

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

CERTIORARI TO ANDERSON COUNTY  
HONORABLE EUGENE C. GRIFFITH, circuit court judge

Bobby Joe Arflin, . . . . . Petitioner,

STATE OF SOUTH CAROLINA . . . . . Respondent.

PRO SE RESPONSE BRIEF

This matter comes before the supreme court by way of an memorandum in support of the writ of certiorari; for consideration in this case which is already on file with the South Carolina supreme court.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Anderson county clerk of court. Applicant was indicted at the March 18, 2014 term of the Anderson county Grand jury for Murder (2014-GS-04-00-426) and possession of a weapon during the commission of a violent crime (2014-GS-04-00-426), and two counts of solicitation to commit a felony Nos. (2015-GS-04-00340), and (2015-GS- 04-340), 2015-GS-04-00-341). Druanne D. White, Esquire represented defendant during his jury trial that was held August 24-27, 2015, he was convicted on all charges. The Honorable R. Scott Sprouse and a jury. At the conclusion of trial, the jury found applicant guilty as indicted on all charges Judge Sprouse sentence applicant to imprisonment for thirty (30) years for murder, ten (10) years each for two of the solicitation charges, ten (10) years for the third solicitation charge, and five (5) years for the possession charge, with all sentence running concurrently.

Defendant contends that the indictment he has received was (2014-GS-04-00-426), (30) years for murder, and (2014-GS-04-00-426 for possession a weapon during violent crime, and also indictment (2015-GS-04-00340 is running consecutive with indictment (2015-GS-04-00-426. There seem to be a variance between the essential elements alleged in the indictments. The three indictments for solicitation was run concurrent together which was (10) years each.

## INEFFECTIVE ASSISTANCE OF COUNSEL

In order to show ineffective assistance of counsel as a ground for relief, petitioner will prove that "counsel so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E. 2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland. 466 U.S. at 687-688.

The two - prong test is used in evaluating allegations of ineffective assistance of counsel. Petitioner will prove "that counsel's performance was deficient" and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E. 2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E. 2d 733, 735 (1977) (citing Strickland, 466 U.S. at 668).

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Walker v. State, 407 S.C. 400, 405, 756 S.E. 2d 144, 147 (2014) (quoting Strickland, 466 U.S. at 691) (alterations in original); See Ard v. Gatoe, 372 S.C. 318, 331, 642 S.E. 2d 590, 597 (2007). "When evaluating the reasonableness of counsel's conduct, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. Ard, 372 S.C. at 331, 642 S.E. 2d at 597 (quoting Strickland v. Washington, 466 U.S. at 690).

Petitioner presented credible evidence that had trial counsel conducted a thorough investigation by examining and photographing the vehicles, she would have discovered evidence that one of the bullets fired by defendant ricocheted off the victim's truck before striking the victim in the buttocks. This physical evidence along with defendant's testimony would have refuted the state's theory that defendant shot the victim from behind as the victim was running away. Defendant was prejudiced by counsel's deficient performance because if counsel had discovered such evidence and presented it to the jury, there is a reasonable probability the jury would have acquitted defendant of murder and found he acted in self - defense. Defendant's account of altercation was compelling and demonstrated that he had no choice but to shoot the victim to prevent the victim from attacking him. With a credible explanation as to how the victim was shot on his backside, the jury would have found the shooting was justified.

Applicant have suffered a miscarriage of justice and his conviction only stands due to severs denial of due process and equal protection in the state court in multiple and gross violation of the United States supreme court precedents and the United States constitution, that constitutes an outrage of mockery of justice that the Federal courts who sworn to uphold the United States constitution should not tolerate.

Applicant contends his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a definitive objective demanded of counsel in certain aspects of their service. And with this discretion the courts should admonish that if the right to counsel guaranteed by the constitution in to serve its purpose defendant can not be left to the mercies of incompetent counsel judge should strive to maintain proper standards of performance by attorney cases in their courts McMunn-v.-Richardson, 377 U.S. 759 90 S.Ct. 1444 256, E.d. 26736 (1970), Marzillo-v.-State, of M.D. 561 F. R. 2d S. C. 544 Example.

The applicant was unconstitutionally deprived of Law, by the act, and omissions of defense counsel, that deprived the applicant of effective assistance of counsel in violation of the fourteenth and sixth Amendments of the United States and Article 1, § 3 & 14 of the South Carolina constitution. [T]he United States supreme court has held the defendant must have a fair opportunity to present his defense, there be requiring the state to provide the basic tools for an adequate defense to an indigent defendant. Bailey v. State, 309 S.C. 455, 459, 426 S.E. 503 506 (1992) (quoting Ake v. Oklahoma, 470 U.S. 68, 105, S.Ct. 1037, 84 L.Ed. 2d 53 (1985)).

