

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

Case No. 2011-CP-18-1497

RECEIVED

JUN 17 2013

S.C. Supreme Court

Tiffany Sanders, ... Petitioner,

vs.

State of South Carolina Respondent,

APPENDIX

Salley W. Elliott
S. C. Attorney General
P. O. Box 11549
Columbia, S. C. 29211
(803) 734-0477
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ATTORNEYS FOR RESPONDENT

Dale T. Cobb # 1291
Thomas R. Goldstein #2186
Belk, Cobb, Infinger & Goldstein, P.A.
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ATTORNEYS FOR PETITIONER

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STATE OF SOUTH CAROLINA

County of DORCHESTER

IN THE COURT OF COMMON PLEAS

2007-GS-18-1206 / 2010-GS-18-0707

2011-CP-18-

1497

TIFFANY ANN SANDERS #342130

Full name and prison number (if any) of Applicant

v.

State of South Carolina

AMENDED
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Camille Griffin, Columbia, SC
2. Name and location of Court which imposed sentence Court of General Sessions
Dorchester County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-18-0707

CERTIFIED COPY
 FILED - RECORDED
 2011 AUG 24 PM 12:35
 2011 AUG 18 PM 12:35
 CHERYL
 CLERK OF COURT
 DORCHESTER

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) August 5, 2010 - 30 years
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty X
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. _____
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) I was not advised by my attorney that I had a right to appeal.

- (b) _____
(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) my attorney failed to call witnesses at trial
(b) my attorney failed to notify me of my right to appeal
(c) my attorney failed to cross examine Jessica Hans on the issue of my presence at the scene when the shots were fired.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED
(b) _____
(c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
(d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
i. _____
ii. _____
iii. _____
iv. _____
- (b) the name and location of the Court in which each was filed:
i. _____
ii. _____
iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) All of these grounds deal with ineffective assistance of
- (b) counsel and they are only ripe now for consideration.
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Michael O'Neal

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. At trial & sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Reversal & remand for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

Revised 3/2003
FILED - RECORD
AUG 18 PM 4:48
CHERYL GRAYSON
CLERK OF COURT
DORCHESTER COUNTY

I, Tiffany Ann Sanders, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tiffany Ann Sanders

SWORN to and subscribed before me this 8th
day of August, 2011.

John R. Barnes (L.S.)
Notary Public

My Commission Expires August 12, 2015

My Commission Expires: _____

11. (a) – My attorney failed to investigate, interview or call as witnesses, Sean Kammerer, or Amanda Sue Fender.

Mr. Kammerer would have verified that I was not involved in any pre-arranged plot to bring Jesse Ham to a location for the purpose of having Mr. Kammerer murder Mr. Ham and would verify that Ms. Sanders was not present when any shots were fired.

Ms. Fender was present in the car with me the entire evening and would verify that no plans were made to take Mr. Ham to a pre-arranged location for the purpose of having him murdered. She also would have testified that at no time was a gun ever mentioned, and that we were over a mile from the crime scene when Mr. Ham was shot.

Ms. Hans would have indicated that she did not know who was in the Jeep Cherokee, and could not have testified that Ms. Sanders was at the scene when any shots were fired. She also did not see a Honda Accord after the shots were verified, and Ms. Sanders was driving a Honda Accord.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Tiffany Sanders, #342130,)

C.A. No. 2011-CP-18-1497

Applicant,)

RETURN

v.)

(Appointment of Counsel Requested)

State of South Carolina,)

Respondent.)
_____)

In response to the amended post-conviction relief application filed August 18, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. The Dorchester County Grand Jury indicted the Applicant at the May 2010 term of General Sessions for Murder (2010-GS-18-0707). Michael O'Neal, Esquire represented the Applicant. A Dorchester County jury convicted the Applicant of the charge as indicted. On August 5, 2010 the Honorable Diane Goodstein sentenced the Applicant to thirty (30) years imprisonment. The Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Dorchester County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

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

1. "My attorney failed to call witnesses at trial"
 - a. "My attorney failed to investigate, interview or call as witnesses, Sean Kammerer, or Amanda Sue Fender. Mr. Kammerer would have verified that I was not involved in any pre-arranged plot to bring Jesse Ham to a location for the purpose of having Mr. Kammerer murder Mr. Ham and would verify that Ms. Sanders was not present when any shots were fired. Ms. Fender was present in the car with me the entire evening and would verify that no plans were made to take Mr. Ham to a pre-arranged location for the purpose of having him murdered. She also would have testified that at no time was a gun ever mentioned, and that we were over a mile from the crime scene when Mr. Ham was shot. Ms. Hans would have indicated that she did not know who was in the Jeep Cherokee, and could not have testified that Ms. Sanders was at the scene when any shots were fired. She also did not see a Honda Accord after the shots were verified, and Ms. Sanders was driving a Honda Accord."
2. "My attorney failed to notify me of my right to appeal"
3. "My attorney failed to cross examine Jessica Hans on the issue of my presence at the scene when the shots were fired"

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct 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, 104 S. Ct. 2052, 2064 (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. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the 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)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

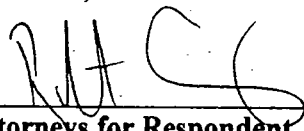
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

November 10, 2011

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2011-CP-18-1497

TIFFANY SANDERS, 342130,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Dale T. Cobb Jr., Esquire
Belk Cobb Infinger & Goldstein, PA
Post Office Box 71121
Charleston, SC 29415

DATED this 10th day of November, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

WITNESSES

J. Jellico

North Charleston Police Department

07-024114

ARREST WARRANT NUMBER
K269532

Arrested: June 26, 2007

ACTION **PROCEED** GRAND JURY

DATE

9/4/09
Garrett

Foreperson of Grand Jury
Date: September 08, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS18-1206

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE
vs.

Tiffany Ann Sanders

Indictment for

ACCESSORY BEFORE THE FACT TO A
FELONY

SC Code: 16-1-40

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

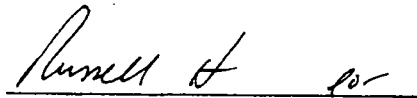
INDICTMENT
2007GS18-1206

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of
Dorchester present upon their oath:

ACCESSORY BEFORE THE FACT TO A FELONY

That in Dorchester County, South Carolina, on or about June 8, 2007, the
Defendant, Tiffany Ann Sanders, did knowingly and unlawfully aid in the
commission of, abet, counsel, hire, or otherwise procure the commission of
Murder, by the principal, Sean Kammerer, and the defendant was not present
when the principal felony was committed; this offense being a violation of Section
16-1-40 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



B. Bell, Solicitor

WITNESSES

J. Jellico

North Charleston Police Department

ARREST WARRANT NUMBER
2010DOR08

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

DATE

Foreperson of Grand Jury

Date: May 6, 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS18-0707

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE
vs.

Tiffany Ann Sanders

Indictment for

MURDER

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
MAY -6 AM 10:41
CHERYL L. CLARK
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

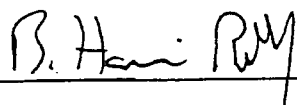
INDICTMENT
2010GS18-0707

At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of
Dorchester County present upon their oath:

MURDER

That in Dorchester County on or about June 8, 2007, with malice aforethought,
the defendant, Tiffany Ann Sanders did kill or aid, abet, assist, or join with Sean
Kammerer to kill Jesse Ham by means of shooting him. The victim did die as a
proximate result thereof. This offense being in violation of the Common Law and
Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Harrison Bell, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF

Dorchester

STATE

VS.
Tiffany Ann Sanders

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2010GS18-0707

A/W#:

2010DOR08

AKA:

2011 AUG -3 PM 3:02

Race:

Sex:

Age:

2010

Date of Offense:

6/8/2007

S.C. Code §

16-3-10

DOB:

00-00-0000

SS#:

CDR Code #:

0116

Address:

CLERK OF COURT
DORCHESTER COUNTY

DL#:

SID#:

SENTENCE SHEET

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was:

☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code #

0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

B. Harrison

Bell, Harrison

7863

SC Bar#

Tiffany Ann Sanders

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

for a determinate term of 30 days/months/years or

☒ State Department of Corrections,☐ County Detention Center,

and/or to pay a fine of \$

under the Youthful Offender Act

not to exceed

years

; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.**Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.**

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1)(Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-288 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 73.3, 1B TP (Law Enforce. Funding)

\$25

\$

§ 33.7, 1B TP (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

§ 44-53-450(C) (Conditional Discharge)

\$350

\$

3% to County (If paid in installments)

\$

TOTAL

\$

Chuck Shahan

Clerk of Court Deputy Clerk

Court Reporter:

B. Kelly

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

☐ Conditional Discharge § 44-53-450 (C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (06/2010)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

TIFFANY SANDERS, 342130,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-18-1497

**ORDER GRANTING WHITE V. STATE
REVIEW AND DISMISSING ALL
OTHER CLAIMS**

2012 AUG 3 PM 2:54
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 3, 2011 and Amended Application filed August 24, 2011. The State made Return dated November 10, 2011. An evidentiary hearing into the matter was convened on May 24, 2012, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Dale T. Cobb, Jr., Esquire. The Respondent was represented by Salley W. Elliott, Senior Assistant Deputy Attorney General.

The Applicant and her trial attorney, Michael S. O'Neal, Esquire, testified at the hearing. Also testifying were Harrison Bell, Esquire, Applicant's mother, and Applicant's sister, Amanda Sue Fender. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Dorchester County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections

pursuant to orders of commitment. The Dorchester County Grand Jury indicted the Applicant for Murder (2010-GS-18-0707) and Accessory Before the Fact of Murder (2010-GS-18-1206). Michael O'Neal, Esquire represented the Applicant. A Dorchester County jury convicted the Applicant of murder and acquitted her of the accessory charge. On August 5, 2010 the Honorable Diane Goodstein sentenced the Applicant to thirty (30) years imprisonment. The Applicant did not appeal the conviction or sentence.

Applicant alleges she is being held in custody unlawfully for the following reason:

1. "My attorney failed to call witnesses at trial"
 - a. "My attorney failed to investigate, interview or call as witnesses, Sean Kammerer, or Amanda Sue Fender. Mr. Kammerer would have verified that I was not involved in any pre-arranged plot to bring Jesse Ham to a location for the purpose of having Mr. Kammerer murder Mr. Ham and would verify that Ms. Sanders was not present when any shots were fired. Ms. Fender was present in the car with me the entire evening and would verify that no plans were made to take Mr. Ham to a pre-arranged location for the purpose of having him murdered. She also would have testified that at no time was a gun ever mentioned, and that we were over a mile from the crime scene when Mr. Ham was shot. Ms. Hans would have indicated that she did not know who was in the Jeep Cherokee, and could not have testified that Ms. Sanders was at the scene when any shots were fired. She also did not see a Honda Accord after the shots were verified, and Ms. Sanders was driving a Honda Accord."
2. "My attorney failed to notify me of my right to appeal"
3. "My attorney failed to cross examine Jessica Hans on the issue of my presence at the scene when the shots were fired"

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 (2003).

Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, 466 U.S. at 668. "Where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Where counsel articulates a valid reason for employing a particular trial strategy, counsel’s conduct will not be determined ineffective assistance of counsel Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006). This Court finds that all allegations with the exception of the appeal to be without merit and are denied and dismissed as set forth below.

Applicant first asserts that she received ineffective assistance of trial counsel for counsel’s failure to investigate, interview, or call her co-defendant, Sean Kammerer, as a witness at her trial. Applicant testified at the evidentiary hearing that she discussed her co-defendant, Sean Kammerer, and the statement he gave to law enforcement authorities with counsel. She stated that Kammerer had entered a guilty plea by the time her case proceeded to trial and that counsel should have called Kammerer as a witness to verify her version of the facts. However, Applicant admitted that she and counsel discussed whether to use Kammerer as a witness and both decided that it would be best not to call him. Applicant also admitted that she did not know what Kammerer would have said had he been called as a witness and that she was engaging in speculation.

~~Trial counsel testified that Kammerer was represented by counsel for the majority of the~~
time counsel was preparing for Applicant’s trial. Counsel did not interview Kammerer but reviewed his statement to law enforcement authorities in preparation for trial. Counsel stated that he and Applicant discussed whether to call Kammerer as a witness at trial but made a strategic decision not to call him as a defense witness because of the uncertainty of what he would say when he took the witness stand. Even had counsel interviewed Kammerer, there would still have been uncertainty as to what Kammerer would actually say when called to testify.

Counsel stated that ultimately he and Applicant made a strategic decision not to call Kammerer as a witness. Instead, counsel used Kammerer's absence to Applicant's advantage during the trial by contending to the jury that the State's failure to present Kammerer as a witness against Applicant indicates Kammerer would not have testified favorably for the State.

First, this Court finds that prejudice from trial counsel's failure to interview or call a witness cannot be shown where the witness does not testify at the post conviction relief hearing. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant did not present Kammerer at the post-conviction relief hearing or properly establish his testimony in accordance with the rules of evidence. Therefore, the Applicant did not show prejudice from the failure of trial counsel in this regard.

Second, this Court finds that trial counsel articulated a valid strategic reason for not calling Kammerer as a defense witness based upon the uncertainty of what he might ultimately say when actually placed under oath on the witness stand. Counsel fully discussed this strategy with Applicant before trial and Applicant concurred. This was a legitimate concern and is one which was shared at the time by Applicant. This Court notes that it is still not known what

Kammerer would have said at trial. It is only now after conviction and the lack of success of the original trial strategy respecting Kammerer that Applicant and trial counsel are second-guessing the strategy originally employed. This Court will not second-guess defense counsel's reasonable trial tactic. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). As noted above, trial counsel articulated valid strategic reasons for not calling Kammerer as a defense witness and used Kammerer's absence from trial to Applicant's advantage. Applicant has not shown that counsel was deficient in that choice of tactic or that she suffered the requisite prejudice. The allegation is without merit and is denied and dismissed.

