

VOLUME III OF III

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARCUS EVANS,

APPELLANT

RECORD ON APPEAL

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1 MANSLAUGHTER. OUR CODE OF LAWS DEFINES THE VOLUNTARY
2 MANSLAUGHTER AS THE UNLAWFUL KILLING OF ANOTHER WITHOUT
3 MALICE EXPRESS OR IMPLIED.

4 SO EVEN AS I GIVE TO YOU THE DEFINITIONS OF
5 THESE TWO CRIMES WITHOUT ANY FURTHER EXPLANATION, YOU CAN
6 SEE MURDER IS DEFINED AS THE UNLAWFUL KILLING OF ANY
7 PERSON WITH MALICE AFORETHOUGHT EXPRESSED OR IMPLIED.
8 VOLUNTARY MANSLAUGHTER IS THE UNLAWFUL KILLING OF ANOTHER
9 WITHOUT MALICE EXPRESSED OR IMPLIED.

10 SO YOU CAN SEE THE DISTINCTION IN THE VERY
11 DEFINITION, BUT I WILL EXPAND ON THAT AND GIVE YOU GREATER
12 EXPLANATION AS TO THE DISTINCTION. VOLUNTARY MANSLAUGHTER
13 IS COMMONLY DEFINED AS THE UNLAWFUL KILLING OF A HUMAN
14 BEING IN SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL
15 PROVOCATION.

16 IT INVOLVES THE INTENT TO KILL ON THE PART OF
17 THE ONE DOING THE KILLING, BUT IT DOES NOT INVOLVE
18 MALICE.

19 AND SO VOLUNTARY MANSLAUGHTER THEN IS THE
20 WRONGFUL KILLING OF A HUMAN BEING WITHOUT MALICE IN SUDDEN
21 HEAT OF PASSION AND ON SUFFICIENT LEGAL PROVOCATION. SO
22 THAT IF MALICE DID EXIST, THE WRONGFUL KILLING WOULD BE
23 MURDER EVEN IF IT WAS DONE WITH PASSION AND UPON
24 PROVOCATION BECAUSE THE LAW DOES NOT REDUCE FROM A MURDER
25 CHARGE TO A MANSLAUGHTER CHARGE EVERY HOMICIDE THAT IS

1 COMMITTED IN THE HEAT OF PASSION.

2 IT MUST BE PASSION WHICH IS JUSTLY EXCITED BY
3 LEGAL PROVOCATION. AND IF AN ADEQUATE LEGAL PROVOCATION
4 DOES NOT EXIST, THE KILLING, EVEN IF IT IS DONE IN THE
5 HEAT OF PASSION, IS MURDER AND NOT MANSLAUGHTER.

6 AND SO AS YOU CAN SEE, LADIES AND GENTLEMEN, SIT
7 THE PRESENCE OF MALICE THAT MAKES THE KILLING MURDER. IT
8 IS THE ABSENCE OF MALICE THAT MAKES THE KILLING
9 MANSLAUGHTER.

10 THE SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL
11 PROVOCATION WHICH REDUCES A WRONGFUL KILLING TO
12 MANSLAUGHTER, WHILE IT NEED NOT REMOVE OR DEFEAT REASON
13 ENTIRELY OR SHUT OUT KNOWLEDGE AND PRECHOICE ON THE PART
14 OF THE ONE DOING THE ACT, IT MUST BE SUCH AS WOULD
15 NATURALLY DISTURB THE SWAY OF REASON AND WOULD RENDER THE
16 MIND OF AN ORDINARY PERSON INCAPABLE OF COOL REFLECTION
17 AND WOULD PRODUCE WHAT IS ACCORDING TO HUMAN EXPERIENCE AN
18 UNCONTROLLABLE IMPULSE TO DO VIOLENCE.

19 NOW, AS YOU DETERMINE WHETHER AN ACT WOULD CAUSE
20 THE DEATH OR WAS CAUSED BY THE HEAT OF PASSION WHICH WOULD
21 MAKE IT MANSLAUGHTER IF IT'S -- IF IT IS UPON SUFFICIENT
22 LEVEL PROVOCATION OR BY MALICE WHICH WOULD MAKE IT MURDER,
23 ALL OF THE SURROUNDING CIRCUMSTANCES AND CONDITIONS HAVE
24 TO BE TAKEN INTO ACCOUNT INCLUDING PREVIOUS RELATIONS AND
25 CONDITIONS CONNECTED WITH THE TRAGEDY AS WELL AS THOSE

1 WHICH EXISTED AT THE TIME OF THE KILLING.

2 I TELL YOU ONCE AGAIN AND REMIND YOU THAT IF ONE
3 INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON, AN
4 IMPLICATION OF MALICE MAY ARISE. AND I REMIND YOU THAT AS
5 TO THE CHARGE OF VOLUNTARY MANSLAUGHTER IF FACTS ARE
6 PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN
7 INFERENCE OF MALICE TO YOUR SATISFACTION, THAT INFERENCE
8 WOULD BE AN EVIDENTIARY FACT THAT YOU WOULD TAKE INTO
9 ACCOUNT ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AND
10 GIVE IT THE WEIGHT THAT YOU THINK IT SHOULD RECEIVE.

11 IF IT IS PROVEN BEYOND A REASONABLE DOUBT THAT
12 MALICE EXISTED, THEN THE KILLING CANNOT BE VOLUNTARY
13 MANSLAUGHTER. I TELL YOU, LADIES AND GENTLEMEN, WHERE
14 DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON, WORDS
15 ALONE, NO MATTER HOW INSULTING, ARE NOT SUFFICIENT TO
16 CONSTITUTE LEGAL PROVOCATION.

17 NOW, OF COURSE WORDS ACCOMPANIED BY HOSTILE ACTS
18 MAY ACCORDING TO THE CIRCUMSTANCES REDUCE A KILLING FROM
19 MURDER TO MANSLAUGHTER. EXAMPLES OF ACTS OF PROVOCATION
20 THAT HAVE BEEN RECOGNIZED BY OUR LAW AS BEING SUFFICIENT
21 TO NEGATE MALICE ARE PULLING A KNIFE ON A DEFENDANT,
22 POINTING A GUN AT THE DEFENDANT, HUMILIATING ASSAULT ON
23 THE DEFENDANT AND SO FORTH.

24 THOSE ARE THE TYPES OF THINGS WHICH ARE NOT
25 EXHAUSTED OR ALL INCLUSIVE IN ANY EVENT, BUT ARE EXAMPLES

1 AND EXAMPLES ONLY OF ACTS OF PROVOCATION THAT HAVE BEEN
2 RECOGNIZED AS BEING SUFFICIENT TO NEGATE MALICE.

3 YOU LADIES AND GENTLEMEN HOWEVER MUST MAKE A
4 DETERMINATION IN THIS PARTICULAR CASE AS TO WHETHER OR NOT
5 SUCH ACTS DID IN FACT EXIST. I TELL YOU AGAIN THAT
6 INSULTING WORDS, NO MATTER HOW IRRITABLE, ARE NOT ENOUGH
7 TO MITIGATE OR REDUCE A HOMICIDE FROM MURDER TO
8 MANSLAUGHTER WHEN THE DEATH IS CAUSED BY A DEADLY WEAPON
9 EVEN IF THE LANGUAGE IS CALCULATED AROUSE THE WRATH OF AN
10 ORDINARY PERSON.

11 BUT IF THE INSULTING WORDS ARE ACCOMPANIED BY
12 OVERT THREATENING ACTS OR BY PHYSICAL ENCOUNTERS, THE
13 TOTAL PROVOCATION OR AT LEAST ITS PHYSICAL MANIFESTATIONS
14 MAY SUFFICE. NOW LADIES AND GENTLEMEN, THAT IS THE LAW OF
15 VOLUNTARY MANSLAUGHTER.

16 TO SUMMARIZE, MURDER IS THE UNLAWFUL KILLING OF
17 ANOTHER PERSON WITH MALICE EITHER EXPRESS OR INFERRED.
18 VOLUNTARY MANSLAUGHTER IS THE UNLAWFUL KILLING OF ANOTHER
19 PERSON WITHOUT MALICE EXPRESSED OR INFERRED.

20 NOW I CHARGE YOU, LADIES AND GENTLEMEN, THAT
21 WHEN TWO OR MORE PERSONS AID AND ENCOURAGE AND ABET EACH
22 OTHER IN THE COMMISSION OF A CRIME, ALL WHO ARE PRESENT
23 ARE PRINCIPALS AND EQUALLY GUILTY.

24 AND SO WHERE TWO PERSONS COMBINE TOGETHER TO
25 COMMIT A CRIME AND THE CRIME IS COMMITTED, ALL OF THOSE

1 WHO ARE PRESENT TO AID AND ABET AND ASSIST IN THE
2 COMMISSION OF THAT CRIME ARE GUILTY BECAUSE THE ACT OF ONE
3 BECOMES THE ACT OF ALL. THE HAND OF ONE BECOMES THE HAND
4 OF ALL.

5 IT MAKES NO DIFFERENCE BY WHOSE IMMEDIATE ACT OR
6 AGENCY THE CRIME ITSELF IS COMMITTED BECAUSE ALL ARE
7 PRINCIPALS. I TELL YOU HOWEVER THAT MERE PRESENCE AT THE
8 SCENE OF A CRIME, EVEN WITH KNOWLEDGE OF THE COMMISSION OF
9 A CRIME BUT WITHOUT THE INTENT TO AID OR ABET OR ASSIST IN
10 THE COMMISSION OF THE CRIME WOULD NOT CONSTITUTE GUILT
11 UNDER THIS THEORY.

12 AND SO THE BURDEN IS ON THE STATE TO PROVE
13 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT AND EACH OF
14 THEM WERE PRESENT AND THAT THEY WERE THERE WITH A CRIMINAL
15 INTENT, THAT IS TO SAY WITH THE INTENT TO AID, ENCOURAGE
16 AND ABET EACH OTHER IN COMMITTING THE OFFENSE.

17 NOW, CRIMINAL INTENT IS A NECESSARY ELEMENT OF
18 THE CRIME AND IT HAS TO BE PROVEN BY THE STATE BEYOND A
19 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT
20 HAS TO BE DETERMINED BY YOU AS A JURY FROM THE
21 CIRCUMSTANCES SURROUNDING THE SITUATION.

22 THERE IS NO WAY TO PROVE INTENT TO A
23 MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE
24 CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE HAD IN
25 MIND. AND SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE

1 INFERRED FROM THE CIRCUMSTANCES WHICH WERE SHOWN TO HAVE
2 EXISTED AT THE TIME.

3 AND THAT IS HOW YOU AS A JURY MAKE A
4 DETERMINATION AS TO WHETHER OR NOT THE ELEMENT REQUIRING
5 INTENT WAS PRESENT.. CRIMINAL INTENT IS A STATE OF MIND
6 AND IT OPERATES JOINTLY WITH AN ACT IN THE COMMISSION OF A
7 CRIME. CRIMINAL INTENT IS A MENTAL STATE.

8 IT IS A CONSCIOUS WRONGDOING. AND SO IT IS UP
9 TO YOU, THE JURY, TO DETERMINE WHAT THE DEFENDANT OR
10 EITHER OF THEM INTENDED TO DO BASED ON THE CIRCUMSTANCES
11 SHOWN TO HAVE EXISTED.

12 I TELL YOU THAT THE STATE HAS TO PROVE CRIMINAL
13 INTENT BEYOND A REASONABLE DOUBT JUST AS IT MUST PROVE
14 EVERY OTHER ELEMENT BEYOND A REASONABLE DOUBT AS I HAVE
15 PREVIOUSLY EXPLAINED THAT TO YOU. EXCUSE ME JUST A
16 MINUTE.

17 I DON'T WANT YOU TO GET DISCOURAGED THE FACT I'M
18 DRINKING WATER. DON'T HAVE AS FAR TO GO AS I HAVE GONE IN
19 THIS CHARGE.

20 NOW LADIES AND GENTLEMEN, I INSTRUCT YOU ON THE
21 LAW OF MISPRISON OF A FELONY. I REMIND YOU THAT TWO OF
22 THE DEFENDANTS IN THIS PARTICULAR CASE, MR. SINGLETON AND
23 MR. WITHERSPOON ARE INDICTED FOR THE CHARGE OF MISPRISON
24 OF A FELONY.

25 SO WHAT DO WE MEAN BY THAT PHRASE AND BY THAT

1 CRIME AND WHAT DOES IT ENCOMPASS? MISPRISON OF A FELONY
2 IS DESCRIBED AS A CRIMINAL NEGLECT TO BRING A CRIMINAL
3 OFFENDER TO JUSTICE AFTER A CRIME HAS BEEN COMMITTED.

4 I TELL YOU LADIES AND GENTLEMEN THAT THE MERE
5 SIZE OR THE FAILURE TO COME FORWARD IS NOT ENOUGH TO
6 CONSTITUTE MISPRISON OF A FELONY. THERE MUST BE SOME
7 POSITIVE ACTS OF CONCEALMENT OF THE FELONY ITSELF.

8 CRIMINAL NEGLECT AS DEFINED UNDER THE LAW MEANS
9 THE FOLLOWING. CRIMINAL NEGLIGENCE IS DEFINED AS
10 RECKLESSNESS, THAT IS THE DOING OF THE NEGLIGENT ACT
11 KNOWINGLY. SO LET ME DEFINE FOR YOU NEGLIGENCE, SIMPLE
12 NEGLIGENCE FIRST AND THEN CRIMINAL NEGLIGENCE. NEGLIGENCE
13 IS DEFINED SIMPLY AS CARELESSNESS.

14 IT'S THE FAILURE TO DO WHAT AN ORDINARILY
15 REASONABLE PERSON WOULD HAVE DONE UNDER THE CIRCUMSTANCES
16 OR IS DOING SOMETHING THAT AN ORDINARILY REASONABLE PERSON
17 WOULD NOT HAVE DONE UNDER THE CIRCUMSTANCES. NEGLIGENCE
18 AND CARELESSNESS ARE SYNONYMS FOR EACH OTHER.

19 THEY MEAN THE SAME THING. NOW CRIMINAL
20 NEGLIGENCE, HOWEVER, IS MORE THAN MERE CARELESSNESS.
21 CRIMINAL NEGLIGENCE IS THE DOING OF A NEGLIGENT ACT
22 KNOWINGLY. IT IS NOT UNINTENTIONAL.

23 IT IS A KNOWING ACT IN THAT REGARD OR I SHOULD
24 SAY -- DISREGARD WHAT I SAID ABOUT INTENTIONAL ACT. IT IS
25 KNOWINGLY DOING A NEGLIGENT ACT AND SO THE ACTOR HAS TO

1 REALIZE THAT HE IS ACTING NEGLIGENTLY AT THE TIME.

2 AND SO YOU, LADIES AND GENTLEMEN, MUST BE
3 CONVINCED BY THE STATE BEYOND A REASONABLE DOUBT THAT NOT
4 ONLY WAS THE DEFENDANT IN THIS PARTICULAR CASE, EITHER OR
5 BOTH OF THEM, ACTING NEGLIGENTLY IN REGARD TO THE CHARGE
6 OF MISPRISON OF A FELONY, BUT THAT THEY WERE AWARE OF
7 THEIR NEGLIGENCE IN THIS REGARD BECAUSE IT IS THIS
8 CONSCIOUS DISREGARD OF THE RISK CREATED BY THE ACT THAT
9 DISTINGUISHES RECKLESSNESS OR CRIMINAL NEGLIGENCE FROM
10 ORDINARY NEGLIGENCE.

11 SO HAVING DEFINED FOR YOU CRIMINAL NEGLIGENCE, I
12 RE-DEFINED FOR YOU THE CHARGE OF MISPRISON OF A FELONY.
13 IT IS THE CRIMINAL NEGLECT TO BRING A DEFENDANT -- AN
14 OFFENDER TO JUSTICE AFTER THE COMMISSION OF A FELONY.

15 I REMIND YOU AGAIN YOUR SILENCE OR FAILURE TO
16 COME FORWARD IS NOT ENOUGH TO CONSTITUTE MISPRISON OF A
17 FELONY, BUT THERE HAS TO BE SOME POSITIVE ACTS OF
18 CONCEALMENT OF THE FELONY ITSELF.

19 NOW LADIES AND GENTLEMEN, ONE OF THE ISSUES IN
20 THIS CASE IS THE IDENTIFICATION OF THE DEFENDANTS AS THE
21 PERPETRATORS OF THE CRIME. AND THE PROSECUTION HAS THE
22 BURDEN OF PROVING IDENTITY BEYOND A REASONABLE DOUBT.

23 YOU THE JURY HAVE TO DECIDE WHETHER THE STATE
24 HAS ESTABLISHED THE DEFENDANT OF -- EXCUSE ME -- HAS
25 ESTABLISHED THE IDENTITY OF A DEFENDANT BEYOND A

1 REASONABLE DOUBT.

2 IF YOU ARE NOT CONVINCED BEYOND A REASONABLE
3 DOUBT THAT A DEFENDANT WAS THE PERSON WHO COMMITTED THE
4 CRIME, YOU MUST FIND THE DEFENDANT NOT GUILTY AND YOU MUST
5 CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION WITNESS IN
6 THE SAME WAY AS EVERY OTHER WITNESS.

7 YOU WOULD CONSIDER THE CAPACITY AND THE
8 OPPORTUNITY TO MAKE A RELIABLE OBSERVATION ON THE MATTER
9 COVERED IN THE TESTIMONY OF THAT WITNESS. AND IF AFTER
10 CONSIDERING THE TESTIMONY OF THE IDENTIFICATION WITNESS
11 YOU HAVE A REASONABLE DOUBT AS TO THE ACCURACY OF THE
12 IDENTIFICATION, YOU MUST FIND THE DEFENDANT NOT GUILTY.

13 NOW LADIES AND GENTLEMEN, YOU HAVE HEARD IN THIS
14 PARTICULAR CASE STATEMENTS THAT HAVE BEEN INTRODUCED INTO
15 EVIDENCE BY CERTAIN OF THE PEOPLE CHARGED IN THE
16 INDICTMENT. WHILE AS A COURT I HAVE TO DETERMINE THE
17 ADMISSIBILITY OF THAT EVIDENCE, THAT IS WHETHER OR NOT YOU
18 CAN HEAR IT, YOU AS THE JURY HAVE TO DETERMINE ITS
19 EXISTENCE, ITS VOLUNTARINESS AND ANY WEIGHT THAT YOU WOULD
20 GIVE TO ANY ALLEGED STATEMENT MADE BY A DEFENDANT.

21 YOU HAVE TO MAKE THE ULTIMATE DETERMINATION OF
22 WHETHER OR NOT THE DEFENDANT IN FACT MADE THE STATEMENT.
23 AND IF YOU DETERMINE THAT THE DEFENDANT MADE THE
24 STATEMENT, YOU MUST THEN DETERMINE WHETHER THE STATEMENT
25 WAS MADE VOLUNTARILY.

1 AND FINALLY YOU WILL DECIDE WHAT WEIGHT IF ANY
2 SHOULD BE GIVEN TO ANY SUCH ALLEGED STATEMENT. YOU HAVE
3 TO DECIDE WHETHER THE STATEMENT WAS A PRODUCTION OF AN
4 ESSENTIALLY FREE CHOICE BY ITS MAKER.

5 THE STATE HAS TO PROVE THE VOLUNTARINESS OF THE
6 STATEMENT BEYOND A REASONABLE DOUBT. IF AND YOU DETERMINE
7 BEYOND A REASONABLE DOUBT THAT A STATEMENT WAS FREELY AND
8 VOLUNTARILY GIVEN, THEN YOU CAN GIVE A STATEMENT SUCH
9 FURTHER WEIGHT AS YOU THINK IT SHOULD RECEIVE.

10 IF YOU DETERMINE THAT THE STATEMENT WAS NOT THE
11 FREE AND VOLUNTARY WILLED CHOICE AND EXPRESSION OF THE
12 DEFENDANT, THEN YOU WOULD NOT CONSIDER THE STATEMENT AS
13 EVIDENCE.

14 NOW, AS YOU MAKE THIS DECISION AND DETERMINE
15 WHETHER OR NOT A DEFENDANT'S WILL WAS OVERCOME IN
16 OBTAINING THE STATEMENT, THE LAW REQUIRES YOU TO CONSIDER
17 WHAT IS KNOWN AS THE TOTALITY OF THE CIRCUMSTANCES.

18 THAT MEANS YOU CONSIDER BOTH THE CHARACTERISTICS
19 OF THE DEFENDANT AND THE CIRCUMSTANCES SURROUNDING THE
20 QUESTIONING. SOME OF THE FACTORS THE LAW SAYS YOU MAY
21 CONSIDER ARE THE AGE OF THE DEFENDANT, THE DEFENDANT'S
22 EDUCATIONAL BACKGROUND, HIS MENTAL ABILITY OR CAPACITY AND
23 THE DEFENDANT'S BACKGROUND ALONG WITH ALL OF THE OTHER
24 FACTS AND CIRCUMSTANCES SURROUNDING THE MAKING AND THE
25 TAKING OF SUCH STATEMENT.

1 NOW, AS YOU DETERMINE THE VOLUNTARINESS OF ANY
2 ALLEGED STATEMENT, YOU SHOULD CONSIDER WHETHER THE
3 DEFENDANT WAS ADVISED OF AND UNDERSTOOD HIS CONSTITUTIONAL
4 RIGHTS. THE LAW REQUIRES THAT BEFORE ANY QUESTIONS CAN BE
5 ASKED OF A PERSON WHO IS IN CUSTODY, LAW ENFORCEMENT HAS
6 TO ADVISE THE ACCUSED OF WHAT HAS BEEN KNOWN AS MIRANDA
7 RIGHTS.

8 THIS MEANS THAT THE AUTHORITIES HAVE TO ADVISE
9 THE ACCUSED FIRST THAT HE HAS THE RIGHT TO REMAIN SILENT,
10 AND SECONDLY THAT ANY STATEMENT COULD BE USED AGAINST HIM
11 IN COURT, AND THIRDLY THAT HE HAS THE RIGHT TO HAVE A
12 LAWYER PRESENT AND THAT IF HE CANNOT AFFORD A LAWYER THEN
13 ONE WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST
14 AND THAT HE CAN STOP MAKING THE STATEMENT AT ANY TIME.

15 THE STATE HAS TO PROVE THAT THESE WARNINGS WERE
16 GIVEN BEYOND A REASONABLE DOUBT AND ALSO MUST PROVE THAT
17 HE UNDERSTOOD IT, WAIVED OR GAVE UP THOSE RIGHTS BEFORE
18 MAKING THE STATEMENT.

19 YOU MUST CAREFULLY SCRUTINIZE ALL OF THE
20 SURROUNDING CIRCUMSTANCES BEFORE YOU CAN GIVE ANY WEIGHT
21 TO AN ALLEGED STATEMENT. YOU MUST BE SATISFIED BEYOND A
22 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE
23 DEFENDANT, THAT IT WAS UNINFLUENCED BY A PROMISE OF REWARD
24 OR BY THREAT OF HARM.

25 AND IF YOU FIND BEYOND A REASONABLE DOUBT THAT

1 ANY STATEMENT WAS GIVEN VOLUNTARILY, THEN YOU MUST DECIDE
2 WHAT WEIGHT, IF ANY, IT SHOULD RECEIVE. IF YOU FIND THAT
3 THE STATEMENT WAS NOT VOLUNTARY, THEN IN THAT EVENT YOU
4 MUST NOT CONSIDER THE STATEMENT AS EVIDENCE FOR ANY
5 PURPOSE.

6 NOW LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF
7 EVIDENCE WHICH ARE NORMALLY PRESENTED DURING THE COURSE OF
8 A TRIAL. ONE IS CALLED DIRECT EVIDENCE AND THE OTHER IS
9 CALLED CIRCUMSTANTIAL EVIDENCE. YOU HAVE HEARD SOME
10 REFERENCE TO THESE TWO TERMS DURING THE COURSE OF THE
11 TRIAL.

12 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
13 CLAIMS TO HAVE KNOWLEDGE OF THE FACT, ACTUAL KNOWLEDGE OF
14 THE FACT SUCH AS AN EYE WITNESS. THAT IS THE PERSON WHO
15 ALLEGES OR CLAIMS THAT HE OR SHE SAW SOMETHING AND THEN
16 COMES TO COURT AND TELLS YOU WHAT HE OR SHE SAW. THAT IS
17 DIRECT EVIDENCE, EYE WITNESS TYPE TESTIMONY.

18 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
19 FACTS AND CIRCUMSTANCES WHICH LEAD TO THE EXISTENCE OF
20 ANOTHER FACTOR. NOW LADIES AND GENTLEMEN, THE LAW DOESN'T
21 MAKE ANY DISTINCTION WHATSOEVER BETWEEN THE WEIGHT OR THE
22 VALUE THAT YOU WILL GIVE TO EITHER DIRECT EVIDENCE OR
23 CIRCUMSTANTIAL EVIDENCE.

