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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, Circuit Court Judge

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Case No. 2014-CP-40-4524

Jeroid Price,

Petitioner,

vs.

The State of South Carolina,

Respondent.

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# NOTICE OF APPEAL

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Jeroid Price appeals the decision of the Honorable Diane S. Goodstein filed August 31, 2021 but received by counsel on September 7, 2021, the day after Labor Day.

Respectfully submitted,

/s/ John Shupper
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September 16, 2021

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| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL CIRCUIT |
| Jeroid John Price, #298791,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | Case No.: 2014-CP-40-4524<br><br>**ORDER GRANTING STATE'S MOTION TO DISMISS** |



This matter comes before the Court by way of an application for post-conviction relief filed July 21, 2014 by Applicant Jeroid John Price, SCDC # 298791, alleging he was entitled to a new trial based on various allegations of ineffective assistance of trial counsel, ineffective assistance of appellate counsel, trial court error, and newly discovered evidence. The State of South Carolina (Respondent) moved to summarily dismiss the application as successive to Applicant's prior post-conviction relief action, barred by the statute of limitations, and for failing to make a prima facie showing that he was entitled to relief based on newly discovered evidence. A hearing on Respondent's motion to dismiss was held before this Court at the Richland County Courthouse on November 12, 2019. At the conclusion of the hearing, the Court requested proposed orders from both parties. After review of the evidence presented at the hearing, the trial court record, and the arguments of the parties, this Court finds Applicant has failed to meet his requisite burden of proof and dismisses this action.

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its May 2003 term, the Richland County Grand Jury indicted Applicant for murder (2003-GS-40-2295) following the

December 7, 2002, shooting death of Carl Smalls at the Club Voodoo nightclub in Richland County following an altercation between two rival gangs. Cameron B. Littlejohn, Jr., and Amye Rushing (Rushing) represented Applicant. David M. Pascoe, Jr.; Donald N. Sorenson; and Bryan Jeffries, all of the Fifth Circuit Solicitor's Office, prosecuted the case. On December 15, 2003, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd, III, circuit court judge. The jury found convicted Applicant guilty as indicted and Judge Lloyd sentenced him to a term of imprisonment of thirty-five years.

Applicant, through counsel, filed a timely notice of Appeal. Applicant was represented on appeal by Chief Appellate Defender Joseph L. Savitz, III, of the South Carolina Commission on Indigent Defense – Appellate Defense Division and Rushing. On certification from the South Carolina Court of Appeals pursuant to Rule 204(b), SCACR, the South Carolina Supreme Court affirmed Applicant's conviction and sentence, finding an investigator's testimony that Applicant was a gang leader was inadmissible hearsay but the error in admission was harmless because the inadmissible hearsay was cumulative to other properly admitted evidence. State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006). The Remittitur was returned to the circuit court on May 5, 2006.

**First PCR Action (2006-CP-40-7168)**

Applicant filed his first application for post-conviction relief on December 4, 2006, alleging he was being held in custody unlawfully due to ineffective assistance of counsel for failure to object to a gang expert's testimony as a violation of the Confrontation Clause. Respondent made its return on May 14, 2007, requesting an evidentiary hearing. Applicant, through his attorney Charles T. Brooks, III, filed an amended application on April 30, 2008, alleging trial counsel was ineffective for failing to investigate the crime scene, failing to object to

a confrontation clause violation, and failing to object to improper closing remarks by the State,, as well as ineffective assistance of appellate counsel for failing to argue the prejudicial value of the improper hearsay testimony. An evidentiary hearing into the matter convened at the Richland County Courthouse on June 25, 2008, before the Honorable William P. Keesley. Applicant was present and represented counsel Brooks. Assistant Attorney General Brian T. Petrano of the South Carolina Attorney General's Office represented Respondent. By written order dated June 27, 2008, Judge Keesley denied relief and dismissed the application with prejudice.

Applicant then filed a timely notice of appeal of the denial of post-conviction relief and Appellate Defender Elizabeth Franklin-Best filed a petition for writ of certiorari was filed on his behalf by on June 15, 2009.

Respondent filed its return to the petition on August 31, 2009. The South Carolina Supreme Court transferred the case to the South Carolina Court of Appeal. On January 12, 2011, the Court of Appeals issued an order denying certiorari. The Court of Appeals issued a remittitur on January 28, 2011.