Counsel assistance resulted in ineffective because she failed to render reasonable effective assistance under prevailing professional norms, and that she he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Rorter v. State, 368 S.C. 378, 383, 629 S.E. 2d 853, 356 (2006). In order to prove prejudice, defendant will show "there is a reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different. "Cherry v. State, 300 S.C. at 117-18 386 S.E. 2d at 625.

"A reasonable probability is a probability sufficient to undermine confidence in outcome of trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E. 2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)). Applicant contends his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed It is a definitive objective description of the competency normally demanded of counsel in certain aspects of their services

Due to defendant's illiterely to the Law he was entitled to rely upon his counsel to make a reasonable decision pursuant to U.S. v. Dewalt, 92 F. 301209 without some authoritative guidance, the defendant cannot know whether he understood anything correctly at his trial. In this case the question before the court was whether or not there was prejudice to the defendant as a result of insufficient factual allegations contained in the records.

Where a State obtains a criminal conviction in a trial in which the accused is deprived of the effective assistance of counsel the state unconstitutionally deprives the defendant of his liberty, Cuyler, 446 U.S. at 343, 100 S.Ct. at 1175 the right to the effective assistance of counsel is recognized not for its own sake but because of the effect it has on the ability of the accused to receive a fair trial. United States v. Gronic, 466 U.S. 658, 104 S.Ct. 2039, 2096 (1984).

The United States supreme court have recently recognized that defense counsel must conduct a reasonable investigation to discover all reasonable available mitigation evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor. Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 2537, 156 L.Ed. 2d 471 (2003) (citation omitted). Particularized prejudice inquiry unnecessary. Frett v. State, 298 S.C. 54, 56, 378 S.E. 2d 249, 251 (1988).

If the attorney make a serious mistake which could effect the verdict reversal is required even if the attorney was general competent. Tromly v. Anderson, 439 F. Supp. 1250, 1256 (1977). Aff'd 584 F. 2d 807 (6th cir. 1978); Hyman v. Aiken, 924 F. 2d 1405 (4th cir. 1987).

Defendant further, contends that the state's evidence when viewed in the light most favorable to the prosecution, was so insufficient that no rational trier of fact could have found the essential elements beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2181, 61 L.Ed. 2d 560 (1991).

What we have in this case is a failure to investigate. Without investigating no real defense strategy can be prepared. In Ard v. Catoe, 372 S.C. 318, 642 S.E. 2d 590 (2007) the court wrote:

Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigations.

"Thompson v. Wainwright, 787 F. 2d 1447, 1450 (11th cir. 1986); see also Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. Strickland v. Washington, 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of facts and circumstances of the case. Trodel v. Wainwright, 667 F. Supp. 1456, 1461 (S.D.Fla. 1986), aff'd 828 F. 2d 670 (11th cir. 1987).

The American Bar Association (ABA) has specifically provided guidelines for a defense counsel's performance regarding investigation of a capital case "counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty. American Bar Association guidelines for the appointment and performance of defense counsel in death penalty cases, reprinted in 31 Hofstra L. Rev. 913, 1015 (2003) hereafter "ABA guideline). with respect to forensic evidence, the ABA directs the following. With respect to forensic evidence the ABA directs the following with the assistance of appropriate experts, counsel should aggressively reexamine all of the government's forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Id. at 1020 372 S.Ct. at 331-332, 642 S.E. 2d at 597.

#### DUE PROCESS CLAUSE VIOLATION

The United States constitution guarantees a criminal defendant the right to present a complete defense through the Due process clause of the Fourteenth Amendment and the sixth Amendment. Crane v. Kentucky, 476 U.S. 683, 690 (1986); State v. Schmidt, 288 S.C. 301, 303, 342, S.E. 2d 401, 402 (1986) (holding the sixth Amendment "constitutionalizes" the right to present a defense in a criminal trial). [T]he constitution guarantees criminal defendants a meaningful opportunity to present a

complete defense. Crane, 476 U.S. 683, 690 (quoting California v. Trombetta, 467 U.S. 479, 485 (1984)). South Carolina's constitution provides similarly. "Any person charged with an offense shall enjoy the right ... to be fully heard in his defense "S.C. const. Art. 1, § 14; see also S.C. code ANN. § 17-23-60 ("Every person accused shall at his trial be allowed to produce witnesses and proofs in his favor. Few rights are more fundamental than that of an accused to present witnesses in his own defense.

Taylor v. Illinois, 484 U.S. 400, 408 (1988)(citing Chambers v. Mississippi, 410 U.S. 284, 302 (1973)). The need to develop all relevant facts in the adversary system is both fundamental and comprehensive.

The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. Id. at 408-409 (quoting United States v. Nixon, 418 U.S. 683, 709 (1974)). The right to offer the testimony of witnesses is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Id. at 409 (quoting Washington v. Texas, 388 U.S. 14, 19 (1967)). Without question or hesitation, the United States supreme court declared [t]his right is a fundamental element of due process of Law. Id. undermining the "ostensible integrity of the investigation" is one method by which a defendant may present a defense. See Kyles v. Whitley, 514 U.S. 419, 448 (1995).

"Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears. " Schmidt, 288 S.C. at 303, 342 S.E. 2d Assoc. Mgmt. v. E.D. Sauls constr Co., 279 S.C., 219, 305 S.E. 2d, 236 (1983)); see also Rule 401, SCRE (defining relevant evidence. Further, [e]vidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent. "Id. citing Toole v. Salter, 249 S.C. 354, 154 S.E. 2d 434 (1967)); see also Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided evidence which is not relevant is not admissible.

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In State v. Page, 406 S.C. 272, 287, 750 S.E. 2d 623, 631 (Ct. App. 2013), this court held the trial judge abused his discretion by finding the proffered testimony offered by the defendant was not relevant. Page sought to introduce a text message and

testimony by a witness that the alleged victim had admitted to the witness that she had lied to the police. Id. at 288, 750 S.E. 2d at 632.

#### PROSECUTORIAL MISCONDUCT

The prosecutor's duty in a criminal prosecution is to seek justice. Although the prosecutor should "prosecute with earnestness and vigor," he or she may not use "improper methods calculated to produce a wrongful conviction." 1742 Generally, the use of such methods is grounds for mistrial or reversal of a conviction if it results in an unfair trial violating the Due process. If the prosecutorial misconduct is intended to cause a mistrial, the double jeopardy clause may bar further prosecution.

Improper comments to justify reversal of a conviction, it is not enough that the prosecutor's remarks or conduct were improper [t]he relevant question is whether the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.

In 2013, Bobby suffered from cancer diabetes kidney disease, neuropathy in both feet, busted cartilages in both knees, and arthritis in his knees, hips, mid lower, and upper back, shoulder elbows and wrists. (ROA. p. 857- 858, 11. 22-25 & 1-5) Bobby's eyesight suffered as a result of diabetes and from years of work as a diesel mechanic. (ROA. p. 858, 11. 5-8) His argument at trial was self- defense.

The night began on Williamson road with a birthday party and James Madison, explained most of the actors as follows: "James" Madison testified that he lived on Williamson Drive. (ROA. p. 262, 15-20) He added that his mother-in law father-in law and a man named Larry lived across the street (ROA, p. 262, 11. 24-25) Larry is James"s wife uncle; ROA. p. 263, 11. 2-3) He explained that Brenda Masters, his sister-in law, lived next door. (ROA. p. 263, 11. 5-10). He detailed how the Williamsons

were all related and how they lived within walking distance of one another. (ROA. p. 263) there was a birthday party for a niece. The party was at Jamie's in-law's home across the street (ROA. p. 264, 11. 24-25) at some point Jody Powell arrived. ( ROA. p. 265, 11. 23-25) Jody was Brenda's boyfriend. (ROA. p. 266, 11. 5-6) Around 8:30 p.m. that night Bobby Arflin clips Jody's truck with his own truck. An argument between the two there was a physical altercation. When Bobby shot Jody. Bobby maintained the shooting was in self-defense.

In criminal cases, the court reviews errors of Law only. State v. Baccus, 367 S.C. 41, 48 625 S.E. 2d 216, 220 (2006). The court is bound by the trial court's factual findings unless there are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E. 2d 105, 111 (2000). In review, the court is limited to determining whether the trial court abused its discretion. State v. Rochester, 301 S.C. 196 200, 391 S.E. 2d 244, 247 (1990), the court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E. 2d 827, 829 (2001).

THE TRIAL COURT ERRED WHEN IT EXCLUDED EVIDENCE OF THE VICTIM'S ARREST FOR CRIMINAL DOMESTIC VIOLENCE.

1. Standard of review concerning the exclusion of evidence.

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. "State v. Douglas, 632 S.E. 2d 845 (2004). An abuse of discretion occurs when the trial court's decision is based on an error of law or upon factual findings that are without evidentiary support. State v. McEachern, 731 S.E. 2d 604, 609 (Ct. App. 2012) citing, State v. Morris, 656 S.E. 2d 359, 368 (2008).

As expanded upon below, because the state questioned one of its witnesses on re direct examination concerning whether the victim had the character trait of peacefulness, the defendant was entitled under the common law of South Carolina to present the jury with rebuttal evidence that the victim was capable of reacting violently when angered. That rebuttal evidence consisted of the testimony of Kerri Powell, the victim's former wife, concerning the victim slapping her on July 18, 2009, with sufficient force to knock her to the ground, and the testimony of Anderson county Deputy Sheriff Brian L. Lewis, about his investigation of the victim slapping Ms. Powell and his arrest of the victim for criminal domestic violence as a result. The trial court did not allow the introduction of either Ms. Powell's testimony or Deputy Lewis testimony and the trial court did not allow defendant's counsel to ask the state's witness, who testified that he had never seen the victim fight anyone, about the CDV arrest or re-cross examination. By refusing to allow the introduction of defendant's rebuttal evidence, the trial court abused its discretion. Moreover, Defendant was prejudiced by the exclusion of evidence concerning the victim's arrest for the CDV and nature of the CDV. Therefore, defendant's conviction should be reversed and the case remanded for a new trial.

