BLAZER
LAW FIRM

1037 Chuck Dawley Blvd. D100
Mount Pleasant, SC 29464

843.732.4441
www.blazerlaw.com

March 25, 2019

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MAR 28 2019
S.C. SUPREME COURT

Mr. Daniel E. Shearhouse
Clerk, the S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: Robert Steed v. State
Civil Action No: 2017-CP-10-5944

Dear Mr. Shearhouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal being appealed.

With best wishes I remain,

Sincerely,

Cameron Jane Blazer

cc: AAG Benjamin Limbaugh, Office of the Attorney General

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MAR 28 2019
S.C. SUPREME COURT

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

Case No. 2017-CP-10-5944

Robert Steed,

Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Robert Steed appeals the order of the Honorable George E. Brown dated February 5, 2019. The order was filed February 20, 2019, and Appellant received written notice of entry of the order on February 21, 2019. (A duplicate order signed on February 8, 2019, and also filed on February 20, 2019, has since been vacated.)

This 25th day of March, 2019.

BY: */s/ Cameron J. Blazer*

CAMERON J. BLAZER
SC Bar Number: 77000
BLAZER LAW FIRM
1037 Chuck Dawley Blvd. D104
Mount Pleasant, SC 29464
Telephone: (843) 732-4441

Other Counsel of Record:
Benjamin Limbaugh
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

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AT
AG
SOL
GS

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Robert Steed, #271499, Applicant, v. State of South Carolina, Respondent.	2017-CP-10-5944 **ORDER OF DISMISSAL**

FILED
2019 FEB 20 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed November 17, 2017 by Robert Steed (Applicant). The State (Respondent) made its return and motion to dismiss on April 18, 2018, requesting the application be summarily dismissed for failing to make a *prima facie* showing Applicant was entitled to relief based upon newly discovered evidence. On April 27, 2018, the Honorable Kristi L. Harrington, in her capacity as Chief Administrative Judge for the Ninth Judicial Circuit, Court of Common Pleas for Charleston County, issued a conditional order of dismissal provisionally denying and dismissing the application with prejudice, while giving Applicant twenty days to show why the conditional order should not become final. Thereafter, through counsel, Applicant filed a response to the conditional order of dismissal on May 17, 2018. A hearing on Respondent's motion to dismiss was held on October 2, 2018, before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Cameron J. Blazer, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office. After hearing arguments from both sides, Judge Nettles issued an order denying Respondent's motion to dismiss and ordering Applicant's case be set for an evidentiary hearing. An

evidentiary hearing into the matter was convened on January 22, 2019, at the Charleston County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was again represented by Cameron J. Blazer, Esquire. Assistant Attorney General Oppenheimer represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its July 1999 term, the Charleston County Grand Jury indicted Applicant for murder (1999-GS-10-4627), assault and battery with intent to kill (ABWIK) (1999-GS-10-4628), first-degree burglary (1999-GS-10-4629), and armed robbery (1999-GS-10-4630). The Grand Jury also indicted Applicant during its July 2000 term for criminal conspiracy (2000-GS-10-5019). Chief Public Defender for the Ninth Judicial Circuit, D. Ashley Pennington, represented Applicant on these charges. On December 4-7, 2000, Applicant proceeded to a jury trial with one of his co-defendants, Michael Flynn, before the Honorable Luke N. Brown. Following deliberations, the jury convicted Applicant as indicted for all charges. Judge Brown sentenced Applicant to concurrent terms of imprisonment of thirty years for murder, twenty years for ABWIK, thirty years for first-degree burglary, thirty years for armed robbery, and five years for criminal conspiracy.