Applicant also contends that counsel should have investigated, interviewed and called her sister, Amanda Sue Fender, as a defense witness at trial to establish that Applicant was not involved in a pre-arranged plot to bring the victim to a location for the purpose of allowing co-defendant Kammerer to murder the victim. She also contends that Fender could establish that ~~Applicant was over one mile from the scene when gunshots were fired. Applicant acknowledged~~ that she spoke with counsel before trial about the possibility of using Fender as a defense witness but ultimately decided not to do so after speaking with her family and based upon Fender's mental limitations or special needs. Applicant stated that later during trial, she changed her mind and asked counsel about using Fender as a witness but was told by counsel that calling Fender would be too risky.

Trial counsel testified that he spoke with Applicant's family and accepted the family's

assessment of Amanda's mental limitation and likely inability to benefit Applicant's defense during trial. He fully discussed this strategy with Applicant and she concurred. Counsel stated that Applicant family did not want Fender called as a witness. Fender's mother testified at the post-conviction relief hearing and acknowledged this decision. When asked about using Fender as a witness during the trial, counsel advised Applicant that it would be too risky at that point in the proceedings and that the information Fender could provide was available from other sources. Applicant's statement establishing the matters about which Fender would have testified was admitted as evidence at trial. This Court agrees and also notes that, based upon the initial discussions with Applicant and her family about Fender, counsel informed the jury that Fender would not testify at trial and acknowledged Fender's mental impairment.

This Court finds counsel's failure to call Fender as a witness was based upon reasonable, valid, trial strategy respecting concerns about Fender's abilities as a witness. It was also a strategy that was dictated initially by Applicant. Applicant thereafter changed her mind at a point when using Fender was not a beneficial option. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective

assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Applicant has not shown that counsel was deficient in the choice of tactic respecting Fender. After hearing Fender's testimony at the post-conviction relief hearing, this Court finds that Fender would have offered little to alter the outcome of the trial in view of her relationship to Applicant, lack of credibility, and the manner and substance of her testimony. Fender conceded at the post-conviction relief hearing that she did not know the substance of the

conversations between Applicant and Kammerer and this Court finds that Fender's testimony about Applicant's location when gunshots were fired is simply not credible. Applicant failed to show that she suffered the requisite prejudice respecting the claim relating to Fender. The allegation is without merit and is denied and dismissed.

Applicant also complains that counsel was ineffective for failing to cross-examine State's witness Jessica Hans to establish that Hans did not see Applicant after she heard gunshots being fired at the scene. This Court finds the allegation to be without merit. At trial, Hans testified that as she was leaving her job at Publix for the night and heard several pops from another area of the parking lot. When she looked toward Tire Kingdom some distance away, Hans saw a person pointing and another person running. Hans also testified that the shooter ultimately ran away and disappeared. She testified that shortly thereafter, she saw a Jeep speed away. She did not remember seeing any other vehicle. Trial counsel testified that Hans did not have anything to offer on cross-examination because the information that was beneficial to Applicant was elicited on direct examination. Hans did not identify Applicant as being present in the Jeep and Hans did not see any other vehicles, including Applicant's Honda.

The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). Applicant failed to present Hans as a witness at the post-conviction relief hearing to establish whether beneficial information could have been elicited other than that obvious from a

review of Hans' testimony on direct examination.

This Court finds counsel engaged a valid and reasonable trial strategy in choosing not to cross-examine Hans when the information favorable to Applicant was elicited from Hans on direct examination. Applicant failed to establish that Hans could have offered any information favorable to the defense other than what was established in her direct examination. Cross-examination of Hans to have her repeat what has already been stated on direct examination would not have served a useful purpose in this case based upon the evidence presented at trial and the danger cross-examination can sometimes pose. This Court finds that counsel's strategy respecting further examination of Hans was reasonable and did not constitute ineffective assistance. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005) and *McLaughlin v. State*, 352 S.C. 476, 575 S.E.2d 841 (2003). The Applicant failed to establish there is a reasonable probability the result of the trial would have been different had counsel engaged in cross-examination of Hans. Instead, Applicant engages in pure speculation. *See Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006) (stating applicant failed to meet his burden of proof when he failed to show that further investigation would have led to a different result).

Lastly, Applicant contends in her application that trial counsel failed to advise her of the right to appeal. At the post-conviction relief hearing, Applicant testified that counsel did not advise her of the right to appeal but conceded that the trial court advised her of the right to appeal after her conviction. She testified that members of her husband's family contacted another attorney about handling the direct appeal and that attorney wanted to review the trial transcript before proceeding with the appeal.

Trial counsel testified that he advised Applicant of the right to pursue an appeal but also advised her that she did not have meritorious grounds for a direct appeal. He stated that he did not advise Applicant about assistance that might be available to Applicant without cost from the South Carolina Office of Appellate Defense or the manner in which to pursue that assistance. Neither counsel nor Applicant indicated that Applicant might have qualified for this service at the time. Neither Applicant nor trial counsel stated that Applicant expressed to counsel a desire to appeal. The prosecutor in this case testified that he was contacted by another attorney the day after Applicant's conviction about the possibility of representing Applicant on appeal.

After conviction, trial counsel has a duty to make certain his client is aware of the right to appeal and give his or her judgment as to whether an appeal should be taken. In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). If the post-conviction relief judge determines the Applicant did not freely and voluntarily waive the right to appeal, the applicant may petition the appellate court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Based upon the testimony before it, this Court finds that, while Applicant was advised of ~~the right to appeal, there is no showing that she knowingly and voluntarily waived the right to~~ appeal. Therefore, Applicant is entitled to appellate review of direct appeal issues pursuant to White v State, 263 S.C. 110, 208 S.E.2d 35 (1974). Accordingly, Applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. at 110, 208 S.E.2d at 35; See Rule 243, SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d

60 (1986).¹ This Court cautions Applicant that she must appeal from this order to secure review.

CONCLUSION

Based on the foregoing, this Court finds and concludes that, other than the right to appellate review following conviction, Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, with the exception of a review pursuant to White v. State, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that a notice of appeal must be served within thirty (30) days from the receipt of notice of entry of this Order to secure the appropriate appellate review. The Applicant's attention is also directed to South Carolina Appellate Rule 243 for appropriate procedures after notice has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice;
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 243 for the appropriate procedure for securing belated appellate review;

¹Even where the PCR judge makes this finding, the applicant must petition this Court for a White v. State review to secure the appropriate review of trial.

3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of July, 2012.



DEANDREA G. BENJAMIN
Presiding Judge
First Judicial Circuit

Columbia, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS.
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2011-CP-18-1497

Tiffany Sanders,)
)
 Applicant,)
)
 v.) Transcript of Record
)
 State of South Carolina,)
)
 Defendant.)
)
)
)

May 24, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable Deandrea G. Benjamin, Judge

A P P E A R A N C E S:

Dale T. Cobb, Jr.,
Attorney for the Applicant

Salley Elliott, Esquire
Attorney for the State

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NO.

EXCERPT OF PCR OF TIFFANY SANDERS

TESTIMONY:

Tiffany Sanders direct..... 4

Tiffany Sanders cross..... 17

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Amanda Fender direct..... 38

Amanda Fender cross..... 45

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Michael O'Neal direct..... 62

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Harrison Bell direct..... 90

Harrison Bell cross..... 91

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 92

1 THE COURT: Yes ma'am.

2 MS. ELLIOTT: Your Honor, the next case somewhat out of
3 order. Tiffany Sanders verses State, will be one of the
4 larger packets in the stack.

5 May it please the Court. Before you is the matter of
6 Tiffany Sanders verses State. Ms. Sanders was indicted in
7 May 2010 for murder and accessory before the fact of murder.
8 She proceeded to trial before Judge Goodstein and a jury.
9 Was found guilty of murder and was sentenced to 30 years on
10 August 5, 2010. She did not appeal. She filed timely
11 application for Post Conviction Relief. In the application
12 Ms. Sanders is alleging that she received ineffective
13 assistance of counsel on three grounds. First that counsel
14 failed to advise her of the right to appeal from the
15 conviction and sentence. Secondly, that counsel failed to
16 investigate or call Sean Kaminer (sp), who was the
17 co-defendant -- I'm probably mispronouncing it -- or Amanda
18 Sue Fender as witnesses to show that she was not involved in
19 a prearranged plot to bring the victim to the location of
20 the murder. She also asserts that Fender would have said
21 they planned -- no pre-arranged plan and that no gun was
22 discussed and actually the defendant was a mile away from
23 the scene of the shooting, and I'll ask Mr. Cobb to correct
24 me if I'm wrong in any of these assertions. And thirdly
25 that the attorney failed to cross-examine a state's witness,

1 Jessica Hahn (sp) on the defendant's presence at the scene
2 when the shots were fired. She's asserting that Kahn's
3 would have said she did not know who was in a Jeep Cherokee
4 that left the scene and could not identify the defendant at
5 the scene, and did not see the Honda Accord after the shots
6 were fired and the defendant was driving a Honda Accord.

7 It's my understanding those are the claims before the
8 Court today.

9 MR. COBB: That is correct, Your Honor.

10 THE COURT: All right. Are you ready to call your first
11 witness?

12 MR. COBB: We are, Your Honor. I would like to call
13 Ms. Tiffany Sanders.

14 THE CLERK: Place your left hand on the Bible and raise
15 your right. Could you state your name for the record?

16 MS. SANDERS: Tiffany Ann Sanders.

17 (WHEREUPON, Tiffany Sanders was
18 sworn to tell the truth.)

19 TIFFANY SANDERS - DIRECT EXAMINATION

20 BY MR. COBB:

21 Q Thank you. Now, you need to speak up now nice and loud
22 and clear so the Court can hear you and the court reporter
23 can hear you, and the Attorney General can hear you. Don't
24 just nod your head. You have to speak up. She can't pick
25 up a nod of the head, all right?

1 A Okay.

2 Q All right. Ms. Sanders, you were charged initially in
3 this offense with being an accessory to the murder of this
4 young man, Jesse; is that correct?

5 A Yes.

6 Q Initially, you were represented by a gentleman named
7 Milton Stratus?

8 A Yes.

9 Q And at some point you switched attorneys and hired Mr.
10 Michael O'Neal?

11 A Yes.

12 Q And you met with Mr. O'Neal and talked with him about
13 what happened that night; is that correct?

14 A Yes.

15 Q You told him where you were that night?

16 A Yes.

17 Q And who was with you that night?

18 A My sister Amanda.

19 Q Is she here in Court today?

20 A Yes, she is.

21 Q Could you please point to her in Court?

22 A She's sitting right there.

23 MR. COBB: Amanda, can you please stand up.

24 (Amanda stands.)

25 MR. COBB: Thank you.

1 BY MR. COBB:

2 Q Is she your sister?

3 A She is.

4 Q Is she older or younger?

5 A She's older.

6 Q What were y'all doing that night?

7 A We were riding around. We had went out to grab a bit
8 to eat. My parents had went out to celebrate their
9 anniversary.

10 Q Anniversary?

11 A Yes, sir.

12 Q And did you run across some people that you knew?

13 A Yes, sir.

14 Q And ultimately did any of those people get in the car
15 with you?

16 A Yes. Towards the end of the night they did.

17 Q Whose car was this?

18 A It was my car.

19 Q What kind of car was it?

20 A It was a Honda Accord.

21 Q It was not a Jeep Cherokee?

22 A No, sir.

23 Q What color was it?

24 A It was blue.

25 Q And where were you when these people got in the car

1 with you?

2 A We were in front of Brandon's house in our
3 neighborhood.

4 Q Now, who is Brandon?

5 A He's an affiliate, I guess you could say.

6 Q All right. And for the Court's purposes, where were
7 you, is this in South Carolina, where were you?

8 A In North Charleston.

9 Q In North Charleston. Okay. And who was it got in the
10 car with you?

11 A Jesse and his friend, Kevin.

12 Q Jesse and Kevin?

13 A Uh-huh. (Affirmative response.)

14 Q Did you know these two boys?

15 A No, sir.

16 Q So in the car now are Jesse, Kevin, you and Amanda?

17 A Yes, sir.

18 Q And why did they get in the car with you?

19 A Because they wanted me to take them up there to the
20 Publix parking lot to meet Sean.

21 Q Publix where?

22 A In North Charleston on Dorchester Road.

23 Q Okay. And they wanted to go to the Publix to meet who?

24 A Sean Kaminer (sp).

25 Q Sean Kaminer. And did you give them a ride?

- 1 A Yes, sir.
- 2 Q When you got to the Publix what time of day or night
- 3 was this?
- 4 A I would say it was around 10:00 at night.
- 5 Q 10:00 at night, and you were driving?
- 6 A Yes, sir.
- 7 Q Where was Amanda?
- 8 A Amanda was sitting in the back seat.
- 9 Q And where was Jesse?
- 10 A He was sitting in the passenger seat.
- 11 Q And where was Kevin?
- 12 A He was in the back seat.
- 13 Q All right. Did anybody get out of the car?
- 14 A Yes, sir. Brandon did -- Kevin did.
- 15 Q Kevin did. Did anybody else get out of the car?
- 16 A Jesse did.
- 17 Q All right. Did you see anybody at the Publix?
- 18 A No, sir.
- 19 Q Did you see Sean Kaminer?
- 20 A I seen a body, but I could not make out that it was
- 21 him.
- 22 Q Okay. And what did you do after Jesse and Kevin got
- 23 out of the car?
- 24 A He told me to drive?
- 25 Q He told you to drive, and did you do that?