24 AND A GREATER DEGREE OF CERTAINTY IS NOT
25 REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN IT IS OF DIRECT

1 EVIDENCE BECAUSE CIRCUMSTANTIAL EVIDENCE IS GOOD EVIDENCE
2 SO LONG AS IT MEETS THE TEST OF STRICT PROOF.

3 LET ME USE THE EXAMPLE THAT I COMMONLY USE
4 BEFORE JURORS TO TRY TO DEFINE FOR YOU BY WAY OF EXAMPLE
5 ONLY THE DIFFERENCE BETWEEN DIRECT AND CIRCUMSTANTIAL
6 EVIDENCE.

7 IT IS OBVIOUS WE ARE IN THE THROWS OF WINTER.
8 ONE DAY IT'S COLD, NEXT WAY WARM, BUT THE GRASS ON MY
9 FRONT LAWN IS ABOUT THE COLOR OF THIS CARPET, GRASS IS DRY
10 LIKE IT IS IN YOUR YARDS AS WELL.

11 AND IF I WERE TO GO TO BED TONIGHT, LOOK OUT
12 ACROSS MY LAWN AND THAT'S THE WAY IT LOOKS, JUST THAT
13 GRASS OUT THERE AND WAKE UP THE NEXT MORNING AND SEE THAT
14 MY LAWN IS COVERED WITH SNOW, AND IF I WERE TO LOOK
15 FURTHER AND SEE THAT THERE WERE FOOTPRINTS ACROSS MY LAWN
16 LEADING UP TO MY FRONT DOOR, I WOULD BE ABLE TO GATHER BY
17 CIRCUMSTANTIAL EVIDENCE CERTAIN INFORMATION FROM WHAT I
18 SAW.

19 FIRST OF ALL I WOULD KNOW THAT SOMETIME AFTER I
20 WENT TO BED, IT SNOWED. I DID NOT SEE A SINGLE FLAKE
21 FALL, SO I COULD NOT TESTIFY AS AN EYE WITNESS BY DIRECT
22 EVIDENCE THAT IT SNOWED BECAUSE I DIDN'T SEE IT SNOW, BUT
23 I SAW THE SNOW ON THE GROUND THE NEXT DAY.

24 AND I WOULD ALSO KNOW THAT SOMETIME AFTER IT
25 SNOWED, SOMEBODY CAME ACROSS MY FRONT LAWN AND CAME UP TO

1 MY FRONT DOOR. I WOULDN'T KNOW WHO THEY WERE. I DIDN'T
2 SEE THEM, SO I COULD NOT TESTIFY AS AN EYE WITNESS TO
3 THAT.

4 BUT I WOULD BE ABLE TO CONCLUDE FROM THE CHAIN
5 OF FACTS AND REASONING AND LOGICAL REASONING AND INDUCTION
6 BY WHAT I DID SEE THAT THAT'S WHAT HAPPENED, AND THAT'S
7 THE WAY THAT CIRCUMSTANTIAL EVIDENCE WORKS. IT IS THE
8 PROOF OF A CHAIN OF FACTS WHICH LEADS TO A CONCLUSION.

9 NOW, TO THE EXTENT THAT THE STATE RELIES ON
10 CIRCUMSTANTIAL EVIDENCE TO PROVE AN EVENT, NOT ONLY MUST
11 THE CIRCUMSTANCES THEMSELVES BE PROVEN, BUT THEY MUST
12 POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED AND THEY
13 MUST BE WHOLLY AND IN EVERY PARTICULAR PERFECTLY
14 CONSISTENT WITH EACH OTHER AND THEY MUST FURTHER BE
15 ABSOLUTELY INCONSISTENT WITH ANY OTHER REASONABLE
16 EXPLANATION THAN THE GUILT OF THE ACCUSED.

17 EVERY CIRCUMSTANCE WHICH IS RELIED UPON BY THE
18 PROSECUTION AS MATERIAL MUST BE BROUGHT TO THE TEST OF
19 STRICT PROOF. AND ALL OF THE FACTS PROVEN MUST BE
20 CONSISTENT WITH EACH OTHER AND TAKEN TOGETHER THEY SHOULD
21 BE OF A CONCLUSIVE NATURE AND TENDENCY PRODUCING A
22 REASONABLE CERTAINTY THAT THE DEFENDANT COMMITTED THE
23 OFFENSE CHARGED.

24 IT IS NOT SUFFICIENT THAT THE FACTS CREATE A
25 POSSIBILITY OF GUILT, EVEN THOUGH A STRONG ONE. AND IF

1 THEREFORE ASSUMING THOSE FACTS TO BE TRUE THERE IS ANY
2 EXPLANATION WHICH DOES NOT INCLUDE THE GUILT OF THE
3 DEFENDANT, THEN THE PROOF FAILS.

4 AND THE REASON FOR THIS IS THAT ALL PRESUMPTIONS
5 OF LAW INDEPENDENT OF EVIDENCE ARE IN FAVOR OF INNOCENCE.
6 AND EVERY PERSON IS PRESUMED TO BE INNOCENT UNTIL HE IS
7 PROVEN TO BE GUILTY. IT IS NOT ENOUGH TO ESTABLISH A
8 PROBABILITY OF GUILT ARISING FROM THE DOCTRINE OF CHANCES
9 THAT A FACT CHARGED IS LIKELY TO BE TRUE.

10 NOW LADIES AND GENTLEMEN, I TELL YOU THAT AN
11 ACCUSED WHEN HE IS CHARGED WITH A CRIME HAS THE RIGHT OF
12 PROVING HIS GENERAL GOOD CHARACTER. THAT IS TO SAY A
13 CHARACTER WHICH IS INCONSISTENT WITH THE CRIME CHARGED
14 AGAINST HIM.

15 AND EVIDENCE, IF ANY, OF THE GENERAL GOOD
16 CHARACTER OF THE ACCUSED IS FOR THE PURPOSE OF SHOWING THE
17 IMPROBABILITY THAT THE DEFENDANT WOULD HAVE COMMITTED OR
18 DID COMMIT THE CRIME CHARGED AGAINST HIM. THE GOOD
19 CHARACTER OF THE ACCUSED, IF PROVEN, IS LIKE ALL OF THE
20 OTHER EVIDENCE IN THE CASE AND IS ENTITLED TO SUCH WEIGHT
21 AND EFFECT AS YOU THE JURY MAY DETERMINE.

22 AND ITS VALUE IS NOT TO BE DETERMINED BY THAT OF
23 OCCASION, BUT ON THE CONTRARY IT MAY CREATE A REASONABLE
24 DOUBT AS TO THE EVIDENCE WHICH MAY OTHERWISE APPEAR
25 CONCLUSIVE.

1 IT IS THE PRIVILEGE OF AN ACCUSED TO PLACE INTO
2 EVIDENCE HIS GOOD CHARACTER WITHOUT REGARD TO OTHER
3 EVIDENCE IN THE CASE AND IT IS FOR YOU THE JURY TO
4 CONSIDER IT IN CONNECTION WITH ALL THE OTHER EVIDENCE IN
5 THE CASE AND TO DETERMINE WHAT FORCE, EFFECT, VALUE AND
6 WEIGHT IT SHOULD HAVE.

7 I REMIND YOU AGAIN, LADIES AND GENTLEMEN, THAT
8 EVEN THOUGH A DEFENDANT HAS THE RIGHT OF PROVING HIS
9 GENERAL GOOD CHARACTER, THAT DOES NOT MEAN THAT THE BURDEN
10 OF PROOF SHIFTS ON HIM IN THAT REGARD. THE STATE STILL
11 HAS THE BURDEN OF PROOF TO PROVE THE ELEMENTS OF THE
12 OFFENSE CHARGED BEYOND A REASONABLE DOUBT.

13 NOW LADIES AND GENTLEMEN, AS YOU KNOW, IN THIS
14 PARTICULAR CASE THERE ARE TWO CHARGES. ONE CHARGE AGAINST
15 TWO DEFENDANTS, ANOTHER CHARGE AGAINST TWO MORE
16 DEFENDANTS. AND SO WE HAVE FOUR SEPARATE DEFENDANTS
17 ACTUALLY NAMED IN TWO SEPARATE CHARGES.

18 YOU MUST CONSIDER EACH COUNT OR CHARGE
19 SEPARATELY AND YOU MUST DECIDE SEPARATELY WHETHER EACH
20 INDIVIDUAL DEFENDANT IS GUILTY OR NOT GUILTY OF THE CHARGE
21 ALLEGED IN THE INDICTMENT.

22 IT IS YOUR DUTY TO GIVE SEPARATE CONSIDERATION
23 TO EACH INDIVIDUAL DEFENDANT ON EACH, ON THE SEPARATE
24 CHARGE ALLEGED IN THE INDICTMENT. YOU MUST THEREFORE
25 CONSIDER SEPARATELY THE EVIDENCE AND THE LAW FOR EACH

1 INDIVIDUAL DEFENDANT AND WRITE YOUR VERDICT ACCORDINGLY.

2 YOU MAY IF THE EVIDENCE WARRANTS IT FIND EACH
3 INDIVIDUAL DEFENDANT GUILTY OR NOT GUILTY ON THE CHARGE.
4 YOUR VERDICT IS NOT HAVE TO BE THE SAME FOR EACH
5 DEFENDANT.

6 THAT IS TO SAY WHEN THERE ARE TWO PERSONS
7 CHARGED WITH A CRIME, YOU MAY IF THE EVIDENCE WARRANTS IT
8 CONVICT BOTH OR ACQUIT BOTH OR CONVICT ONE AND ACQUIT THE
9 OTHER DEPENDING UPON YOUR VIEW OF THE EVIDENCE BECAUSE YOU
10 WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT
11 GUILTY FOR EACH INDIVIDUAL DEFENDANT AND FOR EACH CHARGE
12 ALLEGED IN THE INDICTMENT.

13 NOW FINALLY, LADIES AND GENTLEMEN, AND THERE NO
14 DOUBT IS A WORD YOU HAVE BEEN LONGING ON FOR SINCE
15 TUESDAY, FINALLY, LET ME TELL YOU THAT YOU DON'T SERVE AS
16 PARTISANS OR ADVOCATES IN THIS CASE FOR THE STATE OF SOUTH
17 CAROLINA OR FOR THESE DEFENDANTS.

18 YOU DON'T SERVE AS JURORS TO PUNISH YOUR ENEMIES
19 NOR TO REWARD YOUR FRIENDS. OBVIOUSLY SUCH A PERVERTED
20 SYSTEM OF JUSTICE WOULD BE INTOLERABLE UNDER THE LAW. YOU
21 HAVE BEEN SELECTED BY BOTH THE STATE AND THESE DEFENDANTS
22 TO BE FAIR AND IMPARTIAL JURORS.

23 IT IS YOUR DUTY THEN BY YOUR JOINT DELIBERATIONS
24 TO DETERMINE THE TRUTH OF THIS CASE GIVING TO THESE
25 DEFENDANTS THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH

1 AND EVERY ISSUE AND THEN TO THE FACTS WHICH YOU DETERMINE
2 TO BE TRUE YOU TAKE AND APPLY THE LAW WHICH I HAVE JUST
3 GIVEN YOU AND THUS ARRIVE AT A VERDICT WHICH SPEAKS THE
4 TRUTH OF THIS CASE.

5 AND THAT IS WHAT THE WORD VERDICT MEANS. IT
6 MEANS A TRUTHFUL SAYING. AND ONCE YOU HAVE DONE THOSE
7 THINGS, YOU WILL HAVE DISCHARGED THE OATH, FULFILLED THE
8 RESPONSIBILITY THAT YOU UNDERTOOK TO WELL AND TRULY TRY
9 THIS CASE AND A TRUE VERDICT RENDER ACCORDING TO THE
10 EVIDENCE SO HELP YOU GOD.

11 LET ME NOW INSTRUCT YOU, LADIES AND GENTLEMEN,
12 AS TO THE FORMS OF THE VERDICT WHICH MAY APPLY IN THIS
13 PARTICULAR CASE. THE ORDER IN WHICH THE VERDICTS ARE
14 WRITTEN DOWN ON THESE SHEETS OF PAPER DOESN'T HAVE ANY
15 MEANING AT ALL OR ANY SIGNIFICANCE AT ALL.

16 I WRITE THEM DOWN IN THE ORDER THAT I FIND THEM
17 EASIEST TO EXPLAIN. BUT YOU LADIES AND GENTLEMEN ARE NOT
18 TO GATHER ANYTHING, REACH NO CONCLUSION, REACH NO
19 INFERENCE AT ALL FROM THE ORDER IN WHICH I HAVE WRITTEN --
20 THE ORDER THAT I EXPLAIN THEM TO YOU.

21 THERE ARE FOUR SEPARATE VERDICT FORMS BECAUSE
22 THERE ARE FOUR SEPARATE DEFENDANTS. AND EACH DEFENDANT
23 HAS HIS OWN SEPARATE VERDICT FORM AND HIS NAME WILL APPEAR
24 AT THE TOP.

25 AND YOU WILL SEE THERE IS ONE VERDICT FORM FOR

1 MARCUS EVANS ON THE CHARGE OF MURDER, ONE FOR GILARON
2 TAYLOR ON THE CHARGE OF MURDER, ONE FOR TRAVIS SINGLETON
3 ON THE CHARGE OF MISPRISON OF A FELONY, ONE FOR LAMONT
4 WITHERSPOON ON THE SAME CHARGE, MISPRISON OF A FELONY.

5 AND YOU WILL WRITE IN THIS PARTICULAR CASE FOUR
6 SEPARATE VERDICTS. I REMIND YOU AGAIN THAT YOUR VERDICT
7 IN ONE CASE IS NOT DETERMINATIVE OF YOUR VERDICT ON
8 ANOTHER. YOU UNDERSTAND THAT.

9 NOW MADAM FORELADY, I GIVE THESE TO YOU BECAUSE
10 YOU ARE THE ONE WHO HAS TO FILL THEM OUT AND I'LL GO OVER
11 WITH YOU NOW THE ORDER YOU SEE THEM THERE. BUT LADIES AND
12 GENTLEMEN, I WANT ALL OF YOU TO LISTEN AS I GO OVER THIS
13 WITH THE FORELADY BECAUSE OBVIOUSLY IT'S NOT GOING TO BE
14 HER VERDICT ALONE.

15 THE VERDICTS HAVE TO BE UNANIMOUS. ALL 12 OF
16 YOU HAVE TO AGREE AS TO WHAT THE VERDICT WILL BE BEFORE
17 SHE IS AUTHORIZED TO FILL OUT THAT FORM AND TO SIGN IT.
18 WE BEGIN WITH THE CHARGES AGAINST MARCUS EVANS INDICTED
19 WITH THE CRIME OF MURDER.

20 THERE ARE THREE POSSIBLE VERDICT FORMS IN THIS
21 PARTICULAR CASE. ONE IS WE THE JURY BY UNANIMOUS CONSENT
22 FIND THE DEFENDANT GUILTY OF MURDER. THAT IS THE VERDICT
23 FORM THAT YOU WILL USE IF YOU FIND THAT THE STATE HAS
24 PROVEN BEYOND A REASONABLE DOUBT THE ELEMENTS OF THE
25 CHARGE OF MURDER AS THEY APPLY TO THIS DEFENDANT IN THIS

1 PARTICULAR CASE.

2 AND IF THAT'S THE VERDICT FORM THAT YOU ARRIVE
3 AT, MADAM FORELADY, YOU WILL INDICATE THAT BY PUTTING AND
4 "X" OR A CHECK MARCUS TO THE LEFT OF THE WORDS GUILTY OF
5 MURDER THAT YOU SEE WE HAVE PROVIDED FOR YOU.

6 ANOTHER POSSIBLE VERDICT FORM THAT MAY ARISE IN
7 THIS PARTICULAR CASE IS WE THE JURY BY UNANIMOUS CONSENT
8 FIND THE DEFENDANT GUILTY OF VOLUNTARY MANSLAUGHTER.

9 THAT IS THE VERDICT FORM THAT YOU WOULD USE IF
10 YOU FIND THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
11 THE ELEMENTS OF THE CRIME OF VOLUNTARY MANSLAUGHTER AS I
12 HAVE INSTRUCTED YOU AS IT APPLIES TO THIS DEFENDANT.

13 IF THAT IS THE VERDICT FORM YOU ARRIVE AT, YOU
14 PUT AND "X" OR A CHECK MARCUS TO THE LEFT OF THE WORDS
15 GUILTY OF VOLUNTARY MANSLAUGHTER.

16 THE FINAL VERDICT FORM WHICH MAY BE USED IN THIS
17 PARTICULAR CASE IS WE THE JURY BY UNANIMOUS CONSENT FIND
18 THE DEFENDANT NOT GUILTY. THAT'S THE VERDICT FORM YOU
19 WILL USE IF YOU FIND THE STATE HAS FAILED TO MEET ITS
20 BURDEN OF PROOF EITHER AS TO THE CHARGE OF GUILTY OF
21 MURDER OR GUILTY OF VOLUNTARY MANSLAUGHTER.

22 AS TO GILARON TAYLOR, THE CHOICES ARE EXACTLY
23 THE SAME AND YOU WILL APPLY THE SAME STANDARDS IN MAKING
24 YOUR DECISION AS TO MR. TAYLOR AS I HAVE CHARGED YOU UNDER
25 THE LAW TO THE FACTS THAT YOU FIND TO EXIST IN THIS CASE

1 AND INDICATE YOUR VERDICT ACCORDINGLY.

2 AS TO MR. WITHERSPOON AND MR. SINGLETON, THERE
3 ARE ONLY TWO POSSIBLE VERDICT FORMS. WE THE JURY BY
4 UNANIMOUS CONSENT FIND THE DEFENDANT, AND THE FIRST
5 POSSIBLE VERDICT FORM IS GUILTY OF MISPRISON OF A FELONY.

6 IF THE STATE HAS PROVEN BY EVIDENCE BEYOND A
7 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF THAT
8 CHARGE, THAT IS A VERDICT FORM THAT YOU WILL USE.

9 THE OTHER POSSIBLE VERDICT FORM IS NOT GUILTY OF
10 THAT CHARGE. AND LIKEWISE YOU WILL INDICATE WHATEVER THE
11 VERDICT SHOULD BE BY PUTTING AN "X" OR A CHECK MARKS TO
12 THE LEFT OF THE VERDICT FORM THAT YOU ARRIVE AT.

13 MADAM FORELADY, AFTER YOU HAVE ARRIVED AT THE
14 VERDICT, FILL OUT THE FORM, YOU WILL SIGN IT. NOW LADIES
15 AND GENTLEMEN, I AM GOING TO SEND YOU TO YOUR JURY ROOM
16 AND I ASK THAT YOU WAIT JUST A MINUTE BEFORE YOU BEGIN
17 YOUR DELIBERATIONS. I HAVE TO TALK WITH THE LAWYERS.

18 I HAVE BEEN TALKING TO YOU ACCORDING TO MY COUNT
19 NOW FOR SOME 45 MINUTES. AND YOU MAY FIND IT DIFFICULT TO
20 BELIEVE I MAY HAVE LEFT OUT SOMETHING, BUT I MAY HAVE OR I
21 MAY HAVE MISSTATED SOMETHING.

22 AND IF I HAVE, I WILL BRING YOU BACK OUT TO
23 CORRECT ANY MISSTATEMENT OR ANY ERROR THAT I HAVE MADE IN
24 MY INSTRUCTION ON THE LAW. IF I DON'T HAVE TO BRING YOU
25 BACK OUT, WE WILL SEND IN THE ITEMS OF EVIDENCE.

1 AND ONCE WE SEND IN THE ITEMS OF EVIDENCE, THAT
2 WILL BE YOUR SIGNAL TO BEGIN YOUR DELIBERATIONS. PLEASE
3 DON'T START YOUR DELIBERATIONS AND YOUR DISCUSSIONS UNTIL
4 THE ITEMS OF EVIDENCE ARE DELIVERED TO YOU.

5 ONCE YOU BEGIN YOUR DELIBERATIONS YOU WILL
6 DELIBERATE UNTIL YOU REACH A VERDICT. AT THAT TIME YOU
7 WILL FILL OUT THE VERDICT FORMS, SIGN THE VERDICT FORMS
8 AND ADVISE THE BAILIFF AND THEY WILL SHOW YOU THE LIGHT
9 SYSTEM THAT THEY HAVE THAT WORKS TO HELP YOU DO THAT OR
10 KNOCK ON THE DOOR IF YOU HAVE SOME TROUBLE WITH THE
11 LIGHT.

12 THE BAILIFF THERE THEN ADVISES US, WE WILL BRING
13 YOU OUT TO RECEIVE YOUR VERDICT. WHILE YOU'RE
14 DELIBERATING, IF YOU HAVE ANY QUESTIONS THAT YOU WOULD
15 LIKE FOR US TO TRY TO ANSWER, YOU HAVE TO WRITE THOSE
16 QUESTIONS DOWN FIRST AND SEND THEM OUT TO US IN WRITTEN
17 FORM.

18 WE TAKE CARE OF THEM OUTSIDE OF YOUR PRESENCE
19 FIRST AND THEN WE BRING YOU OUT TO DEAL WITH THEM IN YOUR
20 PRESENCE. THANK YOU, LADIES AND GENTLEMEN. PLEASE RETIRE
21 TO YOUR JURY ROOM. DO NOT YET BEGIN YOUR DISCUSSIONS.
22 MR. TAYLOR, MR. WILSON, IF YOU'LL STAY WHERE YOU ALL ARE
23 FOR THE TIME BEING. MRS. JACKSON -- I'M SORRY.

24 (WHEREUPON THE JURY LEFT THE COURTROOM AT 9:53 A.M.)

25 THE COURT: MS. NIELSEN, ANY EXCEPTIONS OR REQUESTS

1 FOR ADDITIONAL CHARGE FROM THE STATE?

2 MS. NIELSEN: YOUR HONOR, I DID NOT HEAR YOU ACTUALLY
3 GIVE THEM THE DEFINITION OF WHAT EXPRESS MALICE IS. I
4 KNOW YOU TALKED ABOUT IMPLIED OR INFERRED MALICE. I DID
5 NOT HEAR YOU EXPLAIN TO THEM EXPRESSION MALICE.

6 MAYBE SOMETHING -- SEEMED LIKE ANYBODY WOULD
7 KNOW WHAT EXPRESSED MEANS, BUT I WOULD ASK THAT YOU GIVE
8 THEM SOME TYPE OF CHARGE ON THE DEFINITION OF EXPRESS
9 MALICE. AND YOU MAY HAVE DONE THIS AND I MAY NOT HAVE
10 HEARD. I DID NOT HEAR YOU CHARGE THEM WITH THE -- THEIR
11 VERDICT MUST BE A UNANIMOUS VERDICT.

12 THE COURT: YES, MA'AM. I DID TELL THEM THAT RIGHT
13 AT THE END. THE DEFINITION THAT I USE FOR EXPRESS MALICE
14 IS THE ONE THAT I NORMALLY USE, MALICE IS EXPRESS WHERE
15 THERE IS SHOWN A VIOLENT, DELIBERATE INTENTION TO
16 UNLAWFULLY TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING.
17 OKAY. OTHER THAN THAT, MS. NIELSEN, ANY ADDITIONAL
18 EXCEPTIONS OR REQUESTS TO CHARGE?

19 MS. NIELSEN: NO, SIR, YOUR HONOR.

20 THE COURT: THANK YOU. MR. DOBY, ANY EXCEPTIONS OR
21 REQUESTS FOR ADDITIONAL CHARGE ON BEHALF OF MR. EVANS?

22 MR. DOBY: NO, YOUR HONOR.

23 THE COURT: THANK YOU. MR. ROGERS ON BEHALF OF MR.
24 TAYLOR?

25 MR. ROGERS: YES, YOUR HONOR. ALTHOUGH WE DIDN'T

1 SPECIFICALLY REQUEST IT, I THOUGHT IT WOULD BE INCLUDED IN
2 YOUR GENERAL CHARGE, THE CHARGE ON EITHER IMPEACHMENT OR
3 PRIOR INCONSISTENT STATEMENTS. BELIEVE THERE IS EVIDENCE
4 IN THE RECORD REGARDING THAT WITNESSES HAD GIVEN PRIOR
5 INCONSISTENT STATEMENTS.

6 THE COURT: WHAT I DID INSTRUCT THEM IN THAT REGARD
7 WAS THE EVIDENCE AND TESTIMONY OF A WITNESS MADE STRONGER
8 BY OTHER EVIDENCE AND TESTIMONY OR WAS IT MADE WEAKER BY
9 OTHER EVIDENCE AND TESTIMONY.