Applicant filed a timely notice of appeal, and Stephan V. Futeral, Esquire, represented him on appeal. On June 7, 2004, Applicant, through his counsel, filed a brief pursuant to *Anders*

v. California.[1] In his *Anders* brief, Applicant raised the following issues:

1. Did the lower court err in denying [Applicant's] *Batson*[2] motion?
2. Did the lower court err in failing to use [Applicant's] fifth and sixth voir dire questions?
3. Did the lower court err in permitting a witness for the State to testify regarding the witness's prior consistent statement?
4. Did the lower court err in denying [Applicant's] motion for a directed verdict?
5. Did the lower court err in refusing to charge the jury regarding voluntary manslaughter?
6. Did the lower court err in permitting the prosecution, during closing argument, to vouch for witnesses who did not testify at trial? [and]
7. Did the lower court err in refusing to charge the jury regarding [Applicant's] proposed circumstantial evidence charge?

Thereafter, on July 29, 2004, Applicant submitted his *pro se* brief, in which he raised the following issues:

1. [Applicant's] trial was unconstitutionally held because the lower court lacked subject matter jurisdiction;
2. The lower court erred by denying [Applicant] a timely damanded [sic] preliminary hearing;
3. The lower court erred in denying [Applicant's] *Batson* motion;
4. The lower court erred in denying [Applicant] effective assistance of counsel;
5. The lower court erred in denying [Applicant's] motion for a directed verdict; [and]
6. The lower court erred by failing to supply severance.

On December 6, 2004, the South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Steed*, Op. No. 2004-UP-608 (S.C. Ct. App. filed December 6, 2004). The remittitur was issued on January 6, 2005.

CURRENT APPLICATION

In his current application for post-conviction relief Applicant alleges he is being held in custody unlawfully for the following reasons:

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[1] 386 U.S. 264 (1967).
[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).

1. Newly discovered evidence, the existence of which could not have been discovered sooner through the reasonable exercise fo diligence, has become known to the Applicant and which validates his claims of actual innocence; [and]
   a. Investigation is on-going, but to date the Applicant has learned that at least one witness who testified at his trial has come forward seeking to recant trial testimony implicating [Applicant] in the armed robbery and murder.
2. Further this newly discovered evidence indicates that the Applicant's conviction is the result of prosecutorial misconduct involving the intimidation of one or more witnesses whose recanted testimony was known to the State prior to trial.
   a. Investigation is on-going, but to date the Applicant has learned that at least one witness who testified at his trial attempted to recant statements implicating Applicant in the crime but was threatened or coerced by agents of the State to testify against the Applicant and did, in fact, testify against the Applicant.

Respondent made its return and motion to dismiss on April 18, 2018, requesting the applicant be summarily dismissed for failing to make a *prima facie* showing of newly discovered evidence. Thereafter, on May 2, 2018, Judge Harrington, in her capacity as Chief Administrative Judge for the Ninth Judicial Circuit for Common Pleas, Charleston County, issued a conditional order of dismissal, provisionally denying and dismissing the application. Applicant filed his "Response to Conditional Order of Dismissal" on May 17, 2018, alleging Thomas Lyons Bond, one of Applicant's co-defendants, had recanted part of his testimony at trial[3] and further alleging Michael Griffin, another one of Applicant's co-defendants, had recanted a substantial portion of his trial testimony, in which he admitted to shooting Porter Walker.[4]

STATEMENT OF FACTS ADDUCED AT TRIAL

During school on May 3, 1999, John Griffin and Demetrius Green discussed robbing a house in Woodside Manor, where they could find drugs and money. Tr. 324-25, 379-80. John Griffin then contacted his brother, Michael Griffin, and Michael Flynn and told them what Green

[3] Applicant submitted an affidavit from Bond in support of this allegation.
[4] Applicant wholly failed to submit an affidavit in support of this allegation with his response to the conditional order.

had said about this house in Woodside Manor. Tr. 382, 431. Michael Griffin, Flynn, and Tommy Bond then came to pick up John Griffin and Green. Tr. 327, 384-85, 535, 758-60. They all drove by the house in Woodside Manor, but no one was home; so they planned to return later that evening. Tr. 330, 387.