1 A Yes, sir.

2 Q If you're looking at the publix from the front of the
3 building, where were you parked?

4 A If you're looking at the front of the building I was
5 parked on the right side in front of the Tire Kingdom.

6 Q Okay. Were parked facing in or backed in?

7 A I was backed in.

8 Q Did you happen to see whether or not there was a Jeep
9 Cherokee anywhere near your Honda Accord?

10 A No, sir.

11 Q Thank you. And when Jesse said drive, you pulled out?

12 A Yes, sir.

13 Q And who else was still in the car with you?

14 A My sister.

15 Q And which way did you go?

16 A I went to the left and when I pulled out the parking
17 lot I took another left and there's a back street that goes
18 down in our neighborhood.

19 Q And where were you heading?

20 A Home.

21 Q Home. And how far did you get before you heard
22 anything?

23 A On the back street, there's two churches. I got next
24 to the Jehovah Witness Church and I heard something that
25 sounded like a fireworks.

1 Q And did you go back?

2 A No, sir. I went to Brandon's and told Brandon
3 something had happened and picked him up to go up there with
4 me to see what happened?

5 Q And did you go back?

6 A Yes, sir.

7 Q And did you see anything?

8 A No, sir.

9 Q Where did you go after that?

10 A I took Brandon back home and took me and my sister back
11 home.

12 Q And you went back home?

13 A Yes, sir.

14 Q That night did you see either Jesse or Kevin with a
15 gun?

16 A No, sir.

17 Q Did Kevin or Jesse talk about having a gun?

18 A Yes, sir. On my way up to take them to --

19 MS. ELLIOTT: Your Honor, I'm going to object to
20 hearsay.

21 MR. COBB: Well, it goes to her state of mind, Your
22 Honor, whether or not she had any prior knowledge. She's
23 being charged with being an accessory. She would have to
24 know whether or not she was becoming involved in an
25 altercation.

1 THE COURT: I'm going to sustain the objection.

2 BY MR. COBB:

3 Q Did you see any guns?

4 A No, sir.

5 Q When you got up there did you see any guns?

6 A No, sir.

7 Q Did you see anybody involved in any kind of a fight?

8 A No, sir.

9 Q Did you see anybody involved in any kind of altercation
10 whatsoever?

11 A When Kevin got out of the car, I seen somebody push
12 him.

13 Q You saw somebody push --

14 A Kevin.

15 Q -- Kevin?

16 A Yes, sir.

17 Q But other than that you did not see anybody hit anybody
18 --

19 A No, sir.

20 Q -- certainly did not see anybody shoot anybody?

21 A No, sir.

22 Q Okay. Did you have any plans with Sean Kaminer?

23 A No, sir.

24 Q Let me finish. Did you have any plans to bring anyone
25 up to Sean Kaminer for him to be involved in a fight?

1 A No, sir.

2 Q Did you have any plans with Sean Kaminer for him to do
3 bodily harm to anyone?

4 A No, sir.

5 Q Did you have any plans with Sean Kaminer for him to
6 shoot anyone?

7 A No, sir.

8 Q Amanda has some special needs doesn't she?

9 A Yes, sir.

10 Q Okay. She was in your charge that night?

11 A Yes, sir.

12 Q Would you have taken her with you that night if that's
13 what you were involved in?

14 A No, sir.

15 Q Now, before you went to trial, were you aware that Sean
16 had entered a guilty plea to murder?

17 A Yes, sir.

18 Q Did Sean testify for or against you at your trial?

19 A He was not there.

20 Q Okay. Did you discuss with either of your lawyers
21 about getting a statement from Sean?

22 A Michael did.

23 Q Okay. You knew that Sean had given a statement to
24 police; did you not?

25 A Yes, sir.

1 Q And that statement did not involve you?

2 A Correct.

3 Q Now, when you went to trial did you talk to your
4 attorney about having Amanda testify?

5 A Yes, sir.

6 Q Okay. Do you know what, do you remember what his
7 response was?

8 A That with her, with her abilities that it was kind of a
9 toss-up, just because of her mental issues.

10 Q Okay. Did he come and talk to her before trial?

11 A No, sir.

12 Q To your knowledge, did he go and talk to Sean before
13 trial?

14 A No, sir.

15 Q Now, after you were convicted and sentenced that day,
16 did he talk to you about filing an appeal?

17 A No, sir, not to me. After that, I didn't hear anything
18 from him.

19 Q Okay. That day?

20 A That day or afterwards.

21 Q Or afterwards?

22 A No, sir.

23 Q Did you contact him?

24 A No, sir.

25 Q All right. So you had not talked to him from that point

1 on about your conviction, your sentence or whether or not --

2 A No, sir. He told my family that he was supposed to
3 come visit or he was supposed to write, but he never came.

4 Q So you haven't spoken to him about an appeal?

5 A No, sir.

6 Q Did anyone from the bench or anyone from the court
7 system explain to you that you had a right to appeal your
8 conviction and sentence.

9 A The judge did.

10 Q The judge -- when?

11 A After I was convicted.

12 Q And what did the judge tell you?

13 A She said we had the right to appeal her decision.

14 Q All right. But you didn't know how to do that?

15 A No, sir.

16 Q You didn't know what you had to do to appeal it?

17 A No, sir.

18 Q You didn't know how much time you had?

19 A Correct.

20 Q You didn't know what forms to file?

21 A Correct.

22 Q Now, there was a witness who was a police officer who
23 worked at Publix named Jessica Hahn; is that right?

24 A Yes.

25 Q Who testified that she saw the shooting and then saw a

1 Jeep Cherokee leave the location; right?

2 A Correct.

3 Q Did Mr. O'Neal ask her any questions?

4 A No, sir.

5 Q She did not indicate in her testimony whether or not
6 she saw who was driving that vehicle; right?

7 A Correct.

8 Q Or who was in that vehicle?

9 A Correct.

10 Q She did not testify that she saw a blue Accord --

11 A Right.

12 Q -- did she?

13 A No, she didn't.

14 Q She was not asked whether or not she saw a blue Accord?

15 A No.

16 Q Had she been asked, she could have potentially said she
17 did not see it because you had already left?

18 MS. ELLIOTT: Objection. Speculation.

19 THE COURT: Sustained.

20 MR. COBB: Okay.

21 BY MR. COBB:

22 Q When you came back to the scene with Brandon and Amanda
23 you did not see anything in the parking lot; right?

24 A No, sir.

25 Q So you did not call 911 or the police because you did

1 not see anything?

2 A Correct.

3 Q You took Brandon home?

4 A Yes, sir.

5 Q And then you went home?

6 A Yes, sir.

7 Q So you weren't aware that an actual shooting had taken
8 place until you were questioned by the police later on; is
9 that correct?

10 A Correct.

11 Q So the nature of your post-conviction application is
12 that Amanda could have verified your testimony, right?

13 A Yes, sir.

14 Q And she was never questioned?

15 A Yes, sir.

16 Q And never testified?

17 A Yes, sir.

18 Q Sean Kaminer could have verified your testimony?

19 A Yes, sir.

20 Q And was never questioned?

21 A Yes, sir.

22 Q And never testified?

23 A Yes, sir.

24 Q And Jessica Hahn was never cross-examined on the issue
25 of whether or not she saw, as a police officer, you actually

1 there at the parking lot at the time of the shooting?

2 A Yes, sir.

3 Q And you were unaware of what you had to do to file an
4 appeal?

5 A Yes, sir.

6 Q Is there anything else that you want to add for the
7 Court?

8 A No, sir.

9 Q You're sure?

10 A (Nods head in the affirmative.)

11 Q All right. Please answer any questions that the
12 Attorney General may have for you.

13 TIFFANY SANDERS - CROSS-EXAMINATION

14 BY MS. ELLIOTT:

15 Q Hi, Ms. Sanders. I just have a few questions for you.
16 Your claims are, basically you're saying that your
17 allegations -- your claims against your attorney are that he
18 didn't cross-examine Hahn, but we don't know what she would
19 have said; isn't that true?

20 A Yes, ma'am.

21 Q And he could have presented Mr. Kaminer, am I
22 pronouncing that right?

23 A Kaminer. Yes, ma'am.

24 Q Kaminer, as a witness, but we don't know, actually,
25 what he would have said if he'd gotten up and testified

1 would we?

2 A No, ma'am.

3 Q And we also don't know what your sister would have
4 said, actually, if she had gotten up and testified and what
5 she would have said on cross-examination by the solicitor,
6 do we?

7 A Yes, ma'am, we do?

8 Q She didn't testify, though, did she?

9 A No, ma'am.

10 Q Okay, so you don't know actually what would have come
11 out at trial had she testified?

12 A No, ma'am.

13 Q So that's all basically just speculation at this point,
14 is that correct?

15 A Yes, ma'am.

16 Q Prior to your trial, did you also spoke to the other
17 prosecutor, the prosecutor who was prosecuting Mr. Kaminer;
18 is that correct?

19 A Yes, ma'am.

20 Q In preparation in possibly testifying for the state in
21 his trial?

22 A Yes, ma'am.

23 Q And describe for him what transpired that night?

24 A Yes, ma'am.

25 Q You also gave a statement to the police about happened

1 that night?

2 A Yes, ma'am.

3 Q And in your statement, I believe that statement was
4 actually read out during the trial; is that correct?

5 A Yes, ma'am.

6 Q And in that statement you told law enforcement officers
7 that Mr. Kaminer called and basically asked you to bring the
8 victim up to Publix; isn't that correct?

9 A Yes, ma'am.

10 Q And that is what you did; isn't that correct?

11 A Yes, ma'am.

12 Q In fact, you saw the boys, left the area where they
13 were standing and came back to ask the victim, Mr. Ham, to
14 come with you up to McDonald's; is that correct?

15 A No, ma'am.

16 Q That's not correct?

17 A That's not why I came back.

18 Q Why did you come back?

19 A Because recently my mother had a fall, and there was a
20 friend at the house when she fell, and Brandon had contact
21 with this guy.

22 Q Why did you ask for the victim and his friend to come
23 out from the backyard?

24 A I didn't ask for them to come out.

25 Q And why did you insist that they come with you to

1 McDonald's?

2 A I didn't insist. They got in the car. He made his
3 own decision to come up.

4 Q Why did you tell him there was a girl at McDonald's, a
5 cute girl, a good looking girl that wanted to see him at
6 McDonald's and try to get him to go with you up to that
7 area?

8 A I did not tell him that.

9 Q And why did all the other witnesses testify to this
10 consistently at the trial; isn't that correct?

11 A Not all of them.

12 Q All the witnesses who were there at the time that you
13 were insisting that the victim get in the car with you, did
14 they not?

15 A No.

16 Q No, but if the transcript shows otherwise, you don't
17 dispute that do you?

18 A No, ma'am. You just said all of them.

19 Q All the four boys, the three boys who were still
20 living?

21 A Yes, ma'am.

22 Q Okay, and they all said that, did they not?

23 A Yes, ma'am.

24 Q And you were on your cell phone during this entire
25 period of time, on and off, were you not?

1 A Yes, ma'am.

2 Q And you were on your cell phone with Mr. Kaminer were
3 you not?

4 A Yes, ma'am.

5 Q And you had known Mr. Kaminer for some time?

6 A Yes, ma'am.

7 Q And at one point, you and he were girlfriend and
8 boyfriend?

9 A No, ma'am.

10 Q Did you not tell Mr. Sorenson that?

11 A He was not my boyfriend.

12 Q Y'all were obviously friends enough to be on the cell
13 phone constantly that night; were you not?

14 A Yes, ma'am.

15 MS. ELLIOTT: One moment, Your Honor.

16 BY MS. ELLIOTT:

17 Q All right. And the three boys who lived testified that
18 you persisted for about 15 minutes trying to get the boy who
19 was the victim to get in the car with you; isn't that
20 correct?

21 A Yes, ma'am.

22 Q And that once he got in the car with you, you drove up
23 to the McDonald's, circled it and then went into the back
24 behind Tire Kingdom; is that correct?

25 A Yes, ma'am.

1 Q And you backed into a wooded area at Tire Kingdom;
2 isn't that correct?

3 A Yes, ma'am.

4 Q And didn't Kevin ask you to move the car to some area
5 that was more lighted?

6 A There was light in that area.

7 Q But you didn't move the car did you?

8 A No, ma'am.

9 Q You backed into the woods, towards the woods?

10 A Yes, ma'am.

11 Q And as Kevin got out of the car, Mr. Kaminer was there
12 at the door with a gun; isn't that correct?

13 A He was not at the door, and I do not know that he had a
14 gun in his hand.

15 Q And didn't he shoot between Kevin's legs as Kevin was
16 getting out of the car?

17 A No, ma'am.

18 Q And did Kevin run away?

19 A No, ma'am.

20 Q He didn't run away?

21 A I don't know that.

22 Q Well, then, how did the victim get out of the car,
23 because he got out second. How did the victim get out of
24 the car if there was somebody standing at the door and the
25 testimony from trial is that they were shooting between that

1 individuals legs, Kevin's legs, and the victim got out after
2 Kevin. How did you drive off with Kevin still -- I mean,
3 with the victim, then, still in the car?

4 A He was not in the car. He was out of the car. I don't
5 even know if he closed the car door.

6 Q Well, did you drive off with the door open?

7 A Ma'am, I don't even remember. I just remember being on
8 the back lane.

9 Q You knew from prior conversations in your associations
10 with Mr. Kaminer that there was bad blood between Mr.
11 Kaminer and the victim; did you not?

12 A I do not know of it being him.

13 Q Well, you said in your statement that you knew that the
14 victim had beaten Mr. Kaminer with a bat; isn't that
15 correct?

16 A The next day I was able to put two and two together.

17 Q Well, you knew that the co-defendant was asking you to
18 find out who he was at that house, find out if that's Mr.
19 Ham. Bring him up to the area where he was ultimately shot.
20 You knew that was going on. You made a big effort to find
21 out who he was before he got in the car with you; isn't that
22 true?