10 I DID NOT USE THE WORDS IMPEACHED AS SUCH
11 BECAUSE FRANKLY I'M NOT EXACTLY SURE WHETHER THAT IS A
12 TERMS THAT IS UNDERSTOOD VERY WELL. OUR CONGRESS HAS SOME
13 TROUBLE UNDERSTANDING IT THIS PAST SESSION, SO I AM NOT
14 EXACTLY SURE WHETHER THE JURORS DO, SO I HAVE -- YOU ARE
15 EXACTLY RIGHT THOUGH, MR. ROGERS.

16 I DIDN'T REFER TO PRIOR INCONSISTENT STATEMENTS
17 IN THAT REGARD, BUT I DID REFER TO OTHER EVIDENCE AND
18 TESTIMONY IN THIS CASE AND WHETHER THE TESTIMONY WAS
19 CONSISTENT, WHETHER IT WAS MADE STRONGER BY OTHER EVIDENCE
20 AND TESTIMONY OR WEAKER BY OTHER EVIDENCE AND TESTIMONY.

21 AND I THINK THAT WOULD BE SUFFICIENT TO LET THEM
22 KNOW, AND OF COURSE YOU ALL SUFFICIENTLY ARGUED THAT I
23 THINK AND PUT THAT POINT BEFORE THEM.

24 MR. ROGERS: THE SECOND MATTER, YOUR HONOR, IS
25 ALTHOUGH YOU DID SAY THAT ALL DOUBT SHOULD BE RESOLVED IN

1 FAVOR OF THE DEFENDANTS, I USUALLY HEARD CHARGE
2 SPECIFICALLY WHEN YOU ARE CHARGING MURDER AND
3 MANSLAUGHTER, THAT IF THE JURY HAS ANY DOUBT BETWEEN
4 MURDER AND MANSLAUGHTER, THEY ARE TO RESOLVE IT IN FAVOR
5 OF MANSLAUGHTER.

6 THE COURT: AND YOU KNOW, AND IF -- WE USED TO ALL DO
7 THAT. THE SUPREME COURT EARLIER THERE YEAR CAME DOWN WITH
8 A CASE WHICH SAID THAT, THE KING CHARGE, AND THAT'S WHAT
9 YOU ARE REFERRING TO.

10 MR. ROGERS: YES, SIR.

11 THE COURT: NO LONGER SHOULD BE GIVEN. FOR A WHILE I
12 CONTINUED TO GIVE IT IN SPITE OF THAT. I TOOK IT FOR A
13 WHILE AS A RECOMMENDATION AND THEN I READ THE CASE AGAIN
14 AND IT ALMOST SEEMED TO BE A MANDATE THAT THE KING CHARGE
15 WAS NO LONGER GIVEN, AND SO I NO LONGER GIVE IT, BUT I
16 NOTE YOUR EXCEPTION IN THAT REGARD IN ANY EVENT. THANK
17 YOU. MR. JORDAN ON BEHALF OF MR. SINGLETON?

18 MR. JORDAN: NO, YOUR HONOR. I BELIEVE ALL WAS
19 SUFFICIENT.

20 THE COURT: MR. FINNEY?

21 MR. FINNEY: NO, YOUR HONOR.

22 THE COURT: THANK YOU. ALL RIGHT, FOLKS. IN THIS
23 CASE THEN WE WILL STAND AT EASE UNTIL WE HEAR FROM THE
24 JURY.

25 (ALTERNATES EXCUSED)

1 (JURY BEGAN DELIBERATIONS AT 10:00 A.M.)

2 QUESTION OF JURY.

3 THE COURT: PLEASE BRING US THE JURY.

4 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:46
5 A.M.)

6 THE COURT: LADIES AND GENTLEMEN, YOU HAVE SENT A
7 NOTE OUT AND I HAVE INDICATED TO YOU OBVIOUSLY THAT IF YOU
8 HAD ANY QUESTIONS THAT YOU WANTED US TO TRY TO ANSWER AND
9 I'M GLAD THAT I TOLD YOU TRY TO ANSWER, THAT'S ALWAYS THE
10 WAY I CHARACTERIZE THAT QUESTION FOR REASONS THAT WILL BE
11 OBVIOUS TO YOU IN JUST A MOMENT.

12 FIRST I WANT TO REMIND YOU OF A FEW THINGS THAT
13 I TOLD YOU WHEN I WAS INSTRUCTING YOU A FEW MOMENTS AGO.
14 AS YOU KNOW AND AS I REPEATEDLY TOLD DURING AND AFTER THIS
15 TRIAL, YOU ARE THE JUDGES OF THE FACTS OF THE CASE AND I'M
16 THE JUDGE OF THE LAW.

17 I CAN'T COMMENT UPON THE FACTS. I CAN'T HINT TO
18 YOU HOW I MIGHT FEEL ABOUT THE FACTS AND WHAT INFERENCES I
19 FEEL MIGHT BE DRAWN FROM THE EVIDENCE THAT HAS BEEN
20 PRESENTED BECAUSE THAT'S A MATTER FOR YOUR DETERMINATION.
21 I DON'T HAVE ANY RIGHT TO INTRUDE INTO THOSE MATTERS.

22 I DON'T HAVE THE RIGHT UNDER THE LAW TO HAVE AN
23 OPINION ABOUT THE FACTS OF THE CASE. AND I ALSO TOLD YOU
24 AS YOU DETERMINE WHAT THE FACTS OF THE CASE ARE, YOU HAVE
25 TO DECIDE THE -- THOSE, MAKE YOUR DECISIONS ON THE BASIS

1 OF THE COMPETENT EVIDENCE BEFORE YOU.

2 AND I REMIND YOU AGAIN YOU ARE TO CONSIDER ONLY
3 THE TESTIMONY OFFERED FROM THE WITNESS STAND RIGHT HERE
4 TOGETHER WITH ANY EXHIBITS THAT HAVE BEEN ADMITTED INTO
5 THE RECORD OF THIS CASE.

6 IN OTHER WORDS, YOUR VERDICT MUST BE BASED UPON
7 AND SUPPORTED BY TESTIMONY AND EVIDENCE IN THE CASE. NOW,
8 WITH THAT IN MIND THEN I ADDRESS FIRST OF ALL THE FIRST
9 QUESTIONS THAT YOU ASKED. THE SIZE OF THE BULLET THAT WAS
10 FOUND IN THE CAR.

11 THERE IS NO EVIDENCE IN THIS CASE OF ANY BULLET
12 BEING FOUND IN THE CAR. AND SO THAT MATTER IS -- THERE IS
13 NO EVIDENCE IN THAT REGARD IN THE RECORD. AND SINCE THERE
14 IS NO EVIDENCE IN THAT REGARD ON THE RECORD, OBVIOUSLY
15 THAT IS NOT A MATTER FOR YOU TO CONSIDER.

16 I WILL GO TO THE THIRD QUESTION NEXT. WHAT TYPE
17 OF GUN DID HENRY'S FATHER PROVIDE? THERE IS NO EVIDENCE
18 IN THE RECORD OF WHAT TYPE OF GUN WAS PROVIDED. TESTIMONY
19 WAS MADE, WAS REFERENCED TO A GUN BEING PROVIDED, BUT
20 THERE WAS NO EVIDENCE OFFERED AS TO WHAT TYPE OF GUN, WHAT
21 CALIBER, WHAT MAKE, WHAT TYPE OF GUN IT WAS.

22 SO THE ANSWER TO THIS QUESTION IS I DON'T KNOW
23 AND NEITHER DO YOU, AND SO YOU HAVE TO MAKE YOUR DECISIONS
24 IN THIS PARTICULAR CASE WITHOUT ANY REFERENCE IN THAT
25 REGARD OR WITHOUT ANY BENEFIT OF THAT TYPE OF INFORMATION

1 IF IT WOULD PROVIDE BENEFIT TO YOU.

2 AND THE FINAL THING YOU ASKED WAS ALL TESTIMONY
3 OF ALL THE WITNESSES. I'M CONFIDENT YOU DID NOT WANT US
4 TO PLAY BACK FOR YOU ALL OF THE TESTIMONY OF ALL OF THE
5 WITNESSES. YOU ARE AWARE OF THE FACT THAT IT TOOK US
6 THREE DAYS TO PRESENT ALL OF THE TESTIMONY OF ALL OF THE
7 WITNESSES TO YOU THE FIRST TIME.

8 AND IF WE HAD TO PLAY IT ALL BACK, IT WOULD TAKE
9 THREE DAYS TO DO IT AGAIN. AND OF COURSE YOU PAID
10 ATTENTION DURING THE COURSE OF THIS TRIAL. I WATCHED
11 YOU. YOU WERE PAYING ATTENTION. BEFORE YOU STARTED I
12 TOLD YOU YOU NEEDED TO PAY ATTENTION AND YOU DID IN FACT
13 PAY ATTENTION.

14 SO IT IS IMPOSSIBLE FOR US WITH THOSE
15 INSTRUCTIONS IN MIND AND WITH THE ATTENTION THAT YOU GAVE
16 TO TRY THIS CASE TWICE, THAT IS ONCE BEFORE YOU OUT HERE
17 BEFORE YOU BEGIN YOUR DELIBERATIONS AND THEN ANOTHER TIME
18 AFTER YOU BEGIN YOUR DELIBERATIONS.

19 WE CANNOT DO THAT. HOWEVER, I WILL TELL YOU
20 THIS. IF THERE IS ANY SPECIFIC AREA OF ANY WITNESS'S
21 TESTIMONY THAT YOU WOULD LIKE TO HEAR AGAIN, THAT IS IF
22 YOU ALL ARE UNABLE TO AGREE AMONG YOURSELVES AS TO WHAT A
23 WITNESS SAID ON A PARTICULAR POINT OR SERIES OF POINTS
24 THAT YOU HAVE SOME INTEREST IN THAT ARE MATERIAL TO YOUR
25 DECISION, YOU ALL DISCUSS AMONG YOURSELVES AND YOU GOT A

1 BASIC DISAGREEMENT ABOUT IT AND YOU CAN'T RESOLVE THAT
2 DISAGREEMENT AMONG YOURSELVES, WE CAN IF YOU GIVE US
3 ENOUGH NOTICE, LOCATE THAT NARROW AREA OF TESTIMONY AND
4 PLAY IT BACK FOR YOU.

5 BUT YOU ALL CAN UNDERSTAND THE IMPLAUSIBILITY OF
6 PLAYING ALL OF THE TESTIMONY OF ALL OF THE WITNESSES TO
7 YOU, AND WE DON'T HAVE IT. IT'S NOT LIKE WE CAN SEND THE
8 TRANSCRIPT. YOU MIGHT HAVE THOUGHT WE COULD SEND THE
9 TRANSCRIPT BACK.

10 OBVIOUSLY WE DON'T HAVE THAT CAPACITY EITHER.
11 CAN'T DO THAT. THAT MAY HAVE BEEN WHAT YOU ARE REFERRING
12 TO. AND SO THE ANSWER TO THE FIRST QUESTION IS THE SIZE
13 OF THE BULLET THAT WAS FOUND IN THE CAR.

14 APPLYING THE RULES THAT I TOLD YOU THAT YOU MUST
15 BASE YOUR TESTIMONY AND THE EVIDENCE, I MEAN BASE YOUR
16 DECISION ON THE EVIDENCE THAT HAS BEEN INTRODUCED, THERE
17 IS NO EVIDENCE OF ANY BULLET FOUND IN THE CAR.

18 WHAT TYPE OF GUN DID HENRY'S FATHER PROVIDE?
19 THERE IS NO EVIDENCE OF WHAT TYPE OF GUN WAS PROVIDED.
20 AND SO YOU HAVE TO MAKE A DECISION WITHOUT REGARD TO THOSE
21 THINGS.

22 AS TO THE TESTIMONY OF ALL OF THE WITNESSES, AS
23 I HAVE SAID, YOU ALL FOCUS ON NARROW AREAS YOU WOULD LIKE
24 FOR US TO LOCATE, WE WOULD BE GLAD TO DO THAT FOR YOU.
25 TAKE US A WHILE TO DO IT. IT'S ALL RECORDED, HAVE TO GO

1 BACK AND FIND THOSE THINGS. TAKES A WHILE TO DO IT, SO I
2 URGE YOU PLEASE DON'T MAKE THOSE REQUESTS LIGHTLY.

3 DO ALL YOU CAN TO RESOLVE THE DISPUTES AMONG
4 YOURSELVES ABOUT THE TESTIMONY BY CONFERRING AMONG
5 YOURSELVES, BUT IF YOU ARE UNABLE TO DO THAT, IF YOU CAN
6 NOT MAKE THOSE RESOLUTIONS OF THOSE DISPUTES OTHERWISE, WE
7 ARE PREPARED TO LOCATE THAT TESTIMONY AND ASSIST YOU IN
8 THAT REGARD.

9 DO YOU UNDERSTAND THAT? ALL RIGHT. THANK YOU,
10 LADIES AND GENTLEMEN. PLEASE RETURN TO YOUR JURY ROOM AND
11 CONTINUE DELIBERATIONS.

12 (JURY OUT TO CONTINUE DELIBERATIONS AT 10:51 A.M.)

13 THE COURT: MS. NIELSEN, ANY EXCEPTIONS OR REQUESTS
14 FOR ADDITIONAL REMARKS, CHARGE?

15 MS. NIELSEN: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. MR. DOBY?

17 MR. DOBY: NO, SIR, YOUR HONOR.

18 THE COURT: MR. ROGERS?

19 MR. ROGERS: NONE, YOUR HONOR.

20 THE COURT: MR. JORDAN?

21 MR. JORDAN: NO, SIR, YOUR HONOR.

22 THE COURT: MR. FINNEY?

23 MR. FINNEY: NO, SIR, YOUR HONOR.

24 THE COURT: THANK YOU. ALL RIGHT, LADIES AND
25 GENTLEMEN. WE WILL CONTINUE TO STAND AT EASE THEN UNTIL

1 WE HEAR FURTHER.

2 (WHEREUPON A BRIEF RECESS WAS TAKEN).

3 THE COURT: LADIES AND GENTLEMEN, WE ARE ADVISED THE
4 JURY HAS REACHED A VERDICT. BEFORE THE JURY IS BROUGHT IN
5 TO DELIVER THE VERDICT, I WANTED TO MAKE JUST A FEW
6 CURSORY REMARKS TO THOSE OF YOU WHO HAVE BEEN HERE
7 THROUGHOUT THIS TRIAL AND HAVE SAT HERE LISTENING TO
8 TESTIMONY ON EITHER SIDE OF THIS ISSUE.

9 I RECOGNIZE THAT ON EITHER SIDE OF THIS AISLE WE
10 HAVE BOTH VARYING DIFFERENT OPINIONS ABOUT WHAT WENT ON
11 AND WHAT THIS OUTCOME SHOULD BE. WE DON'T KNOW WHAT THE
12 OUTCOME IS GOING TO BE. NONE OF US DO AND WE'RE ALL
13 ANXIOUS TO HEAR IT.

14 I DON'T WANT TO DELAY THAT ANY LONGER THAN
15 NECESSARY, BUT I WANT TO IMPRESS UPON YOU PLEASE THAT IT
16 IS VERY IMPORTANT AS THE VERDICT IS ANNOUNCED AND THE
17 VERDICTS ARE ANNOUNCED THAT EACH OF YOU SPECTATORS AND
18 ALIKE CONTINUE TO USE THE SAME RESTRAINT AND RESPECT FOR
19 THIS SETTING THAT YOU HAVE SHOWN THROUGHOUT, THAT IS THAT
20 THERE NOT BE ANY INAPPROPRIATE OUTBURSTS OF EITHER JOY OR
21 SORROW.

22 ALL YOU HAVE A CONSIDERABLE INTEREST THIS AND I
23 APPRECIATE THE FACT YOUR EMOTIONS ARE EITHER GOING TO BE
24 UP OR DOWN WHEN THE VERDICT IS ANNOUNCED. AND IF YOU FEEL
25 LIKE YOU CANNOT KEEP THOSE EMOTIONS IN CHECK, IF YOU FEEL

1 LIKE YOU CANNOT CONTROL YOUR EMOTIONS, I WANT YOU TO LEAVE
2 NOW.

3 I WANT YOU TO TAKE ADVANTAGE OF THIS MOMENT.
4 PLEASE AND LEAVE THE COURTROOM, BECAUSE IF YOU STAY HERE,
5 I'M GOING TO EXPECT THAT YOU HONOR AND ABIDE BY MY
6 INSTRUCTIONS TO KEEP YOURSELVES IN RESTRAINT. THE
7 OFFICERS ABOUT THE COURTROOM ARE HERE TO SEE THAT THAT IS
8 DONE.

9 SO IF THERE IS ANY, ANY FEELING THAT YOU MIGHT
10 HAVE THAT YOU CANNOT CONTROL YOURSELF AS THE VERDICT IS
11 ANNOUNCED, PLEASE LEAVE NOW. THANK YOU. YOU CAN BRING US
12 THE JURY.

13 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:37
14 A.M.)

15 V E R D I C T.

16 THE COURT: ALL RIGHT. MADAM CLERK?

17 THE CLERK: HAVE YOU REACHED A VERDICT?

18 FORELADY: YES, WE HAVE.

19 THE CLERK: IS IT A UNANIMOUS VERDICT?

20 FORELADY: YES, IT IS.

21 (CLERK APPROACHED FORELADY THEN APPROACHED THE COURT).

22 THE COURT: YOU MAY PUBLISH THE VERDICT.

23 THE CLERK: INDICTMENT NUMBER 2000-GS-31-10, THE
24 STATE VERSUS MARCUS EVANS, WE THE JURY BY UNANIMOUS
25 CONSENT FIND THE DEFENDANT GUILTY OF VOLUNTARY

1 MANSLAUGHTER, SIGNED HELEN MACK, FOREPERSON.

2 STATE VERSUS GILARON TAYLOR, WE THE JURY BY
3 UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY OF VOLUNTARY
4 MANSLAUGHTER, SIGNED HELEN L. MACK, FOREPERSON.

5 THE STATE VERSUS LAMONT WITHERSPOON, WE THE JURY
6 BY UNANIMOUS CONSENT FIND THE DEFENDANT NOT GUILTY, SIGNED
7 HELEN L. MACK, FOREPERSON.

8 THE STATE VERSUS TRAVIS SINGLETON, WE THE JURY
9 BY UNANIMOUS CONSENT FIND THE DEFENDANT NOT GUILTY, SIGNED
10 HELEN L. MACK, FOREPERSON.

11 THE COURT: LADIES AND GENTLEMEN, THESE BE YOUR
12 VERDICTS SAY YE ONE SAY ALL, PLEASE INDICATE BY RAISING
13 YOUR RIGHT HANDS.

14 (ALL RAISED).

15 THE COURT: THANK YOU. YOU CAN PUT THEM DOWN. THE
16 RECORD WILL REFLECT THAT ALL 12 HAVE RAISED THEIR RIGHT
17 HANDS. MR. DOBY, MR. ROGERS, DO THE DEFENDANTS DESIRE
18 POLLING OF THE JURY?

19 MR. ROGERS: YES, YOUR HONOR.

20 MR. DOBY: YES, YOUR HONOR.

21 THE COURT: OKAY. MADAM FORELADY AND MEMBERS OF THE
22 JURY, YOU ARE GOING TO BE POLLED NOW INDIVIDUALLY. AND
23 WHAT THAT MEANS IS THIS. THE CLERK IS GOING TO READ YOUR
24 NAMES OFF INDIVIDUALLY, AND AS YOUR NAMES ARE READ, IF YOU
25 WILL JUST STAND IN PLACE RIGHT WHERE YOU ARE AND SHE WILL

1 ASK YOU ARE THESE YOUR VERDICTS OR WERE THESE YOUR
2 VERDICTS AND ARE THEY STILL YOUR VERDICTS, AND IF YOU'LL
3 SIMPLY GIVE WHATEVER THE APPROPRIATE ANSWER HAPPENS TO
4 BE. MADAM CLERK, YOU MAY POLL THE JURY.

5 THE CLERK: BRENDA SLATER, WAS THIS YOUR VERDICT?

6 JUROR: YES.

7 THE CLERK: IS IT STILL YOUR VERDICT?

8 JUROR: YES, MA'AM.

9 THE CLERK: AMANDA HATTON, WAS THIS YOUR VERDICT?

10 JUROR: YES.

11 THE CLERK: IS IT STILL YOUR VERDICT?

12 JUROR: YES.

13 THE CLERK: HELEN MACK, WAS THIS YOUR VERDICT?

14 JUROR: YES.

15 THE CLERK: IS IT STILL YOUR VERDICT?

16 FORELADY: YES, IT IS.

17 THE CLERK: CHRIS BENJAMIN?

18 JUROR: YES.

19 THE CLERK: IS THIS YOUR VERDICT?

20 JUROR: YES.

21 THE CLERK: IS IT STILL YOUR VERDICT?

22 JUROR: YES.

23 THE CLERK: BERNICE BOYKIN, WAS THIS YOUR VERDICT?

24 JUROR: YES.

25 THE CLERK: IS IT STILL YOUR VERDICT?

1 JUROR: YES.

2 THE CLERK: WILLY TONEY, IS THIS YOUR VERDICT?

3 JUROR: YES, MA'AM.

4 THE CLERK: IS IT STILL YOUR VERDICT?

5 JUROR: YES, MA'AM.

6 THE CLERK: BASHTI RUBEN, WAS THIS YOUR VERDICT?

7 JUROR: YES.

8 THE CLERK: STILL YOUR VERDICT?

9 JUROR: YES.

10 THE CLERK: HARRY EVANS, WAS THIS YOUR VERDICT?

11 JUROR: YES, MA'AM.

12 THE CLERK: STILL YOUR VERDICT?

13 JUROR: YES, MA'AM.

14 THE CLERK: CHERYL SIMS, WAS THIS YOUR VERDICT?

15 JUROR: YES.

16 THE CLERK: STILL YOUR VERDICT?

17 JUROR: YES.

18 THE CLERK: BRENDA HAYES, WAS THIS YOUR VERDICT?

19 JUROR: YES, MA'AM.

20 THE CLERK: STILL YOUR VERDICT?

21 JUROR: YES, MA'AM.

22 THE CLERK: INEZ HUNTER, WAS THIS YOUR VERDICT?

23 JUROR: YES, MA'AM.

24 THE CLERK: STILL YOUR VERDICT?

25 JUROR: YES, MA'AM.

1 THE CLERK: AVRIL HOOPA, WAS THIS YOUR VERDICT?

2 JUROR: YES.

3 THE CLERK: STILL YOUR VERDICT?

4 JUROR: YES.

5 THE COURT: THANK YOU. IS THERE ANYTHING FURTHER
6 THEN GENTLEMEN BEFORE THE JURY IS DISMISSED FROM ANYONE?

7 MR. DOBY: NO, SIR, YOUR HONOR.

8 MR. ROGERS: NO, YOUR HONOR.

9 THE COURT: THANK YOU. LADIES AND GENTLEMEN, I'M
10 GOING TO INDEED BE ABLE NOW AT LONG LAST TO DISMISS YOU.

11 (JURORS EXCUSED).

12 THE COURT: MR. DOBY, BE GLAD TO HEAR MOTIONS FOR MR.
13 EVANS.

14 MR. DOBY: RENEW THE MOTIONS THAT WE HAD FILED OR
15 THAT WE HAD ARGUED EARLIER DURING THE EVIDENCE. IN THE
16 LIGHT MOST FAVORABLE TO THE STATE, WE WOULD ASK FOR YOU TO
17 SIMPLY REVERSE THE VERDICT AND FIND MARCUS EVANS NOT
18 GUILTY.

19 THE COURT: THANK YOU, SIR. AND MR. ROGERS?

20 MR. ROGERS: AGAIN, YOUR HONOR, I WOULD MAKE A MOTION
21 FOR A NEW TRIAL BASED ON OUR EARLIER MOTIONS.

22 THE COURT: THANK YOU. I WILL RENEW MY RULING IN
23 THAT REGARD AND I THINK I PREVIOUSLY ADDRESSED THOSE
24 MOTIONS AND THE RATIONALE BEHIND MY RULINGS. CLEARLY THIS
25 WAS A JURY ISSUE.

1 THERE WAS MORE THAN SUFFICIENT EVIDENCE, EYE
2 WITNESS TESTIMONY SPECIFICALLY, FROM WHICH THIS JURY COULD
3 HAVE CONCLUDED AS IT DID THAT MR. EVANS, TAYLOR, WERE
4 GUILTY OF THE CHARGES OF VOLUNTARY MANSLAUGHTER. I THINK
5 THEY TOOK THOSE THINGS INTO ACCOUNT.

6 THEY TOOK INTO ACCOUNT FULLY THE CIRCUMSTANCES
7 SURROUNDING THIS TRAGIC EVENT, AND I FEEL THAT THE VERDICT
8 WAS SUPPORTED BY THE EVIDENCE IN THAT REGARD. AND FOR
9 THAT REASON THE MOTIONS ARE RESPECTFULLY DENIED.