Later that evening, Flynn called Applicant (a.k.a. "T-Lo"), and Applicant came over to Peter Davis's house, where Michael Griffin, Flynn, and Bond were. Tr. 434, 540, 760-62. Flynn and Applicant both had nine millimeter guns, and Michael Griffin had a .32 revolver. Tr. 442, 480, 493, 540-41, 577, 581, 762. Around nine o'clock, Michael Griffin, Bond, Flynn, and Applicant went to pick up Green and John Griffin in two separate cars. Tr. 331-32, 387-89, 543. Bond and Griffin were in a four-door Honda, and Applicant and Flynn were in a dark green Alero. Tr. 765. John Griffin got in the car with Michael Griffin and Bond, and Green got into the car with Applicant and Flynn. Tr. 332, 388-89, 444, 543. The two cars drove to Woodside Manor, saw someone was home, and parked at a church located on the street behind the neighborhood. Tr. 332, 389, 446, 543.

Applicant, Michael Griffin, and Flynn then exited their vehicles, and went through a path, which led to Woodside Manor. Tr. 332-35, 390, 446, 544. All three of them had their faces covered with bandanas, went to look around the house with their guns out, and knocked on the back door. Tr. 446-48. No one answered, so Applicant told Michael Griffin to take his bandana off, give Applicant his gun, and knock on the front door. Tr. 448-50. Michael Griffin knocked, and two men came to the door. Tr. 452. After hearing the knock, Porter Walker, who was inside watching television with Christopher Gorski, asked who it was, to which Michael Griffin said "Mike." Tr. 161, 221-22, 452. Walker opened the door and attempted to tell Michael Griffin he had the wrong house; but as Walker went to close the door, Applicant and Flynn came around

the corner and Michael Griffin kicked the door in. Tr. 222-23, 452. As the men entered the home, Applicant[5] shot Walker. Tr. 223, 452-55. Walker got to the ground, and Applicant stood over him screaming at Walker not to look at Applicant's face, to keep his mouth shut, and demanding money and drugs. Tr. 225-26.

Meanwhile, Michael Griffin went into the back bedroom, where Walker's girlfriend (Tonya Holbrook) and son were sleeping. Tr. 161. Michael Griffin put a gun in Holbrook's face and asked where the money and drugs were. Tr. 162. Gorski then entered the room with Flynn and Applicant. Tr. 163, 201, 227-28, 456-57. At that time, Walker ran out of the house to find help. Tr. 229. The men then led Gorski back to the living room, where they shot him multiple times. Tr. 166-67, 202, 229-30, 459-60.

Michael Griffin, Flynn, and Applicant then left the house and returned to the cars, where Bond, John Griffin, and Green were waiting. Tr. 336, 392-93, 461, 545. When Applicant got back in the car with Green and Flynn, he told Flynn: "[N]ext time, you get your priorities straight." Tr. 336. After they had dropped John Griffin and Green off, Applicant, Flynn, Bond, and Michael Griffin went to Peter Davis's house. Tr. 546, 767. Applicant changed clothes, and stated: "[I]f anyone tells, we're dead." Tr. 549. They then went to a woman's (Asa's) house, around 11:30 that evening. Tr. 550, 770-71. Applicant stayed there for about an hour, then left in the green Alero. Tr. 771.

A day or two later, Bond, Green, John Griffin, and Michael Griffin were interviewed by law enforcement. Tr. 281-85, 339, 401, 464, 552. All four of them gave statements to law enforcement implicating not only themselves but also "T-Lo" and Flynn in the crimes that

[5] At trial, Walker identified Applicant as the man who shot him, stating: "I have a man standing over me that has already shot me once, I'm not going to forget his eyes." Tr. 226. Walker further stated he knew Applicant was the man who shot him because Applicant had the same eyes Walker was looking into and he was one hundred percent (100%) certain Applicant was the man who shot him. Tr. 267-68.

occurred on Woodside Manor on May 3, 1999.[6] Tr. 285-88, 307, 343-44, 359, 424-25, 501-02, 555. At trial, all four identified Applicant as "T-Lo." Tr. 330, 336, 396, 465, 559.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant presented the testimony of Thomas Bond, Michael Griffin, Porter Walker, and Ninth Circuit Public Defender Pennington (Counsel). This Court also had before it the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the record on appeal, and the records from this current action.