Prior to trial, the state moved to exclude the testimony of Ms. Powell and Deputy Lewis. The trial court allowed defendant to proffer the testimony of both Ms. Powell and Deputy Lewis.

Relying on the incident report he prepared soon after his arrest of the victim, Deputy Lewis testified in his proffer that Ms. Powell told him she and the victim had a bad argument the day before the incident, and she had left the marital residence. (ROA. p. 97, 11. 20-21) According to Ms. Powell, she came back home the next day, and she and the victim had another argument about a cell phone bill. (ROA. p. 97, 11. 20-24) Ms. Powell told Deputy Lewis the argument escalated, and she went to gather a few things to leave again. (ROA. p. 98, 11. 3-9) the victim followed Ms. Powell to the bedroom and then followed her into the bathroom.

(ROA. p. 98, 11. 7-10). In the bathroom, Ms. Powell began to yell at the victim and at that time the victim slapped her on the left side of her face with sufficient force to knock Ms. Powell to the ground. (ROA. p. 98, 11. 11-14). According to Ms. Powell, after the victim slapped her, she got her things, left the house, went to a friend's house and called 911. (ROA. p. 98, 11. 15-17). Deputy Lewis asked Ms. Powell for a written statement. (ROA. p. 98, 11. 18-20). However, Ms. Powell would not do so, (Id.) Deputy Lewis photographed Ms. Powell's face. (ROA. p. 98, 11. 20). He then went to the marital residence and spoke with the victim who did not deny striking Ms. Powell. (ROA. p. 98, 11. 21-22). Deputy Lewis placed the victim under arrest. (ROA. p. 98, 11. 22-23). Ms. Powell testified that the victim "had never done anything like that to her before [ ]" and that is "very out of character for him. (ROA. p. 101, 11. 21-22, 24-25) She "begged" Deputy Lewis not to arrest the victim. (ROA. p. 102, 11. 5) Ms. Powell also testified that the victim was athletic, that he worked out, and was muscular. (ROA. p. 103, 11. 8-11).

The trial court granted the state's motion and excluded the testimony of both Deputy Lewis and Ms. Powell.

The trial, the state called James Madison, (ROA p. 262) During redirect examination of Mr. Madison, the state asked him, "Did you ever see him [the victim] fight someone?" (ROA. p. 328, 11. 20). Mr. Madison responded, "no ma'am" (ROA. p. 328, 11. 21). The state then asked Mr. Madison. "[u]ntil he died, did you ever see him [the victim] fight someone." (ROA. p. 328, 11. 22). Mr. Madison responded "no ma'am." (ROA. p. 328, 11. 22). Owing to the state's questions to Mr. Madison about whether he ever seen the victim fight someone, during re-cross examination of Mr. Madison. Counsel for defendant sought to question Mr. Madison about the CDV arrest, which resulted from the victim slapping his then wife on the left side of her face with such force that the blow knocked her to the ground. However, prior to asking Mr. Madison about the CDV arrest, the defendant's counsel requested a bench conference, and the conference was held outside of the presence of the jury. (ROA. p. 332-336).



The South Carolina it is settled that "[w]hen a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially. State v. McEachern, 731 S.E. 2d at 610 citing State v. Jackson, 364 S.C. 329, 336, 613 S.E. 2d 374, 377 (2005).

In the present matter, by eliciting testimony from Mr. Madison that he had never seen the victim fight before, the state introduced evidence of the victim's alleged character trait of peacefulness through that testimony - Defendant, therefore, was entitled to introduce the testimony of Deputy Lewis concerning the victim's slapping his wife in a fit of anger and his resulting arrest for criminal domestic violence as well as to question Mr. Madison in the presence of the jury about whether he knew that the victim had been arrested for CDV. In sum, it was an error of Law for the trial court to preclude introduction of evidence concerning the criminal domestic violence and therefore, the

535 S.E. 2d at 436 (citations omitted).

Trial court abused its discretion by doing so, Defendant is entitled to a reversal of his conviction and a new trial.

Defendant was prejudiced by the exclusion of evidence concerning the Criminal Domestic Violence.