10 MR. WITHERSPOON, MR. SINGLETON, YOU HAVE BEEN
11 DISCHARGED FROM CUSTODY, NO LONGER BOUND BY THE CONDITIONS
12 OF YOUR BOND. THANK YOU.

13 MR. JORDAN: THANK YOU, YOUR HONOR.

14 THE COURT: YES, MA'AM.

15 MS. NIELSEN: I NEED TO RUN TO MY OFFICE AND GET A
16 COUPLE OF THINGS SO I CAN -- I NEED TO RUN AND GET A
17 COUPLE OF MY BOOKS FROM MY OFFICE TO FINISH THESE SENTENCE
18 SHEETS.

19 THE COURT: ALL RIGHT. MOMENTARILY WE WILL PROCEED
20 WITH THE MATTER OF SENTENCING. WE WILL STAY IN PLACE
21 WHERE WE ARE.

22 (WHEREUPON THERE WAS A PAUSE).

23 THE COURT: ALL RIGHT. MADAM SOLICITOR, THE STATE
24 READY TO PROCEED TO MATTER OF SENTENCING NOW?

25 MS. NIELSEN: YES, SIR.

1 THE COURT: MR. EVANS, MR. TAYLOR, GENTLEMEN, COME
2 AROUND PLEASE.

3 S E N T E N C I N G.

4 THE COURT: ALL RIGHT. MADAM SOLICITOR, IF YOU'LL
5 TELL ME FIRST OF ALL ABOUT ANY RECORDS, ANY OTHER FACTORS
6 THAT YOU WANT ME TO TAKE INTO ACCOUNT, I WILL BE GLAD TO
7 HEAR FROM YOU.

8 MS. NIELSEN: YOUR HONOR, THIS IS ANNIE OAKS AND
9 HENRY SCOTT, THE PARENTS OF THE VICTIM AND I WOULD REQUEST
10 THAT YOU HEAR FROM THEM WHILE I GO THROUGH ALL THESE
11 N.C.I.C.'S I HAVE IN HERE AND FIND THESE DEFENDANTS.

12 THE COURT: MRS. OAKS, MR. SCOTT, BE GLAD TO HEAR
13 FROM EITHER OR BOTH OF YOU ALL IF YOU'D LIKE TO ADDRESS
14 THE COURT FIRST.

15 MRS. OAKS: I JUST THANK GOD THAT JUSTICE IS DONE.
16 THAT'S ALL I CAN SAY.

17 THE COURT: ALL RIGHT. THANK YOU. MR. SCOTT, DO YOU
18 HAVE ANYTHING YOU WANT TO SAY?

19 MR. SCOTT: SAME THING.

20 MS. NIELSEN: YOUR HONOR, GILARON TAYLOR HAS NO PRIOR
21 RECORD. MARCUS EVANS HAS A CONVICTION FOR UNLAWFUL
22 CARRYING A PISTOL FROM 1993, GOT ONE YEAR SUSPENDED TO
23 \$350 AND THREE YEARS PROBATION, 120 HOURS OF COMMUNITY
24 SERVICE. ALSO AT THAT TIME WAS -- HAS A CONVICTION FOR
25 RESISTING ARREST WHICH APPARENTLY RAN CONCURRENT WITH THE

1 OTHER SENTENCE.

2 FROM ARREST DATE 1-23-96, COURT DATE 10-22-96 HE
3 HAS A POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE
4 AND A POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE
5 WITHIN PROXIMITY OF SCHOOL OR PARK.

6 THE COURT: THE YEAR OF THAT PLEASE MA'AM?

7 MS. NIELSEN: 1996. THE ACTUAL COURT DATE WAS
8 10-22-96.

9 THE COURT: THANK YOU, MA'AM.

10 MS. NIELSEN: HE RECEIVED THREE YEARS SUSPENDED TO
11 ONE YEAR AND THREE YEARS PROBATION WITH THE RECOMMENDATION
12 OF SHOCK INCARCERATION. AND THAT'S THE ONLY RECORD I SEE
13 ON HIM.

14 THE COURT: IS THERE ANYTHING FURTHER FROM THE STATE
15 ON THE MATTER OF SENTENCING BEFORE I RETURN TO THE
16 DEFENDANTS, MS. NIELSEN?

17 MS. NIELSEN: NO, SIR, YOUR HONOR.

18 THE COURT: THANK YOU. ALL RIGHT. MR. DOBY, I WILL
19 BE GLAD TO HEAR FROM YOU FIRST ON BEHALF OF MR. EVANS OR
20 ANYONE ON HIS BEHALF.

21 MR. DOBY: YOUR HONOR, MARCUS IS 25 YEARS OF AGE. HE
22 HAS ONE CHILD I BELIEVE, YOUR HONOR. HE TOLD ME IT WAS
23 ONE YEAR OLD BY THE -- IF I REMEMBER CORRECTLY. YOUR
24 HONOR, HE DOES SUPPORT THAT CHILD. HE GRADUATED FROM HIGH
25 SCHOOL AND WENT TO SUMTER HIGH FOR A FEW YEARS, ULTIMATELY

1 GRADUATED FROM SUMMERVILLE HIGH IN 1994.

2 HE HAD WORKED AT A COUPLE OF DIFFERENT JOBS,
3 FOOD LION, QUINCY'S AND SANTEE PRINT AND HE WAS WORKING
4 WITH SANTEE PRINT UP TO THE TIME OF HIS ARREST LAST YEAR,
5 YOUR HONOR.

6 YOUR HONOR, HE IS A YOUNG MAN. HE HAS GOT
7 FAMILY SUPPORT. HIS MOTHER HAS BEEN WITH HIM ALL OF THIS
8 WEEK. I HAVE BEEN IMPRESSED WITH THE FAMILY SUPPORT THAT
9 HE HAS HAD, YOUR HONOR. HE IS A YOUNG MAN. I WOULD ASK
10 THE COURT TO BE AS LENIENT AS POSSIBLE GIVEN THE FACT THAT
11 HE IS A YOUNG MAN AND HAS A CHILD, YOUR HONOR.

12 WHILE WE CERTAINLY ARE MINDFUL OF THE EVIDENCE,
13 YOUR HONOR, AND THE VERDICT FROM THE JURY, NOTWITHSTANDING
14 THAT, YOUR HONOR, WE WOULD ASK FOR YOU TO BE LENIENT
15 BECAUSE HE DOES HAVE HIS ENTIRE LIFE IN FRONT OF HIM AND
16 WE WOULD ASK THE COURT TO ALLOW HIM SOME OPPORTUNITY TO
17 COMPLETE THAT LIFE. THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU, MR. DOBY. MR. EVANS, WILL YOU
19 OR YOUR MOTHER WANT TO ADDRESS THE COURT AT THIS TIME?

20 DEFENDANT EVANS: NO, SIR.

21 SISTER OF DEFENDANT EVANS: I LIKE TO SAY SOMETHING.
22 I'M HIS SISTER.

23 THE COURT: YOUR NAME?

24 SISTER OF DEFENDANT EVANS: SHAWNA EVANS.

25 THE COURT: YES, MA'AM.

1 SISTER OF DEFENDANT EVANS: BROTHER HAS BEEN IN
2 TROUBLE BEFORE. HE HAS TURNED HIS LIFE AROUND. JUST A
3 FEW MONTHS AGO -- WELL, NOT A FEW MONTHS AGO, IT'S BEEN
4 QUITE A YEAR, ALMOST A YEAR, RIGHT BEFORE ALL OF THIS
5 HAPPENED WE ALL GOT SAVED.

6 WE CAME TO CHRIST AND HE HAS BEEN WORKING
7 FAITHFULLY, TAKING CARE OF HIS SON. AND MY MOTHER JUST
8 OPENED A DAY CARE CENTER. HE HAS BEEN HELPING HER A LOT
9 WITH A LOT OF THINGS, THINGS THAT HE DIDN'T AND WE KNEW HE
10 DID NOT KNOW ABOUT, ELECTRIC WORK. HE CAME IN, HE STEPPED
11 IN, HE HELPED OUT.

12 HE'S A VERY WELL RESPECTED YOUNG MAN IN THE
13 CHURCH AND IN OUR COMMUNITY. WE LOVE HIM DEARLY A LOT. I
14 JUST ASK THAT YOU HAVE SOME SYMPATHY ON HIM TODAY AND...

15 THE COURT: ALL RIGHT.

16 SISTER OF DEFENDANT EVANS: I JUST WANT TO SAY, YOU
17 KNOW, IT...

18 THE COURT: THANK YOU, MS. EVANS. MR. ROGERS, I WILL
19 BE GLAD TO HEAR FROM YOU NOW AND ANYONE ELSE ON MR.
20 TAYLOR'S BEHALF.

21 MR. ROGERS: THANK YOU, YOUR HONOR. MAY IT PLEASE
22 THE COURT.

23 THE COURT: YES, SIR.

24 MR. ROGERS: YOUR HONOR, RON IS 23 YEARS OLD. HE
25 GREW UP IN MARION COUNTY. HE LIVED THERE ALL HIS LIFE,

1 GRADUATED HIGH SCHOOL AND THEN ENTERED THE AIR FORCE WHERE
2 HE RECEIVED AN HONORABLE DISCHARGE.

3 HE TOO WORKED AT SANTEE PRINTING AT THE TIME OF
4 HIS ARREST. HE'S NEVER BEEN IN ANY TROUBLE BEFORE. HE
5 NEVER HAS A PRIOR RECORD. AS I SAID IN MY OPENING, YOUR
6 HONOR, THIS IS A TRAGEDY FOR ALL THE FAMILIES INVOLVED.

7 I WITH ALL DUE RESPECT TO MR. SCOTT AND HIS
8 FAMILY, I THINK A JURY VERDICT REFLECTS THAT I THINK THEY
9 THOUGHT THAT MAYBE MR. SCOTT MIGHT HAVE BEEN THE AGGRESSOR
10 AND THIS COULD NOT HAVE BEEN A SELF-DEFENSE BECAUSE OF THE
11 FACT THAT HE WAS SHOT IN THE BACK, BUT I THINK ALL OF THE
12 TESTIMONY SPEAKS THAT MR. SCOTT MAY HAVE FIRED THE FIRST
13 SHOT OR AT LEAST WAS THE AGGRESSOR, GOT HIS WEAPON FIRST,
14 AND I'D ASK YOU TO TAKE THAT INTO CONSIDERATION.

15 HE DOES HAVE A CHILD. HE IS ONLY 23 YEARS OLD,
16 YOUR HONOR, AND HE HAS NEVER BEEN IN ANY TROUBLE BEFORE.
17 I'D ASK YOU TO CONSIDER A SENTENCE THAT REFLECTS THAT
18 INVOLVEMENT.

19 THERE WAS NO TESTIMONY THAT RON HAD ANY PROBLEM
20 BEFORE WITH MR. TAYLOR, AND I THINK HE WAS JUST THERE WHEN
21 THE FIRING STARTED AND HE FIRED BACK. SO FOR THOSE
22 REASONS, YOUR HONOR, I'D ASK YOU TO BE AS LENIENT AS
23 POSSIBLE UNDER THE CIRCUMSTANCES AND CONSIDER SENTENCING
24 HIM ON THE LOWER END OF THE RANGE.

25 THE COURT: THANK YOU.

1 MR. ROGERS: DON'T KNOW IF RON OR HIS FAMILY HAS
2 ANYTHING THEY WANT TO SAY.

3 THE COURT: MR. TAYLOR, DO YOU OR ANYONE OF YOUR
4 FAMILY WANT TO ADDRESS THE COURT?

5 DEFENDANT TAYLOR: I LIKE TO APOLOGIZE TO THE FAMILY
6 THAN MR. SCOTT FAMILY, OUR FAMILY FOR PUTTING PEOPLE
7 THROUGH THIS SITUATION THAT NO ONE REALLY NEED TO GO
8 THROUGH. SYMPATHY FOR THE FAMILIES. SORRY, APOLOGIZE TO
9 THE COURT.

10 THE COURT: THANK YOU. ANYTHING FURTHER, MR. ROGERS?

11 MR. ROGERS: NO. YOU WANT TO SAY SOMETHING?

12 MOTHER OF DEFENDANT TAYLOR: YOUR HONOR, I'M A
13 WIDOW. HAVE TWO CHILDREN WHO ARE RON AND I HAVE A SON AT
14 HOME THAT IS 17 YEARS OLD AND IN THE 12TH GRADE. RON HAS
15 BEEN HELPING ME TAKE CARE OF HIM ALONG WITH HIS DAUGHTER
16 WHO IS ONE YEARS OLD.

17 AND AS A SINGLE PARENT, I HAVE RAISED HIM, I
18 HAVE TAUGHT HIM AND HE HAS NEVER BEEN ANY TROUBLE, NEVER
19 ALLOWED HIM -- AND WE MOVED TO SUMTER, HE DIDN'T KNOW
20 ANYBODY WHEN WE MOVED HERE.

21 THE COURT: ALL RIGHT, MA'AM. THANK YOU, MA'AM.

22 (WHEREUPON THERE WAS A PAUSE).

23 THE COURT: MR. DOBY, WERE YOU AWARE IF MR. EVANS
24 SPENT ANY TIME IN JAIL?

25 MR. DOBY: YOUR HONOR, I BELIEVE THAT HE DID SPEND

1 SOME TIME IN THE JAIL. IF I REMEMBER CORRECTLY, HE SPENT
2 A COUPLE OF MONTHS IN JAIL BEFORE HE ULTIMATELY GOT OUT ON
3 BOND. HE GOT ARRESTED ON NOVEMBER THE 15TH IF I REMEMBER
4 CORRECTLY, YOUR HONOR, AND HE TELLS ME HE GOT OUT ON
5 FEBRUARY THE 24TH OF 2000.

6 THE COURT: NOVEMBER THE 15TH? IS THAT WHAT YOU
7 SAID?

8 MR. DOBY: YES, SIR.

9 THE COURT: OF '99 AND GOT OUT ON WHAT DAY?

10 MR. DOBY: NOVEMBER THE 24TH OF 2000. I MEAN
11 FEBRUARY.

12 THE COURT: FEBRUARY 24TH. MR. ROGERS, DID MR.
13 TAYLOR SPEND ANY TIME IN JAIL?

14 MR. ROGERS: HE TELLS ME HE WAS IN THREE MONTHS
15 BEFORE HE WAS RELEASED, YOUR HONOR.

16 THE COURT: INDEED THE LOSS TO THE SCOTT FAMILY CAN'T
17 REPLACE THE LOSS, MR. SCOTT, THIS YOUNG MAN TAKEN AWAY
18 SUDDENLY AND SENSELESSLY. THE EVANS FAMILY, TAYLORS
19 FAMILY EXPERIENCE LOSSES AS WELL AS THEIR LOVED ONES GO
20 AWAY FROM THEM FOR A LONG PERIOD OF TIME, HOWEVER THEY
21 WILL COME BACK IN TIME UNLIKE MR. SCOTT.

22 I HAVE TO TAKE THAT INTO ACCOUNT OBVIOUSLY. I
23 TAKE INTO ACCOUNT ALSO THE FACT THAT THIS IS UNDER THE LAW
24 A NO PAROLE OFFENSE WHICH REQUIRES THESE INDIVIDUALS TO
25 SERVE 85 PERCENT OF THE SENTENCE BEFORE THEY CAN BE

1 CONSIDERED FOR PAROLE OR FOR COMMUNITY RELEASE.

2 I TAKE INTO THE FACT THAT THEY ARE BOTH YOUNG,
3 23, 25 YEARS OF AGE, GREAT DEAL OF THEIR LIFE IN FRONT OF
4 THEM. AND WHILE THE SCOTT FAMILY MAY TESTIFY, ASK FOR THE
5 MAXIMUM SENTENCE AND THE TAYLOR AND EVANS FAMILY ASK FOR
6 ABSOLUTE MINIMUM SENTENCE, AS IS MOSTLY THE CASE, JUSTICE
7 I FEEL COMES SOMEWHERE IN BETWEEN.

8 I TAKE INTO ACCOUNT MR. EVANS' RECORD, MR.
9 TAYLOR'S LACK OF RECORD AND IN IMPOSING SENTENCES WHICH
10 ARE NOT THE SAME EVEN THOUGH THE ACTS WHICH THEY COMMITTED
11 OR WERE CONVICTED OF WERE THE SAME. I TAKE INTO ACCOUNT
12 THE TIME THAT THEY WILL HAVE TO SERVE.

13 I TAKE INTO ACCOUNT THE CIRCUMSTANCES OF THE
14 CRIME ITSELF, AND THAT'S THE REASON THE GENERAL ASSEMBLY
15 IMPOSES UPON US A GREAT DEAL OF DISCRETION, SOMETIMES MORE
16 THAN I WANT, AS I DEAL WITH CASES LIKE THIS.

17 I JUST APPLY THAT DISCRETION AS I -- AS I FEEL
18 MEETS NOT ONLY THE CRIME THAT'S BEEN COMMITTED BUT THE
19 CIRCUMSTANCES OF THE INDIVIDUAL DEFENDANTS AS WELL.

20 MR. EVANS, ON THE CHARGE OF VOLUNTARY
21 MANSLAUGHTER, THE SENTENCE OF THE COURT IS THAT YOU BE
22 COMMITTED THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD
23 OF 18 YEARS. CREDIT FOR TIME SERVED.

24 MR. TAYLOR, ON THE CHARGE OF VOLUNTARY
25 MANSLAUGHTER, THE SENTENCE OF THE COURT IS YOU BE

1 COMMITTED THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD
2 OF 14 YEARS. YOU WILL GET CREDIT FOR TIME SERVED. THANK
3 YOU.

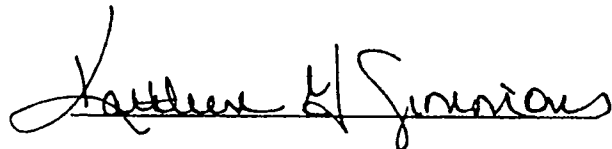
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C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR LEE COUNTY, SOUTH CAROLINA, ON THE FIFTEENTH DAY OF DECEMBER, 2000.

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

APRIL 30, 2001

A handwritten signature in cursive script, reading "Kathleen M. Simmons", written over a horizontal line.

CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEE	)	
	)	DOCKET NO.: 2000-GS-31-10
STATE OF SOUTH CAROLINA,	)	
	)	
v.	)	MOTION FOR A NEW TRIAL
	)	BASED ON AFTER-DISCOVERED
MARCUS EVANS, 237444,	)	EVIDENCE, PURSUANT TO
	)	RULE 29(b), SCRCrimP
Defendant,	)	

COMES NOW the Defendant, through his undersigned attorney, and moves before this Court for a new trial based upon after-discovered evidence pursuant to Rule 29(b), SCRCrimP. The Defendant submits that the admissions made by Ron Taylor at his plea hearing on October 5, 2009 in the front of the Honorable George C. James, Jr. amounts to after-discovered evidence under Rule 29(b), SCRCrimP, and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999).

PROCEDURAL HISTORY

The Defendant ("Evans") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lee County. Evans was indicted at the February 2000 term of the Lee County Grand Jury for Murder (Docket No.: 2000-GS-31-0010). He was represented by Bryan Doby, Esquire. On December 11 - 15, 2000, Evans and co-defendant Ron Taylor ("Taylor") proceeded to a jury trial.¹ Evans and Taylor were found guilty of Voluntary Manslaughter. Evans was sentenced by the Honorable Thomas W. Cooper, Jr. to confinement for eighteen (18) years.

¹ Co-defendants Travis Singleton and Lamont Witherspoon were also tried for related offenses

A timely Notice of Appeal was filed on Evans's behalf and an appeal was perfected. Evans was represented by Robert M. Dudek of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Evans's conviction and sentence in an unpublished opinion. State v. Evans, Op. No. 2002-UP-674 (S.C. Ct. App. filed November 5, 2002). The Remittitur was issued on November 21, 2002.

Evans filed an Application for Post Conviction Relief (PCR) on March 31, 2003 (Docket No. 2003-CP-31-0065). The State made its Return on or about September 22, 2003. A "Motion and Memorandum of Law in Support of Amending Previously Submitted PCR Application" was filed in December 2003, and a "Supplemental Amendment and Memorandum of Law in Support of Application for Post-Conviction Relief" was filed on June 3, 2004. An evidentiary hearing was convened on December 16, 2004. Evans was represented by Richard Blackmon, Esquire. Testimony was received from Evans and trial counsel Bryan Doby, Esquire. The Honorable B. Hicks Harwell denied and dismissed the application by written order dated June 3, 2005, and filed June 8, 2005.

A Johnson Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court on November 28, 2005 by Robert Pachak of the South Carolina Office of Appellate Defense. Evans submitted a *pro se* Petition for Writ of Certiorari. On February 15, 2006, the South Carolina Supreme Court transferred the Petition to the South Carolina Court of Appeals. On September 27, 2006, the South Carolina Court of Appeals entered its order denying the petition and granting counsel's request to be relieved after review of the record pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The remittitur was issued on October 30, 2006.

Evans filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody dated September 20, 2007, in the United States District Court (Docket No. 4:07-3217-PMD-TER). The Respondent's motion for summary judgment was granted and the petition was dismissed as barred by the statute of limitations by order of the Honorable Patrick Michael Duffy dated July 14, 2008.

On April 4, 2007, Evans filed a subsequent Application for Post Conviction Relief in Lee County. The State submitted a Return and Motion to Dismiss and proposed Conditional Order of Dismissal on November 26, 2007. Due to the erroneous information contained in the initial Return and proposed Conditional Order of Dismissal, the State submitted an Amended Return and Motion to Dismiss with a second proposed Conditional Order of Dismissal on January 30, 2008. On December 11, 2007, the Honorable Clifton Newman issued a Conditional Order of Dismissal without prejudice. On April 15, 2008, the Honorable George C. James, Jr., issued a Final Order, which was followed by an Order Vacating Prior Order of Dismissal filed on April 30, 2008.

On August 12, 2008, Evans, through counsel, submitted a Response to Conditional Order of Dismissal. Thereafter, a motion hearing was conducted in front of the Honorable George C. James, Jr., on April 2, 2009 at the Sumter County Courthouse. On May 4, 2009, the Honorable George C. James, Jr. issued an Order Denying Motion to Dismiss and Granting Continuation for an Evidentiary Hearing.

An evidentiary hearing was conducted on April 26, 2010 at the Sumter County Courthouse in front of the Honorable W. Jeffrey Young. Evans was present and was represented by Tricia A. Blanchette, Esquire. The State was represented by Mary S. Williams, Assistant Attorney General. During the evidentiary hearing, Evans testified,

and he called Ron Taylor as a witness. The State called Bryan Doby, Esquire. At the close of the hearing, the Honorable W. Jeffrey Young requested that the parties submit a Memorandum of Law. The parties submitted a Memorandum, and the Honorable W. Jeffrey Young sent out an email requesting that the State prepare and propose an Order of Dismissal. On June 2, 2010, the Applicant, through counsel filed a Motion to Compel a Specific Ruling on Post Conviction Relief. In lieu of a formal response, Mary S. Williams, Assistant Attorney General submitted a letter on June 2, 2010.

On July 31, 2010, the Honorable W. Jeffrey Young issued an Order of Dismissal, which was filed on August 9, 2010. On August 18, 2010, Evans, through counsel, filed a Motion for Rehearing Pursuant to Rule 59(a), SCRCP, and/or Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP. On August 23, 2010, the State submitted a Return and Motion to Dismiss Applicant's Motion to Dismiss Applicant's Motion to Alter or Amend and a proposed Order Denying Applicant's Motion to Alter or Amend.

SUMMARY OF THE LAW

By way of this Motion, the Defendant is alleging after-discovered evidence that warrants a new trial and/or resentencing. To prevail on this claim the Defendant "must show that the after-discovered evidence: 1) is such that it would probably change the result if a new trial were granted; 2) has been discovered since the trial; 3) could not in the exercise of due diligence been discovered prior to trial; 4) is material; and 5) is not merely cumulative or impeaching." State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); See Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

SUMMARY OF THE RECORD

The Defendant was tried jointly for murder with Ron Taylor ("Taylor) on December 11-15, 2000.² Mr. Taylor filed a Post Conviction Relief Application, and an evidentiary hearing was held on November 21, 2005. Taylor was represented by Tara Shurling, Esquire. The Honorable Howard P. King issued an Order Granting PCR on April 10, 2006, from which the State appealed.³ The South Carolina Supreme Court denied the State's Petition for Writ of Certiorari on May 4, 2009. Taylor v. State, Op. No. 2009-MO-021 (S.C. Sup. Ct. filed May 4, 2009).