Thomas Bond's Testimony

Applicant first presented the testimony of Thomas Bond. Bond testified he and his co-defendants were at a friend's house, when they heard Walker had certain things they wanted; so they planned to rob Walker. He elaborated he, Michael Griffin, Flynn, and someone he had never met before were part of planning this robbery. He further elaborated this unknown individual was not charged as a co-defendant, and Bond has not seen this person since May 3, 1999. Bond testified he played an active role in planning the robbery. He testified two cars went to the house and parked on the street behind the house. He further testified the robbery, however, did not go according to plan, as people were shot. He elaborated he was not in the house, but he knew the people who went inside the house were armed. He further elaborated he did not expect anyone to get shot.

Bond also testified he was arrested on May 5, 1999; but during May 3rd and May 5th, he

[6] It is important to note before Bond gave the statement to law enforcement in which he implicated Applicant, himself, and his other co-defendants, he gave a statement to law enforcement implicating a man named Steve Smith in these crimes. Tr. 553-54. At trial, Bond admitted the first statement to law enforcement was a lie, and he only gave that statement to "exact revenge" on Smith. Tr. 553-54. He further admitted the second statement to law enforcement was accurate. Tr. 555. There were only twenty minutes in between the first and second statements. Tr. 554.

and his co-defendants discussed what they would say to law enforcement. He further testified on May 5th, he identified Applicant as being involved in these crimes, but Applicant was not there and was not part of the plan. He elaborated he and his co-defendants had discussed beforehand they would make Applicant the fall guy because Applicant had previously cheated them out of some money.

He testified he attempted to retract his statement implicating Applicant while in the county jail, but he was under pressure from the guards in the dorm. He elaborated the guards threatened him with lock-up and pressured him to recant his recantation. He further elaborated because of this pressure, he testified in accordance with his first statement to law enforcement.[7] He testified he testified the way he did at Applicant's trial because he was worried he would get life in prison if he did not testify accordingly. Bond further testified he did not tell his attorney he was being asked to testify untruthfully. He testified he at Applicant's trial, Counsel cross-examined him on his recantation, but he could not recall the reason he gave for recanting.

Bond also testified he served seventeen years in SCDC for his involvement in these crimes, and he was released on April 30, 2016. He testified when he was released from SCDC, he met with Applicant's counsel's investigator, Steve Russell, to discuss what happened on May 3, 1999. He elaborated he told Russell the truth and gave an affidavit recanting his trial testimony. He further elaborated he did not receive any threats or force for the affidavit, and he has no fear of reprisal from Applicant.

On cross-examination, Bond testified he actually gave two statements to law enforcement, both of which told different stories. He further testified in his first statement he implicated Steve Smith, and he admitted at Applicant's trial this statement was not true. He

[7] Despite Bond's assertion he testified in accordance with his first statement to law enforcement, this is simply not true. As aforementioned, Bond gave two statements to law enforcement: the first in which he implicated Steve Smith in these crimes and the second in which he implicated himself, Applicant, and his other co-defendants.

testified he then gave a second statement to law enforcement, in which he implicated himself, Applicant, Michael Griffin, John Griffin, Flynn, and Green. He explained at Applicant's trial, he testified that second statement was true. Bond testified he cannot provide any information about this unknown individual. Bond admitted he has changed his story multiple times.

He also testified he wrote a letter to Applicant prior to Applicant's trial, in which he apologized to Applicant for getting him mixed up in this when he had nothing to do with these crimes. He further testified in that letter, he told Applicant he was told to use the name "T-Lo." He testified he was asked about that letter at Applicant's trial; and at the time, he testified it was true, but that is a lie. He further testified at Applicant's trial, the jury heard his recantation through this letter but chose not to believe it. He testified he and his family did not receive any threats from Applicant prior to Applicant's trial, because he had no contact with Applicant.

Michael Griffin's Testimony

Following Bond's testimony, Applicant presented the testimony of Michael Griffin. Michael Griffin testified he was involved in the crimes occurring at Walker's house on May 3, 1999. He testified he pled guilty to his involvement in these crimes and was sentenced after Applicant's trial. He further testified he received twenty years imprisonment for his involvement in these crimes, and he was released from SCDC in August of 2016.