Based on the re-direct testimony of Mr. Madison, the jury was left with the impression that the victim was a peaceful man who Mr. Madison had never seen get involved in a fight in the two years he had known the victim. However, the alleged trait of peacefulness is belied by the victim slapping his wife with such force that it knocked her to the ground and his subsequent arrest for criminal domestic violence. Indeed, the incident illustrates that when sufficiently provoked, the victim was capable of physical violence, more importantly, the Criminal Domestic Violence shows the victim could become so angered that he would physically assault someone weaker than he a woman and

even more troubling, his own wife. Furthermore, while it may be out of the ordinary for the victim, the testimony of both Deputy Brian L. Lewis and Kerri Powell about the Criminal Domestic Violence clearly show the victim would resort to violence when angered. Moreover, when the evidence presented at trial is considered as a whole, it is clear that exclusion of the victim's arrest for CDV prejudiced Defendant more specifically, defendant was 61 at the time of the incident occurred. (ROA. p. 856, 11. 22-25). He had worked his entire adult life as a diesel mechanic. (ROA. p. 857, 11. 15-18). In 2013, Defendant battled cancer, suffered from diabetes, kidney disease, and neuropathy in both feet and the front portion of his lower legs. (ROA. p. 857, 11. 22-25 thru p. 858, 1. 1 ). Further, defendant had "busted cartilages in both knees, (ROA. p. 858, 11. 1. 1-2). He had arthritis in his hips and mid, lower and upper back, in his shoulder, elbows, and wrists. (ROA. p. 858, 11. 3-5). He had a large hernia. (ROA. p. 311, 11. 20-23). And his eyesight suffered as a result of the diabetes (ROA. p. 858, 11. 5-8). And also defendant was taking blood thinner.

In stark contrast, the victim was young 41 years old at the time of the incident. (ROA. p. 652, 11. 22-23). He worked as a U.P.S. driver delivering packages. (ROA. p. 347, 11. 11-13). The victim worked out and was physically fit. (ROA. p. 306, 11. 8-13).

Defendant's Exhibit no. 1, ROA, p. 322 & supplemental (ROA. p. 1 ). During trial defendant presented evidence that victim was the aggressor that evidence was when the victim first came out his girlriend house she said, "the cops have already been called, let them handle it. "(ROA. p. 310, 11. 20-24). The incident occurred at night around 8:40 p.m. (ROA. p. 43-45). It was pitch dark outside. (ROA. p. 44-48). The victim had a phone in his hand. (ROA. p. 311. 11. 12-18). And that the victim "kind of pushed him the defendant back "(ROA p. 276, 11. 9-10). Indeed, Mr. James Madison told 911 that the victim confronted defendant on the road. (ROA. p. 313, 11. 18-25 through (ROA. p. 314, 11. 1-18). When asked if he or the victim said

anything about "kicking defendant's ass, James Madison said he had not said that, but if the victim did he did not hear him. (ROA. p. 328, 11. 20-25 through p. 329, 11. 1-3).

Defendant and the victim met, the victim said, "oh I heard all about you. (ROA. p. 310, 11. 4-7). The victim had recently purchased the truck that defendant had swiped in the accident. (ROA. p. 310, 11. 8-10). And the victim said, "this was not an accident. This was deliberate. Defendant would never have backed into this had it not been deliberate." (ROA. p. 310, 11. 11-15). Defendant was already on his phone with 911 when the victim came out of the house. (ROA. p. 320, 11. 17-19). The victim clearly had adopted the Williamsons negative view of defendant (ROA. p. 310, 11. 16-19). The Criminal Domestic Violence supports the evidence that the victim was the aggressor. Furthermore, the evidence of the CDV rebuts the testimony of Mr. Madison that the victim possessed the character trait of peacefulness specifically, Mr. Madison was asked.

Q. "Did you ever see him [the victim] fight someone?

A. "no ma'am.

Q. Until he [the victim] died did you ever see him fight someone.

A. "no ma'am. (ROA. p. 328, 11. 20-23). Brenda Masters, the victim's girlfriend, testified that when she went back outside she saw, [the victim] and the defendant in each other's face. (ROA. p. 350, 11. 18-20). And that their voices were raised. (ROA. p. 350, 11. 21-22). Her testimony explains why the victim was so angry. The victim couldn't understand him he could understand him knocking the side mirror off, but he couldn't understand him backing back into it and hitting his truck again, (ROA. p. 350, 11. 23-25 through p. 351, 11. 1-2).

She continued, they were really close. (ROA. p. 351, 11. 5). When asked what she did, Ms. Masters responded, " I tried to go up in between them and, you know just calm the situayion, tell them that it's okay, that he's you know, defendant had already called the police. They were on their way. (ROA. p. 351, 11. 23-25 through p. 352, 11. 1) when asked if she heard what the victim said to defendant, Ms. Masters testified, "he just he just told defendant he had heard stories about him,

he didn't he never knew him. He had only heard stories about how mean and hateful he was. And he could see now what a mean person he was "(ROA. p. 352, 11. 7-10). When asked if the victim touched defendant Ms. Masters responded, "he just barely pushed defendant. (ROA. p. 352, 11. 14-15).