Applicant then filed a petition for writ of certiorari to the United States Supreme Court The United States Supreme Court denied certiorari on June 13, 2011.

**Federal Habeas Corpus Action (1:11-1172-JMC-SVH)**

Thereafter, Applicant filed a *pro se* petition for a writ of habeas corpus in the United States District Court for the District of South Carolina on May 12, 2011. Respondent filed a motion for summary judgment on August 31, 2011, as well as a return and memorandum of law in support of the motion on the same date. On March 21, 2012, United States District Court Judge J. Michelle Childs issued an order adopting the report and recommendation of the magistrate judge,

granted the motion for summary judgment, and denied Applicant's motions for evidentiary hearings. The district court denied a certificate of appealability.

## II. SUMMARY OF FACTS ADDUCED AT TRIAL

On the evening of December 6, 2002, Club Voodoo in lower Richland County hosted a sorority/fraternity party. December 15-16 Tr. pp. 250, 272, 282. Both Applicant and the victim, Carl Smalls (Smalls), attended the party. Applicant shot and killed Smalls during a gang-related altercation in the club's hallway after the party had ended and the club was shutting down. Applicant claimed the shooting was done in self-defense. December 17-19 Tr. pp. 290-384.

Smalls was a member of the Crips gang. December 15-16 Tr. p. 236. At trial, the State introduced significant circumstantial evidence that Applicant was a leader of a rival gang, the Bloods. Among the evidence seized from Applicant's apartment and admitted at trial were photographs depicting young men "throwing up" Blood hand signs and wearing Blood colors; a book of "different codes that [Bloods] would use like a dictionary;" an unusual amount of red clothing and hats of the type known to be worn by Bloods; and bullet-proof vests, worn by high-ranking gang members. December 17-19 Tr. pp. 311-12, 318-21, Police also seized a document containing a "pledge of allegiance" to the United Blood Nation. December 17-19 Tr. pp. 321-22. The pledge contained references to "Crip Killing Thugs." December 17-19 Tr. p. 328. Additionally, Applicant's codefendant, Ryan Brooks, told police Applicant was a Blood. December 15-16 Tr. p. 104.

Applicant and Smalls confronted each other during an altercation on the dance floor involving Bloods and Crips. December 15-16 Tr. pp. 173-75, 201, 229; December 17-19 Tr. pp. 276-77. The gang members were "throwing" gang signs and hand signals at each other and "flashing" their colors. December 15-16 Tr. pp. 277. Multiple witnesses testified Smalls was

"irate," "acting wild," and "beefing" with everyone that night. December 17-19 Tr. pp. 191, 389. After Smalls did the "Crip walk" and drew a line on the floor with his foot, Applicant "got in [Small's] face" and told him, "You're going to fall like 'The Matrix,'" which, according to one witness, meant "I'm going to kill you." December 15-16 Tr. pp. 275, 279, 286-87, 289. Witnesses then saw Applicant making hand motions like firing a gun, although Applicant denied this during his testimony. December 15-16 Tr. pp. 279-80.

Later, around 2:00 a.m. on the morning of December 7, the partygoers were leaving the club and congregating in the parking lot. A bystander, Joe Jones, saw Ryan Brooks heading purposefully from the parking lot back into the club carrying "steel" in his hand. December 15-16 Tr. pp. 200-02. Brooks, who is about 6'1" tall and weighs 200 pounds, wore his hair in braids and was not wearing a hat. December 15-16 Tr. pp. 89-90.

Brooks admitted he retrieved a pistol from a car, a chrome .380-caliber semi-automatic, then went back inside where he saw Applicant and Smalls in the hallway. December 15-16 Tr. pp. 94-95, 97-98. Brooks testified when he returned to the hallway, Applicant and Smalls were "having words." December 15-16 Tr. p. 94. Brooks testified Smalls rushed Applicant and had Applicant pinned against the wall. December 15-16 Tr. pp. 122-23. Brooks also admitted shooting Smalls one time, because, Brooks claimed, Smalls managed to grab Applicant's gun and pointed it at him, and Brooks was scared. December 15-16 Tr. pp. 95-98. Brooks testified he shot once when he saw Applicant and Smalls start "tussling," and then he immediately fled back outside the building. December 15-16 Tr. p. 98.