23 A I did not make a big effort.

24 Q You found out what his name was?

25 A Yes, ma'am.

1 Q And you persisted to find out what his name was because
2 he wasn't telling you initially, was he?

3 A No, ma'am, he told me.

4 Q And once you knew who he was you took him up to Tire
5 Kingdom to Sean Kaminer; did you not?

6 A Yes, ma'am.

7 Q At Sean Kaminer's request; correct?

8 A Well, it was his decision. He got on the phone, as
9 well, with Sean Kaminer.

10 Q Knowing there was bad blood, knowing there had already
11 been a weapon involved in a prior altercation; isn't that
12 correct?

13 A Yes, ma'am.

14 Q After you drove off, I believe the testimony at trial
15 was, Mr. Kevin got out of the car. As he was exiting with
16 one foot on the pavement, the defendant ran up, pointed the
17 gun at him, shot -- Kevin knocked his hand down, shot
18 between Kevin's legs. Kevin ran off. Then the victim get's
19 out of the car; correct?

20 A No, ma'am.

21 Q And runs off as the co-defendant is shooting him down;
22 isn't that correct?

23 A No, ma'am.

24 Q Why, what do you mean that's not correct?

25 A That's not how it was.

1 Q What was it?

2 A Brandon -- Kevin wanted to get out of the car. Brandon
3 -- Kevin got out of the car, and at that time Jesse was
4 hanging out of the car messing with my radio. Out of the
5 corner of my eye I seen somebody come up and push Kevin.
6 That's when Jesse looked at me and Jesse told me to drive
7 and go out the vehicle, and that's when I took off.

8 Q And there were gunshots before you took off; isn't that
9 correct?

10 A No, ma'am.

11 Q You left, went back to Brandon's house where you
12 initially saw the four young men; isn't that correct?

13 A Yes, ma'am.

14 Q Got Brandon in the car, your car, and drove back to the
15 area?

16 A Yes, ma'am.

17 Q You didn't go to Tire Kingdom where all this happened,
18 did you?

19 A No. He told me not to go up there.

20 Q He -- why would he know where to do? You drove him
21 around McDonald's, didn't you and then you left?

22 A He asked where we was parked at. Brandon did. I told
23 him where we was parked at. He said, don't go up there. He
24 said, we can see from here.

25 Q Well, what did you tell Brandon?

1 A I said, I think something happened. On the back street
2 I heard something that sounded like fireworks. I've never
3 heard a gunshot go off. So I couldn't tell him that was a
4 gunshot or not.

5 Q Well, you don't know where that happened. You said you
6 weren't even there so how would you even know where it was?

7 A When I was on the back street, that's when I heard a
8 pop.

9 Q But you don't know where the pop came from, according
10 to your testimony today; is that correct?

11 A Correct, but earlier in that night when I drove up
12 there, Jesse had asked me to go take him to his house to get
13 a gun, and I told him no.

14 MS. ELLIOTT: Your Honor, I move to strike that as
15 non-responsive.

16 MR. COBB: No objection.

17 THE COURT: All right.

18 BY MS. ELLIOTT:

19 Q And so where were you exactly when you heard what you
20 say were pops?

21 A Right next to the Jehovah Witness church.

22 Q Okay. You were close enough to hear the gun fire,
23 then?

24 A Yes, ma'am.

25 Q According to your testimony. You told -- during trial

1 your statement was admitted as evidence; is that correct?

2 A Yes, ma'am.

3 Q And during -- and in your statement you said that
4 basically, that Sean ran up to Kevin, pushed him and Jesse
5 said to you, go, and you drove, correct. That you didn't
6 have any knowledge of the gun being present to take a life
7 until you heard the shots; is that correct?

8 A Yes, ma'am.

9 Q So that information was presented to the jury through
10 your statement?

11 A Yes, ma'am.

12 Q Already?

13 A Yes, ma'am.

14 Q And you -- the only knowledge you have is that Sean
15 wanted to fight Jesse?

16 A Yes, ma'am.

17 Q And that's what you told the police and that's what's
18 in your statement; correct?

19 A Yes, ma'am.

20 Q Because Sean -- because Jesse had beaten Sean in the
21 head with a baseball bat?

22 A Yes, ma'am.

23 Q You knew all that?

24 A After that night.

25 Q You knew all that that night?

- 1 A I did not know about Jesse, specifically.
- 2 Q Well, you knew that Sean was wanting to fight with
- 3 Jesse?
- 4 A Yes, ma'am.
- 5 Q And you knew weapons had been used before; correct?
- 6 A Yes, ma'am.
- 7 Q And what mental incapacitation does your sister have?
- 8 A My sister, she's 33 and she's mentally 16 year old, 15
- 9 year old.
- 10 Q Okay, and you talked to your attorney about whether or
- 11 not to use her as a witness; is that correct?
- 12 A Yes, ma'am.
- 13 Q Basically, she would have said she was riding with you
- 14 during these events?
- 15 A Yes, ma'am.
- 16 Q And that you heard -- and that issue was discussed with
- 17 your family as well?
- 18 A Yes, ma'am.
- 19 Q And wasn't it decided that it would be best not to use
- 20 her testimony?
- 21 A She was still -- as far as a witness, on the witness
- 22 list.
- 23 Q Right, and then ultimately y'all decided not to use her
- 24 as a witness during trial; isn't that correct?
- 25 A Yes, ma'am.

1 Q And that was an issue that was discussed with you and
2 your family; is that correct?

3 A I wouldn't say it was discussed. She was never called.

4 Q Well, didn't you lawyer tell you why he didn't think it
5 would be a good idea to call her as a witness?

6 A Not that day. We discussed prior why he wouldn't.

7 Q Okay, and during his opening arguments to the jury
8 didn't he say that she was present in Court, but wouldn't be
9 -- but wouldn't testify because of her mental impairment?

10 A I didn't remember that, ma'am.

11 Q Well, if it's in the transcript, you don't dispute it?

12 A No, ma'am.

13 Q And if that were not true wouldn't you have discussed
14 that with your lawyer when you heard that?

15 A Yes, ma'am.

16 Q So y'all had discussed whether she would testify and it
17 was agreed that it would be best for her not to?

18 A I'm guessing so.

19 Q It's just now you wish you had called her because the
20 result for you was not so good; is that correct?

21 A Yes, ma'am.

22 Q You'd like to have a re-do?

23 A Yes, ma'am.

24 Q And call her now because you think, hope it might would
25 make a difference?

1 A Yes, ma'am.

2 Q But at the time it was a matter of strategy between you
3 and your attorney about how the trial should proceed; isn't
4 that correct?

5 A Yes, ma'am.

6 Q But it just didn't go as you had hoped?

7 A No.

8 Q Okay. And you also discussed with your attorney
9 whether or not Mr. Kaminer should be produced as a witness
10 for the defense; is that correct?

11 A Yes, ma'am.

12 Q And was it that -- that also discussed that it might
13 not be a good idea to do that because you don't have any
14 control over what he may say once he gets on the witness
15 stand; is that true?

16 A Yes, ma'am.

17 Q And it was decided, again, as a matter of trial
18 strategy, that it would be best not to call Mr. Kaminer
19 because there is no control and you don't know what's going
20 to happen?

21 A Yes, ma'am.

22 Q But now that you've gone to trial and the result is not
23 as you had hoped, you now wish you had called him just to
24 see if it would make a difference?

25 A Yes, ma'am.

1 Q Okay, but we don't know what he would have said,
2 correct?

3 A Correct.

4 Q And you made a decision not to testify at trial; is
5 that correct?

6 A Yes, ma'am.

7 Q And that was after discussions with your attorney?

8 A Yes, ma'am.

9 Q And after you were questioned by the trial court?

10 A Yes, ma'am.

11 Q Okay, and you made the knowing and voluntary decision
12 not to testify?

13 A Yes, ma'am.

14 Q And present any of this information?

15 A Yes, ma'am.

16 Q Because your statement was already in evidence, and
17 your statement said you didn't know anything about the gun?

18 A Yes, ma'am.

19 Q So as a matter of trial strategy it was decided that
20 your defense would be presented through your statement; is
21 that correct?

22 A Yes, ma'am.

23 Q Okay. What was the timing between the shots; do you
24 know?

25 A I would say one went pow, and then probably two quick

1 ones and then another one.

2 Q Okay. So in pretty close succession; is that correct?

3 A Yes, ma'am.

4 Q Okay. All right. And in your discussions -- Mr.
5 Kaminer pled guilty before your trial; isn't that correct?

6 A Yes, ma'am.

7 Q And you -- he is the one who told you where to go that
8 night once you got up to the shopping area?

9 A No, ma'am.

10 Q Did you not tell that to the prosecutor that prosecuted
11 Mr. Kaminer?

12 A No, ma'am.

13 Q That Sean directed you where to go?

14 A No, ma'am.

15 Q Well, how did you know where to go?

16 A I didn't.

17 Q You just happened to pull into that parking spot?

18 A Yes, ma'am.

19 Q Just happenstance?

20 A Yes, ma'am.

21 Q But didn't your statement say that Sean asked you to
22 bring Jesse up to Publix?

23 A Yes, ma'am.

24 Q Okay. And that was a true statement, was it not?

25 A Yes, ma'am, but he didn't tell me where to park.

1 Q Oh, well, excuse me. But he told you where to go, to
2 go up to the Publix area; isn't that right, and you were on
3 the cell phone with him, as you got to the shopping center
4 you were on the cell phone with him?

5 A Yes, ma'am.

6 Q And you were going to drive between that little
7 driveway between the Publix and the other buildings, but it
8 was locked was it not?

9 A No, ma'am. I wasn't going to drive back there.

10 Q You weren't going to drive back there, but you said,
11 okay, when you were on the cell phone, okay, I'll go that
12 way, something like that?

13 A No, ma'am.

14 Q You did not? You deny that?

15 A Yes, ma'am.

16 MS. ELLIOTT: Your Honor, if I may have a moment?

17 THE COURT: Yes, ma'am.

18 BY MS. ELLIOTT:

19 Q Now, your sister, Amanda. I know you said she
20 functions as a -- what age?

21 A I would say a 15 years old.

22 Q A 15 year old. What other impediments does that cause
23 as far as memory or ability to comprehend?

24 A I would say that's more of a social skills, her
25 educational skills I wouldn't really put a gap on that.

1 Q So you don't really know. If I may ask you, too, in
2 closing argument your attorney made a lot of hay, I guess
3 maybe is not the right word, your attorney argued over and
4 over again to your advantage that had the state wanted to
5 present evidence against you some of the good evidence would
6 have come from Sean Kaminer; is that correct, about your
7 knowledge and your participation?

8 A I'm sorry, could you repeat that, please?

9 Q Okay. In the jury closing argument, didn't your
10 attorney point out that the state failed to present Sean
11 Kaminer as a witness?

12 A Yes, ma'am.

13 Q And that that might have been something beneficial for
14 the state?

15 A I don't believe that was his argument.

16 Q Wasn't he arguing to your benefit the fact that Sean
17 Kaminer was not present at trial and he did not testify.
18 Did he use that to your benefit in his closing argument?

19 A Yes, ma'am.

20 Q So it might have been a good thing that Sean wasn't
21 there if you were able to use it to your advantage during
22 closing argument; correct?

23 A Yes, ma'am.

24 Q And did not Andy Savage's law firm contact the
25 solicitor's office about an appeal for you?

1 A I believe so. That was in the talks of hiring Andy
2 Savage, but from my understanding the solicitor's office
3 told him that there was no other vehicle used. So Andy
4 Savage did not want to take on my case without getting the
5 transcripts.

6 Q Okay. So you made a decision not to appeal because you
7 would have to pay for the transcripts?

8 A No, not because of that, because we placed the order
9 quickly to get them as soon as we could.

10 Q Okay. So you knew about the appeal and you had already
11 ordered the transcripts?

12 A This was a couple of days after we didn't hear from
13 Michael O'Neal.

14 Q Okay, and a decision was made by Mr. Savage that you
15 didn't have any grounds for appeal in the transcript?

16 A That's not his decision. His decision is he felt that
17 he needed to see the transcripts before he took on the case.

18 Q Okay. So you knew you had the right to appeal,
19 obviously?

20 A After my family got involved.

21 Q And did not appeal?

22 A Correct.

23 Q Okay. You consulted other counsel and did not appeal?

24 A Yes, ma'am.

25 Q Okay. And didn't Ms. Hahn's testify that she saw the

1 Jeep Cherokee leave, but to her recollection she doesn't
2 remember seeing any other vehicles?

3 A Yes, ma'am.

4 MS. ELLIOTT: One moment, Your Honor.

5 That's all I have, Your Honor.

6 THE COURT: All right. Yes, sir, anything else?

7 MR. COBB: Yes, Your Honor.

8 TIFFANY SANDERS - REDIRECT EXAMINATION

9 BY MR. COBB:

10 Q Ms. Sanders, Kevin was a friend of Sean Kaminer, too,
11 wasn't he?

12 A I believe so.

13 Q They had been friends for a while?

14 A That's what they said.

15 Q And Kevin had a cell phone that night, too?

16 A Yes, sir.

17 Q. And he was on the phone with Sean, wasn't he?

18 MS. ELLIOTT: Your Honor, I object. She has no basis
19 to know that. It's totally hearsay.

20 BY MR. COBB:

21 Q Kevin was directing you to go to that particular
22 location, was he not?

23 A Kevin wasn't.

24 Q When you say that Andy Savage was talking about an
25 appeal, did you talk directly to Andy Savage?

1 A No, sir.

2 Q How long after your conviction did you talk to Andy
3 Savage?

4 A I have never talked to Andy Savage. My family --
5 actually my in-laws are the ones who called and tried to
6 contact Andy Savage.