See Pages 1038. The cross-examination of Ms. Masters went as follows:

Q. Now, I believe you told this jury the [the victim] had just gotten this truck and that had been told stories about how evil [Defendant] was; is that right?

A. Yeah, what a mean man he was.

Q. And that he was [the victim] had come out, and I think you said was about, what, and inch apart in each other's face?

A. After I had came [sic] back out the second time.

Q. And you're telling this jury that [the victim] just barely pushed the defendant?

A. Yes.

Q. Do you remember the night this occurred, when you gave your statement at the hospital, saying that Jody came out and confronted [Defendant]?

A. He came out and, yeah, asked him.

Q. Well, you used the word "confront, "though, what does confront mean to you?

A. Was asking him if he had hit his truck.

Q. Do you remember saying the night of the statement, the night that this occurred, that Jody was cussing at [Defendant].

Q. Okay, now you also said, didn't you that you had to get in between them both but you weren't talking to Defendant. You just told the jury and you said that night that you were talking to [the victim], saying, he's already called the police let the police handle it; is that right?

A. I was going in to try to get in between both of them.

Q. But you were facing [the victim] trying to talk him down because he kept insisting this was deliberate; is that correct?

A. He never said that. He [the victim] just couldn't understand his way just trying to understand. It looked deliberate. He was trying to understand. He could see [Defendant] knocking the mirror off. He didn't understand Defendant backing into

it and hitting it again. (ROA. p. 362-364).

Defendant's wife Sheila Arflin testified that she received a phone call from defendant at 8:42 p.m. the night of December 11, 2013. (ROA. p. 833, 11. 19-21). During that call, Defendant told his wife Sheila, "he were trying to get home and he hit the neighbor's truck. And he heard the neighbor coming out hollering at him and victim hit him. (ROA. p. 834, 11. 1-3). When asked where was he hit, Shelia responded, in the jaw.) (ROA. p. 834, 11. 4-5) The Defendant told his wife he had shot the victim and Ms. Shelia went out to the scene. (ROA. p. 834, 11. 6-10).

The Defendant had no other way to avoid the danger because he's were stuck between his truck and the victim. The defendant is without fault in bringing on the difficulty. Upon being hit, when the victim started coming towards defendant, the defendant had no other choice but to act.

The General Assembly finds that it is proper for Law-abiding citizen to protect them selves, their families, and other from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others. And that's for 16-11-420, section (e). The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to criminal nor should a person or victim be required to needlessly retreat in the face of intrusion or attack. And for this statute, 16-11-450 (b)(a).

#### SELF - DEFENSE

Defendant's sixth and fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to investigate whether one of the bullets fired by defendant in self-defense as the decedent was charging towards defendant and the bullets ricocheted off a vehicle before striking the decedent in the buttocks, where defendant was prejudiced by counsel's deficient performance because the state argued the location of the entrance wound on the decedent's

backside was evidence defendant shot the decedent with malice from behind.

The state argued the location of the entrance wound on the decedent's buttocks was evidence defendant acted with malice and shot the decedent from behind. See App. 961, 11. 9-11. If counsel had conducted a reasonable investigation, she would have discovered evidence that one of the projectiles ricocheted off the decedent's truck, thereby changing its trajectory, before striking the decedent in the buttocks. Counsel's deficient performance prejudiced petitioner because this evidence would have supported petitioner's defense and refuted the state's theory of the case. With this evidence, there is a reasonable probability the jury would have acquitted petitioner of murder.

#### SELF-DEFENSE VIOLATION

See Page 13. lines 5-25. Now, your Honor, my client is sixty-one years old he has never had any difficulty, has severe health problems. There is absolutely no indication that any of this and this is the other important thing, your Honor. In the statements, when Jody when the girlfriend of Jody is talking, she says, Jody has never met the defendant. However, they have told him all about my client, how he tried to run their family down in the road. How they've had all sorts of problems. And so, Jody -- I'm not casting dispersion on Jody at all. But the bottom line is he comes out with this other group of people who have threatened the defendant. They're all young and in good shape. And they come out, your Honor, confronting defendant in the dark, accusing him of intentionally running into some thing, cussing at defendant, getting in the face so much the girlfriend had to get between them.

And your Honor, the defendant is allowed to act on appearances. He's without fault in bringing about the difficulty. Anybody in that situation would have feared for their life or serious bodily injury or death, especially with these health reasons, these health problems, your Honor.

First, the defendant were without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger or death or serious bodily injury.

If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief. In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and victim.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The defendant has a right to act on appearances even though the defendant's was fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. The cussing of the victim may be considered in deciding whether the defendant's fear of death or serious bodily injury was reasonable. State v. Day, 341 S.C. 410, 416-17, 535 S.E. 2d 431, 434 (2000)(quoting State v. Muller, 282 S.C. 10. 316 S.E. 2d 409 (1984)). "[W]hen a defendant claims self-defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt.