On October 5, 2009, Taylor entered a guilty plea to the charge of voluntary manslaughter in front of the Honorable George C. James, Jr. at the Lee County Courthouse. When asked, Taylor admitted his guilt and explained where he was located when he shot the victim. See attached plea transcript. The Honorable George C. James, Jr., accepted the negotiated sentence of time served, and Taylor was free to leave at the conclusion of the plea.

On April 26, 2010, an evidentiary hearing was conducted on Evans's PCR Application (Docket No.: 2007-CP-31-75) in front of the Honorable W. Jeffrey Young at the Sumter County Courthouse. When Evans took the stand, he acknowledged that he was tried jointly with Taylor, and he explained that they were represented by separate attorneys. He further explained that their cases were developed separately. Even though

² Evans was also tried with co-defendants Lamont Witherspoon and Travis Singleton. Mr. Witherspoon and Mr. Singleton were charged with accessory after the fact and misprision of a felony. The trial court directed verdicts on the accessory charges, and the jury found Mr. Witherspoon and Mr. Singleton not guilty on the misprision charges. Transcript p. 1031.

³ At his first PCR, Evans alleged that trial counsel was ineffective for failing to move for a mistrial or Brady violation when the victim's gun surfaced in the middle of trial. In his PCR Action, Taylor raised the same issue and was granted relief. At the evidentiary hearing on his most recent PCR Application, Evans alleged newly discovered evidence due to the ruling in Taylor's PCR Action.

their cases were entirely independently developed and presented, Evans recalled coming together to discuss a joint plea offer and the request for a jury charge on voluntary manslaughter.

Regarding the trial, Evans identified and counsel admitted the SLED Forensic Services Laboratory Report that was introduced at trial, a copy of which is attached. Evans testified that this report, the trial testimony of Agent Ira Parnell, and his appellate court decision provided the following conclusions regarding the ballistics evidence: 1) fifteen spent shell casings were recovered at the scene, 2) ten were from a .380 caliber and five from a .45 caliber, 3) all five of the .45 caliber casings were from the same weapon, 4) six of the .380 caliber casings were from one weapon, three of the .380 caliber casings were from a second weapon, and one of the .380 caliber casing was from a third weapon, 5) four weapons were used and none were recovered, 6) two .380 caliber bullets were found in the victim's body, 7) the two bullets found in the victim's body were from the same HiPoint semi-automatic pistol.

Regarding the firearms report, Evans testified that no weapons were turned over to SLED, but it came out during trial that the victim's father turned in a .45 caliber weapon. He identified and counsel introduced an Evidence Receipt for said .45 caliber pistol, a copy of which is attached. Evans explained that this document was part of the record from Taylor's PCR Action, and he had received it from his present PCR counsel. He further explained that he had never seen or received it prior to his current PCR Action.

When Taylor was called to the stand, he confirmed the Defendant's testimony regarding their joint trial but independent case preparation. Taylor recalled that his

counsel advised him to stay away from the Defendant prior to trial, and he testified that he complied with his advice.

While on the stand, Taylor identified and counsel introduced a receipt in his name for a HiPoint .380 caliber handgun, which was dated February 25, 1999, a copy of which is attached. Taylor testified that he purchased this handgun prior to the shooting at issue, and he did not provide this information or receipt to Evans prior to trial. Taylor also testified that a search warrant was not executed at his home nor did anyone ever investigate his ownership of this weapon.

When asked, Taylor testified that he entered a guilty plea on October 5, 2009 in front of the Honorable George C. James, Jr. at the Lee County Courthouse. Taylor was provided a copy of the transcript and acknowledged that he admitted that he was guilty of shooting and killing the victim. Taylor explained that he entered a negotiated plea and received a sentence of time served.

At the close of his testimony, Taylor made it clear that he was not coerced or forced by the Defendant or his counsel to testify. He also acknowledged that he was represented by appointed counsel and spoke with him before taking the stand. He also wanted to make it very clear that he had not previously provided any information to the Defendant regarding his ownership of the .380 caliber handgun nor his admission that he was the one who shot the victim. When asked on cross examination about the reason for his admission and the timing of it, Taylor explained that he did not testify at trial or at his evidentiary hearing, so his guilty plea was his first opportunity to testify regarding his actions that resulted in the shooting death of the victim.

At the evidentiary hearing, the State called Bryan Doby, Esquire, to the stand. Mr. Doby recalled his representation of the Defendant and agreed with the prior testimony that the Defendant's case was prepared independently of Taylor's case. He further recalled that Evans informed him that he did not commit the crime at issue. During cross-examination, Mr. Doby testified that he did not know about Taylor's weapon purchase prior to his testimony immediately before him. He also testified that he had heard about Taylor's admission at his plea, but he had not had direct knowledge of it before his testimony. When asked, Mr. Doby agreed that Taylor's testimony was material and if he had known this information prior to trial, it would have very likely changed the outcome.

ARGUMENT

By way of this Motion, the Defendant is alleging after-discovered evidence due to the confession of Taylor at his plea that he shot and killed the victim. This admission was supported by the proof of Taylor's purchase, prior to the shooting at issue, of the caliber and type of weapon linked to the bullets found in the victim's body. The Supreme Court of the United States has held:

A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.

Arizona v. Fulminante, 499 U.S. 279, 296, 111 S.Ct. 1246, 1257 (1991) (Internal citations and punctuation omitted). See Johnson v. Catoe, 345 S.C. 389, 403, 548 S.E.2d 587, 594 (2001) (Pleicones, J., dissenting).

In Newsom v. United States, 311 F.2d 74 (5th Cir. 1962), the defendant (Newsom) was called to trial with his co-defendant (Linton) on federal drug charges. During the questioning of the jury panel, Linton was released from the trial, and Newsom was convicted and sentenced to five years. Id. at 75-76. Following trial, Newsom submitted a motion for a new trial with a copy of Linton's guilty plea and an affidavit in which he claimed responsibility for the drugs. Id. at 78. The court reasoned that another jury may find reasonable doubt under the facts presented in the motion for new trial and held that the district court erred in denying the motion for a new trial. The court stated: "Every practicable precaution must be taken to insure that the verdict really speaks the truth, for if it does not an innocent man may be imprisoned". Id. at 79.

In Johnson v. Catoe, 345 S.C. 389, 548 S.E.2d 587 (2001), the Supreme Court of South Carolina granted a stay of execution to determine if a new trial was warranted due to an eyewitness providing a new version of her previous statement. The Court found that the witness lacked credibility due to her prior inconsistent statements, mental health history, and the comparison of her statements with the facts of the crime. Id. at 399, 548 S.E.2d at 592. In applying the factors that must be shown to grant a new trial, the Court found that due to her lack of credibility her statement was not "such that it would change the result if a new trial was granted." Id. at 400, 548 S.E.2d at 592-3. The Court surmised: "We do not believe it is probable that a jury would find Hess credible given her prior inconsistent statements." Id. at 400, 548 S.E.2d at 593.

Interestingly, the majority opinion was accompanied by two strong dissenting opinions. In his dissent, Justice Pleicones found that the confession would probably change the result if a new trial were granted. In reaching this finding, he noted that "our

system of justice reveres the probative value of confessions.” Johnson v. Catoe, 345 S.C. 389, 403, 548 S.E.2d 587, 594 (2001) (Pleicones, J., dissenting). In his dissent, Justice Waller held: “I believe that to deny Johnson a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute “a denial of fundamental fairness shocking to the judicial sense of justice.” Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Waller, J., dissenting) (quoting Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)).

In the instant case, the Honorable W. Jeffery Young has issued an Order of Dismissal on the Evans’s PCR Application finding that the testimony given at Taylor’s plea in the Court of General Sessions and repeated at Evans’s evidentiary hearing lacked credibility. Specifically, the Order stated: “Taylor’s current rendition of facts emerged over time as he became assured that he would not face further criminal prosecution in this matter.” Order p. 9. This finding was preceded by a citation to Jones v. United States, 279 F.2d 433 (4th Cir.), for the proposition that the “purpose of relief from manifest injustice would not be served where judge would have to ‘assume that a jury would believe testimonial evidence however improbable and unworthy of belief he finds it to be.’” Order p. 9

The Defendant submits that the Order issued by the Honorable W. Jeffery Young is in direct contradiction to the acceptance of Taylor’s admission and guilty plea by the Honorable George C. James, Jr., in the Court of General Sessions. It is well established that one circuit court judge does not have the authority to set aside a ruling or finding of another, yet the Order at issue completely negates the plea court’s findings regarding Taylor’s admission of guilt. See Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604,

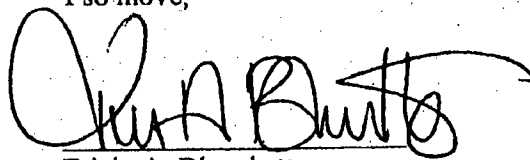
340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). The Defendant submits that the Order of Dismissal issued by the Honorable W. Jeffrey Young completely disregards the findings made by the Honorable George C. James, Jr. at Taylor's plea in the Court of General Sessions.

Therefore, the Defendant urges this Court to consider his claim of after-discovered evidence and the following testimony and evidence that were not presented at trial or to court prior to sentencing: 1) the Chain of Custody Form, which showed that the victim's gun was turned over to law enforcement prior to trial, 2) the ruling in Ron Taylor's PCR that his trial counsel was ineffective for not raising a Brady violation in connection with law enforcements failure to the disclose the receipt of the victim's gun, 3) the testimony of Ron Taylor at his plea and at the evidentiary hearing that he was shooter and the party responsible for the victim's death, 4) the gun registration form for a .380 caliber HiPoint handgun, which matched the type and caliber of bullets retrieved from the victim's body, and 5) the testimony of trial counsel that the "new" evidence was material and outcome determinative. The Defendant submits it would amount to "a denial of fundamental fairness shocking to the judicial sense of justice" if this Court fails to consider and act on this issue of after-discovered evidence. See Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Waller, J., dissenting) (quoting Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)).

CONCLUSION

For the above stated reasons, the Defendant would respectfully request that this Court allow this Motion to proceed to a hearing and/or grant the Defendant a new trial and/or resentencing.

I so move,



Tricia A. Blanchette
Attorney for the Defendant
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Columbia, South Carolina 29211
(803) 988-0008

September 3, 2010
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEE	)	DOCKET NO.: 2000-GS-31-10
STATE OF SOUTH CAROLINA,	)	
v.	)	CERTIFICATE OF SERVICE
MARCUS EVANS, 237444,	)	
Defendant,	)	

I, Tricia A. Blanchette, Attorney for the Defendant, hereby certify that I placed in the United States Mail on this 7th day of September 2010, a copy of a Motion for a New Trial Based on After-Discovered Evidence Pursuant to Rule 29(b), SCRCrimP, with postage prepaid and the return address clearly shown on said envelope to C. Kelly Jackson, Solicitor for Lee County, at:

C. Kelly Jackson, Solicitor
For Lee County
141 N. Main Street
Sumter, SC 29150



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211

September 7, 2010

STATE OF SOUTH CAROLINA
COUNTY OF LEE
RON GILARON TAYLOR, 271649

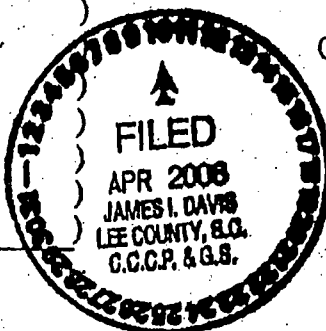
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 03-CP-31-13

ORDER GRANTING PCR



THIS MATTER is before the Court on an Application for Post-Conviction Relief (PCR) by Ron Gilaron Taylor ("TAYLOR") filed January 15, 2003 and amended on June 23, 2005. Taylor contends he is being held in custody unlawfully due to ineffective assistance of trial and appellate counsel. The State filed its Return on September 7, 2004. An evidentiary hearing was held November 21, 2005. Taylor was present and was represented by his court-appointed attorney, Tara Dawn Shurling of the Richland County Bar. The State was represented by Paula Magargle, Assistant Attorney General.

I. PROCEDURAL BACKGROUND

Taylor is incarcerated at the South Carolina Department of Corrections pursuant to the Lee County Clerk of Court's orders of commitment. The Lee County Grand Jury indicted Taylor at the February 2000 term of General Sessions for Murder (00-GS-31-10). Taylor was represented by Jimmy Rogers, Esquire, and on December 11-15, 2000, he went to trial by jury and was found guilty of voluntary manslaughter. The Honorable Thomas W. Cooper sentenced Taylor to imprisonment for fourteen (14) years.

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10. Trial counsel was ineffective for failing to investigate and present witnesses from the scene of the crime who were not related by friendship or blood to the deceased.
11. Trial counsel was ineffective for failing to investigate and present witnesses who provided medical transportation and treatment to the deceased to determine to what degree their handling of the deceased hands may have affected the validity of the GSR test done on the deceased hands at the time of his autopsy.
12. Trial counsel was ineffective for failing to present testimony from a pathologist to refute assertions by the state's witnesses concerning the direction from which the deceased was shot.
13. Trial counsel was ineffective for advising the court during sentencing that his client had in fact fired a weapon where there was conflicting evidence on this point presented at trial and where the Applicant had elected to exercise his rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution by neither giving a statement nor testifying in this matter.
14. Trial counsel was ineffective for failing to present the Applicant as witness in his defense where the Applicant had no prior record and was fully capable of articulating the facts surrounding the evening in question in a manner which would have supported his defense.
15. Trial counsel was ineffective for failing to adequately cross-examine the State's witness, Inv. Dillenger, concerning the circumstances under which the deceased's father turned over a gun attributed to his son, the source from which the father obtained the weapon, the location from which the gun was taken and what type of weapon.
16. Trial counsel was ineffective for failure to develop and present evidence of self-defense.
17. Trial counsel was ineffective for failing to request a jury charge on the law of self-defense where under one interpretation of the evidence presented at trial, the charge was appropriate.
18. Appellate counsel was ineffective for failing to present additional meritorious issues on appeal and for presenting, as the

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Applicant's sole issue, an issue which was not preserved for appeal.

IV. EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case on November 21, 2005, Taylor presented testimony from trial counsel James P. Rogers, Agent Jennifer Stoner of the South Carolina Law Enforcement Division, Dr. Carol Lynn McMahon, forensic pathologist, Leonard Q. Bradley, investigator, Investigator J.D. Dillinger of the Lee County Sheriff's Department, Debby Nielson, Assistant Solicitor for Lee County, Henry Shaw, father of the deceased in this case and Leonard Scott, the brother of Henry Shaw's ex-fiancée who was with the deceased on the night of the incident for which Taylor was charged. Taylor did not testify at the PCR hearing and informed this Court that he did not wish to testify at this hearing after being questioned and advised by this Court of his right to testify.

In addition to this testimony, this Court has before it a transcript of the trial, a copy of the records of the Lee County Clerk of Court regarding the subject conviction, a copy of Taylor's records with the South Carolina Department of Corrections, copies of the Appellate Briefs submitted in this case on direct appeal, along with a copy of the South Carolina Court of Appeals opinion in this matter. In addition, this Court has taken into consideration the six exhibits introduced by Taylor during his Post-Conviction Relief hearing as well as the single exhibit introduced by the State. This Court has additionally been provided with a transcript of the November 21, 2005 Post-Conviction Relief hearing. What follows below are the findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Relief Procedure Act, S.C. Code Ann. §17-27-10 *et seq* (1985).

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V. DEFENSE COUNSEL

As a threshold matter, this Court would note that Taylor was represented by an experienced trial attorney who is generally highly regarded for his competence. On the facts of this case, however, this Court finds that the combined effect of two errors in judgment were such that Taylor was deprived of a fair trial. Specifically, this Court finds a reasonable probability that but for counsel's errors and omissions, the outcome of this trial would have been different. For the reasons set forth herein, this Court finds that trial counsel failed to provide the Applicant reasonable, professional assistance of counsel.

VI. RELEVANT FACTS

A good general overview of the facts in this case can be found in the opinion of the Court of Appeals in this case. See, State v. Gilaron Taylor, *supra*. There are certain other facts that are highly relevant to the allegations addressed in this Post-Conviction Relief case.

At the Post-Conviction Relief hearing, trial counsel Jimmy Rogers testified that immediately before the trial began, he was notified that a weapon had been turned in to the Sheriff's Department. He was given no detailed information about where the gun came from. He was not told who turned the gun over to the police. His recollection was that he was told that someone from the victim's family had produced the gun but that the police did not know who it was and had no records regarding the identity. PCR Tr. p. 15, line 9-p. 16, line 10. Counsel also candidly admitted that he did not even consider asking for a continuance when he was told just before trial about a weapon identified as belonging to the deceased being turned into the Sheriff's Department. PCR Tr. p. 22, line 20-p. 23, line 15.

Defense counsel did not interview Investigator Dillinger before this trial. His explanation for why he did not more thoroughly cross-examine Investigator Dillinger concerning the weapon

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that was turned over to the Sheriff's Department was somewhat vague. PCR Tr. p. 31, line 12-p. 32, line 1. When asked to introduce the evidence receipt document for the weapon turned over to the Sheriff's Department, defense counsel testified that it *"was not something I was provided."* PCR Tr. p. 32, lines 7-11. When shown the document during the PCR hearing, he acknowledged that the document states that the evidence was received on November 14, 1999, the day of the shooting. He further acknowledged that he was not told about the weapon until immediately before the trial, *"probably the day of the trial."* PCR Tr. p. 32, lines 17-21. He acknowledged that had he realized that this information had been withheld from him for approximately 13 months, he would have raised an objection at trial. PCR Tr. p. 32, line 25-p.33, line 3. Defense counsel expressly stated that he would have made a motion for a continuance if he had ever seen that document introduced at the Post-Conviction Relief hearing as an Applicant's Exhibit. As a matter of fact, defense counsel testified that it was his understanding from what he was told that the weapon had just recently been turned in. PCR Tr. p. 34, lines 1-11. Not only did he testify that he would have moved for a continuance if he had seen this document before trial, but he unequivocally testified that he would have made a motion for a mistrial had he discovered this document during the course of the trial. PCR Tr. p. 34, lines 21-23.

At the time of the Post-Conviction Relief hearing, defense counsel acknowledged that he should have objected to the introduction of testimony concerning a statement allegedly made by co-defendant Marcus Evans approximately a month before this incident. He stated that at the time of the trial, he operated under the assumption that the statement would not impact Taylor. His PCR testimony candidly admitted that after reviewing the decision of the Court of Appeals, he had reached the conclusion that he was wrong and should have objected to this testimony. PCR Tr. p. 5, line 18-p. 6, line 17.

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During this Post-Conviction Relief hearing, Investigator J.D. Dillinger identified the chain of evidence form filled out by him on November 17, 1999 when he took possession of a .45 caliber pistol turned into the Sheriff's Department. He acknowledged that this weapon was turned in at the Sheriff's Department by the deceased's father on the day of the shooting, November 14, 1999. He acknowledged that the form itself contains the notation crime/father. He offered absolutely no credible explanation for why he failed to make detailed notes concerning the circumstances under which the weapon was turned in and any information provided by the father concerning how the gun came to be in his possession. PCR Tr. p. 71, line 9-p. 73, line 30. Despite earlier noting that the evidence sheet in question is dated November 14, 1999, he testified that the weapon was turned in several days after the incident but that he could not independently recall the date. PCR Tr. p. 73, line 13. Investigator Dillinger initially testified that this evidence sheet may not have ever even been in the Sheriff's Department's case file. Ultimately, however, he acknowledged that he sent this form to counsel for Taylor, along with a package of materials sent to counsel from the Sheriff's Department's file. PCR Tr. p. 75, line 25-p. 76, line 23. Investigator Dillinger acknowledged that the gun being turned in by the deceased's father was a significant development in the case. He went on to admit, however, that he conducted no further investigation to determine where the gun had come from. Nor did he send the weapon to SLED to have it forensically compared with any of the 18 shell casings found at the scene. PCR Tr. p. 78, line 2-p. 79, line 15. Nor did he offer any credible explanation for why no gunshot residue tests were conducted on the hands of the individuals who admitted to being with the deceased on the night of the shooting. PCR Tr. p. 80, line 21-p. 84, line 25.

Investigator Dillinger testified that he had no specific conversation with Assistant Solicitor Nielson about the gun turned into the Sheriff's Department prior to the beginning of the

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Investigator Dillinger testified that he had no specific conversation with Assistant Solicitor Nielson about the gun turned into the Sheriff's Department prior to the beginning of the

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trial. He acknowledged that at the time of the trial, he had a heated conversation with Assistant Solicitor Nielson after his testimony. PCR Tr. p. 85, line 19-p. 86, line 23. After the deceased's father turned the weapon in to law enforcement, Investigator Dillinger did not go back and re-interview Leonard Scott, to determine what, if any thing further, he knew about how the weapon had come to be in the father's possession. PCR Tr. p. 87, lines 1-20. Investigator Dillinger acknowledged that at the time of the incident he knew that he needed to investigate whether there was any basis for a claim of self-defense. Notwithstanding this fact, he offered no credible explanation for why none of the witnesses from the scene were questioned concerning whether they had fired a weapon on the night in question. PCR Tr. p. 93, line 23-p. 94, line 19.

VII. ANALYSIS

Allegation of ineffective assistance of counsel for failing to object to the introduction of statements made by Applicant's co-defendant and for failing to make a motion to sever Applicant's trial. (Applicant's allegations 1 & 2.)

Taylor alleges that counsel should have objected to the introduction of statements made by his co-defendant because Taylor alleges that it was highly prejudicial to him. He further alleges that counsel should have moved to have his case severed from his co-defendant's case. Counsel testified that he did not object to the introduction of the statement made by Taylor's co-defendant but that he discussed this statement with him. He further testified that he and Taylor did not feel that the statement impacted on him or his defense. The Court of Appeals' decision indicates otherwise. Counsel also testified that it was his tactical decision not to object to this statement because it would be attributed to Marcus Evans, the co-defendant, and not to Taylor. Counsel testified that he considered severing Taylor's case but that it was trial strategy not to

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sever the case because he believed that Taylor would be lost in the shuffle of all the other co-defendants that were being tried at the same time.

Where trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of counsel. Roseborough v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial by simply labeling them matters of trial strategy or tactics. In the case of Ingle v. State, 348 S.C. 467, 560 S.E. 2d 401 (2002), the Supreme Court found that,

[C]ounsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Roseboro v. State, 317 S.C. 292 294, 454 S.E. 2d 312, 313 (1995); Stokes v. State, 308 S.C. 546, 419 S.E. 2d 778 (1992). Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

Roseboro, Supra. (Emphasis in original.)

Defense counsel should have objected to the admission of the alleged confession of the intent to kill by the co-defendant. This hearsay testimony, from a close friend and associate of the deceased, was evidence that Taylor was present when Evans announced his intention to kill the deceased. This testimony was highly prejudicial to Taylor inasmuch as the jury could have inferred from this testimony that Taylor was not *merely present* when his co-defendant got in an argument with the deceased and ended up killing him. But for this testimony, the jury may have found that Taylor happened to be there when gun fire broke out between the deceased and the co-defendant. If the jury found Taylor was merely at the wrong place at the wrong time when an altercation between Evans and the deceased turned violent, they may well have found him not guilty of any legal wrongdoing in the death of Henry Scott.

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At the very least, a motion to sever should have been made, thereby preserving that issue for appeal. Similarly, a motion to exclude the statement, articulating the grounds for the objection, should have been made. Had either of these been done, the issues would have been preserved for appellate review and failure to do so was ineffective assistance.

Allegation of ineffective assistance of counsel for failing to request/make motion for a continuance, for failing to request full disclosure from prosecution, for failing to move for a mistrial, and for failing to fully cross examine state's witness regarding the weapon that was turned over to law enforcement by victim's father. (Applicant's allegation number 3, 4, 5, 7, and 15).

Debbie Nielsen, Solicitor, testified that she was unaware of the fact that a gun had been turned over to the police by the victim's family. J.D. Dillinger, investigator, testified that a gun was turned over to them from the victim's family. He further testified that the gun was never sent to SLED for testing. He also testified that he thought that he had informed the Solicitor about this gun but that at trial he recalls the Solicitor being very upset because she did not know about the gun.

At the PCR hearing, victim's father, Henry Shaw, and another relative of the victim, Leonard Scott, testified regarding the gun. Mr. Shaw testified that he does not know where the gun came from and does not know if the gun belonged to his son or someone else that was at the scene the night of the shooting. Mr. Scott testified that the victim went back to his car to get a gun but that he does not know what type of gun the victim had at the scene. He further testified that he would not be able to identify the gun retrieved by victim.

Counsel testified that he was informed about the gun that was turned over to the police by victim's father the day before trial. Rogers further testified that he did not consider making a Motion for a Continuance or a Motion for a Mistrial based on the fact that he had learned about the gun right before trial. Counsel also testified that he filed a Rule 5/Brady Motion prior to trial

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and that the Solicitor's office gave him everything that they had in their file. However, Rogers testified, and the record reflects, that some of the State's witnesses testified that the victim went to his car and retrieved a gun prior to being killed.