Applicant testified the party had ended, the music had been turned off, and the partygoers had exited the club to the parking lot when the shooting took place. December 17-19 Tr. pp. 365, 369-70. Applicant claimed he left the club to retrieve his .40-caliber pistol from a car

because the man in charge of counting the money from the party, Ty, asked Applicant to watch his back while he did so.[1] December 17-19 Tr. pp. 336-67. Applicant testified when he returned to the club, Smalls confronted him in the hallway. December 17-19 Tr. pp. 314-15. Applicant then related a similar version of events as Brooks, claiming Smalls rushed him and pinned him against the wall; Brooks fired one shot and ran; and Applicant was then able to get his own gun and shoot. December 17-19 Tr. pp. 314-84.

Marcus Jones worked for the party's DJ and testified the party ended around 2:00 a.m. December 15-16 Tr. pp. 135, 137. Jones testified the DJ had turned off the music and turned the club lights on to let the partygoers know the party was over, and they should exit the club. Tr. pp. 137-38. Jones further testified he was packing up the DJ equipment when he heard the first gunshot and looked up. December 15-16 Tr. p. 138, 166. Jones testified the club's lights were on when the shooting occurred. December 15-16 Tr. p. 140. Jones stated he saw the gunfire of the second and third shots, but it was difficult to see the gunman or the victim because the club doors were open and the cold air from outside had created fog inside the warm club. December 15-16 Tr. pp. 139-41. Jones also testified there was no one else in the area except for the gunman and the victim, and the victim was on the ground. December 15-16 Tr. pp. 144, 147. Jones described the gunman as being around 5' 5" and not very heavy. December 15-16 Tr. p. 143. He testified the gunman was wearing a "red, black, and white pinwheel hat." December 15-16 Tr. p. 142. Marcus Jones later picked Applicant out of a photo lineup as the gunman with the pinwheel hat. December 15-16 Tr. pp. 154-57.

Damien Martin was also present at the party on the night of the shooting, working for the DJ. December 15-16 Tr. p. 172. Martin saw the victim in a confrontation with another group of

[1] Ronald Hamilton, the club's promoter, testified he never asked Applicant to assist with security. December 17-19 Tr. pp. 388, 395.

guys on the dancefloor, which Martin testified he believed was gang-related. December 15-16 Tr. pp. 173-74, 178. Martin testified he heard the first shot and ducked down. December 15-16 Tr. p. 175. When the shooting stopped, he and Jones continued packing up the DJ's equipment and left the club approximately fifteen minutes later. December 15-16 Tr. p. 175.

Shonte Boyd was also still inside the club counting money at the time of the shooting. She testified the party had ended, the lights were on and the DJ was packing up his equipment. December 17-19 Tr. p. 220. According to Boyd, only people from the fraternity and sorority, the DJ, and the club employees were still in the building at the time of the shooting. December 17-19 Tr. p. 220. Boyd testified the shooting took place in the hallway, which was a small, narrow area leading into the main club. December 17-19 Tr. pp. 221, 223. Boyd further testified she ran and hid when she heard the first shot, and when she did she got a glimpse inside the hallway. She did not see anyone in the hallway except the victim. December 17-19 Tr. pp. 222-23.

Smalls died on the hallway floor, after calling 911 on his cell phone at 2:14 a.m. December 15-16 Tr. p. 185; December 17-19 Tr. pp. 107-09. Evidence collected at the crime scene, including bullet fragments recovered from an indentation in the floor, was consistent with the victim having been shot while lying on the floor. December 15-16 Tr. pp. 384-85. Marcus Jones testified Smalls did not appear to have a weapon and the gunman's life was not in danger when he killed the victim. December 15-16 Tr. p. 148.

Although he could not rule out other possibilities (i.e., that the victim fired a weapon), Lieutenant Joseph Powell testified the gunshot residue test performed on Smalls' left hand[2] was "most consistent" with Smalls being in a defensive posture and within five feet of a weapon that he did not fire. December 15-16 Tr. p. 408. Dr. Ronald Burns, the pathologist who performed

[2] Testimony established Smalls was right handed. December 17-19 Tr. p. 107.

the autopsy, likewise could not opine conclusively whether Smalls had been lying down when Petitioner shot him, but testified that his wounds were consistent with that scenario. December 17-19 Tr. p. 22. Spent .40-caliber and .380-caliber cartridges were recovered near the body. December 15-16 Tr. pp. 376-77.