State v. Dickey, 394 S.C. 491, 499, 716 S.E. 2d 97, 101 (2011) (citing State v. Wiggins, 330 S.C. 538, 544-45, 500 S.E. 2d 489, 492-93 (1998)). A person is justified in using deadly force in self-defense when:

(1) The defendant was without fault in bringing on the difficulty  
(2) The defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defendant is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

RULE 59(e)

THIS matter is before the court by way of a notice of appeal from and order denying petitioner Bobby Joe Arflin's application for post-conviction relief (PCR). At the conclusion of the trial of this PCR case, the circuit court took the decision on the merits under advisement. However, the state did not address each of defendant's claims and did not include specific findings of fact or conclusions of Law on any of defendant's claims. nevertheless, the circuit court signed the order. As the Law requires when a PCR order does not contain specific findings of fact and conclusions of Law, defendant's PCR counsel never filed a motion pursuant to Rule 59 (e) of the South Carolina Rules of civil procedure. See Marlar v. State, 375 S.C. 407, 410, 653 S.E. 2d 266, 267 (2007)(holding, "a Rule 59 (e) motion must be filed if issues are not adequately addressed in the PCR order).

The counsel never explained the "order of Dismissal does not contain specific findings of fact and conclusions of Law regarding each of the claims presented at the evidentiary hearing as required by S.C. code Ann. § 17-27-80 (2014). Counsel fail to filed the Rule 59(e) SCRPC. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59 (e), SCRPC, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a), SCRPC.

310 S.C. at 255-56, 423 S.E. 2d at 128; see also Smalls v. State, 422 S.C. 174, 195, 810 S.E. 2d 836, 847 (2018) (holding "the PCR court did not make specific findings); Ramirez v. State, 419 S.C. 14, 21 n.6. 795 S.E. 2d 841, 845 n.6. (2017)(finding error because "there are no findings of fact contained within the PCR courts order to support its conclusion); Simmons v. State, 416 S.C. 584, 592, 788 S.E. 2d 220, 225 (2016)(holding. The PCR court's general denial of all claims not specifically addressed in the PCR court's order does not constitute a sufficient Ruling on any issues since it does not set forth specific findings of fact and conclusion of Law. (quoting Marlar, 375 S.C. at 409, 653 S.E. 2d at 266)); Tappeiner v. State, 416 S.C. 239, 249 n.5. 785 S.E. 2d 471, 476 n.5 (2016) (reiterating the PCR court is required to make specific findings of fact, and state expressly its conclusions of Law, relating to each issue presented (quoting section 17-27-80)); Marlar, 375 S.C. at 408, 653 S.E. 2d at 266 (holding. Pursuant to S.C. code Ann. § 17-27-80. The PCR judge must specific findings of fact and state expressly the conclusions of Law retaning to each issue presented. Marlar, 375 S.C. at 410, 653 S.E. 2d at 267 (reiterating] our admonition from Pruitt; Hall v. Gatoe, 360 S.C. 353, 364-65, 601 S.E. 2d 335, 341 (2004) (repeating our admonition from Pruitt); Bryson v. State, 328 S.C. 236, 236, 236-37, 493 S.E. 2d 500, 500 (1997).

SUBJECT MATTER JURISDICTION

Defendant argues subject matter jurisdiction in this case. Because the true billed indictment for murder indictment number (2014-GS-04-00426) were convened on March 18, 2014, by the Anderson county grand jury. The state than indicted defendant again on a different indictment which was for solicitation to commit a felony, that was convened on March 17, 2015, by the Anderson county grand jury, case number (2015-GS-04-00340). The state fail to establish the time between the issuing of both indictments, one were from the actual incident which occurred on December 11, 2013, and the other from the solicitation charge between the dates of October 4, 2014, through November 4, 2014. The record reflect these two charges is two different years apart they should not have been joinded because they are in different time zone.

See page 9, lines 7-25. Your Honor, if you look at the single chain of circumstances, the indictments for the murder and the malicious injury, first of all, this happened on a road in another part of the county on December 11, 2013. The allegations the shooting did. The allegations are that the solicitation, if you look at the state's indictments -- your Honor, do you want me to hand those indictments up? I don't know if you have those in front of you or not. I have a copy, October of 2014, your Honor, so almost a year later. Your Honor, they are not proven by the same evidence. you have witnesses and a whole different investigator from the shooting incident, a whole different investigator and an informant on the other one that wasn't involved at all in the first one. So this is almost a year apart, different witnesses, different evidence. They're alleging that the defendant gave him a map and a list of names and that evidence in the later one, certainly not in the earlier one.

Page 10, lines 1-25. through page 13.

Your Honor, also, if you look at are they of the same general nature, all you have to do is look at the elements of solicitation versus the elements of malicious injury to personal property and murder.