Further, Taylor alleges that counsel was ineffective for failing to have ballistics testing conducted on the gun.

In the view of this Court, counsel should have made a Motion for a Continuance when advised at the last moment that a gun attributed to the deceased had been turned into the Sheriff's Department by the victim's father. This Court notes that the father declined to disclose in his PCR hearing testimony who turned the gun over to him after his son's death. Had the issue been properly investigated by the police it is fair to infer that the father could have been required to reveal this critical information. Counsel expressly stated that he would have moved for a mistrial had he seen the evidence receipt for the weapon brought in by the father before this trial. The fact remains, that counsel did not ask for a continuance once the existence of the gun was disclosed to him at the last minute. Had he done so, he should have been given time to investigate this apparent Brady violation.¹

The Court is extremely concerned that the investigating officer did not inform the prosecutor (solicitor) of the existence of this critical piece of evidence until the eve of trial. The handling of this weapon and the lack of communication between law enforcement and prosecutor smacks of intentional concealment, or at the very least, sloppy police work. By failing to object or move for a continuance, the issue of a Rule 5 or Brady violation was not preserved for appellate review. This is ineffective assistance of counsel.

¹ The Applicant has alleged a Brady violation. Brady v. Maryland, 373 U.S. 83 (1963). Ultimately, counsel admits that the information in question was disclosed to him prior to trial. The question then, in the view of this court, becomes how effectively trial counsel dealt with the untimely disclosure.

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Allegation of ineffective assistance of counsel for failing to adequately cross examine State's witness regarding presence of trace metals on victim's hands and for failing to present the witnesses who provided transportation of victim to the hospital and treated victim at the hospital to determine if their handling of the victim affected the validity of the GSR test. (Applicant's allegations number 6 & 11).

Taylor alleges that counsel should have more thoroughly cross-examined Jennifer Stoner, SLED agent who testified on behalf of the State, regarding the presence of trace metals on the victim's hands. He further alleges that counsel should have presented the witnesses who transported and treated the victim at the hospital to discern what, if any, effect that had on the validity of the GSR test. At the PCR hearing, counsel testified, and the record reflects, that he did not have medical personnel testify at the trial but that he argued that the victim's hands had been wiped prior to the GSR test being conducted on the victim. Counsel further testified that testimony from the medical personnel would have been merely cumulative to the testimony that was presented at the trial. Most importantly, as previously stated, counsel testified that their defense was that Taylor did not fire any shots.

Although, Taylor had Jennifer Stoner, SLED, testify at the PCR hearing, this Court finds the cross-examination of her by counsel adequately covered the testimony that was presented at the PCR hearing. This Court further finds that testimony by medical personnel would have been merely cumulative. Most importantly, this Court finds that Taylor cannot show that he was prejudiced by counsel's failure to call these witnesses because he did not present these witnesses at this hearing. Therefore, any finding of prejudice would be merely speculative. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (S.C. filed March 21, 2005); Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

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This Court finds that trial counsel's testimony was credible. This Court further finds that this is a matter of trial strategy and is not ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996). This allegation of ineffective assistance of counsel is denied.

However, even if Taylor has proven the first prong of the Strickland test that his counsel's representation was deficient, he must further prove the second prong and that is because of this deficiency there is reasonable probability that counsel's deficient conduct prejudiced the outcome of his trial. This Court finds that Taylor has failed to prove the second element of Strickland requiring prejudice. Therefore, Taylor has failed to show prejudice. This allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to request a jury instruction regarding prior inconsistent statements. (Applicant's allegation number 8).

Taylor alleges that counsel was ineffective for failing to request a Copeland instruction from the judge. Counsel testified that he did not request a Copeland instruction but that he knew the judge was going to instruct the jury regarding prior inconsistent statements. Counsel further testified, and the record reflects, that counsel did object to the trial court not specifically instructing the jury regarding the impeachment value of prior inconsistent statements. This Court finds that counsel was not ineffective because he objected to the jury charge.

This Court finds that trial counsel's testimony was credible. This Court further finds that Taylor failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. This was a matter of trial strategy and not ineffective assistance of counsel. Where counsel articulates a valid strategic reason for his action or inaction, counsel's

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performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996). This allegation of ineffective assistance of counsel is denied.

However, even if Taylor has proven the first prong of the Strickland test that his counsel's representation was deficient for failing to request a jury instruction, he must further prove the second prong and that is because of this deficiency there is reasonable probability that counsel's deficient conduct prejudiced the outcome of his trial. This Court finds that Taylor has failed to prove the second element of Strickland requiring prejudice. Therefore, he has failed to show prejudice. This allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to adequately cross-examine witnesses for the State concerning whether they were armed and shot during the altercation. (Applicant's allegation 9.)

Taylor alleges that counsel was ineffective for failing to adequately cross-examine the State's witnesses regarding whether they were armed and whether they shot the night of the incident. Counsel testified that it was a tactical decision on his part not to further cross-examine the State's witnesses. Counsel further testified that he did cross-examine the State's witnesses and brought out in his closing arguments that this incident was a shootout and that anyone could have been the individual that shot the victim. However, Taylor's defense was that he did not fire any shots the night of the incident.

This Court finds that trial counsel testimony was credible. This Court further finds that Taylor failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. This was a matter of trial strategy and not ineffective assistance of counsel. Where counsel articulates a valid strategic reason for his action or inaction, counsel's

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performance should not be found ineffective. Rosboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996). This allegation of ineffective assistance of counsel is denied.

However, even if Taylor has proven the first prong of the Strickland test that his counsel's representation was deficient for failing to adequately cross-examine the witnesses, he must further prove the second prong and that is because of this deficiency there is reasonable probability that counsel's deficient conduct prejudiced the outcome of his trial. This Court finds that Taylor has failed to prove the second element of Strickland requiring prejudice. Therefore, he has failed to show prejudice. This allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to present witnesses from the scene that were not related or friends of the victim. (Applicant's allegation 10.)

Taylor alleges that counsel should have presented witnesses from the scene that were not related to the victim or friends of the victim. Applicant has failed to present any witnesses to testify in regards to this issue at this hearing.

This Court finds that Taylor failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State.

Most importantly, Taylor did not present any witnesses to testify on his behalf at the PCR hearing. This Court finds and concludes that Taylor cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (S.C. filed March 21, 2005); Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995). This Court further finds that because Taylor failed to have any witnesses testify at the PCR hearing any finding of prejudice is merely speculative. Id.

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Therefore, Taylor has failed to show prejudice and this allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to present testimony from a pathologist to refute assertions made by the State's witness. (Applicant's allegations 12).

Taylor alleges that counsel should have presented testimony from a pathologist to refute assertions made by the State pathologist concerning the direction from which the victim was shot. Although Taylor presented testimony from a witness regarding how she perceived the victim to have been shot, this witness was never qualified as an expert. Further, the only testimony presented by this witness, Dr. Carol Lynn McMahon, was that she did not believe the shooting was an execution style shooting but more of a slightly downward shooting. She also testified that the wounds appeared to indicate that they were not made in close contact. However, she also testified that based on the information that she reviewed in this case, she does not know how the victim was standing, kneeling, or lying at the time of the shooting and that could make a difference.

As stated previously, counsel testified that their defense was that Taylor did not fire any shots at all the night of the incident. Therefore, the way the victim was shot would not have been of grave concern to Taylor and the fact that he did not have someone testify did not prejudice him based on his defense.

This Court finds that trial counsel's testimony was credible. This Court further finds that Taylor failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. This was a matter of trial strategy and not ineffective assistance of counsel. Where counsel articulates a valid strategic reason for his action or inaction, counsel's

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However, even if Taylor has proven the first prong of the Strickland test that his counsel's representation was deficient for admitting that Taylor shot during the mitigation at his sentencing, he must further prove the second prong and that is because of this deficiency there is reasonable probability that counsel's deficient conduct prejudiced the outcome of his trial. This Court finds that Taylor has failed to prove the second element of Strickland requiring prejudice. Therefore, he has failed to show prejudice. This allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to present Applicant as a witness during the trial. (Applicant's allegations 14).

Taylor alleges that counsel should have presented him as a witness during his trial. Counsel testified that he discussed with Taylor his right to testify and that he chose not to testify. Counsel further testified that the decision about testifying was made by Taylor and that he did not threaten or coerce him. Counsel also testified, and the record reflects, that Taylor was informed of his right to testify by the trial court and that he chose not to testify. Further, Taylor never took the stand in this hearing, so he cannot show prejudice because he has not shown that his testimony would have impacted the trial.

This Court finds that trial counsel's testimony was credible. This Court further finds that Taylor failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. This was a matter of trial strategy and not ineffective assistance of counsel. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996).

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performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996). This allegation of ineffective assistance of counsel is denied.

However, even Taylor has proven the first prong of the Strickland test that his counsel's representation was deficient for failing to present a defense of self-defense and for failing to request a jury charge on self-defense, he must further prove the second prong and that is because of this deficiency there is reasonable probability that counsel's deficient conduct prejudiced the outcome of his trial. This Court finds that Taylor has failed to prove the second element of Strickland requiring prejudice. Therefore, Taylor has failed to show prejudice. This allegation of ineffective assistance of counsel is denied.

Allegation that appellate counsel was ineffective. (Applicant's allegation 18).

Taylor alleges in his application that appellate counsel was ineffective. He presented no evidence that appellate counsel was ineffective because he did not testify at this hearing and he did not call appellate counsel as a witness in this hearing.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to

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exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds that Taylor cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. Therefore, this allegation of ineffective assistance of appellate counsel is denied.

Miscellaneous allegations

As to any and all allegations which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that Taylor failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice.

VIII. CONCLUSION

This Court finds and concludes that Taylor has proven two grounds for requiring a new trial because of the ineffective assistance of trial counsel. First, counsel was ineffective for failing to object to the introduction of co-defendant's statement or failing to move to sever because of the prejudicial effect of this statement. Second, counsel was ineffective for failure to

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seek a continuance or mistrial on the State's apparent violation of Rule 5 and *Brady* regarding disclosure of the gun.

Other than these two grounds, Taylor has not established any constitutional violations or deprivations that entitle him to a new trial.

Accordingly, the conviction of Taylor is REVERSED for the reasons set forth herein and the matter is REMANDED to the trial court for a new trial.

Applicant's Right to Appeal

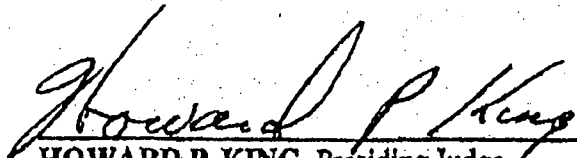
Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Appellate counsel is required to brief arguable issues in order to safeguard the right to appeal. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must file a Notice of Appeal on the Applicant's behalf. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is GRANTED and the case is REVERSED and REMANDED to the trial court for a new trial.
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent pending a new trial.

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IT IS SO ORDERED!



HOWARD P. KING, Presiding Judge
Third Judicial Circuit

This 10th day of April, 2006.

Sander, South Carolina

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Ron G. Taylor, Respondent,

v.

State of South Carolina, Petitioner.

ON WRIT OF CERTIORARI

Appeal From Lee County
Howard P. King, Circuit Court Judge

Opinion No. 2009-MO-021
Submitted April 22, 2009- Filed April 27, 2009

DISMISSED AS IMPROVIDENTLY GRANTED

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Lance S. Boozer, all of
Columbia, for Petitioner.

Deputy Chief Appellate Defender Wanda H. Carter, of
South Carolina Commission on Indigent Defense, of
Columbia, for Respondent.

PER CURIAM: Respondent Ron G. Taylor was granted post-conviction relief by the lower court. We granted the State's petition for a writ of certiorari. After a careful review of the record, appendix, and briefs, the writ is

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

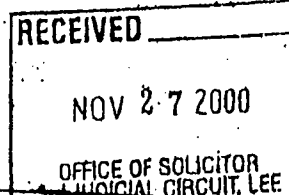
JIM H. HODGES
GOVERNOR



ROBERT M. STEWART
CHIEF

Firearms Department
November 22, 2000
SLED Lab No.: L99-14770
Your Case No.:
Incident Date: 11/14/99
(V) Scott, Henry

CORONER ALFRED ELMORE
LEE COUNTY CORONERS OFFICE
PO BOX 166
ELLIOT SC 29046



This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEM(S) SUBMITTED:

- 7 One fired bullet from autopsy of Henry Scott (labeled "...Right Scrotum...").
- 8 One fired bullet from autopsy of Henry Scott (labeled "...left knee...").

RESULTS OF EXAMINATION: Items 7 and 8 were weighed, examined, and determined to be most consistent with bullets loaded into some 380 AUTO caliber ammunition. Additional comparisons revealed that Item 7 and Item 8 were both fired by one firearm.

Based on the general rifling characteristics, Items 7 and 8 were found to have been fired by a Hi-Point brand pistol in 380 AUTO caliber. Any firearm of this brand and caliber encountered during this investigation should be submitted for comparison with Items 7 and 8. Unless otherwise instructed, Item 7 and Item 8 will be available for pickup by your agency from SLED Evidence Login.



Deborah Truett Nielsen
Attorney At Law

618 Pearl Street
Bishopville, South Carolina 29010
Phone: (803) 484-4245 • Fax: (803) 484-4495

12/8/00

Bryan Doby
Chip Finney
Michael Jordan
Jimmy Rogers

As I believe I have told you all, SLED has confirmed the shell casing at the scene were from 3 different 380's and a 46.

The numbers correspond to the numbers on the diagram you received earlier. Mr. Parnell has just finished this & I have no written report.

This Page + 1

See you Monday.

Received 08-Dec-00 03:36pm
FROM : BEASLEY TRANSPORT INC.

from 1 803 428 2578 - JENNINGS & JENNINGS

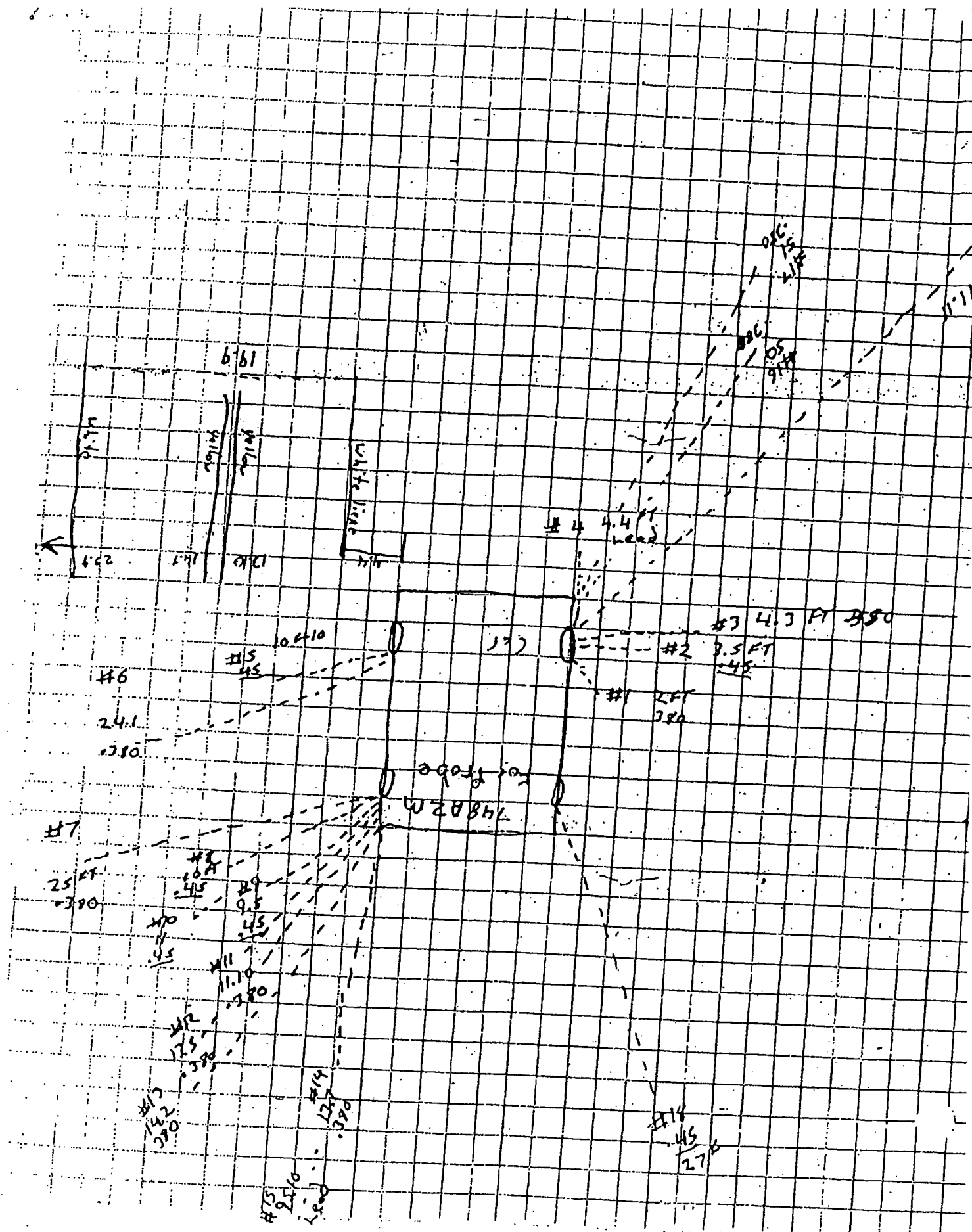
page 2

FAX NO. : 1 803 428 2578
Dec. 08 2000 04:37PM P2

380 #1
380 #2
380 #3
450

1, 6, 7, 11, 12, 14
3, 16, 17
13

all on you 2, 5, 8, 9, 10



EVIDENCE/ PROPERTY CHAIN OF CUSTODY RECEIPT

LEE COUNTY SHERIFF'S DEPARTMENT

Suspect: Taylor, Wither spoon Victim: Henry Scott
Received From: Crime Scene / Fath Phone: _____
Offense: Murder Case No.: 99-01-0076
Date/ Time Received: 11-14-99 Officer: _____

DESCRIPTION OF EVIDENCE/ PROPERTY

ITEM #1 1-18 Casings, Lead, bullet
ITEM #2 .45 cal pistol (obtained after 11-14-99)
ITEM #3 _____
ITEM #4 _____
ITEM #5 _____
ITEM #6 _____
ITEM #7 _____
ITEM #8 _____
ITEM #9 _____
ITEM #10 _____

Received From: J. I. F. [Signature]
Date / Time : _____ Storage Bin No.: _____
Signature: _____
Evidence/ Property Custodian

SUMTER PAWN

705 BROAD ST.
SUMTER, SC 29150
803-436-0027 DIAN

SALES RECEIPT
10-24-2009

Invoice Numb: 199900831
Invoice Date: 02-25-99
ID:007617484

GILARON DEMERY TAYLOR
44 S SALEM AVE
SUMTER, SC. 29150

PAY #	BRAND	Description	DESCRIPTION	Qnt	Price	AMOUNT
199805933		HANDGUN HIFONT CF BLUE 380 SE		1	89.00	89.00
		SERIAL NUMBER: P723381				
		SLED		1	5.00	5.00
						=====
Merch. Total:						94.00
Tax Total:						5.64
						=====
Amount Billed:						99.64
Total Paid:						99.64
Amount Due:						0.00

INVOICE PAID IN FULL - THANK YOU!

Please KEEP THIS COPY for Your Records.

**ALL SALES FINAL NO CASH REFUNDS
LAYAWAYS: SUBJECT TO 15% RESTOCK FEE**

State of South Carolina)

)

County of Lee)

)

State of South Carolina,
Plaintiffis

vs.

General Sessions
2000-GS-31-10

Ron Gilaron Taylor,
Defendant

October 5, 2009
Bishopville, S.C.

Before The Honorable George C. James, Jr. Judge.

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

MR. JOHN GENTRY,
Assistant Solicitor

Ms. Deborah Butcher,
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

1 MR. GENTRY: May It Please the Court, this
2 is Mr. Ron Gilaron Taylor. He's before court on
3 Indictment No. 2000-10. He is pleading guilty to
4 voluntary manslaughter. There is a negotiated
5 sentence. By way of explanation, Mr. Taylor was
6 convicted in the year of 2000, of voluntary
7 manslaughter in a trial by jury. His case went
8 forward on a direct appeal and was affirmed.
9 Recently on a PCR he was granted a new trial. He
10 has determined to enter a plea of guilty to
11 voluntary manslaughter for time served.

12 THE COURT: And has he served any time in
13 the -- how much time has he served?

14 MR. GENTRY: 3,178 days by my count, Your
15 Honor.

16 MR. BUTCHER: Eight and a half years.

17 THE COURT: So with all that, he was in
18 prison the whole time.

19 MR. BUTCHER: Yes, Your Honor.

20 THE COURT: Is he going to admit his
21 guilt?

22 MR. BUTCHER: Yes, Your Honor.

23 THE COURT: And It's going to be, he was
24 found guilty of voluntary manslaughter?

25 MR. GENTRY: Yes, sir, he was. He has

1 been charged with murder.

2 THE COURT: And sentenced to---

3 MR. GENTRY: 14 years.

4 THE COURT: And so he would have to do
5 85 percent of that. And he was -- he went for a
6 new trial and he was charged with murder again?

7 MR. GENTRY: No, he was acquitted of
8 murder by the jury.

9 THE COURT: He was acquitted for---

10 MR. GENTRY: Yeah, I am sorry. He would
11 be up for voluntary again.

12 THE COURT: It wasn't a plea.

13 MR. GENTRY: No, sir.

14 THE COURT: He would be facing a maximum
15 of manslaughter.

16 MR. GENTRY: Yes, sir.

17 THE COURT: If he was convicted. All
18 right, do you represent Mr. Taylor?

19 MR. BUTCHER: Yes, Your Honor.

20 THE COURT: I am going to be asking
21 Mr. Taylor a lot of questions. Has he been sworn?

22 MS. BUTCHER: No, sir.

23 (Whereupon, the defendant is sworn.)

24 THE COURT: Do you think the jury would
25 find him guilty based on your knowledge of the

1 facts and circumstances?

2 MR. BUTCHER: Yes, Your Honor.

3 THE COURT: And do you agree with his
4 decision to enter the plea?

5 MR. BUTCHER: Yes, Your Honor.

6 THE COURT: And this is negotiated, is
7 that right?

8 MR. GENTRY: Yes, sir. Negotiated for
9 time served.

10 THE COURT: Mr. Taylor, listen carefully
11 to all these questions. I want to make sure you
12 enter your plea freely, voluntarily, knowingly and
13 intelligently. If somebody says something that
14 you don't agree with, or you don't understand, you
15 let your lawyer know. If you want to talk to your
16 lawyer at any time, you let me know. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now if you went back, you do
20 have a right to have this case tried again. Do
21 you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: I understand that certain
24 what some may consider common sense
25 considerations, would have to be taken into

1 account in that regard. But today I won't be able
2 to accept your plea unless you actually admit your
3 guilt. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How about the victim's family?

6 MR. GENTRY: The victim's family, the
7 mother has been notified on numerous occasions by
8 me, and has not made any appointments. I turned
9 it over to the Sheriff's Office for notification.
10 I've heard nothing at all.

11 THE COURT: He's facing up to 30 on the
12 retrial, is that right?

13 MR. GENTRY: I think that is correct, yes,
14 sir.

15 THE COURT: How far did you go in school,
16 Mr. Taylor?

17 THE DEFENDANT: I graduated, sir.

18 THE COURT: And according to this, what I
19 have before me, you are 32 years old?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What kind of work did you do
22 before you been to prison?

23 THE DEFENDANT: I was in the U.S. Air
24 Force. After that, I received a couple of jobs in
25 industrial type of work.

1 THE COURT: Do you have any history of
2 alcohol abuse, drug abuse or mental illness?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you take medication?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any drugs or
7 alcohol in your system now?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you able to understand
10 what you're doing today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now the Indictment of this
13 case, I will just read the Count 1, which is the
14 title of the murder. But it says you did on or
15 about November 14, 1999, with malice aforethought,
16 kill one Henry Scott by means of shooting him.
17 Now that's not -- those aren't the elements of
18 voluntary manslaughter. But the gist of the
19 offense is that the State claims that you did kill
20 Mr. Scott. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And the charge that you are
23 wanting to plead guilty, as I understand it, is
24 called voluntary manslaughter, which is a lesser
25 included offense of murder. Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that under
4 the law, this is a serious, excuse me, this is
5 most serious, isn't it?