He testified at Applicant's trial, he testified he did not fire any shots on May 3, 1999. He further testified, however, that was not true. He testified in April of 2018, he met with Russell about this incident, and told him he shot Walker. He elaborated three men went into Walker's house with guns, and Gorski was shot nine times with a nine millimeter and died as a result. He further elaborated his .32 bullet is still in Walker, but no one would believe he shot Walker because Walker believes an African-American man shot him. He testified Walker testified at

trial Applicant shot him. He further testified he did not lie about anything else at Applicant's trial, and he only lied about whether or not he had fired any shots.

On cross-examination, Michael Griffin testified Applicant was there and involved in these crimes on May 3, 1999. He further testified he gave a statement to law enforcement about the events that occurred before, during, and after these crimes, which implicated Applicant; and he testified to the whole story at Applicant's trial.

He did not recall writing any letters to his girlfriend prior to Applicant's trial and did not recall being asked about any letters at Applicant's trial. He testified, however, Applicant wrote him letters prior to trial, in which he asked Michael Griffin to change his story.

Porter Walker's Testimony

Next, Porter Walker testified. Walker testified he was the victim to the crimes occurring at his home on May 3, 1999. He recalled telling law enforcement an African-American man shot him. He further testified hearing Michael Griffin's testimony did not change his opinion an African-American man shot him. He explained Michael Griffin's testimony does not change his certainty.

On cross-examination, Walker testified he recalled identifying Applicant at trial. He testified he remembered explaining at trial he recalled Applicant's eyes. He further remembered explaining he would not forget Applicant's eyes because Applicant was standing over him with a gun pointed at his face.

Counsel's Testimony

Finally, Applicant presented the testimony of Counsel. Counsel testified he was Applicant's lead trial counsel and represented him from his arrest to the trial. He further testified he investigated witnesses changing their stories throughout his representation of Applciant. He

explained he received a letter from Applicant, which was written by Bond. He further explained in that letter, Bond admitted to falsely naming Applicant and also admitted he was told to implicate "T-Lo." He testified in that letter, Bond told Applicant "Little T," who was a friend of Bond and the other co-defendants, had instructed him to name "T-Lo." He testified he had no opportunity to interview Bond prior to trial because he was represented by counsel, but he knew Bond was going to testify at trial that Applicant was involved in these crimes. He further testified he questioned Bond about the letter he wrote and contended Bond was lying. He explained he argued to the jury Bond was untrustworthy and was lying about a material issue in the case. He also testified he knew nothing about Bond's story the guards in the detention center were pressuring him.

Counsel also testified he had a letter Michael Griffin wrote, in which Michael Griffin admitted to falsely identifying Applicant. He testified he cross-examined Michael Griffin on this point and also cross-examined Michael Griffin on whether a .32 revolver was used to shoot Walker.

He testified his theory of the case was these co-defendants were misidentifying Applicant in order to protect someone else. He further testified his theory at trial was Walker identified Applicant mistakenly. He explained he argued to the jury Walker had initially given an extremely vague description of the perpetrator to law enforcement. He further testified he argued Walker's identification of Applicant's eyes was not sufficiently reliable because Walker was exposed to the news media prior to trial. He testified he attempted to undermine Walker's identification of Applicant as the shooter.

On cross-examination, Counsel testified Michael Griffin's testimony he shot Walker does not absolve Applicant of guilt under the theory of the hand of one is the hand of all. He also

testified his theory of the case was all of these witnesses were lying when they identified Applicant. He explained he presented this theory to the jury through highlighting the witnesses' prior recantations, other lies they had told, and their motivation to testify at trial. He testified he presented both the letter Bond wrote to Applicant and the letter Michael Griffin wrote to his girlfriend, in which both Bond and Michael Griffin recanted their implication of Applicant, at trial. He further explained he attempted to suggest the perpetrator was one of two other males who were associated with the co-defendants' gang. He also testified Applicant was not a member of this gang, but rather was aligned with another gang. Counsel further testified Michael Griffin and Bond were not the only two co-defendants who testified against Applicant at trial, but rather John Griffin and Green also testified.