They are totally different on that as well. And then are they of the same general nature. Your Honor, they're obviously not. And are they prejudicial, unduly prejudicial, of course they're unduly prejudicial. The defendant is facing a murder charge and they throw in he's trying to hire people to kill the witnesses. Now, your Honor, I would like to preserve the record, and in State v. Cutro, in 2005, the court held in South Carolina at that point changed policy a little bit, and they said, as you know, one of the thing that they're looking at in here is it unduly prejudicial. And one of the things you're looking at is it going to come in anyway under Lyle. And so, of course, Lyle, you're looking at first you've got to prove by clear and convincing evidence that it occurred, second, you have got to prove that it fit one of those things in 404 (b), motive, intent, whatever it is, and third you do the 40 weighing, is it unduly prejudicial, does the prejudice outweigh the probative value.

So what the court said in Cutro is okay, you don't have to look for purposes of joinder of changes only -- and this is really important to remember. In other words, if there is a Lyle analysis, if this is just a Lyle motion, no, the state has still got to prove by clear and convincing evidence. But it says for joinder purposes only. The state can skip that because this thing had been indicted and, therefore, there is sufficient evidence because it's been indicted. So, your Honor, I'm going to argue that precedent, and obviously I have an ethical duty to tell you there is a case, State v. Cutro, and some following cases that say that; however, I would like to argue that should be changed because indictment and preliminary hearing in this state mean nothing. And let me kind of outline that, and then I've got a witness on it.

First of all, for indictment, your Honor, hundreds of indictments go in. As a matter of fact, it was funny. When I was preparing for this I had already prepared this argument, and the Greenville paper had a, I think it was front page the other day about how everybody is raising cane because they do like 400 indictments in less than a day over there. Your Honor, I'm going to be submitting evidence from the clerk of court that indictment means nothing in this State. In fact they do hundreds or hundred

even in one morning. We're not even notified. But we, I mean the defense. We're not allowed to present anything. One officer goes in -- there are no rules of evidence whatsoever -- and presents indictment after indictment. And I think you're going to hear from Mr. Shirley's testimony at best it's about two minutes per indictment. We're not allowed to be there. We're we're not allowed to present any evidence. It certainly does not substitute for clear and convincing evidence, which is what would normally be required.

The CI in this case has a lengthy record going all the way back to the '80, crime after crime. He's got pending charges right now for molesting a seven - year old child. He's facing 25 years to life.

The Defendant contends that CI Roy Lawrence, did not pass the polygraph test when he fabricated a story up about defendant telling him about an incident. The date of the polygraph test with South Carolina Law Enforcement Division. Which was on November 19, 2014, the polygraph case P14-343 and also the polygraph examiner SA Rick Charles, with SLED. The testing issue: Examinee claimed that he was in a jail cell with defendant who was being held for a fatal shooting. He allegedly told examinee that there were 3 witnesses who saw the shooting and he wanted them to disappear before the trial. Examinee said defendant drew him a map of where the witnesses lived and wrote down their names. Examinee did provide the map and paper with the names to the Sheriff's office. He also had telephone contact with the suspect after he made bail over a monitored phone line. He said the suspect will give he some land to kidnap the witnesses and hold them captive until his trial was over. Examinee said defendant offered him some land to do this. He completed a written statement just prior to being administered the polygraph examination.

## EXAMINER'S RESULT

Test data analysis of the collected charts did not meet the numeric threshold required to render a conclusive opinion. The following relevant question were used:

R5) Did you lie in that statement you just wrote?

Examinee Response: No

R7) Did you lie in that statement you wrote today?

Examinee Response: No

### Post - test interview/comments

The investigator was advised of the results of the examination. Examinee has severe health problems and was unable to sit still during the test. This resulted in charts that were distorted and difficult to interpret.

### FALSE TESTIMONY VIOLATION

Conviction must be set aside if false testimony could have affected the judgment of the jury. Hernandez-v.-Estelle, 624 F. 2d 313 (5th cir. 1983).

The trial judge committed error in not granting direct verdict suspicion however strong suspicion does not sustain a conviction. State-v.-Hyder, 242 S.C. 372, 131 S.E. 2d 96 (1963). Defendant was not proven guilty beyond a reasonable doubt of all the elements of the offense charged in the indictment. Summons-v.-State, 264 S.C. 417, 215 S.E. 2d 883 (1975).

IN CONCLUSION

XXXXXXXXXXXX

WHEREFORE. APPLICANT RESPECTFULLY PRAYS THIS HONORABLE COURT  
WILL ALLOW HIM TO HAVE HIS FAIR BITE AT THE APPLE TO EXHAUST  
ALL AVAILABLE STATE REMEDIES THROUGH THE APPROPRIATE APPELLATE  
PROCEDURES AVAILABLE UNDER STATE LAW.

RESPECTFULLY SUBMITTED,

S/ Bobby Joe Arflin  
Bobby Joe Arflin, # 365273