6 MR. GENTRY: Yes, sir, I believe it is.

7 THE COURT: We have what we call three
8 strikes law and two strikes law in South Carolina.
9 Under the two strikes law, if you were convicted
10 of two most serious offenses, on the second one,
11 you would be facing mandatory life in prison in
12 without parole. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In other words, if I accept
15 your plea, that's one most serious. If for
16 example, a year from now you go out and commit an
17 armed robbery, you would be facing mandatory life
18 if you were convicted. That would be the only
19 possible sentence, do you that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: We also have the three strikes
22 law. And if you get three serious offenses, or
23 one most serious, plus two serious offenses, you
24 could possibly face life without parole on that.
25 Even though it wouldn't be mandatory. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And the state would have to
4 seek it. So do you understand that if I don't
5 think that an eight and a half year sentence is
6 appropriate in this case, I will let you withdraw
7 your plea and you can basically start over?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Taylor, you have some
10 rights that you have to give up when you plead
11 guilty. First, is your right to remain silent.
12 You do have the right to say nothing. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You also have the right to a
16 jury trial. And you have been through one
17 already, is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And 12 people as you know,
20 would be on your jury. You would not have to
21 prove anything. You don't have to disprove
22 anything. Once the case is over, the jury would
23 decide whether or not you are guilty. They could
24 not convict you of voluntary manslaughter or
25 anything unless they all agreed beyond a

1 reasonable doubt that you were guilty. Thirdly,
2 you have the right to confront and be confronted
3 by witnesses the state calls against you. And you
4 have the right to be in the courtroom when they
5 testify.

6 You get to look at them and listen to
7 them, and then your lawyer gets to question them.
8 And then along with that right is your right if
9 you wanted to, is to call your own witnesses. Do
10 you understand all those rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you want to give up each
13 right and plead guilty to voluntary manslaughter
14 today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that if you
17 have any defenses to this charge, that when you
18 plead guilty, you give up those defenses for ever?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And if you made any statements
21 to the police that would incriminate you, and you
22 plead guilty, you give up the right to challenge
23 the admissibility of those statements.

24 THE DEFENDANT: Yes.

25 THE COURT: Are you guilty or not guilty

1 of voluntary manslaughter?

2 THE DEFENDANT: Guilty.

3 THE COURT: Why don't you tell me what
4 happened. Did you shoot Mr. Scott.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What kind of gun did you use?

7 THE DEFENDANT: A 380.

8 THE COURT: A 380. In a minute Mr. Gentry
9 is going to give me some circumstances, and then I
10 will come back to you, okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What was the provocation of
13 the case? Based on sufficient legal provocation.

14 MR. GENTRY: I would assume so, Judge.

15 THE COURT: You all were fighting?

16 THE DEFENDANT: Actually there was a
17 shootout at a nightclub.

18 THE COURT: I got you. So at the trial
19 did you interpose a self-defense defense?

20 THE DEFENDANT: Yes, sir, I did.

21 THE COURT: What was basis for the PCR,
22 Ms. Butcher, do you remember?

23 MR. BUTCHER: I don't know.

24 MR. GENTRY: It had to do with the
25 suppression or the nonexistence of a report on a

1 gun that was supposedly turned into law
2 enforcement about 10 days before trial.

3 THE COURT: No Ballistic's Report?

4 MR. GENTRY: No Ballistic's Report was
5 made. And I guess there was attenuation on how
6 that gun actually played in to the circumstances.
7 But Judge King indicated that it was a PCR issue.
8 And his co-defendant interposed the same
9 objection. And there was no PCR granted on that
10 one. It went all the way to the Supreme Court and
11 held -- granted a PCR.

12 THE COURT: Who was the your trial lawyer?

13 THE DEFENDANT: James Rogers.

14 THE COURT: Okay. Now has anybody
15 promised you anything to get you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anybody including your
18 lawyer, used any threats, force or intimidation to
19 get you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you had enough time to
22 make up your mind?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you pleading guilty based
25 on your own free will?

1 THE DEFENDANT: Yes, sir, I am.

2 THE COURT: And are you satisfied with the
3 manner in which Ms. Butcher has represented you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So are you familiar with the
6 PCR process. So you understand the meaning behind
7 this question. Is there anything else you want
8 her to do that you think she has not done at all
9 or not done properly?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you had enough time to
12 talk to her?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you understood your
15 conversations?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now do you understand that you
18 have 10 days to appeal this plea and the sentence?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you understood everything
21 that you and I have talked about?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Gentry.

24 MR. GENTRY: Your Honor, the Indictment
25 Report states that the complainant above, "One

1 Mr. Larry Davis, at the Davis Country Club in the
2 Manwell St. Charles Highway on 11/14/99, made a
3 complaint to Daniel Simon who was, I guess working
4 security at the club. Someone was arguing on the
5 outside of the club. "While we were going
6 outside, we heard several shots went off around
7 the 10 round estimate. As we got to the end of
8 the parking lot, investigator, now major Simon,
9 saw someone running down the road. He then went
10 back to his vehicle to secure his shotgun."

11 At any rate what happened was, the
12 defendant was one of the two people along with, I
13 believe, Mr., the other gentleman mentioned in the
14 Indictment, Mr. Evans.

15 THE COURT: Lamont. This defendant,
16 Travis Singleton and Mr. Evans.

17 MR. GENTRY: Right. Mr. Evans, and
18 Mr. Taylor were both tried for murder. And both
19 were convicted of voluntary manslaughter. And
20 Mr. Taylor got 18 -- excuse me, Mr. Taylor got 14
21 years. And the other gentleman got 18 years. It
22 turned out, there was essentially a shootout. The
23 victim in this particular case, Mr. Scott. I
24 think they found two weapons at the scene. One
25 was a 380, and the other one was a 45. Or they

1 found bullets in Mr. Evans 380 and 45. At any
2 rate, as you can imagine at a club at that time of
3 the morning, there was complete confusion.

4 They were apprehended later on, and
5 through investigation and lineups, et. cetera, et
6 cetera, they were both as charged with murder.
7 And at a trial by jury they were convicted of
8 voluntary manslaughter.

9 THE COURT: Is all that pretty much
10 correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What's his record?

13 MR. GENTRY: I don't believe he has a
14 prior record, Your Honor.

15 MS. BUTCHER: He has no record, Your
16 Honor.

17 THE COURT: You were about 21 at the time,
18 22?

19 THE DEFENDANT: 22.

20 THE COURT: I will be glad to hear from
21 y'all, Ms. Butcher?

22 MR. BUTCHER: Thank you, Your Honor. As
23 they said earlier, this was an incident in a
24 nightclub, and it was basically a shootout. Your
25 Honor, he was 22-years-old at the time of this,

1 and he has spent eight and a half years in jail.
2 Your Honor, he not only tells me how remorseful he
3 is, but that he still has nightmares about this.
4 He has two children. They are now age 10. He's
5 missed the majority of their life.

6 Your Honor, for somebody that has never
7 had a record prior to this, I don't think, though
8 this is a very serious charge, I don't think this
9 is something that is going to be causing any
10 problems, Your Honor. He states that the hardest
11 thing he has had to deal with is his children.
12 Missing his children, and the example that he has
13 set so far. Your Honor, we would ask you to
14 accept the negotiated sentence.

15 THE COURT: Mr. Taylor, is there anything
16 you want to tell me?

17 THE DEFENDANT: Yes, sir. I'd also like
18 to, you know, Mr. Scott's family is not here. I
19 would like to apologize to them for taking them
20 through what they had to go through. And I would
21 also like to apologize to my family. Because both
22 families suffered for our actions. And I'd ask
23 you to please take into consideration this plea.

24 THE COURT: Did you know Mr. Scott?

25 THE DEFENDANT: Prior to that no, sir.

1 THE COURT: Did he have a gun too?

2 THE DEFENDANT: Yes, sir, he did.

3 THE COURT: How far away from you was he
4 when you shot him?

5 THE DEFENDANT: Probably about, probably
6 from me to you. Maybe a little closer. Not much.

7 THE COURT: Does it seem to be good idea
8 for you to stay away from these Clubs?

9 THE DEFENDANT: Oh, yes, sir, definitely.

10 THE COURT: How long have you been out of
11 prison?

12 THE DEFENDANT: Four months. On the
13 19th of this month will be four months.

14 THE COURT: Is there anything you would
15 like to say? You don't have to.

16 MS. BUTCHER: This is His mother, Your
17 Honor. I don't know if I made that clear.

18 THE COURT: Anything else, Mr. Gentry?

19 MR. GENTRY: No, sir.

20 THE COURT: I guess coincidentally eight
21 and a half years obviously is 85 percent of 10.
22 That would be pretty much the low end of being a
23 true voluntary manslaughter sentence. Under the
24 circumstances in light of the age of the case and
25 the sequel machinated of it, I'll impose a time

1 served sentence of eight and a half years. How do
2 they work? I know if I just put county detention
3 for time served, does he have to go back out
4 there, or does he just need to go right now?

5 MR. GENTRY: Judge, I honestly don't
6 know. I can find that out very shortly.

7 THE COURT: There is a substantial,
8 factual basis for the plea. Mr. Taylor entered
9 the plea freely, voluntarily, knowingly and
10 intelligently. And he is represented by counsel
11 with whom he is satisfied. I think he should
12 probably be good to go. I don't know what the
13 folks at the jail might say. Keep your head under
14 the radar.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If he's out of jail with a
17 time served sentence, county detention center, he
18 doesn't have to go there to get processed out,
19 does he?

20 THE OFFICER: No, sir.

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Taylor.

23 --End of Requested Transcript of Record---

24

25

Certificate

I, Margaret T. Sullivan, Court Reporter, for the Third 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 proceedings had and evidence introduced in the above captioned case, relative to appeal, in General Sessions Court, on October 5, 2009, for Lee County, Bishopville, South Carolina.

I do further that I am neither kin, counsel nor interest to any party hereto.

22310

DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 10-03-11

State of South Carolina)
)
County of Lee)
)

The State of South Carolina,
Plaintiffs

vs.

Marcus Evans,
Defendant

Motion
2000-GS-31-00010

BEFORE THE HONORABLE Howard P. King, Judge.

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

Mr. John Gentry
Assistant Solicitor for the State

Ms. Tricia A. Blanchette,
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

1 THE COURT: The first matter before the
2 court today is the matter of the State of South
3 Carolina versus Marcus Evans. In Docket No.
4 2000-GS-10. Before the court on a motion of the
5 defendant, Mr. Evans, through his counsel
6 Ms. Blanchette, has asked for a new trial based on
7 after discovered evidence. Ms. Blanchette, it is
8 your motion. I will be glad to hear from you.

9 MS. BLANCHETTE: May it please the Court,
10 my name is Tricia Blanchette. I'm here today on
11 behalf of the defendant, Marcus Evans. We are
12 here today on a motion that addresses an issue of
13 fundamental fairness. This is an issue that has
14 been addressed by the United States Supreme Court
15 as well as our Supreme Court. They have found
16 that a denial of fundamental fairness is an issue
17 that is shocking the judicial sense of conscience.

18 Furthermore, Justice Waller in his descent
19 in Johnson v. Catoe, said that I believe to deny
20 Johnson a new trial in the face of a confession by
21 someone who is admittedly present when a murder
22 was committed, would constitute a denial of
23 fundamental fairness shocking to the judicial
24 sense of conscience and justice.

25 And that is the issue we are here on

1 today. I have a copy of those two cases if you
2 would like to review those.

3 THE COURT: Yes, ma'am. If you would hand
4 them up. I will say that I have read your
5 memorandum and transcript. So I am familiar with
6 both of the matters that you have raised. If you
7 will go ahead and hand those two cases up.

8 MS. BLANCHETTE: And for the record, Your
9 Honor, I will be provide you with copy of both of
10 these cases. Would Your Honor like for me to go
11 through the procedural history, or just directly
12 into the matters that weren't in the motion?

13 THE COURT: I am familiar with the
14 procedural history throughout your Memorandum. So
15 I don't need to hear from you. What I am
16 interested in, as I understand it, the motion was
17 made on after discovered evidence. And the
18 standard for after discovered evidence are five
19 factors as set forth in State v. Spann and other
20 South Carolina cases. And you have or it's my
21 understanding five matters that are after
22 discovered evidence that warrant a new trial. So
23 those are the things I want to hear your argument
24 on.

25 MS. BLANCHETTE: Yes, Your Honor. Would

1 you like me to call, I have the witnesses here
2 with the exhibits today. Or would you like me to
3 provide those exhibits to you without the live
4 testimony?

5 THE COURT: What exhibits are they, and
6 has Mr. Gentry seen the exhibits?

7 MR. GENTRY: Judge, we have not seen these
8 before. But I think that most of the things that
9 are covered are covered in Judge Young's Order.
10 An order denying PCR, which was issued much
11 earlier. And also covered by a motion to amend
12 also on a PCR.

13 THE COURT: What are the exhibits that you
14 are offering, Ms. Blanchette?

15 MS. BLANCHETTE: Your Honor, those would
16 be the exhibits attached to the motion itself.
17 Along with, I have also a copy of the Court of
18 Appeals decision. Along with Mr. Taylor's PRC
19 order if the Court would like to have a copy of
20 those.

21 THE COURT: Which Court of Appeals
22 decision?

23 MS. BLANCHETTE: The direct appeal
24 decision in Mr. Evans' case. Which I am not sure
25 if court has a copy of that.

1 THE COURT: Is that a published opinion?

2 MS. BLANCHETTE: I believe it is
3 unpublished, Your Honor.

4 THE COURT: It has no precedential value.

5 MS. BLANCHETTE: It is unpublished.

6 THE COURT: Well it has no precedential
7 value.

8 MS. BLANCHETTE: No, that was just for the
9 record. For the court's review.

10 THE COURT: Well I think that the exhibits
11 are the ones that you are offering, and the ones
12 that you attached to the memorandum that were sent
13 to me. And which would include the Transcript of
14 Record or Mr. Taylor's guilty plea. The South
15 Carolina Law Enforcement Division Forensic
16 Laboratory Report dated November 22, 2000. The
17 Chain of Custody decision of Lee County Sheriff's
18 Department dated, it doesn't have a date on it.
19 But it indicates a date and time received
20 11/14/99. The -- received a Sumter Palm, actually
21 it's an invoice stating full. And of course the
22 Order of Dismissal of Judge Young on a PCR. I
23 have all of those. You don't have any objection
24 to those, is that correct?

25 MR. GENTRY: No, sir.

1 THE COURT: What else?

2 MS. BLANCHETTE: Your Honor, I have a
3 number of documents from the PCR that I think
4 would complete the record. And specifically to
5 address the State's position that this issue was
6 addressed in the PCR. These documents would
7 support our position. If I could hand those up
8 for the record.

9 THE COURT: Show them to Mr. Gentry, and
10 let's see if he has got any objection to the
11 authenticity. There's no need to call a witness
12 if these documents are stipulated to as
13 authenticity is concerned.

14 MS. BLANCHETTE: The first document is a
15 memorandum of law that I submitted at Judge
16 Young's request prior to issuing the PCR Order.

17 MR. GENTRY: I have no objection to that.

18 THE COURT: All right.

19 MS. BLANCHETTE: The second document, Your
20 Honor, is a motion that was filed requesting a
21 motion to compel a specific ruling on
22 Post-conviction Relief that was filed with the
23 Clerk of Court.

24 THE COURT: A motion to compel a specific
25 ruling from who?

1 MS. BLANCHETTE: That would be on a PCR,
2 Your Honor.

3 THE COURT: Okay.

4 MR. GENTRY: I believe that if I read it
5 correctly, this is the first time I've seen it.
6 But it appears that the Memorandum that was just
7 handed up is in response to a couple of cases. Is
8 that correct?

9 MS. BLANCHETTE: No, these are two
10 separate filings of the PCR that I received.

11 THE COURT: Well the motion that are filed
12 with the court are a matter of public record, is
13 it not?

14 MR. GENTRY: Yes, sir.

15 THE COURT: Filed with, the exhibit was
16 filed with the court file of Mr. Evan's file, this
17 would be in it.

18 MS. BLANCHETTE: It is my understanding
19 everyone has a copy of the final order of
20 post-conviction relief application, is that
21 correct?

22 THE COURT: Is that Judge Young's order?

23 MS. BLANCHETTE: Yes, Your Honor.

24 THE COURT: I have a copy of that. That's
25 in front of me.

1 MR. GENTRY: I do also.

2 MS. BLANCHETTE: The next document is also
3 filed with the Clerk of Court is that a motion
4 pursuant to 59-a and e in the PCR Application.

5 THE COURT: I'm sorry, what?

6 MS. BLANCHETTE: It is a motion filed
7 pursuant to Rule 59(a) and e in conjunction with
8 the PCR action.

9 THE COURT: Motion for Reconsideration?

10 MS. BLANCHETTE: Yes.

11 THE COURT: Filed with the court?

12 MS. BLANCHETTE: Yes, it is, Your Honor.

13 THE COURT: Okay.

14 MS. BLANCHETTE: And if I am not mistaken,
15 the state has a copy. Does the court have a copy
16 denying that motion issued by Judge Young?

17 THE COURT: Not unless you published it
18 to me. Ma'am Clerk, do you have a copy of the
19 case file?

20 THE CLERK: I have the criminal file, yes,
21 sir.

22 MS. BLANCHETTE: And would, Your Honor,
23 would the court like a copy of the appendix in
24 this matter?

25 THE COURT: I don't think so. What do I

1 need it for?

2 MS. BLANCHETTE: Just for your review if
3 you would like a copy.

4 THE COURT: I don't think so.

5 MS. BLANCHETTE: Your Honor, the state has
6 raised the issue that this issue is precluded
7 because of what's addressed in the PCR. That
8 brings up the point of res judicata and collateral
9 estoppel. Res judicata prohibits subsequent
10 actions by the state parties on the same issues
11 that were adjudicated---

12 THE COURT: Wait a minute. I haven't seen
13 anything from the state yet.

14 MS. BLANCHETTE: Okay.

15 THE COURT: The only thing I have seen is
16 what you filed with me. So what I need for you to
17 do is for you to argue your position and let the
18 state argue their position. And I will let you
19 respond. At this point, all I have is your motion
20 for a new trial based on after discovered
21 evidence. And that's what I need for you to
22 address. And then I will let the state give me
23 theirs, and then you can reply to their argument.
24 And to anything that they have raised with regard
25 to being res judicata or collateral estoppel.

1 MS. BLANCHETTE: Yes, Your Honor. Then I
2 would respond to those arguments at the
3 appropriate time as you have indicated. As we
4 set forth in the motion, we argue that there are
5 issues here for newly discovered evidence that
6 need to be addressed by this court. Failing to
7 do so would be the double standard in this case.

8 The first issue is the chain of custody
9 form. This goes back to the trial, and shows that
10 the victim's gun was actually turned over to law
11 enforcement, but they failed to turn it over to
12 the Solicitor's Office. And this was discovered
13 in the trial. Mr. Taylor was successful and Your
14 Honor issued an order raising a PCR action on this
15 issue.

16 THE COURT: On that issue. And I am
17 familiar with that. And I know that I did grant
18 the PCR for Mr. Taylor based on that. And after
19 discovered evidence wasn't that available to
20 Mr. Evans at his PCR?

21 MS. BLANCHETTE: Your Honor, it actually
22 was available at his first PCR if that is what
23 Your Honor is referencing. This document became
24 available to him. And I did have a chance to
25 explain that after Mr. Taylor's PCR. He never

1 had access to this document until it became an
2 exhibit at Mr. Taylor's -- at PCR. So that's why
3 I included that document.

4 THE COURT: It wasn't whether he had
5 access to it, it wasn't available. The rule is,
6 could not in exercise of due diligence been
7 discovered prior to trial. Could it be exercised
8 in due diligence prior to his PCR?

9 MS. BLANCHETTE: That is correct, Your
10 Honor. But what is reflected in the appendix;
11 is that, at Mr. Evans' PCR, his counsel put on the
12 record that he had just met him; that he was not
13 prepared to go forward. He asked for a
14 continuance, and the judge would not continue the
15 PCR. He told him he would give him a day to
16 prepare. Unfortunately his PCR, his son became
17 sick and had a medical issue.

18 THE COURT: But isn't that a matter for
19 appeal?

20 MS. BLANCHETTE: As far as his attorney
21 not being prepared and admitting that document?

22 THE COURT: At the refusal to grant the
23 continuance based on that.

24 MS. BLANCHETTE: That is, Your Honor. But
25 I just wanted to give you that background

1 information and put it into the context that his
2 PCR counsel admitted, and said he wasn't ready and
3 prepared to go.

4 THE COURT: Well there are a lot of PCR
5 cases. Okay, he said he wasn't ready to go and
6 moved for a continuance, but that continuance was
7 denied. But really from there, would have been to
8 appeal from that issue, would it not?

9 MS. BLANCHETTE: That is correct, Your
10 Honor. But in the exercise of due diligence,
11 Mr. Taylor did not have that document, nor did the
12 PCR counsel obtain that document.

13 THE COURT: But he could have.

14 MS. BLANCHETTE: I respect that opinion,
15 Your Honor.

16 THE COURT: So doesn't that fail test
17 No. 3 of the after discovered evidence?

18 MS. BLANCHETTE: It's not something that
19 was given to Mr. Evans in discovery. It would be
20 our position that he was not aware that it
21 existed. So in the exercise of due diligence, it
22 wasn't something he knew was available. Because
23 the document was not discovered and ultimately
24 lead to a Brady violation issue.

25 THE COURT: Go ahead.

1 MS. BLANCHETTE: The second document is
2 the ruling on Mr. Taylor's PCR. On the very same
3 issue was raised in Mr. Evans' PCR. He was not
4 granted relief on that issue. The third issue,
5 Your Honor is aware of that issue, so I won't go
6 into that further. The third issue is really our
7 fundamental issue of newly discovered evidence in
8 this case. And that is the plea of Ron Taylor on
9 October 5th 2009, in the Court of General
10 Sessions.

11 In that plea when asked by Judge James,
12 Mr. Taylor admitted to being the shooter in this
13 case. That confession had never been made on the
14 record or been given to the defendant at any time
15 time prior. They were tried jointly. Neither of
16 them testified. Also interestingly, Mr. Taylor
17 did not testify at the PCR. So the first time his
18 testimony became available was at his plea on
19 October 5th 2009.

20 I will concede that we did call him at his
21 PCR. And Judge Young found a credibility issue
22 there. I can get into that at this point if Your
23 Honor would like me to address that after the
24 state raises that, I would be happy to do so.

25 THE COURT: Well I have it right here. I

1 know Judge Young heard it. Go ahead.

2 MS. BLANCHETTE: Okay.

3 THE COURT: Let me ask you one thing.

4 This is -- I think what I surmised on the crux of
5 this issue is, it appears that the crux is the
6 after discovered evidence. And all the other
7 items are looked at and really decided. But the
8 crux of the after discovered evidence is the
9 guilty plea before Judge James where Taylor
10 admitted he was the shooter. Isn't that the crux
11 of your case?

12 MS. BLANCHETTE: That is correct, Your
13 Honor. Along with the gun receipts which had
14 been, Mr. Taylor prepared to testify that this is
15 a gun receipt for a high point handgun. And those
16 are the two bullets found on the victim's body.
17 Lead found from a highpoint handgun.

18 THE COURT: But from the standpoint of the
19 facts in this case, if that is the crux of your
20 case, and I have read the entire transcript of the
21 trial. But I have kind of gotten the overall
22 view; that this being a shoot-out at a night club.
23 And had guns and many shots fired. How does your
24 client get around accomplice liability?

25 MS. BLANCHETTE: Your Honor, I will be

1 completely honest with you. Under our theory in
2 South Carolina, the hand of one, the hands of all,
3 it is likely my client would be convicted by a
4 jury. But what I would like to argue; is that,
5 the jury that convicted him did not have the
6 advantage of knowing about the Brady violation and
7 a gun that was owned and turned over by the
8 victim. They didn't have the testimony of
9 Mr. Taylor admitting he was shooter.

10 THE COURT: What was that last statement
11 you said? And I appreciate your candor. But I
12 see, I believe your candor was, the interview said
13 that it was a new trial; that he would like to be
14 convicted under the accomplice liability theory of
15 the hand of one is the hand of all. Is that what
16 you stated?

17 MS. BLANCHETTE: Your Honor, I don't
18 believe that based upon the legal theory of hand
19 of one hand of all, that I can honestly make an
20 argument that goes against that.

21 THE COURT: Well if that's the case, why
22 is the outcome for the test of a new trial that
23 would likely change the outcome? It wouldn't
24 likely change the outcome by your own admission.

25 MS. BLANCHETTE: Well what my motion

1 focuses on, because I am aware this issue is a
2 prime case for resentencing. Which is exactly
3 what happened for Mr. Taylor. He pled guilty to
4 voluntary manslaughter and he received a sentence
5 for time served.