7 Q Within 10 days after your conviction?

8 A I don't believe so.

9 Q Okay. So you don't know if it was even within the
10 statutory time to even file notice of intent to appeal.

11 A No, sir. I didn't know of the 10 days limitation on
12 that.

13 Q So you did not file notice of intent to appeal yourself
14 within 10 days; is that right?

15 A Yes, sir.

16 Q Because no one told you that?

17 A Correct.

18 Q Either an attorney or the Court?

19 A Correct.

20 Q Or the clerk of court?

21 A Correct.

22 MR. COBB: I have no other questions.

23 MS. ELLIOTT: That's all I have, Your Honor.

24 THE COURT: All right. You can step down.

25 MR. COBB: Come down, Ms. Sanders.

1 Your Honor, we would like to call Amanda to the stand.

2 Step up here, please, ma'am.

3 THE CLERK: Would you place your left hand on the Bible
4 and raise your right hand.

5 (WHEREUPON, Amanda Fender as sworn
6 to tell the truth.)

7 THE CLERK: Could you state your name for the record?

8 MS. FENDER: Amanda Sue Fender.

9 THE CLERK: Thank you. You may be seated

10 AMANDA FENDER - DIRECT EXAMINATION

11 BY MR. COBB:

12 Q Okay, Amanda, you need to speak up nice and loud and
13 clear for everybody, okay?

14 A Okay.

15 Q How old are you, ma'am?

16 A 33.

17 Q All right. And where do you work?

18 A I'm work for Goodwill, but I'm a contractor at Spawar
19 (sp).

20 Q At Spawar. Okay. How long have you been working
21 there?

22 A Almost 2 years with Spawar.

23 Q And how long have you worked for Goodwill?

24 A Almost four.

25 Q Okay. And where do you live?

1 A I live at 244 Carolanne Drive, Summerville, South
2 Carolina.

3 Q All right, do you live with your parents?

4 A Yes, sir.

5 Q And who else?

6 A And my daughter.

7 Q And how old's your daughter?

8 A She's two.

9 Q And you're Tiffany's sister?

10 A Yes, sir.

11 Q All right. Older or younger?

12 A Older.

13 Q Okay. Now, Amanda, we've been talking about Tiffany's
14 trial; do you remember her trial?

15 A Yes, sir.

16 Q Okay. And you remember the night we've all been
17 talking about. Do you remember being in the car with her
18 that night?

19 A Yes, sir.

20 Q I want you to think back. Did you go with her anywhere
21 that night?

22 A Yes, sir.

23 Q Where did y'all go?

24 A Well, we went to grab something to eat because our
25 parents went out for their anniversary, and then we were

1 riding around the neighborhood, and we got stopped by these
2 guys walking and they said, come on to our house.

3 Q Okay.

4 A So when we got there they asked me, they all asked me
5 if I could go get them some beer, and I told them no,
6 because they were underage. They also asked me if I knew
7 where I could get them any marijuana. I was like, I don't
8 do that kind of stuff. So I don't -- I couldn't help. I
9 told them I wouldn't -- no.

10 Q Okay. And --

11 A Because they were drinking that night and --

12 Q And did you ultimately end up at somebody named
13 Brandon's house?

14 A Yes, sir.

15 Q Were there some people there shooting baskets, playing
16 basketball?

17 A Yes, sir, and they were drinking, but me and my sister
18 didn't drink anything.

19 Q You weren't drinking?

20 A No.

21 Q Were y'all shooting baskets with them?

22 A No.

23 Q Were you listening to music?

24 A No.

25 Q Okay.

1 A Not that I know of -- remember.

2 Q At some point -- do you remember what car you were in?

3 A Yeah. My sister's Honda.

4 Q Okay.

5 A It was blue, I think. I'm not sure of the color.

6 Q That's okay. But it was her car?

7 A Yes.

8 Q Okay. Then at some point did you and Amanda (sic)
9 leave with some boys?

10 A Yes.

11 Q Okay. And did you end up going, like we've been
12 talking about, to a Publix parking lot up in North
13 Charleston?

14 A Yes, sir.

15 Q Okay. Where were you sitting in the car?

16 A I was in the back seat.

17 Q All right. So the boys, one was in the front and one
18 was in the back?

19 MS. ELLIOTT: Your Honor, object to the leading.

20 MR. COBB: I'm sorry.

21 BY MR. COBB:

22 Q Where were the boys sitting?

23 A Kevin was sitting beside me and Jesse was up front
24 playing with the radio.

25 Q Okay. Playing music?

1 A Yes, sir.

2 Q Okay. When you got to the Publix, did anybody get out
3 of the car?

4 A Kevin. He was real -- he was real -- like he knew
5 something. He was like, let me out, let me out, you know.
6 And then Jesse got out, and he said drive. So we left.

7 Q You left?

8 A Yes, sir.

9 Q Where were you sitting then?

10 A I was still in the backseat.

11 Q Okay. And where did you drive or where did Tiffany
12 drive?

13 A We went past the churches and that's when we heard, you
14 know, I guess shot, and I didn't know quite what it was, you
15 know?

16 Q All right. How far away from the boys were you when
17 you heard those noises?

18 A I know it was pretty -- you know, it's pretty far
19 because from the Publix to the Catholic church is like -- I
20 would say maybe a mile or two. It's that far away.

21 Q All right. When the boys were in the car, did you see
22 any guns?

23 A No, sir.

24 Q Did you hear them talk about any guns?

25 A No, sir.

1 Q Where did you go after you left; after you heard the
2 noises where did you go?

3 A We went to Brandon's house.

4 Q Right.

5 A And my sister said Brandon we think something's
6 happened.

7 Q Okay.

8 A So he got in the car with us, and he says, if we --
9 Brandon said if we see anybody you don't know me and I don't
10 know you.

11 MS. ELLIOTT: Your Honor, I object.

12 THE COURT: Sustained.

13 BY MR. COBB:

14 Q You can't say what someone else said, okay. All right.

15 A Sorry.

16 Q Where did you go; did you pick up anyone when you got
17 to Brandon's house?

18 A No. We got Brandon and --

19 Q Where did you go with Brandon?

20 A We went back up to the Publix to see if we could --

21 Q Did you see anybody?

22 A No, sir.

23 Q Where did you go then?

24 A We took Brandon back home.

25 Q And then where did you go?

1 A Home.

2 Q Okay. Now, at some point after that Tiffany was
3 arrested, right?

4 A Yes, sir.

5 Q Did anyone from the police question you?

6 A No, sir.

7 Q Did Tiffany's first lawyer question you?

8 A No, sir.

9 Q Did her second lawyer question you?

10 A No, sir.

11 Q When she was getting ready to go to trial, did you
12 actually come to the trial?

13 A Yes.

14 Q All right. When she was getting ready to go to trial,
15 did you offer to come testify as to what you saw and what
16 you heard?

17 A Yes, sir.

18 Q When you actually were at the trial down in St. George,
19 did you offer to testify to what you saw and heard?

20 A (No response.)

21 Q In other words, did you talk to her lawyer and said I'm
22 available to testify?

23 A Yeah. I told him I would.

24 Q Okay. Thank you, ma'am. Please answer any questions
25 that the Attorney General may have for you, okay?

1 A Okay.

2 AMANDA FENDER - CROSS EXAMINATION

3 BY MS. ELLIOTT:

4 Q Ms. Fewer; is that correct?

5 A Fender.

6 Q Fender. I'm sorry. I can't read my own handwriting.

7 Ms. Fender you say you live with your parents and your
8 daughter; is that correct?

9 A Yes, ma'am.

10 Q Have you always lived with your parents?

11 A Yes.

12 Q And this job that you have is this the first job that
13 you've had?

14 A No, ma'am.

15 Q You're had other jobs, too?

16 A Yes.

17 Q Do your parents help you take care of your daughter?

18 A Yeah.

19 Q It's okay. Are you all right?

20 A Yeah.

21 Q You say you remember what happened during the trial; is
22 that correct?

23 A Uh-huh. (Affirmative response.)

24 Q Were you involved in any of the discussions with your
25 sister's other family members, your parents and the attorney

1 about how the attorney felt the trial should go?

2 A Can you repeat that, please?

3 Q Okay. Were you present when your sister's attorney
4 discussed calling witnesses and what evidence should be
5 presented at trial?

6 A I don't remember.

7 Q You don't remember that, but you remember what happened
8 that night?

9 A Yes, ma'am.

10 Q And have you discussed that with your family and your
11 sister?

12 A Discussed what, ma'am?

13 Q What happened that night; have you talked to them about
14 it since then?

15 A My parents.

16 Q About your recollection of it?

17 A Yeah.

18 Q And probably talked to your sister about it after it
19 happened?

20 A Yeah, I think so.

21 Q Okay. You have a hard time remembering?

22 A Some --

23 Q Sometimes?

24 A -- times, some stuff, you know.

25 Q All right, but you've talked to your parents about what

1 happened that night before you testified today; is that
2 right?

3 A What I remember of it.

4 Q How often did Sean Kaminer visit your house?

5 A Not much.

6 Q Not much.

7 A Huh-uh. (Negative response.)

8 Q But he was someone who did visit there?

9 A Not very often. Maybe once or twice.

10 Q All right. He was someone who did visit there; is that
11 correct?

12 A Not -- not -- it was only like two times.

13 Q So he was someone who did visit there; is that correct?

14 A Yeah.

15 Q And how long had your sister know Sean, did you know,
16 that period of time he would come those one or two times he
17 visited; how long was that prior to the incident?

18 A It was long, long time.

19 Q Long time --

20 A Yeah.

21 Q -- before that. They obviously were still talking by
22 telephone; isn't that correct?

23 A I have no idea.

24 Q You wouldn't know that would you?

25 A No.

1 Q Wouldn't know what they talk about on cell phones or in
2 telephone conversations would you?

3 A No, ma'am.

4 Q Okay. So you don't know what Sean and your sister
5 talked about?

6 A No, ma'am.

7 Q And I guess your sister is like everyone your age y'all
8 all use cell phones a lot; isn't that correct? So she's on
9 the cell phone all the time?

10 A No.

11 Q Not too much?

12 A Not too much.

13 Q But she was on the cell phone a good bit that night;
14 was she not?

15 A I don't remember.

16 Q You don't remember.

17 A Right.

18 Q But you remember everything else; is that right?

19 A Yes.

20 Q Okay. You don't like seeing your sister in jail do
21 you?

22 A No, ma'am.

23 Q And you want to help her if you can, don't you?

24 A Yes, ma'am.

25 Q You'd like for her to get out?

- 1 A Yes, ma'am.
- 2 Q And you'd like to do whatever you can for her to get
3 out?
- 4 A (Nods head in the affirmative.)
- 5 Q Okay. And y'all didn't get out of the car at Brandon's
6 house did you?
- 7 A We did.
- 8 Q You got out of the car?
- 9 A Yes.
- 10 Q How long were y'all there that second time?
- 11 A We -- you know, we hanged out with him for a little
12 bit.
- 13 Q Okay. Y'all went by the first time, isn't that right,
14 y'all rode by or they called you down as they were walking?
- 15 A They called us down. They said, come on --
- 16 Q Okay.
- 17 A -- come on to our house.
- 18 Q And then didn't they say to you sister, what are you
19 doing, and she said nothing with y'all; isn't that right?
- 20 A Yes.
- 21 Q But then later, 15 minutes later she came back to
22 Brandon's house, she drove y'all back over there?
- 23 A I don't --
- 24 Q You don't remember?
- 25 A No, ma'am. Like I said, there's some thing, you know --

1 Q Some things you remember pretty well, but most of it
2 not.

3 A (Nods head in the affirmative.)

4 Q Okay, and you talked to --

5 MR. COBB: Object to the characterization, Your Honor.

6 THE COURT: Repeat the question?

7 MS. ELLIOTT: Some things she remembers, but most of it
8 she does not.

9 MR. COBB: I object to characterization. She remembers
10 just fine.

11 MS. ELLIOTT: Well, she said repeatedly --

12 MR. COBB: She said -- most of it --

13 THE COURT: All right. Please rephrase your question.

14 MS. ELLIOTT: All right.

15 BY MS. ELLIOTT:

16 Q You remember some things, you don't remember some
17 things; is that correct?

18 A Yeah.

19 Q Okay. Is that yes? I'm sorry.

20 A Yes.

21 Q Okay. When you went back -- you don't remember how many
22 times y'all went over there?

23 A I think we were there only two.

24 Q Two times?

25 A I think.

1 Q And when you were there was your sister asking who
2 Jesse was, was she trying to find out his name?

3 A No.

4 Q You say she wasn't doing that. Could you hear
5 everything that was going on?

6 A I know that Jesse got the phone from Tiffany and then
7 after he got off the phone he said to take me up to Publix.
8 So him and Kevin got in the car with us. Because we said we
9 were going to go home.

10 MS. ELLIOTT: Your Honor, that is unresponsive
11 testimony. I move to strike that as unresponsive.

12 MR. COBB: She asked the question.

13 THE COURT: Overruled. You can rephrase the question.

14 BY MS. ELLIOTT:

15 Q And you say that when y'all got to the Publix parking
16 lot, Kevin was acting antsy, he knew something was wrong?

17 A Yeah.

18 Q And he got out of the car?

19 A Yeah.

20 Q And that's when he said at trial, he knew something was
21 wrong, and he wanted to get away; isn't that right?

22 A I don't know if he wanted to get away, but I felt that
23 he -- you know, he was -- I think he knew something was
24 going on we didn't know. We didn't know nothing. I didn't
25 know what was going to happen.

1 Q Well, you heard the statement given by your sister at
2 trial that said that Sean asked her to bring Jesse to the
3 Publix parking lot; did you not hear that?

4 A At the trial?

5 Q Yes.

6 A Yes, I heard that.

7 Q And today you heard her say that that was the truth;
8 did you not?

9 A Yes, ma'am.

10 Q And when you heard those shots, when you heard those
11 pops, did you know what it was when you heard it?

12 A No, ma'am.

13 Q You were down by the church?

14 A No, ma'am.

15 Q So you didn't know what it was?

16 A No, ma'am.

17 Q Why would you go back up there, then? Why would you
18 know even where those were coming from?

19 A Because -- I don't --

20 Q You don't know. You were just in the car?

21 A When we heard it, I didn't know what it was, and my
22 sister said, well, we might want to go to Brandon's house
23 and go see if we could see anybody up there. We didn't see
24 anybody up there.