On redirect examination, Counsel testified he questioned the co-defendants as to their motivations to tell the truth or to lie. He further testified although Michael Griffin and Bond were strong witnesses, he went after them heavily on cross-examination. He testified although Applicant was identified facially, no one identified him by name. He explained no one knew Applicant by his name, but rather knew them as "T-Lo."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Newly Discovered Evidence

This Court finds Applicant has wholly failed to set forth a *prima facie* case, which would

permit this application based on newly discovered evidence. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had;
> (2) Has been discovered since the trial;
> (3) Could not by the exercise of due diligence have been discovered before the trial;
> (4) Is material to the issue of guilt or innocence; and,
> (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

As an initial matter, this Court finds the testimony of Michael Griffin and Bond is not credible. The determination of whether new evidence is credible for purposes of a new trial rests with the trial court. *State v. Porter*, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In particular, "our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." *State v. Mercer*, 381 S.C. 149, 168, 672 S.E.2d 556, 565 (2009) (citing *Porter*, 269 S.C. at 621, 239 S.E.2d at 643). "When testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence." *State v. Deese*, 266 S.C. 534, 538 225 S.E.2d 175, 176 (1976) (citing

State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)). Moreover, where the ground for a new trial is the recantation of testimony, the closest scrutiny should be applied, as this type of testimony is ordinarily unreliable. *State v. Wright*, 269 S.C. 414, 421, 237 S.E.2d 764, 768 (1977). Additionally, inconsistency in statements undermines the possibility that the result of a new trial would be different. *See Johnson v. Catoe*, 345 S.C. 389, 548 S.E.2d 587 (2001) (holding the petitioner failed to meet the requirement for a new trial such that the evidence would probably change the result if a new trial were granted when the witnesses upon which the newly discovered evidence was based made prior inconsistent statements and, therefore, was not credible).

Here, Applicant wants to rely on Bond's recantation of his trial testimony and second statement to law enforcement, in which he implicated not only himself, Michael Griffin, John Griffin, Green, and Flynn but also Applicant in these crimes. At this point, Bond has told **four different** versions of the events that occurred on May 3, 1999. When Bond was initially arrested on May 5, 1999, he told law enforcement Steve Smith had committed these crimes. At Applicant's trial, however, Bond admitted this statement was not true, was a complete lie, and he only made this story up in order to "exact revenge" on Smith. Tr. 552-53, 569, 589. Twenty minutes after his first statement to law enforcement, Bond made another statement to law enforcement implicating himself, Applicant, Michael Griffin. John Griffin, Flynn and Green in these crimes. At trial, Bond testified this second statement was accurate and testified in accordance with that statement. Tr. 555. He also explained he changed his statement because he had "pangs of conscience" and there was "no sense in getting an innocent man locked up for life." Tr. 572, 590. Then, prior to Applicant's trial, Bond wrote a letter to Applicant stating: "[L]ook Dog, I'm sorry I got you F-ed up for all this bullshit when you didn't have anything to

do with it." Tr. 595. He further wrote Little T went into the house and murdered Gorski, but Bond was "told to say that you, T-Lo, did this shit because Little T said he would kill me if I put his name into this shit." Tr. 595-96. At trial, however, Bond admitted he wrote the letter to Applicant because his girlfriend and his family had been receiving threats. Tr. 555-58. He further admitted the letter was a lie, and he was not afraid of Walter Gardenhigher (a.k.a. "Little T"). Tr. 558. Now, Bond has once again changed his story to say he was threatened by the guards at the detention center to recant his recantation. Accordingly, this Court finds Bond's testimony is bereft of credibility and, therefore, is unreliable.

Applicant also wants to rely on the statement of Michael Griffin he shot Walker. At trial, Michael Griffin testified he did not fire any shots on May 3, 1999. Tr. 452-53. Now, he claims he shot Walker, two years after the completion his sentence and release from incarceration for his involvement in these crimes and twenty years after these crimes occurred. It is all too convenient Michael Griffin wants to claim he actually shot Walker, when he has no fear of retribution for this allegation.