## III. CURRENT ACTION BEFORE THE COURT

On July 21, 2014, Applicant filed this current application for post-conviction relief—his second application and third collateral challenge to his conviction. He filed amendments September 27, 2016. In this application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence of self-defense based on a new eyewitness;
    a. Mr. Price alleges he is also in possession of the letter he contends is newly discovered evidence, which also includes a typewritten statement by Mr. Price alleging the letter meets the requirements of McCoy v. State, 737 S.E.2d 623 (S.C. 2013) and Clark v. State, 434 S.E.2d (1993). This letter was dated August 4, 2013.
2. Ineffective assistance of counsel pursuant to Missouri v. Frye;
3. Unconstitutional jury charge on hand of one hand of all;
4. IAC PCR claim - "Counsel was ineffective for failing to object that the Judge erred in finding Petitioner was not prejudice by trial counsel's failure to object to the charge on the inference of malice from the sue of a deadly weapon. *Gibson v. State* decided May 11, 2016."
5. "The Judge abused his discretion when he allowed the State's key witness (aunt) to be qualified and be seated as a juror after she disclosed her relationship to the State's key witness during the proceedings."
6. Ineffective assistance of appellate counsel.

On November 7, 2017, Respondent filed a Return and Motion to Dismiss, seeking summary dismissal of this application as successive and barred by the statute of limitations as to all claims beyond newly discovered evidence and for summary dismissal of the newly discovered evidence claims for failure to make a *prima facie* showing that he was entitled to relief because the purported evidence did not meet the five-factor test for newly discovered evidence. On November 13, 2017, Honorable L. Casey Manning, acting in his capacity as Chief

Administrative Judge for Common Pleas for the Fifth Judicial Circuit, signed and filed a Conditional Order of Dismissal provisionally dismissing the application but allowing applicant twenty days to provide sufficient reasons why the matter should not be summarily dismissed.

Applicant, through his counsel John Shupper, filed a Response to the Conditional Order of Dismissal along with a memorandum of law on January 22, 2018, requesting a hearing and addressing only the claim of newly discovered evidence. In this response, Applicant claims he is entitled to a new trial based on the following after discovered evidence:

> -A letter purportedly from a Joshua Hamilton from Kannapolis, North Carolina who asserts he saw an episode of the television show "Gangland" featuring Applicant's case and disputes the portrayal of the shooting based on his presence at the club
>
> -An affidavit from Applicant that his sister told him a man named Cor[ie] Lawrence has information about his case
>
> -An affidavit from Corie Lawrence, who also avers he was present at the club during the shooting and has seen the episode of "Gangland" and similarly disputes the accuracy of the portrayal

Applicant asserts he filed this present action within one year of the discovery of this purported evidence and there is a genuine issue of material fact necessitating a hearing on these newly discovered evidence claims.

A hearing on Respondent's motion to dismiss convened at the Richland County Courthouse before this Court on November 12, 2019. Applicant was present alongside counsel Shupper. Respondent was represented by Assistant Deputy Attorney General Lindsey A. McCallister.

At the beginning of the hearing, Respondent moved to dismiss all claims except the newly discovered evidence issue as those issues were not addressed in Applicant's response to the Conditional Order. This Court agrees Applicant has not presented any explanation or

justification to why the Conditional Order should not become final as to those issues, and, accordingly, these allegations are summarily dismissed for the reasons set forth in the Conditional Order of Dismissal. As a result, these allegations will not be addressed below in this Court's order.

In response to the State's motion to dismiss the newly discovered evidence claims, Applicant presented the testimony of Corie Lawrence (Lawrence), an inmate within the South Carolina Department of Corrections who asserted he witnessed the shooting; and trial counsel Rushing. Applicant also attempted to introduce into evidence a letter allegedly written by a person named Joshua Hamilton (Hamilton), who also claimed to have witnessed the shooting and disputed the portrayal of the incident he saw on an episode of the television show "Gangland." The State objected to the letter's admission during the hearing because it was not a sworn statement, and Hamilton was not present at the hearing to testify.