25 Q Well, you hadn't seen a gun up to that point, according

1 to your testimony?

2 A No, ma'am.

3 Q So why would you even connect the pops with that
4 location?

5 A Can you repeat that, again?

6 Q I said you had not seen a gun, correct?

7 A Yes, ma'am.

8 Q So when you heard those firecracker type sounds why
9 would you connect that with gun and why would that make you
10 fearful, and why would that make you go back to the shopping
11 center?

12 A Because I guess we had dropped the boys off and I
13 didn't know what was going on.' So I thought that's what it
14 was, I guess.

15 Q Well, you're a mile away. You don't even know where
16 the gunshots are coming from, do you, or those noises are
17 coming from?

18 A (No response.)

19 Q Correct?

20 A Correct.

21 Q And you were basically just in the car riding with your
22 sister; isn't that right?

23 A Yes.

24 Q You basically don't know what was discussed or what was
25 going on?

1 A (No response.)

2 Q Is that correct?

3 A Can you repeat that again, please?

4 Q I said, you were basically riding in the car with your
5 sister. You don't know what was discussed or what was going
6 on. You were just a passenger in the car?

7 A Yes, ma'am, but there was music playing so there was
8 really nothing discussing in the car, because there was
9 really loud music playing.

10 Q Okay. But you don't know what was discussed beforehand
11 do you?

12 A (Shakes head in the negative.)

13 Q That's a no?

14 A No.

15 Q Okay. Thank you. That's all I have.

16 THE COURT: Mr. Cobb.

17 MR. COBB: Thank you, ma'am, you may step down, now.

18 THE COURT: Thank you ma'am, you may step down.

19 Step up and be sworn, please ma'am.

20 THE CLERK: If you would raise your right hand, please,
21 and state your name for the record, please?

22 MS. BREMENOUR: My name is Linda Bremenour (sp).

23 (WHEREUPON, Linda Bremenour was
24 sworn to tell the truth.)

25 LINDA BREMENOUR - DIRECT EXAMINATION

1 BY MR. COBB:

2 Q You are Tiffany's mother, is that correct?

3 A Yes, sir.

4 Q Did you know Sean Kaminer?

5 A I knew him from the old neighborhood we lived in.

6 Q Was he someone who was in your house all the time?

7 A No, sir. He wasn't in my house all the time.

8 Q Was he someone who had been to your house?

9 A He'd been to my house one time.

10 Q Okay. Now, let's sort of do this in inverse order.

11 There was some talk about Andy Savage calling the
12 solicitor's office about a possible appeal. Did you or your
13 husband contact Andy Savage about --

14 A No, sir.

15 Q -- calling the solicitor's office about an appeal?

16 A No, sir.

17 Q Do you even know who had done that, if anyone had done
18 that?

19 A I imagine maybe the in-laws or Tiffany's ex-husband.

20 Q Okay. You don't know, but it wasn't you or your
21 husband?

22 A No, sir.

23 Q All right. Well, let's back up, then. You -- when
24 Tiffany was first arrested, hired an attorney to represent
25 her; is that correct?

1 A Yes, sir.

2 Q That was Mr. Milton Stratus?

3 A Yes, sir.

4 Q And for several years she had been charged with being
5 an accessory; is that right?

6 A Yes, sir.

7 Q During that time, did Mr. Stratus ever try to contact
8 either Sean Kaminer or Amanda about getting statements from
9 them to take to the solicitor's office.

10 A No, sir.

11 MS. ELLIOTT: Your Honor, I'm going to object. She
12 would have no knowledge of that.

13 MR. COBB: Well, if he was working for Tiffany and they
14 were -- they were footing the bill.

15 THE COURT: All right.

16 BY MR. COBB:

17 Q Do you, of your own knowledge know whether or not that
18 was done?

19 A Repeat the question again?

20 Q Did Mr. Stratus ever contact Amanda to get a statement
21 from her?

22 A No, sir.

23 Q She lives in your house; did he come to your house to
24 get a statement?

25 A No, sir.

1 Q Thank you. At some point, for whatever reason, Tiffany
2 switched lawyers and you hired Mr. O'Neal; is that right?

3 A Yes, sir.

4 Q And as you were getting ready for trial. Do you know,
5 at that time, whether or not Mr. Kaminer had already pled
6 guilty?

7 A Do I know?

8 Q Yeah.

9 A Yeah, I think I did.

10 Q All right. As you were getting ready for trial, had
11 the police, at that time, taken a statement from Amanda?

12 A No, sir.

13 Q Had the solicitor's office?

14 A No, sir.

15 Q Had either Mr. Stratus or Mr. O'Neal?

16 A No, sir.

17 Q And was Amanda willing to testify at trial?

18 A Yes, she was. And she's just kind of nervous.

19 Q Well, everyone is reluctant to testify. You can
20 understand everyone's nervous about testifying in court.
21 Was there some discussion about preventing her from
22 testifying at trial?

23 A We didn't think that we needed her testimony at first.

24 Q Okay.

25 A And so we just -- the attorney just thought it was the

1 best.

2 Q She has some limitations?

3 A Yeah, a little.

4 Q But she works?

5 A Yes.

6 Q Takes care of her own personal business?

7 A Yes.

8 Q Takes care of her own child?

9 A Yes.

10 Q Takes care of her own life despite the fact that she
11 lives with y'all?

12 A Right.

13 Q She does have help from you and your husband?

14 A A little. Yeah.

15 Q She takes care of herself, by and large?

16 A Right.

17 Q And understanding that she might be nervous about
18 testifying is there anything that would have kept her from
19 testifying at Tiffany's trial?

20 A No, sir. No.

21 Q After Tiffany was convicted, did you have any
22 communications from Sean?

23 A Did I have any communication --

24 Q Right.

25 A -- with Sean? Yes.

1 Q Okay. Just briefly what did that entail. What was that
2 communication about?

3 MS. ELLIOTT: Your Honor, I object. This is going to be
4 based on hearsay. He's not here. He could have been
5 brought into court to testify. We do not have the
6 opportunity to cross-examine him and tremulously object to
7 anything related to Mr. Kaminer from this witness.

8 MR. COBB: Well, unfortunately, Your Honor, he is
9 pending a post conviction relief, and is waiting to have
10 counsel appointed and obviously could not be summons as a
11 witness.

12 THE COURT: All right. Objection sustained.

13 MR. COBB: Pardon me?

14 THE COURT: Objection sustained.

15 BY MR. COBB:

16 Q When you received communication from Sean did you
17 notify your attorney?

18 A That was after --

19 Q Yes.

20 A -- after Tiffany had done been convicted.

21 Q Right.

22 A Okay.

23 Q And did you notify your attorney?

24 A My husband did. Yes.

25 Q Okay. And did you -- did your husband ask him to go

1 see Mr. Kaminer at that point?

2 MS. ELLIOTT: Your Honor, she didn't have these
3 conversations with the attorney. I object to her testimony
4 on that point, too.

5 MR. COBB: Okay.

6 THE COURT: Sustained.

7 BY MR. COBB:

8 Q When Tiffany was convicted, the day that she was
9 convicted, did you have any conversations yourself with Mr.
10 O'Neal about filing a notice of intent to appeal?

11 A No, sir. We were just so upset.

12 Q Pardon me?

13 A No, sir. We were so upset.

14 Q Did you have any conversation with him in the following
15 weeks about filing a notice of intent to appeal?

16 A No, sir. I've heard something about PCR bond or
17 whatever.

18 Q Was a notice of intent to appeal ever filed to your
19 knowledge?

20 A As far as I know, no.

21 Q And you never contacted Mr. Savage. Did you contact
22 any other attorneys about filing an appeal?

23 A No, sir.

24 Q Okay. Thank you, ma'am. No other questions.

25 THE COURT: All right. Please answer any questions that

1 Ms. Elliott may have.

2 MS. ELLIOTT: Your Honor, no questions.

3 THE COURT: Ma'am, you may step down.

4 Call your next witness.

5 MR. COBB: Thank you. Nothing further, Your Honor, at
6 this time other than I wanted to, for purposes of the
7 record, I want -- Page 195 and 195 of the transcript of the
8 trial reflect what Jessica Hahn testified to in the trial,
9 and basically lines four through nine on Page 196 reflect
10 that as a police officer she had seen the shooting, had run
11 out -- seen individuals who had done the shooting, and about
12 30 seconds later a Jeep Cherokee pulled out from the side of
13 the building, pulled down the parking lot and drove off.

14 The solicitor's position was that Ms. Sanders and her
15 sister in the blue Accord were still there at the time of
16 the shooting. If, in fact, that was the case, this witness
17 would have seen them. And would have been able to, as a
18 trained police officer, been able to testify that they
19 either saw them individually or certainly would have seen
20 this particular vehicle.

21 So I wanted those two pages to reflect that for that
22 part of the applications, Your Honor.

23 THE COURT: Okay.

24 MS. ELLIOTT: And just in response, Your Honor, I'll
25 direct your attention to Page 197 where she's talking about

1 any other vehicles and also ask Your Honor to review her
2 testimony because, you know, she said her attention was
3 directed on the shooter. She doesn't remember any other
4 vehicles in the area, but obviously her attention was
5 directed at the shooting incident, but at the time she was
6 not a police officer, she was an employee of Publix. Later
7 became a police officer.

8 MR. COBB: Right. That's correct.

9 THE COURT: All right. You said you don't have any other
10 witnesses?

11 MR. COBB: No, we don't have any other witnesses.

12 THE COURT: All right. Ms. Elliott, do you have any
13 witnesses?

14 MS. ELLIOTT: Yes, Your Honor, we would call Mr. O'Neal
15 the trial attorney.

16 THE CLERK: Please raise your right hand, put your left
17 hand on the Bible, please. State your full name.

18 MR. O'NEAL: Michael Sean O'Neal.

19 (WHEREUPON, Michael O'Neal was
20 sworn to tell the truth.)

21 THE CLERK: Thank you. You may be seated.

22 MR. O'NEAL: Thank you, ma'am.

23 MICHAEL O'NEAL - DIRECT EXAMINATION

24 BY MS. ELLIOTT:

25 Q State your name, please?

1 A Michael O'Neal.

2 Q And Mr. O'Neal, you're a practicing attorney?

3 A I am.

4 Q And how long have you been practicing?

5 A Since 1984.

6 Q And what portion of your practice is devoted to
7 criminal law?

8 A Probably 85 percent.

9 Q And that has been for the entire time?

10 A Actually, for the first five years in my legal career,
11 I worked for the Attorney General's Office.

12 Q Okay. I was probably there. And then you went from
13 the AGs office into private practice?

14 A That's correct.

15 Q And you have devoted most of your time since then to
16 the practice of criminal law?

17 A That's correct.

18 Q And have had opportunity to represent defendants
19 charged with numerous types of crimes?

20 A Yes.

21 Q Including murder?

22 A Yes.

23 Q Accessory?

24 A Yes.

25 Q And have issues involving confessions and ballistics

1 and the types of issues that were involved in this trial?

2 A Yes.

3 Q So you have experience in those areas?

4 A Yes.

5 Q Great experience in those areas?

6 A Yes.

7 Q And how do you maintain your knowledge of the criminal
8 issues, to cutting edge issues and changes in the law as
9 they evolve?

10 A I'm required to do continuing education and, of course,
11 war stories with other lawyers. Probably the best way to
12 learn.

13 Q And handling cases, conducting research for the issues
14 that arise in the cases you handle?

15 A Correct.

16 Q And have you also had the opportunity to handle cases
17 involving aiding and abetting and principle accessory
18 issues?

19 A Yes.

20 Q Okay. Were you retained or appointed in this case?

21 A Retained.

22 Q And were you at -- at what point were you retained in
23 connection with when Ms. Sanders was charged?

24 A Tom Bremenour who I knew from a previous relationship
25 came to me and indicated that his step-daughter had been

1 arrested and charged with accessory before the fact of
2 murder and was being represented by Milton Straus. They
3 came to me about turning the case over to me. I spoke with
4 him. I spoke with the family, and I spoke with Milton and
5 they decided to release Milton Stratus as her lawyer and
6 hire me.

7 Q Okay. And how long did you represent her prior to
8 trial?

9 A A year, maybe.

10 Q Did you have an opportunity to sufficiently confer with
11 your client to prepare for trial?

12 A Yes.

13 Q And what did you do to investigate the charges and any
14 defenses?

15 A Well, I went and looked at all the discovery materials.
16 I looked at all the statements. I spoke with my client.
17 What I did not do, which I should have done, was I should
18 have gone up and talked to Sean Kaminer in prison.

19 Q And why did you not do that?

20 A The trial came up. I figured the government, the state
21 was going to bring him to trial. I kind of was counting on
22 that. I told my client that. We showed up for trial, he
23 wasn't there, and I can just tell you right now that after
24 the trial was over I realized that I should have gone to see
25 him in jail. I should have found out what he was going to

1 say and I should have brought him down there. I did, in my
2 closing argument, try to put it on the state, that if he was
3 going to help their case they would have brought him, but I
4 guess, I could tell looking in the juries eyes that they
5 weren't buying it. They figured I could have got him there
6 just as easily as they could.

7 Q That was, of course, was speculation on your part,
8 unless you spoke to them afterwards; isn't that correct?

9 A I did not speak to them.

10 Q Mr. Kaminer was represented by counsel?

11 A I believe he was.

12 Q Okay, and did you have his statement?

13 A Yes.

14 Q Okay. So you knew what he had told the police as far
15 as his statement?

16 A Yes.

17 Q Did you know what he had said during his guilty plea?

18 A No.

19 Q What reason -- why did you not speak to him in advance
20 of trial?

21 A Like I said, I assumed, which is always a mistake, that
22 the state was going to bring him to trial, and I would get a
23 chance some way to talk to him prior to trial, and if he'd
24 be helpful to my case, I'd put him up as a witness. In
25 retrospect, I should have gone to speak to him. I should

1 have gone to the jail to talk to him. I should have put him
2 up in my case.