Moreover, even if Michael Griffin shot Walker, he testified at the evidentiary hearing Applicant was, in fact, at Walker's house and involved in these crimes on May 3, 1999. Applicant would still be liable for these crimes under the theory the hand of one is the hand of all. Accomplice liability is premised on the notion that in determining individual culpability for joint action, the hand of one is the hand of all. *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014). Accordingly, under this theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *Id.* "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with

the principal offense." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). Additionally, in *State v. Barber*, the Supreme Court held the law of accomplice liability is appropriate where the evidence was "equivocal" on which of four robbers shot and killed the victim. 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). The Court explained: "Like a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Id.* In that case, a charge on accomplice liability was warranted because the State presented "evidence to support the conclusion that Barber was acting with the other men during the robbery." *Id.* at 237, 712 S.E.2d at 439.

Here, all four co-defendants who testified against Applicant at trial testified Applicant was involved in the commission of this home invasion. Tr. 285-88, 307, 343-44, 359, 424-25, 501-02, 555. Each co-defendant gave a detailed account of the events occurring on May 3, 1999, and each specifically highlighted Applicant's involvement. All four testified Applicant drove the second car to Woodside Manor and parked behind the neighborhood on Lincolnville Road. Tr. 332, 359, 389, 434-35, 437, 444-45, 532, 540, 543. In addition, all four testified Applicant was one of the three men who went through the woods to get to Walker's home. Tr. 335, 390, 446, 542, 544. Testimony was also presented Applicant had a gun that evening when he went to Walker's home. Tr. 335, 354, 449, 451, 485, 492-93, 541, 547. Moreover, multiple witnesses testified at least two of the three men were covering their faces with a mask or bandana. Tr. 164, 195, 201, 223-24, 447, 449, 495-96. Testimony was also presented at trial that as soon as the perpetrators kicked the door in, shots were fired. Tr. 223, 452-55, 501. Additionally, at the evidentiary hearing, Michael Griffin was steadfast Applicant was involved in the commission of

these crimes on May 3, 1999. Based on the foregoing, even if Michael Griffin did shoot Walker, this Court finds Applicant would still be liable under a theory of accomplice liability.

To the extent Applicant contends he should be granted a new trial to receive a jury charge on the hand of one, hand of all, this Court finds this allegation is wholly without merit. At the close of the State's case, the trial court indicated he would charge the jury with the hand of one is the hand of all. *See* Tr. 802. The trial court reiterated its position the following day. *See* Tr. 818. In fact, the trial court ultimately charged the jury:

> Finally, I tell you, Mr. Foreman, members of the jury, that the law is that if a crime is committed by two or more persons who are acting together in the commission of an offense, the act of one is the act of both or all, if there are more than two. Two persons can be guilty of killing another of murder when only one of the two had a weapon and only one shot. If both are together acting together, assisting each other in the commission of the offense, the law under those circumstances says that the act of one is the act of all.
> Sometimes it's said the hand of one is the hand of all.

Tr. 923. The jury ultimately found Applicant guilty as indicted for all counts. Accordingly, Applicant was afforded the benefit of a charge on the hand of one is the hand of all and is not entitled to a new trial on that basis.

This Court further finds this recanted testimony has not been discovered since Applicant's trial in 2000. As aforementioned, Bond wrote a letter to Applicant prior to his trial, in which he indicated Applicant had nothing to do with these crimes and he was told to implicate Applicant. *See* Tr. 555, 557, 595. Counsel thoroughly cross-examined Bond about this letter at trial and used this letter to support his theory of the case—that the co-defendants were lying in order to protect another individual. *See* Tr. 144-52, 595, 881-904. Similarly, Michael Griffin wrote a letter to his then girlfriend, indicating Applicant was being set up for these crimes and

another individual would go free. *See* Tr. 477, 509-11. Counsel again was able to cross-examine Michael Griffin about this letter and was even able to get Michael Griffin to admit he and his co-defendants had discussed lying for one another. Tr. 509-11. Accordingly, the jury was presented with both Bond's and Michael Griffin's recantations at trial and were given the opportunity to believe either Applicant was not involved in these crimes and the letters were true or Applicant was involved in these crimes and the letters were a lie. The jury chose to believe the latter. Based on the foregoing, this recanted testimony has not been discovered since trial and is not newly discovered evidence upon which a new trial can be granted.

