of Greenville County in the rush hours in the morning, day, 7:30, a quarter until 8:00, drop somebody off on White Horse Road, drop somebody off in Laurens, and then drive all the way to Greenwood and do that in less than an hour and a half, two hours. It seems impossible. And then be dressed to go make a bail bond payment [by 10:00 a.m.], and then go to the social security office. (App.p. 657-658)

In making its ruling the PCR Court made several initial findings. First, the PCR court noted that Trial counsel's argument to the jury slightly misstated the route described by Scottie Butler, specifically in that Butler testified that he dropped off a participant in Greenwood, then drove Petitioner to Laurens but that the slight misstatement was of no import. Second, the PCR court noted whatever the case the gist of the timeline/travel argument was made by trial counsel at trial. Third, the PCR court noted Petitioner claimed that trial counsel's argument to the jury would have been buttressed by actual testimony from a witness (such as Mr. Stewart) that the route taken from Travelers Rest to Greenville to Greenwood and then to Laurens would have taken such a length of time that it would have been impossible for Petitioner to have been present

at the scene of the murder. Lastly, the PCR Court noted Petitioner claimed Trial counsel was ineffective for not calling such a witness and that there is a reasonable probability that he would not have been found guilty if such testimony had been before the jury. (App.p.7).

Initially, the PCR court found that a cursory glance of the trial transcript would perhaps result in the court finding deficient performance and prejudice on this particular ground for post-conviction relief. However, the PCR court concluded after a close review, Trial counsel was not deficient, and that even if he were, Petitioner had not met his burden of establishing a reasonable probability that the result of the trial would have been different. The PCR court found while evidence of Petitioner's guilt was not overwhelming, the evidence, as a whole, presented to the jury convinced the PCR court that such timeline/travel testimony would not likely have yielded a different result. The PCR court noted the jury heard testimony from three participants (Butler, Dornberg, and Willie Taylor) in the crimes that Petitioner helped plan the robbery, rode with them some days before to scout the scene, and rode back with them to carry out the crime. The PCR court found these witnesses were effectively cross-examined by Trial counsel and by counsel for co-defendant Boyd, and their potential biases were exposed for the jury to consider.

The PCR court concluded that even though the evidence against Petitioner was far from overwhelming, the jury was presented with starkly differing factual scenarios at trial. The PCR court concluded the jury sifted through the different scenarios and concluded that Petitioner was guilty, either under the accomplice liability theory or under the theory that he actually shot the victim. Based on the totality of the trial evidence, the PCR court concluded from a factual standpoint Petitioner had failed to establish the outcome of the trial would have been different if a witness such as Mr. Stewart had given the testimony at trial that he gave at the PCR hearing.

There is substantial evidence of probative value in the record to support the PCR court's finding that Petitioner failed to demonstrate trial counsel was ineffective for failing to present evidence to support the theory of the case. As previously mentioned, the standard of review in PCR cases depends on the specific issue before the reviewing court. It will defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them; but will review questions of law de novo, with no deference to trial courts. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Here, the PCR court after a thorough review of the record found that Trial counsel made a timeline/travel argument to the jury during his closing arguments. Further as found by the PCR court, Trial Counsel cross-examined Petitioner's co-defendants while allowing the jury to review their credibility. While Petitioner argued Trial Counsel was ineffective in his advancement of the theory that it was impossible for Petitioner to have been involved in the crime, the PCR court ultimately concluded that given the contrasting factual situations Petitioner had failed to meet his burden. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland v. Washington, 466 U.S. 668, 688-689 (1984). Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Here, while ultimately unsuccessful, Trial Counsel advanced theory that Petitioner could not have been at the location of the crime. Accordingly, there is evidence of probable value in the record to support the PCR judge's findings.

- II. There is evidence of probative value in the record to support the PCR judge's finding that trial counsel was not deficient for failing to call a witness

Petitioner further argues trial counsel was ineffective for failing to attempt to locate and present testimony of a key witness. However, this argument is without merit as the witness's testimony at the PCR hearing was found to not be credible by the PCR judge.

During the evidentiary hearing, Petitioner called Glenn Shannon to testify. Shannon was the one-legged black man to whom Wendy Bridges allegedly delivered a gun at Petitioner's arrest several days after the murder. (App.p.10) Shannon testified at the PCR hearing that he did have one prosthetic leg. He testified that he frequented the Cadillac Motel in Laurens in 2010 and that he was the person around that had one leg. He testified that no one brought him a bag with a gun inside, and he testified that no one contacted him about testifying at trial. Shannon testified that he lived with Petitioner's mother. (App.p.10). Trial counsel confirmed at the PCR hearing that he did not look for the one-legged man. (App.p.10).

The PCR court concluded Mr. Shannon was not a credible witness and that his PCR testimony should be discounted. Further, the PCR court found even though the credibility of many trial witnesses, both for the State and for Petitioner, was called into question, the PCR court concluded there was not a reasonable probability that Mr. Shannon's testimony would have altered the outcome of the trial. (App.p.10).

Here, the PCR court made a credibility finding after listening to Mr. Shannon's testimony at the PCR hearing. The PCR court deemed his testimony to not be credible. The PCR judge was in the best position to determine credibility and, as such, his findings must be given great deference. Drayton v. Evatt, 312 S.C. 4, 11 430 S.E.2d 517, 521 (1993) (citing S.C. Dept. of Social Services v. Forrester, 282 S.C. 512, 320 S.E.2d 39 (Ct. App. 1984) ("We give great deference to a judge's findings where matters of credibility are involved since we lack the opportunity to directly observe the witnesses.")). The PCR court's findings on matters of credibility are given great deference by this Court. Simuel v. State , 390 S.C. 267, 701 S.E. 2d 738, 739 (2010). Given the PCR's court credibility findings, Petitioner argument fails as there is

evidence of probative value in the record to support the PCR judge's finding that trial counsel was not deficient for failing to call this witness.

CONCLUSION

For the foregoing reasons, the petition should be denied. Should this Court grant the petition for writ of certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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By: 
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May 29, 2018

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 29 2018

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No. 2017-001749

Lamar Dontray Williams,Respondent,

v.

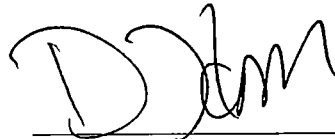
State of South Carolina, Petitioner.

CERTIFICATE OF SERVICE

I, DeShawn H. Mitchell, certify that I have today served the within **Return to Petition for Writ of Certiorari** upon Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville SC 29601

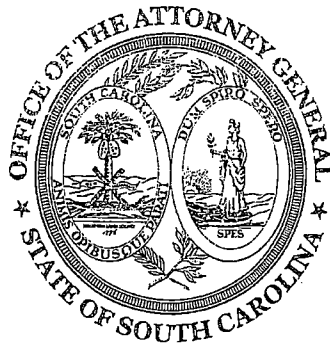
I further certify that all parties required by Rule to be served have been served.
This 29th day of May, 2018.



DESHAWN H. MITCHELL
S.C. Bar # 101813

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ATTORNEY FOR PETITIONER



ALAN WILSON
ATTORNEY GENERAL

May 29, 2018

RECEIVED

MAY 29 2018

S.C. SUPREME COURT

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

Re: Lamar D. Williams v. State of South Carolina
Appellate Case No. 2017-001749
Lower Court Case No. 2014-CP-23-7031

Dear Mr. Shearouse:

Enclosed for filing please find an original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

DeShawn H. Mitchell
Assistant Attorney General
SC Bar #101813

DHM/jacc
Enclosures

cc: J. Falkner Wilkes, Esquire
Victim Advocacy Division (without enclosure)