3 Q Okay. He wasn't on the state's witness list; is that
4 correct?

5 A I don't remember.

6 Q And could you have had him brought in when you realized
7 he wasn't going to be used by the state?

8 A Absolutely.

9 Q Okay. And you did not do that?

10 A I did not.

11 Q And why did you not do that?

12 A His statement was in the package. I knew Tiffany
13 wasn't going to be taking the stand. I didn't think that
14 Amanda was going to be taking the stand. I guess I had an
15 idea that I wanted the last argument and not put up any
16 evidence or testimony whatsoever.

17 Q So as a matter of trial strategy?

18 A At the time, I guess that's what I was thinking.

19 Q Based upon your experience, the facts in the case, your
20 discussions with your client, and the defense you formulated
21 for trial?

22 A Yeah, but turns out it was a mistake.

23 Q Okay. And that's because it was not successful; is
24 that correct?

25 A Well, it's one thing to argue what -- that could have

1 helped the government, but I knew the jury would figure I
2 could have gotten him there just as easy myself, and they
3 wondered why I didn't bring him. I should have brought him.
4 I should have gotten him down there.

5 Q And you're saying that because your client, in
6 retrospect, was convicted?

7 A In part, I suppose, yes.

8 Q Okay. But at the time, having closing argument was you
9 felt a good trial strategy?

10 A With what I had to work with, yes.

11 Q Okay. And, of course, have you called defendants or
12 co-defendants as witnesses before?

13 A Yes.

14 Q And have you ever had that go south?

15 A No.

16 Q Has that been detrimental to your client?

17 A No, have not.

18 Q Have you know of that to happen?

19 A I suppose it's possible.

20 Q And did you have any control over Mr. Kaminer once he
21 was placed on the witness stand as to what he would say?

22 A No. But for what he'd said before.

23 Q In his statement. You could have cross-examined him on
24 his statement?

25 A Yes.

1 Q All right. What about calling -- and let me ask you
2 this -- well -- sorry. What about calling Amanda Fender as
3 a witness. Tell me your thought processes you might have
4 had about that?

5 A Initially, it became clear to me that she was a
6 witness. In speaking with her family I basically took their
7 word for it that her mental ability might not stand up to
8 testifying at court. I never talked to her myself. I never
9 got any doctors reports. I basically took their word for
10 it. After the state's case was over they came to me again
11 and said don't you think she should testify, and, again, I
12 took their word for it and said I don't think it can help.
13 I think it might hurt.

14 Q And during your opening argument to the jury and during
15 the trial it was pointed out that she had some mental
16 incapacity and that she would not be testifying at trial; is
17 that correct?

18 A That's what I said to begin with, but I think I said
19 she probably wouldn't testify, leaving my options open.

20 Q All right. Okay. And when the state rested, it was
21 still your opinion based on your trial strategy, discussions
22 with your client, her family, the facts and your defense it
23 would be best for her not to testify?

24 A Well, the family said that they wanted her to testify.
25 They thought she should testify and I basically overrode

1 them and said, no, I don't think so.

2 Q And you discussed Kaminer's possible testimony,, perhaps
3 having him come in with Amanda Fender and your client, and
4 your reasons for not calling them as witnesses?

5 A As I said, I figured the state was going to bring him
6 down, that I'd get him put up as a witness that way. When
7 they didn't bring him down, you know, I should have
8 subpoenaed him. I should have done that.

9 Q All right. Did you discuss that with your clients?

10 A Yes.

11 Q And she concurred in the strategy you formulated for
12 trial?

13 A I don't think she understood it.

14 Q But then you discussed it with her and explained it to
15 her?

16 A As best I could.

17 Q Okay, and did she have any additional questions after
18 you discussed it with her and explained it to her?

19 A I should have called Sean Kaminer as a witness.

20 Q I'm sorry?

21 A She -- her position was that we should have called Sean
22 Kaminer as a witness.

23 Q And so she was convicted?

24 A Right.

25 Q And you were hoping that now it might have made a

1 difference?

2 A I'm convinced it would have.

3 Q Well, but you don't know that. That's purely
4 speculation on your part; is it not?

5 A I don't know. I tried the case, I was there.

6 Q Well, you don't know what the jury would have done.
7 You didn't think the jury would convict her anyway, did you?

8 A Nobody did, except Mr. Bell, but he's a good trial
9 lawyer.

10 Q And as far as your investigation did you have access to
11 all the discovery materials, the autopsy report, the
12 photographs, the ballistics report, all the evidence the
13 state presented against your client at trial?

14 A Yes.

15 Q Okay. You discussed all that with your client?

16 A Yes.

17 Q Was her position to you, I guess in her discussions
18 with you, was her -- was -- did she relate facts that were
19 consistent with the statement she gave to law enforcement
20 officers, that basically that was the defense?

21 A Yes.

22 Q Okay. And what defense theory did you formulate for
23 trial?

24 A That she didn't know what was going to happen. That
25 she had no idea there was going to violence, certainly not

1 gun play. That she wouldn't have brought her sister up
2 there if she thought anything like that was going to happen
3 and that she was -- she had departed from the scene at the
4 time of the actual shooting.

5 Q And you elicited that information on cross-examination
6 and argued that information during your closing argument;
7 did you not?

8 A I don't know if I elicited the information, but I
9 certainly argued it.

10 Q Okay. As far as the fact that Ms. Sanders didn't have
11 knowledge of the gun or that Sean planned to use a gun to
12 take the victim's life, that information was conveyed to the
13 jury when her statement was read; is that right?

14 A Yes.

15 Q So that information was provided to the jury basically
16 through Tiffany's own mouth without having to have her
17 testify?

18 A Well, yes. That's how I got her position into the
19 record, in front of the jury, plus I think I made some hay
20 with the cross-examining the gentleman on the stand.

21 Q Right. Mr. Jenkins. The cross-examination of Mr.
22 Jenkins, did you not elicit from him the fact that he didn't
23 know Sean had a gun and planned to use it at the scene?

24 A Correct.

25 Q Okay. And in order to establish this lack of knowledge

1 on Tiffany's part?

2 A Right.

3 Q Okay. And also as far as no plans, no pre-scene plans,
4 no knowledge of the gun, Tiffany saying she was a mile away,
5 didn't Mr. Jenkins say that Tiffany left when Sean started
6 shooting?

7 A I don't recall specifically.

8 Q But basically if he did, wouldn't that establish what
9 we've been here talking about today; correct?

10 A I suppose.

11 Q And then Tiffany from her own mouth to the jury through
12 this statement said that when Sean ran up the victim said to
13 her, drive, and she drove off.

14 A Yes.

15 Q Okay. So that would have also established for the jury
16 through Tiffany's statement through her own mouth without
17 having to have her subject to cross-examination?

18 A Yes.

19 Q Okay. So those factors were established at trial?

20 A As best they could.

21 Q Okay.

22 MS. ELLIOTT: If I could have moment, Your Honor.

23 BY MS. ELLIOTT:

24 Q Tiffany, after the state rested, you discussed with her
25 whether or not Amanda should testify; is that what you said?

1 A Yes.

2 Q And it was decided that that would not be in Tiffany's
3 best interest?

4 A I made that decision.

5 Q Okay, and you discussed it with your client before you
6 rested?

7 A I don't know if I'd use the word, discussed. I
8 basically told them.

9 Q She knew Amanda would not testify?

10 A Not if I had anything to do with it.

11 Q Okay. And your decision, I think, after Ms. Hahn
12 testified, the worker from the Publix Shopping Center --

13 A Uh-huh. (Affirmative response.)

14 Q -- who later was a police officer, testified at trial.
15 You did not cross-examine her; is that correct?

16 A No, I did not because -- I read back over her testimony
17 and at trial I didn't think her testimony hurt us that bad.
18 I suppose I should have said, did you see a blue Honda
19 anywhere around. I didn't.

20 Q And what benefit would there have been to that?

21 A To bolster my client's position that she as not in the
22 area when the fatal shots were fired.

23 Q But didn't Ms. Hahn say that she didn't believe, and
24 wasn't her testimony equivocal?

25 A I mean, I could have asked her on cross; did you see my

1 client in the Jeep Cherokee, could you see who was in the
2 Jeep Cherokee? I could have asked her questions. I didn't
3 ask her one.

4 Q Okay. Well, she had already said she didn't know who
5 was in the Jeep Cherokee on direct examination, didn't she?

6 A Right.

7 Q Okay. And she couldn't see who the shooter was. She
8 just saw this incidence from a great distance; is that
9 correct?

10 A That's my understanding.

11 Q All right. Directing your attention to after the
12 trial, after the conviction, did you discuss with Ms.
13 Sanders she had a right to appeal?

14 A I told her she had a right to appeal. I told her she
15 didn't have any grounds. I thought the trial went great.
16 Mr. Bell and I didn't have a whole lot of problems, hardly
17 any, and the judge ruled in my favor on just about every
18 issue.

19 Q Okay. So there was probably nothing reserved for
20 appeal that would result in reversal?

21 A I suppose I should have told you, you have a right to
22 appeal, you have to do it in 10 days, you should probably --
23 I should probably file an appeal and order the transcript. I
24 should have told her all about that, but I was in shock,
25 too, and I basically told her, you've got no right to

1 appeal. You have no grounds for appeal.

2 Q Okay. You told her she had a right to appeal, but she
3 had no valid grounds for appeal?

4 A Correct.

5 Q And you were retained and she would be paying for that
6 appeal; is that right?

7 A Correct.

8 Q Okay. I notice in reading the transcript, too, you did
9 not challenge Ms. Sanders statement as read. Was there a
10 trial strategy related to that?

11 A Yeah, I think the judge expected me to have a Jackson
12 verses Denno hearing to try to keep it out, but it didn't
13 hurt us. I liked her statement. That would be way to get
14 her statement in front of the jury without her having to
15 testify.

16 Q And that was something you talked to your client about
17 in advance --

18 A Yes.

19 Q -- and was part of your defense strategy?

20 A Yes.

21 Q With all these other factors?

22 A Yes.

23 Q And that was something in which she concurred; is that
24 correct?

25 A Yes.

1 Q And the judge questioned her about that specifically;
2 is that correct?

3 A Yes.

4 Q Okay.

5 MS. ELLIOTT: That's all I have right now, Your Honor.
6 Thank you.

7 MR. COBB: Thank you.

8 MICHAEL O'NEAL - CROSS-EXAMINATION

9 BY MR. COBB:

10 Q Mr. O'Neal, as to Mr. Kaminer, when you got the
11 discovery materials, part of that was Sean Kaminer's
12 statement?

13 A Yes.

14 Q And basically, in that statement Mr. Kaminer says that
15 he directed Mr. -- Kevin and Jesse come up to the Publix,
16 but does not indicate that it was for the purpose of
17 anything being done other than them talking. There was no
18 pre-ordained plan that anything was going to go --

19 A That was all.

20 Q Okay. And certainly does not indicate in the statement
21 that Tiffany knew anything about that?

22 A Correct.

23 Q Okay. When you got the case, had Sean already pled
24 guilty?

25 A I think so. Or he pled at some point during my

1 representation.

2 Q And had been sentenced?

3 A Correct.

4 Q So the issue of whether or not he was represented by
5 counsel at that time was a moot issue. He had already, at
6 some point, prior to trial, at least, had pled and been
7 sentenced?

8 A And we knew where we could find him.

9 Q Okay. All right. In any event you did not go to talk
10 to him or have him subpoenaed as a witness and when you
11 found out that the state had not subpoenaed him did not
12 subpoenaed him?

13 A I did not subpoena him, I did not try to go take a
14 statement from him. I -- like I've already said, I assume
15 the state would subpoena him at trial, would bring him down.
16 When I discovered that they had not, I should have. You
17 know, we had time. We had time before our case came up.
18 You got to give somebody you subpoena, what, 24 hours before
19 they've got to be there. I should have subpoenaed him.

20 Q In the two important defendants in this case were Sean
21 and Tiffany?

22 A Yeah.

23 Q And so if the statements of the two important witnesses
24 sort of dovetail that there was no plot to bring Jesse up
25 there to have him murdered, that certainly would have been

1 helpful for the jurors; do you not agree?

2 A Well, it's one thing -- you know, my client did not
3 want to take the stand, I did not want her to take the
4 stand. It would have been effective if I had gotten Sean
5 Kaminer there to be able to answer questions about what he
6 told her, what they said back and forth. That was the whole
7 -- that's the only way they could tie her to the murder.

8 Q Right.

9 A The only way that they could argue that she was guilty.
10 So I should have had him there.

11 Q So for purposes of the jury, Tiffany's motivation for
12 saying that was, she wanted to get off.

13 A Absolutely.

14 Q Sean had no motivation, at that point, he was serving a
15 34 year sentence. He would have no reward for having come
16 in if you had subpoenaed him or if the state had Subpoenaed
17 him to say this?

18 A Right.

19 Q. The other possibility, assuming that Sean was not there
20 as a witness, did you consider trying to have this admitted
21 through the investigating officer as part of his or her
22 investigation?

23 MS. ELLIOTT: Your Honor, I'm going to object to that
24 question. It's not relevant to any of the issues that's
25 been raised. That was not an allegation raised.

1 THE COURT: Yes, sir.

2 MR. COBB: She was asking if that was part of his trial
3 strategy and I'm asking if that was part of his trial
4 strategy as to why he didn't call Sean Kaminer. If this was
5 part of the solicitor's file and he did not have that
6 available through one of the other witnesses either by a
7 police officer or by Sean Kaminer in order to get this in
8 front of the jury, I'm asking as to why that was not done
9 one way or the other.