Additionally, this Court finds the evidence offered by Applicant is not such that would probably change the result if a new trial were had. Bond and Michael Griffin were not the only two witnesses against Applicant at trial. Indeed, two other co-defendants, Green and John Griffin, testified against Applicant at trial, specifically identifying Applicant as being involved. *See* Tr. 327-36, 388-96. Moreover, April Mook, who was present both before and after the crimes and was privy to the planning of this robbery, specifically identified Applicant as being involved in these crimes and also testified to his involvement both before and after the commission of these crimes. *See* Tr. 760-71, 789-90. None of these individuals have recanted their trial testimony. Furthermore, at trial, Walker specifically identified Applicant as the man who shot him. Tr. 226. He testified he could see Applicant's nose and eyes, there was enough lighting so that he could easily see, and he got a good look at Applicant's face. Tr. 224-26. He specifically stated: "I have a man standing over that has already shot me once, I'm not going to forget his eyes." Tr. 226; *see also* Tr. 267-68. Walker testified he was one hundred percent (100%) certain Applicant was the shooter. Tr. 268. Moreover, at the evidentiary hearing, Walker testified nothing presented by Applicant changed his certainty in his identification of

Applicant. Accordingly, this Court finds the recanted testimony of Bond and Michael Griffin would not change the result if a new trial were had.

This Court finds Applicant has failed to make a *prima facie* showing he is entitled to relief based on the information set forth above. Specifically, this Court finds Applicant has wholly failed to establish the information presented at the evidentiary hearing would: (1) change the result if a new trial were had; (2) has been discovered since Applicant's trial; and (3) could not by the exercise of due diligence be discovered prior to trial. This Court further finds the inconsistency in Bond's and Griffin's statements are unreliable and undermine the possibility the result of a new trial would be different. Accordingly, this application must be denied and dismissed with prejudice.

CONCLUSION

Based on all 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 days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 5 day of February, 2019.

J. CORDELL MADDOX, JR.
Presiding Judge
Ninth Judicial Circuit

Anderson, South Carolina

State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

J. CORDELL MADDOX, JR.
JUDGE

100 SOUTH MAIN STREET
POST OFFICE BOX 8002
ANDERSON, SOUTH CAROLINA 29622
TELEPHONE: (864) 260-4636
FAX: (864) 260-6348
E-MAIL: cmaddoxj@scjd.state.sc.us

February 15, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: 2017-CP-10-5944/Robert Steed v State
2018-CP-10-1658/Kadrin Singleton v State

Dear Honorable Armstrong:

Please find enclosed orders for the above referenced cases that have been signed by Judge Maddox.

I would greatly appreciate it if you would file these in your office and provide certified copies to the attorney(s) of record.

Thank you for your assistance in this matter. With kindest regards,

Sincerely,

Cindy Hicks

Cindy Hicks
Administrative Assistant
Judge J. Cordell Maddox, Jr.

/ch
enclosure

BLAZER
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE SUPREME COURT
Robert Antonio Steed (#0271499), Appellant.	)	**CERTIFICATE OF SERVICE BY MAIL**
v.	)	
State of South Carolina, Respondent.	)	

1. I am the attorney in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina, and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Appeal** in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General Alan Wilson
PO Box 11549
Charleston, SC 29211

Attorney for Petitioner

This 25th Day of March, 2019

BLAZER
LAW FIRM

1037 Chuck Dawley Blvd D100
Mount Pleasant, SC 29464

Daniel Shearhouse
Clerk, SC Supreme Court
PO Box 11330
Columbia, SC 29211