The Court held the record open, at Applicant's request, for an additional sixty days until January 13, 2020, to allow Applicant further time to locate Hamilton. On January 13, 2020, the parties agreed to an additional fifteen-day extension until January 28, 2020. On January 28, 2020, Applicant again requested a further fifteen days, and the State objected. However, because the Court did not rule prior to the expiration of the fifteen days, Applicant was essentially granted the extension through February 14, 2020, by default. This Court has now closed the record, as Applicant has had an additional ninety days to locate Hamilton, but he has been unable to do so. The Court sustains the State's objection to Hamilton's letter and will not consider it as evidence in ruling on the issues before the Court.

Corie Lawrence's Testimony

Lawrence testified he has known Applicant for approximately thirty years and that they both lived in the same apartment complex (the Saint Andrews Apartment Complex) prior to the murder. He testified he has spoken to Applicant and Applicant's counsel since Applicant's conviction and incarceration. Lawrence affirmed his affidavit, submitted as an attachment to Applicant's reply to the Conditional Order of Dismissal and a part of this record, was signed by him and is truthful.

Lawrence testified he was present at the club the night of the shooting and has had time to reflect on the shooting over the past seventeen years. He acknowledged he has also viewed the episode of the television show, "Gangland," which features Applicant's case and the murder, on more than one occasion. Lawrence testified that on the night of the shooting, he heard an argument while the music was still playing in the club and then saw men struggling followed by gunshots. Lawrence testified he recalled the struggle and that the men were standing facing each other. On cross-examination, Lawrence reiterated that when he saw the struggle, the music was still playing, the party was still going, and people were still inside the club. Lawrence testified he did not know Applicant was involved in the struggle until after the crowd reacted to the gun-shots. Lawrence testified he heard three gun-shots, then ran from the club and went home.

Lawrence testified that despite being a witness to the shooting, he never contacted law enforcement about the incident after he learned Applicant was arrested for murder. Lawrence claimed he never came forward because he was a newlywed at the time of the incident, and he did not want his wife to know he was at the club on the evening of the shooting because she had asked him to stay home. Lawrence testified he and his wife got divorced in 2012, and,

accordingly, he is no longer concerned with her knowing he was at the club on the night in question.

Lawrence testified in the years since the murder, he has watched the "Gangland" episode portrayal of the murder, and he believes the portrayal is inaccurate. Lawrence stated he first saw the episode when he was in Charlotte in 2012. Lawrence stated he later watched the episode again, and, after his second viewing, was convinced that the television portrayal was incorrect. Specifically, Lawrence testified based on his personal observations, Applicant and the victim were struggling when shots were fired and both men were standing.

Lawrence testified the television portrayal of the incident on the "Gangland" episode disturbed him because he felt Applicant did not "get his just do" because the television show portrayed Applicant as a cold-blooded murderer. Lawrence stated the "Gangland" episode made him feel bad about Applicant's situation. On cross-examination, Lawrence admitted he did not know if the television portrayal of the incident in "Gangland" was accurate based on the evidence presented at trial. Lawrence was not a witness or otherwise present during Applicant's trial.

Lawrence testified that in 2002, he did not have any violent convictions on his record. Lawrence stated that at the time, he only had minor convictions of simple possession, driving under suspension, and "ABC" out of the State of Georgia, but no felony convictions that would have been useful for impeachment purposes. On cross-examination, Lawrence clarified that everything serious on his record prior to trial had been expunged. Lawrence testified he was brought back to South Carolina in 2012 and served forty-four months in the Alvin S. Glenn Detention Center as a pre-trial detainee. Lawrence recalled he was transferred to the custody of the South Carolina Department of Corrections, specifically the Kirkland Correctional Institute, in

August 2018 and has been housed there ever since. A review of the South Carolina Department of Corrections website reveals he is serving an aggregate twenty-year sentence for armed robbery, first-degree burglary, two counts of kidnapping, and escape.

Trial Counsel Amye Rushing's Testimony

Rushing, who acted as a second chair at Applicant's trial alongside lead counsel Cameron B. Littlejohn (who has since passed away), testified the defense team was unaware of Lawrence as a potential eyewitness to the shooting. Rushing testified the defense team wanted a neutral eyewitness to the shooting, and if they had been able to locate such a person, that person would have been called as a defense witness at trial.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the entire record of this case, including Applicant's general sessions records (including the trial transcript), Applicant's appellate records, Applicant's earlier collateral challenge records (including his first post-conviction relief action, the appeal of that action, and the subsequent federal habeas corpus action). This Court has also considered the legal arguments presented by both parties. After a thorough review of the records, evidence, and arguments presented, this Court finds Applicant has failed to meet his requisite burden of proof necessary for post-conviction relief based on his claim of newly discovered evidence and denies and dismissed this action with prejudice. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

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).