10 THE COURT: I think her objection is as far as your
11 applicant, one of the claims she had that she specifically
12 stated in her application. Y'all made that pretty clear.

13 MR. COBB: Okay.

14 THE COURT: I'm going to sustain the objection.

15 MR. COBB: All right.

16 BY MR. COBB:

17 Q The best witness is the witness himself, not just a
18 piece of paper.

19 A Yes. I agree.

20 Q All right. So you agree you did not call the witness.
21 And you agree that whether or not to call the witness is
22 premised on having a direct knowledge of what the witness is
23 going to say and how the witness is going to say it.

24 A I mean, I even considered that suppose he got up there
25 and said something like we planned this, we planned this for

1 months. We both hated this guy. I could have worked with
2 that, also.

3 Q Okay.

4 A And that might have even helped us, if he'd said
5 something like that, but the bottom line is I didn't
6 subpoena him. I didn't put him up and I should have.

7 Q And which goes back to my original question, which is
8 knowing whether or not to subpoena him is premised on first
9 going to see him?

10 A Absolutely.

11 Q And interviewing him to ascertain whether or not he's
12 going to be a valuable witness or whether or not you want to
13 call him or not?

14 A Correct.

15 Q And you did not do that?

16 A I did not do that.

17 Q Okay. And the same sort of can be said about Amanda,
18 because we all understand that Amanda has some limitations,
19 but knowing what those limitations are and whether or not
20 they would effect a decision to call her as a witness depend
21 upon your view of how she would hold up as a witness?

22 A Yes.

23 Q Okay. And whether or not, first of all, she would be
24 competent to testify?

25 A Yes.

1 Q Given her limitations?

2 A Yes.

3 Q And two, whether she would be able to withstand, given
4 her limitations, both direct and cross-examination?

5 A Yes.

6 Q And whether or not she would be sympathetic?

7 A Yes.

8 Q And to be able to know that you would first have to,
9 obviously, have to interview her?

10 A Yes.

11 Q And you did not do that?

12 A I did not.

13 Q Okay.

14 A I took the word of her family.

15 Q And they certainly would want to protect her, but as a
16 trial attorney certainly we have to, sometimes, do things
17 that are in contradiction with what our clients want or our
18 clients families want for the better good?

19 A Yes, that's true.

20 Q Okay. In terms of filing an intent to appeal, you
21 argued for a directed verdict?

22 A Yes, I did.

23 Q And a directed verdict is one of those amorphous terms
24 that sometimes the Court of Appeals and the Supreme Court
25 latches on and grants and sometimes it's doesn't. When you

1 talk to clients about filing a notice of intent to appeal
2 there are very specific bits of information that a client
3 needs to know, is there not?

4 A Yes.

5 Q They need to know, one, they have the right?

6 A Yes.

7 Q Two, they need to know if they have to file a
8 particular document, a Notice of Intent to Appeal, and that
9 has to be done in a certain amount of time?

10 A Yes.

11 Q Usually, the judge does that from the bench; isn't that
12 right?

13 A To make sure. Yeah.

14 Q Looking at the transcript and I do not see in the
15 transcript that that was done by the judge.

16 A I don't recall. I don't believe it was. I think the
17 judge was just as shocked as anybody else.

18 Q I don't see it, but that's not to say that it was not
19 done and not in the transcript, but be that as it may, and
20 your testimony from a little bit earlier. You told her she
21 had a right to appeal, but she didn't have any grounds.

22 A That's what I told her.

23 Q And you were retained in this case, because she was now
24 in custody -- there's another right that she has and that
25 would be a right to file an Application for Indigency and to

1 apply for services of an appellate defender?

2 A Yes.

3 Q Okay. So she certainly did not know those things?

4 A I did not tell her.

5 Q Okay. So she would not have know on her own, she was
6 not told by the Court, and you did not tell her that she had
7 those rights. Now, whether she has a justifiable claim, even
8 if it's only the right to appeal the directed verdict and
9 whether or not there are any justifiable claims in the
10 transcript, she certainly has a right or had the right, at
11 the time, to file a Notice of Intent to Appeal, even if it
12 ended up in some form or fashion an Anders Brief?

13 A Yeah. I mean, technically, I suppose I should have
14 told her you've got a right to file a Notice of Intent to
15 Appeal.

16 Q Right.

17 A You've got to do that within 10 days. I should have
18 done it for her, even if I thought there were no grounds for
19 an appeal. Maybe another lawyer could read the transcript
20 and find something. That's probably what I should have
21 done. I've been trying cases, I've tried hundreds of cases
22 in my career and I can probably count my losses on both
23 hands and one foot.

24 Q All right.

25 A And I was shocked too. I was blown away.

1 Q Okay. All right. So you would agree that you should
2 have gone to see Sean?

3 A Yep.

4 Q You should have called Sean as a witness?

5 A Yep.

6 Q You should have interviewed Amanda?

7 A Yeah.

8 Q You probably should have called Amanda as a witness to
9 verify Tiffany's statement --

10 A Yes.

11 Q -- because with a live witness the jurors would have
12 seen --

13 A Yes.

14 Q -- and in retrospect should have done more about at
15 least notifying her about her rights to appeal to protect
16 her right to appeal?

17 A Yes.

18 Q Okay. Thank you very much. I appreciate it.

19 THE COURT: Anything else.

20 MS. ELLIOTT: Very briefly.

21 MICHAEL O'NEAL - REDIRECT EXAMINATION

22 BY MS. ELLIOTT:

23 Q But you told Tiffany that she had the right to appeal?

24 A Yes, I did.

25 Q So she was aware of that. Did she ask you to file a

1 Notice of Appeal?

2 A No, she did not. She was upset.

3 Q And you're indicating that you should have called
4 Amanda as a witness -- and understanding that my skills at
5 cross-examination are nothing like Mr. Bell's?

6 A Oh, I knew he'd eat her up. And I -- that was my major
7 fear. I knew if I could put her on the stand, I knew I
8 could get her position, her testimony on the stand, but I
9 didn't think she could stand up to cross-examination and,
10 like I said, the family, at the close of the state's case, I
11 told them we didn't have to put up a defense, but we could
12 if we wanted to. I told them that if we didn't put up any
13 defense, didn't put up any witnesses or testimony that I'd
14 get last argument and I figured last argument is more
15 valuable than whatever help or testimony would be.

16 Q Okay. Did you know that Mr. Kaminer, that when he
17 pled, he ended up appearing before the Court twice for a
18 guilty plea?

19 A I did not. No.

20 Q And did you know that when he ultimately pled guilty he
21 admitted to Judge Goodstein that he lied to her during the
22 first guilty plea proceedings?

23 A I heard something about that. Initially he said
24 something about self-defense, didn't say anything about
25 self-defense, and then tried to say something about it.

1 Yeah.

2 Q Okay. So you knew that he had admitted in court that
3 he made statements in court that were untruthful.

4 A Yes.

5 Q To a judge?

6 A But it didn't effect my client's case.

7 Q Right, but had he testified is that not something that
8 the solicitor could have brought out on cross-examination?

9 A Sure. I mean, like I said, looking at the trial, if
10 I'd have put him on the stand, I could have worked with it
11 either way, whether he helped my case or whether he claimed
12 he planned this whole thing with Tiffany.

13 Q You would have put him up to say that?

14 A Well, I should have talked to him first to see what he
15 was going to say.

16 Q Okay.

17 A But I understand completely that he might change his
18 mind. This guy's in jail. Who knows what he was going to
19 say once he got on the stand. Like you said.

20 Q Right.

21 A But I should have put him up there. I could have gone
22 either way. I could have worked with either way.

23 Q All right. So you're now saying you should have taken a
24 chance and put him up regardless of what he said to hurt
25 your client?

1 A Right. I think I could have worked with it either way.
2 I the jury would --

3 Q And you should have put him up --

4 A -- hate him worse than they might hate Tiffany.

5 Q Or disliked both of them; is that an option?

6 A Yes.

7 Q And you knew at the time that he had lied under oath in
8 court?

9 A No, not at the time, but I found out.

10 Q Oh, not at the time, but you found out since then, but
11 if you had talked to him you would have found out about it
12 before you would have called him as a witness you would have
13 talked to him?

14 A If he had told me.

15 Q And that or anything else he might not have told you
16 until it came out on the stand?

17 A Right.

18 Q That's also a danger?

19 A Right. For example, I would have had his statement
20 when I talked to him.

21 Q Okay.

22 A The one he gave police.

23 Q And I mean, it's pretty clear that you're distressed
24 that your client was convicted --

25 A Yes.

1 Q -- and you didn't think that she was going to be
2 convicted --

3 A Yes.

4 Q -- and that you formulated a particular trial strategy
5 for this case that was not successful?

6 A That's how it ultimately turned out.

7 Q And you wish you had handled it a little differently
8 because it might have had a different outcome; is that
9 correct?

10 A Well, I was thinking that, at the time, that I probably
11 should have put Sean Kaminer on the stand, but didn't.

12 Q But you obviously made a conscious decision not to do
13 that?

14 A Yes.

15 Q Based on how you were handling things at the time?

16 A Yes.

17 Q Okay.

18 MS. ELLIOTT: That's all I have, Your Honor.

19 THE COURT: You may step down.

20 MR. O'NEAL: Thank you, Judge.

21 MS. ELLIOTT: I just have one very short witness, Your
22 Honor.

23 THE COURT: All right.

24 MS. ELLIOTT: We call Harrison Bell.

25 THE CLERK: State your name for the record, please?

1 MR. BELL: Benjamin Harrison Bell, Jr.

2 (WHEREUPON, Harrison Bell was sworn
3 to tell the truth.)

4 THE CLERK: Thank you. You may be seated.

5 MR. BELL: Thank you.

6 HARRISON BELL - DIRECT EXAMINATION

7 BY MS. ELLIOTT:

8 Q Mr. Bell, how are you employed?

9 A I'm employed with the First Circuit Solicitor's Office.

10 Q And were you the prosecutor for Tiffany Sanders case?

11 A Yes, I was.

12 Q And, if I can direct your attention to events that
13 might have occurred after the trial?

14 A Yes.

15 Q Do you have any knowledge about discussions of or
16 contacts respecting an appeal in this case?

17 A Yes.

18 Q And what would that be?

19 A I believe it was the day after the conviction, Friday.
20 We were in the office, phone rang and sometimes I pick up
21 the phone, and it turned out to be somebody who said they
22 were from Andy Savage's office talking about this particular
23 case. I kind of told them the background. They said, thank
24 you and went on.

25 Q Okay. The purpose of the call was about a possible

1 appeal?

2 A Yes.

3 Q Okay. That's all I have. Your Honor.

4 HARRISON BELL - CROSS EXAMINATION

5 BY MR. COBB:

6 Q Mr. Bell, do you know what the genesis of that call
7 that contacted Mr. Savage?

8 A No. I just know that they were inquiring about maybe
9 representing her on appeal.

10 Q You don't know whether it came from Tiffany or her
11 parents or from somebody else?

12 A No, I do not know. They just said -- mentioned Tiffany
13 Ann Sanders and an appeal, and wanted a little background.

14 Q Thank you.

15 MR. COBB: No more questions.

16 MS. ELLIOTT: Thank you, Your Honor. State rest.

17 THE COURT: All right.

18 MR. COBB: No other witnesses, Your Honor.

19 THE COURT: I am going to take this under advisement.
20 I'll get back to y'all shortly.

21 MS. ELLIOTT: Thank you, Your Honor.

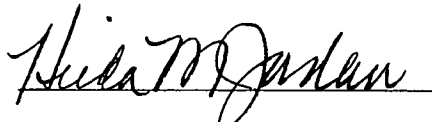
22 MR. COBB: Thank you, Your Honor.

23 (This proceeding was concluded.)
24
25

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PCR IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 24ND DAY OF MAY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


Hilda M. Jordan, CVR-M

June 15, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

RECEIVED

JUN 17 2013

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

S.C. SUPREME COURT

Case No. 2011-CP-18-1497

Tiffany Sanders, ... Petitioner/Appellant,

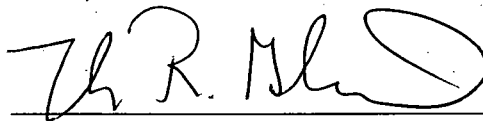
vs.

State of South Carolina Respondent,

PROOF OF SERVICE

I certify that I have served the Petition for Certiorari, Appendix, and Initial Brief and Designation of Contents of Record on Appeal on the State of South Carolina by depositing a copy of all four documents in the United States Mail, postage prepaid on June 12, 2013, addressed to the State's attorney of record, Salley W. Elliott, Deputy Attorney General, P. O. Box 11549, Columbia, S. C. 29211.

June 12, 2013



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June 12, 2013

Hon. Daniel E. Shearhouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

JUN 17 2013

Re: Tiffany Sanders adv. State of South Carolina
2011-CP-18-1497

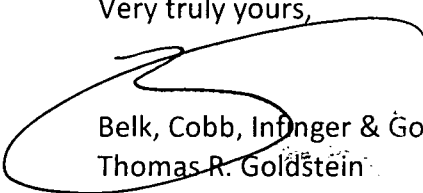
S.C. SUPREME COURT

Dear Mr. Shearhouse,

I enclose the original and seven copies of our petition for certiorari. I also enclose the original, unbound appendix with two bound copies. I also enclose two copies of our initial brief and designation of contents of record on appeal. Lastly, I enclose our certificate of service for these documents.

Would you be so kind as to file the originals and return a clocked copy of the petition for certiorari and initial brief to us in the self-addressed stamped envelope provided? I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: August 28, 2012, correspondence; January 23, 2013, correspondence

cc:

Sally W. Elliott, Esq. (with enclosure)

Harrison Bell, Esq. (with enclosure of petition for cert. and initial brief)