"Traditionally, in South Carolina, to obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (internal citations and quotations omitted); see also 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) (setting forth the five factors to be analyzed when considering a newly discovered evidence claim). The granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

Moreover, section 17-27-70(c) of the South Carolina Code of Laws authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." As an initial matter, this Court finds the testimony of Corie Lawrence as to the events at the club to be wholly lacking in credibility, and as discussed above, Applicant has failed to secure any admissible testimony from Joshua Hamilton, the other

witness discussed in his application for relief. Therefore, this Court finds Applicant has failed to make a prima facie case that any newly discovered evidence – that is, evidence that is material to Applicant's guilt or innocence which would probably change the result if a new trial were had – exists.

Lawrence's testimony appears to have primarily been formed based on his recent viewings of a television portrayal of the murder rather than an actual eyewitness account of the altercation from seventeen years prior. Clearly, the passage of time and the more recent viewings of the television portrayal have colored his recollection, which is inconsistent with the testimony presented from numerous witnesses at trial, including Applicant himself. For example, Lawrence contends the altercation and shooting happened on the dancefloor of the club while the party was on-going, whereas numerous witnesses at trial—including Applicant—all testified the party was over and the DJ and his associates were in the process of packing up their equipment when the altercation occurred in a hallway. At trial, the jury was presented with the testimony of Applicant and his co-defendant, Brooks, who testified the shooting was in self-defense and described what happened on the night in question – namely, that Applicant was acting in self-defense when the shots were fired. Additionally, the jury had a statement from Jason Wood, a friend of Applicant and Brooks, who did not witness the shooting, but who told law enforcement shortly after the shooting that Brooks told him they shot in self-defense after the victim rushed Applicant. Lawrence's testimony simply does not comport with this evidence presented at trial or Applicant's self-defense assertions, and this Court finds Lawrence's version of events is not credible.

Moreover, and more importantly, this Court finds Lawrence's testimony fails to establish or advance Applicant's assertion of self-defense in any way. Lawrence testified only that he saw

a struggle and saw both men standing up facing each other when the gun shots went off. Crucially, Lawrence did not offer any testimony indicating Applicant was not the aggressor in the confrontation or Applicant was "without fault in bringing about the difficulty," that Applicant had reason to fear for his life, or that Applicant could not have avoided the danger in any other way.[3] In fact, an equally plausible interpretation of Lawrence's vague testimony – if it is to be believed at all – is that Applicant and the victim were involved in a struggle because Applicant was the aggressor who was menacing the victim with a gun.

Accordingly, although Ms. Rushing credibly testified the defense would have used testimony from an independent eyewitness who could corroborate Applicant's version of events, this Court finds Lawrence is not such a witness. This Court finds Lawrence's testimony is not credible nor does it corroborate the testimony of Applicant and his codefendant or advance Applicant's defense of self-defense. The Court finds Lawrence's recollection of the events that night has been distorted by his repeated viewing of the "Gangland" episode, and his testimony did not accurately convey the actual events that took place on the night of the shooting based on the record from trial and the evidence previously presented in this case, including, most importantly, Applicant's own version of events. Indeed, the Court finds farfetched Applicant's argument Lawrence would have been presented as a witness at all, as his testimony contradicts Applicant's testimony about what happened and could easily be interpreted as supporting the

[3] To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger. State v. Slater, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007).

State's theory of Applicant as the aggressor. Accordingly, this Court finds the testimony of Corie Lawrence is not newly discovered evidence of self-defense, and the Court is firmly convinced the result of Applicant's trial would not have been different had Lawrence been presented as a witness. Therefore, this Court finds this application must be denied and dismissed with prejudice.

**IT IS THEREFORE ORDERED:**

1. The State's motion to dismiss is granted, and the application is denied and dismissed with prejudice.

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

**AND IT IS SO ORDERED**

This 15 day of November, 2020.

DIANE SCHAFER GOODSTEIN
Presiding Judge
Fifth Judicial Circuit

Kershaw, South Carolina.