6 My client under the law, it is possible he
7 could be convicted for voluntary manslaughter. We
8 are arguing today that this case is primed for
9 resentencing. These were facts that were not
10 known to the sentencing judge at the time he
11 handed down his 18-year-sentence. If these facts
12 were known to the sentencing judge at that time,
13 it's my opinion and belief that specifically based
14 on Mr. Taylor's sentence, that the sentence in
15 this case would be different. And that's why---

16 THE COURT: But what you are asking for is
17 not a new trial, but a new sentence.

18 MS. BLANCHETTE: Yes, Your Honor. We are
19 asking for a resentencing, which I believe is
20 available under Rule 29(b). We are asking --
21 these are facts of newly discovered or after
22 discovered evidence that would change the outcome
23 as far as the sentence is concerned in the case.
24 And that's the focus of my motion. That's also
25 why I handed up those documents from this PCR.

1 Because I filed a motion in that PCR. Once again,
2 conceding the fact that under the law, Mr. Evans
3 could be found guilty of voluntary manslaughter.
4 I am not saying the jury would, but they could.
5 And I specifically asked Judge Young for a ruling
6 on his sentencing.

7 In his order he said that he found that
8 resentencing was not an appropriate -- it could be
9 an appropriate remedy, but he did not make a
10 ruling on the merits.

11 THE COURT: Let me stop you there and ask
12 you one other thing. I don't mean to be rude, I
13 just want to satisfy myself. You cited in your
14 brief that one Circuit Court Judge has no
15 authority to overrule another Circuit Court Judge.
16 If I do that, am I overruling what Judge Young has
17 already ruled upon?

18 MS. BLANCHETTE: No, Your Honor. Because
19 that action was brought under Post Conviction
20 Relief. And I am bringing this action under Rule
21 29(b). Also something that, and I have a case on
22 this issue for Your Honor. I can address in the
23 response to the state's argument; is issues of
24 credibility are given great deference to our
25 appeal. And they are very -- it's not very often

1 that an issue of credibility would be overturned
2 on a PCR appeal. So the timing of Mr. Evans'
3 credibility is not an issue that I can go forward
4 with successfully on a PCR appeal. But it does
5 negate the finding of this Court's General
6 Sessions in accepting Mr. Taylor's plea.

7 So I believe it is appropriate to bring
8 that issue to this court's attention to address
9 the credibility of Mr. Taylor, and that finding of
10 in Judge Young's Order. I'm not asking you to set
11 aside this order, but make a finding for General
12 Sessions which is appropriate for the facts in
13 this case.

14 THE COURT: So he made a finding. He
15 being, Judge Young, made a finding with regard to
16 sentencing. What was his finding in regard to
17 your request for resentencing on a PCR?

18 MS. BLANCHETTE: Your Honor, that would
19 found on page 11 and 12.

20 THE COURT: Of what, his order?

21 MS. BLANCHETTE: His order. If you would
22 like me to read that in the record, I will be
23 happy to.

24 THE COURT: I have got it right here. At
25 the top portion of page 11 of Judge Young's order,

1 up there where it says, "Sentencing." Applicant
2 further argues that he is entitled to
3 resentencing." Do you see at the top?
4 17-27-20(a) 1.

5 Even if assuming the applicant's
6 interpretation is accepted as correct, I do not
7 find the subsequent decision in the Taylor's case
8 warrants a reconsideration of applicant's
9 sentence.

10 MS. BLANCHETTE: That is correct, Your
11 Honor. And then if I could turn your attention to
12 the Motion for Reconsideration on page 5, I
13 specifically requested under Marlow that Judge
14 Young make a specific ruling on the merits of the
15 issue of resentencing. Which he failed to do. So
16 it's my position today is he has not ruled on the
17 merits of the case.

18 THE COURT: I understand that. And I am
19 going to ask one more time, and I want you to
20 tell me one time. Why was it not a subtle issue
21 rather than a collateral issue before me?

22 MS. BLANCHETTE: Your Honor---

23 THE COURT: Why couldn't you have appealed
24 that issue requesting -- why couldn't you have
25 appealed Judge Young's order?

1 MS. BLANCHETTE: The time of the filing of
2 the Judge's order dated October 21st, I was
3 willing to do that, until this proceeding took
4 place.

5 THE COURT: Well this order was issued
6 July 31st of 2010.

7 MS. BLANCHETTE: Go ahead, Your Honor.

8 THE COURT: Huh?

9 MS. BLANCHETTE: His final order was
10 issued August 26th. And I attached a Certificate
11 of Service showing it was served on me September
12 21st.

13 THE COURT: You have until October 21st to
14 appeal Judge Young's order.

15 MS. BLANCHETTE: That is correct, Your
16 Honor. Based upon the 30 days of the date of
17 service.

18 THE COURT: But again, I go back to the
19 issue, you requested a specific finding. He did
20 not give it to you with regard to the sentencing
21 issue. And again, why is that not an issue of
22 appeal? Why is it, how do I have any authority to
23 do anything different; that his order should be
24 appealed from?

25 MS. BLANCHETTE: Your Honor, referring to

1 the case of Harry Church, which I have just cited
2 to this court that my argument was, that one
3 Circuit Court Judge doesn't have the authority to
4 set aside the ruling or a finding of another.
5 And that Judge Young's order that gave these
6 findings to this court, how we get around that is,
7 first, I would argue that his order is not final
8 in this case.

9 The reason why it is filed simultaneously
10 my understanding of Rule 29(b) has to be filed
11 within one year of discovery. And Mr. Taylor's
12 plea was on October 5th 2009. So I filed it
13 before that deadline.

14 THE COURT: So you are saying Judge
15 Young's order was not filed until the 21st, of
16 this month?

17 MS. BLANCHETTE: I would argue that it's
18 not final until a decision has been rendered by
19 the Supreme Court.

20 THE COURT: Until the appeal is filed.

21 MS. BLANCHETTE: Until the appeal is filed
22 within the 30 days, and then when a decision is
23 rendered by our Supreme Court.

24 THE COURT: So it would seem like to me
25 that any action by you, is premature until all

1 those steps have taken place.

2 MS. BLANCHETTE: Your Honor, I would
3 submit that it is not. One, because this motion
4 has been filed in a timely manner and it's before
5 your court for that reason.

6 THE COURT: But it's filed and you are
7 protected on that. But any ruling can be held in
8 abeyance until there is a final order on this.
9 You are protected from the standpoint of the time.
10 Timely, by having filed timely. But I can't rule
11 on it until the order becomes final.

12 MS. BLANCHETTE: Judge, in reading Rule 29
13 (b) my understanding was it is referred to only
14 when a direct appeal became final. I couldn't
15 find case law that precluded Rule 29(b) from
16 proceeding at the same time as the PCR. Also our
17 legislature has enacted the PCR code, which also
18 has Criminal Rule Procedures case 29 (b). Neither
19 of them precludes each other. I can't find a
20 single case on the record that says these actions
21 cannot go forward simultaneously.

22 THE COURT: Have you found any that have
23 shown they can be taken in simultaneously? Is
24 there anything that supports that position? You
25 haven't found any that say you can't. But have

1 you found any that say you can?

2 MS. BLANCHETTE: What I have found, Your
3 Honor, is that if the court would be so gracious
4 to grant our motion today, and or to resentence my
5 client, the state could appeal that as well as I
6 could appeal the PCR. And they could consolidate
7 it as cross claim.

8 THE COURT: But that doesn't make a good
9 judicial economy today, does it?

10 MS. BLANCHETTE: No, it doesn't, Your
11 Honor. What my position is today, if this court
12 would grant his resentencing, the PCR would not go
13 forward. I would not file that appeal. There
14 would be no appeal on that case. And this court
15 would take this matter under Rule 29 (b). Which
16 would give this court jurisdiction to do so.

17 THE COURT: And by now you have got two
18 simultaneous actions pending at the same time.

19 MS. BLANCHETTE: That is correct, Your
20 Honor. But I feel if this court rules, there
21 would be no reason to proceed on the PCR appeal,
22 which is why I did not file it prior to today's
23 hearing. The hope is there could be some judicial
24 economy and we wouldn't have to address this issue
25 in the Supreme Court. Furthermore, the Supreme

1 Court will not look at the issues of credibility.
2 And the issue of credibility is held in this
3 court. Because this is the court that accepted
4 Mr. Taylor's plea. And then he went to the Court
5 of Common Pleas. And Judge Young found him not to
6 be credible. And the state facts that he gave in
7 this court that were accepted as a plea, he deemed
8 not credible. That is not an issue that even
9 though it can be raised, it's not something that
10 the Supreme Court will look at. Because they give
11 great deference to the finding of credibility.

12 THE COURT: I am aware of it.. It's very
13 rare. And we as judges, know that a -- well a
14 catchall is to put in there, we find something not
15 to be credible. And therefore is not appealable.

16 MS. BLANCHETTE: And I appreciate that,
17 Your Honor. The other thing is, this is an issue
18 of fundamental fairness. And the issue of
19 fundamental fairness is recognized by our courts
20 in South Carolina. Turning to my argument on
21 that, Your Honor, in Johnson v. Catoe, which I can
22 provide Your Honor with a copy. That is argued in
23 my motion. There is two very interesting
24 descents in that case. One is Justice Pleicones,
25 where it points out that our system of justice

1 reveres the probative value of confession.

2 And then Justice Waller goes a step
3 further, and he says as I quoted before, that to
4 deny a new trial based on a confession from
5 somebody who is admittedly present at a murder,
6 would constitute the denial of fundamental
7 fairness shocking to the judicial sense of
8 justice.

9 Yes, I can appeal this to our Supreme
10 Court. But what I asking the court today is due
11 to the jurisdiction that's conferred upon this
12 court under Rule 29 (b) to take this matter and
13 appropriately resentence my client. If the court
14 doesn't have any further questions, I will allow
15 the court to respond, and I will be happy to
16 address their argument.

17 THE COURT: Just a moment before I call on
18 you, Mr. Gentry. Thank you, Ms. Blanchette.

19 MS. BLANCHETTE: Your Honor, would you
20 like a copy of those cases I referred to
21 regarding confession?

22 THE COURT: Johnson and Williams? Is that
23 the two you are talking about?

24 MS. BLANCHETTE: Yes, Your Honor. I
25 actually have Newsome, and then Johnson if you

1 would like a copy of it.

2 THE COURT: I have Johnson and Williams.

3 MS. BLANCHETTE: Would you like a copy of
4 Newsome, which is quoted to---

5 THE COURT: Yes.

6 MS. BLANCHETTE: ---in the motion where a
7 new trial was granted on a confession of a
8 co-defendant?

9 THE COURT: Okay. Mr. Gentry.

10 MR. GENTRY: Number one, Your Honor, we
11 think this is a premature action. We think this
12 probably shouldn't be appealed. Judge Young
13 denied it. October 21st, is the deadline before
14 the order becomes final. Admittedly, Your Honor,
15 of course, as Your Honor is aware by issue, but
16 nonetheless, under 29 (b) indicates that a motion
17 for new trial based on after discovered evidence
18 may not be made while the case is on appeal unless
19 the Appellate Court by motion pursuant to, grants
20 leave to make the motion. Granted there is no
21 appeal on file now. But the order is not final
22 until October 21st.

23 THE COURT: Well that's what I was getting
24 at, Ms. Blanchette. On evidence Under 29 (b) on
25 after discovered evidence unless the Supreme Court

1 or Appellate Court allows the after discovered
2 evidence to go forward, it just seems like to me
3 that the spirit of Rule 29 (b); is that, the
4 Supreme Court would have to allow this case to go
5 forward. Because the new appeal hasn't been
6 filed. So what is the difference between the
7 hiatus period between the time the order was
8 issued, and the time that the motion must be
9 filed? So, go ahead.

10 MR. GENTRY: And the PCR code itself
11 essentially provides that the proper notice or
12 means to appeal an order of PCR with the court is
13 to file a Writ of Certiorari. Now with respect to
14 the after discovered evidence, it is clear from
15 the testimony and the testimony in the order, that
16 Mr. Evans was present at the time all of this was
17 going on. It's also clear that there were three
18 pistols involved in this action. One a 45. And
19 when the final PCR hearing, Mr. Evans testified
20 that he was firing a 357. And therefore, what
21 they found was a 357. In that particular case
22 five guns involved here. No gun was ever
23 recovered. We could -- it was never -- the trial
24 court attorney would have those---

25 THE COURT: But the deaths were caused by

1 two bullets from a 380.

2 MR. GENTRY: A 380. I don't know exactly
3 which bullets caused the injury. They recovered
4 the bullets from the body. He was shot 5 times, I
5 believe. So we don't know which weapon
6 specifically killed this gentleman. What we do
7 know is that no weapon was ever found. And
8 therefore nothing actually found about a 45.

9 THE COURT: No weapon was ever found
10 except a 45, which was turned in by the victim's
11 father that was turned in after the fact.

12 MR. GENTRY: That's correct. They found
13 ballistic markings which made only the cartridge
14 cases. They found a 380 was fired and one 45
15 weapon. We don't know what happened. We go back
16 to Mr. Taylor. He wasn't even truthful at his
17 allocution hearing. Because he indicated to the
18 judge that self defense was raised at trial. It
19 was never raised at trial. I believe that further
20 Judge Young had an extended order. I am not
21 familiar with all these other things that
22 Ms. Blanchette referred to. But Judge Young had a
23 specific finding which detailed the entire history
24 of the PCR. Habeas corpus to direct appeal. And
25 finding of facts conclude, and are all in there

1 for the court's review at the court's convenience.

2 And Mr. Taylor was obviously with
3 Mr. Evans at the time. They left in the same
4 vehicle. They were identified at the scene by
5 numerous eye witnesses. They were identified as
6 the shooter. Mr. Taylor just indicated, he did
7 not indicate how many times he shot. He certainly
8 didn't hang around to determine whether his bullet
9 was the fatal bullet.

10 THE COURT: Let me ask you this. I am
11 curious about the statement of fundamental
12 fairness issue raised by Ms. Blanchette. And I
13 don't know the reason for Judge Cooper in the
14 original trial differentiating between the
15 sentence he had given the two defendants. If I
16 recall, Mr. Evans was given an 18-year-sentence.
17 And Mr. Taylor was given a 14-year-sentence. And
18 then after I found that the evidence regarding the
19 surrender of the 45 by Mr. Taylor to the police
20 was not disclosed by Brady, and granted a new
21 trial to Mr. Taylor. The state choose not to
22 retry them, but to accept a plea to time served,
23 which is about 8 and a half years of his 14-year
24 sentence.

25 MR. GENTRY: Yes, sir.

1 THE COURT: Why was that? How was that
2 fair to Mr. Evans?

3 MR. GENTRY: Well, Your Honor, that first
4 of all, that was determined strictly in terms of
5 time and manpower. We did not want the system
6 backed up. A retrial in this case would be quite,
7 would take considerable effort. Number two, I
8 don't know why he was given 18 years and
9 Mr. Taylor was only given 14 years.

10 THE COURT: Well if the state only goes on
11 the basis of not retrying this case to reduce
12 Mr. Taylor's sentence by some 4 years.

13 MR. GENTRY: Yes, sir. The state does
14 have a reason. Mr. Taylor's case was in fact
15 overturned, and subject to a new trial.
16 Mr. Evans' case had not been. And I don't believe
17 it should be, because at this point the facts had
18 already been adjudicated for a new trial by Judge
19 Young.

20 THE COURT: Well I have got great respect
21 for Judge Cooper. And I am sure we have got good
22 reasons in the different sentences that were
23 imposed. We've heard the testimony. And also the
24 criminal records of both defendants, and I don't
25 question. I just -- the fundamental fairness that

1 the defendant has raised with regard to basically
2 the same facts of disclosure apply to
3 Mr. Taylor and apply to Mr. Evans.

4 MR. GENTRY: Yes, sir.

5 THE COURT: The same facts regarding
6 failure to disclose, turning in the 45. So why
7 then should he not get the benefit of a
8 resentencing as Mr. Taylor did? In the
9 fundamental fairness?

10 MR. GENTRY: Judge, I can't answer that
11 particular question. All I can say is that I know
12 that Judge Cooper must have considered all the
13 presentation on those issues, and presented by
14 those individuals. I know Mr. Taylor was a
15 veteran. If my memory serves me correctly, was a
16 veteran of the Air Force. And had no prior
17 history of any violence.

18 THE COURT: Wouldn't that be the same
19 thing if I were to resentence him here? The same
20 thing could be considered as far as what his
21 background is, what the reasons had been given,
22 and what his criminal record is? And actually
23 under a resentencing, me or another judge would
24 still could give him an 18 year sentence.

25 MR. GENTRY: Well I tend to agree with

1 you. But that's probably correct. But I think it
2 is premature at this point, because we haven't
3 gone through the entire appeals process as
4 outlined by the statute.

5 THE COURT: I understand that. I
6 understand the procedural question that you have
7 raised. That's a different issue from the
8 standpoint of the fundamental fairness issue that
9 has been raised by Ms. Blanchette. That's what I
10 was concerned about. Go ahead, Mr. Gentry, I will
11 hear anything else you would like to tell me.

12 MR. GENTRY: That's the other thing, Your
13 Honor. The case as has been pointed out, was 10
14 years old as well at the time.

15 THE COURT: At the time of trial?

16 MR. GENTRY: At the time that the plea was
17 taken.

18 THE COURT: The time of what?

19 MR. GENTRY: At the time the plea was
20 taken was 10 years old. Things had gotten stale.

21 THE COURT: I realize that.

22 MR. GENTRY: So again, I think this is
23 premature. I believe, I don't know the facts were
24 already determined by Judge Young.

25 THE COURT: Thank you, Mr. Gentry.

1 Ms. Blanchette.

2 MS. BLANCHETTE: Your Honor, may I respond
3 to a couple of points? The state made clear I
4 believe, and correct me if I am wrong; that they
5 did not pursue a new trial with Mr. Taylor was
6 something of judicial economy. That's exactly
7 what I am asking for today. This is nothing that
8 precludes this court from ruling in this matter.
9 And what it appears the state is asking you to do
10 is pursue a necessary PCR appeal. And I handle
11 those on a regular basis. That's a two year
12 process by this point.

13 I feel that that would be the weight of
14 judicial resources, making the Attorney General's
15 Office respond to that. Making them go over the
16 2,000 pages at this point. I say in the matter of
17 judicial economy this is a matter the court can
18 take care of today. I cited you a case by the
19 State, Ace v. State. And in it, it says finality
20 must be realized at some point to achieve
21 assemblance of balance in the effectiveness of
22 dissecting justice. At some point, judicial
23 review must stop. It says there is a rare
24 exception though. When the system has failed
25 to---

1 THE COURT: Let me stop you at this point,
2 Ms. Blanchette. The 21st of this month is when
3 you gave notice of appeal, or you were going to
4 appeal, is that correct?

5 MS. BLANCHETTE: That is correct, Your
6 Honor.

7 THE COURT: Suppose I take the matter
8 under advisement today. I don't, I want to review
9 all of this. It's going to take me awhile to do
10 it. And I won't get around to doing it until
11 November 1st. And that point because you have got
12 to protect your client's interest. You filed a
13 notice of appeal. Am I not divested of the
14 jurisdiction, meant that you filed Notice of
15 Appeal?

16 MS. BLANCHETTE: Your Honor, I believe
17 that would be a matter for the Supreme Court.
18 Because my inclination would be that the next step
19 is I can order the transcript. That takes 90
20 days. If this court rules during that time
21 period, I can dismiss that appeal.

22 THE COURT: Well I disagree that's not
23 exactly what you said. The way I read the law,
24 the way I understand the law, that Notice of
25 Appeal that the document would end the

1 jurisdiction of Court of General Sessions. So
2 once you filed the Notice of Appeal in that other
3 case, I have duty from that parallel track. I
4 don't have any further jurisdiction. Now 29(b),
5 the only way that I would if the Supreme Court
6 then referred it back to be heard during the
7 course of the appeal. But it would be up to the
8 Supreme Court to revest jurisdiction with this
9 Court once the appeal is filed.

10 I think that the only thing here for me to
11 do is automatically terminate Notice of Appeal
12 filed. You can't testify. What I have ruled, and
13 you filed a Notice of Appeal, I don't think I can
14 rule unless the Supreme Court then refers it back
15 to me.

16 MS. BLANCHETTE: Your Honor, I would
17 agree. If I could get move to inject a little
18 personal experience here. I have had PCR's
19 pending, because I also get appointed in these
20 matters. And a PCR on newly discovered evidence
21 pending at the same time that our Supreme Court
22 decided to not allow them to go forward. Neither
23 matters were held in abeyance. Just because of
24 the back log we have in our court system at the
25 time.

1 If this court is concerned that once I
2 file that notice that jurisdiction is then
3 divested in the Supreme Court and removed from
4 this court, I would be happy to motion that the
5 court hold the appeal in abeyance.

6 THE COURT: What else?

7 MS. BLANCHETTE: There is just one more
8 thing I wanted to point out. In that case they
9 said to continue a defendant without making a
10 decision would be a gross miscarriage of justice.
11 I would say the case is clearly a double standard.
12 A double standard that can be cured by this court
13 of General Sessions.

14 Furthermore, the state submitted that we
15 don't know which weapon or what happened. And
16 in Mr. Taylor's plea he was asked specifically
17 what happened. And he candidly made admissions,
18 Judge. He's also present in the courtroom today
19 if you want him to answer any questions this Court
20 may have for him. And just to answer a question
21 the court makes during their presentation, I do
22 have a copy of the trial transcript if the court
23 would like that to review. It's my position that
24 Mr. Evans has been made out to be the primary
25 principal throughout trial. Mr. Taylor was made

1 out to be his companion or accessory. For that
2 fact Mr. Taylor was given a lesser sentence.
3 Based upon Mr. Taylor's admission, Judge, that
4 would be the exact opposite of what the facts are
5 in this case.

6 THE COURT: You would agree that as far
7 this motion, the testimony is not proper. I've
8 got to make a decision based upon the record,
9 isn't that correct?

10 MS. BLANCHETTE: Your Honor, I cannot
11 find a rule to specifically say that except for
12 Rule 29 (b) in the case law for that matter. But
13 I do have my witnesses here available today if the
14 court wishes to take testimony.

15 THE COURT: I think I have got to decide
16 the case based on the record, not based upon any
17 new testimony that would be heard in this matter.
18 I am not going to take any testimony.

19 MS. BLANCHETTE: In view of that, If the
20 court would like the trial transcript, I do have
21 that available for you.

22 THE COURT: Well I think that the
23 transcript that would appropriate. So let me just
24 summarize as see if I understand your position at
25 this point. I'll summarize how I understand this.

1 First of all, your position Ms. Blanchette is that
2 you concede that it is likely that he would be
3 convicted under the accomplice liability theory.
4 So what you are asking for here, is a new sentence
5 rather than a new trial.

6 MS. BLANCHETTE: That is the appropriate
7 remedy, I would offer, Your Honor.

8 THE COURT: And your motion was made under
9 29 (b). And that 29 (b) motion can go forward
10 regardless of the situation on the appeal of
11 Judge Young's PCR order.

12 MS. BLANCHETTE: Yes, Your Honor. I
13 believe there are two current jurisdictions based
14 upon how the results are written.

15 THE COURT: And, Mr. Gentry, I understand
16 your position is that they cannot go forward under
17 the 29 (b) until that remedy has been imposed with
18 the final order. Judge Young's order is the final
19 order.

20 MR. GENTRY: When Judge Young's ruled, he
21 determined.

22 THE COURT: Sir?

23 MR. GENTRY: The facts, the findings of
24 fact as determined in Judge Young's order. They
25 have already been adjudicated.

1 THE COURT: That is true. But he did not
2 make a finding on that particular one issue.

3 MR. GENTRY: On fundamental fairness.

4 THE COURT: Right. He did not make a
5 finding on---

6 MR. GENTRY: Sentencing.

7 THE COURT: ---sentencing.

8 MR. GENTRY: Yes, sir. He did say
9 notwithstanding, I believe. The statements in
10 his response.

11 THE COURT: He said assuming.

12 MR. GENTRY: Assuming, yes, sir.

13 THE COURT: He said assuming that
14 applicant's interpretation of the statute is
15 correct, he did not find the procedures entailed,
16 the case warrant a reconsideration of the
17 applicant's sentence.

18 MR. GENTRY: Apparently Ms. Blanchette
19 requested a specific finding on the order denying
20 applicant's motion. She's asserting liability of,
21 along with his prior ruling.

22 THE COURT: Well I understand both of your
23 positions. And I will take the matter under
24 advisement and let you know. Thank you.

25 MS. BLANCHETTE: I just have two

1 additional cases to hand up.

2 THE COURT: Have you got the transcript?

3 MS. BLANCHETTE: I do, Your Honor.

4 -----End of Requested Transcript of Record---

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

I, Margaret T. Sullivan, Court Reporter, for the Third 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 proceedings had and evidence introduced in the Court of General Sessions on October 8th 2010, in Lee County, Bishopville, South Carolina.

I do further that I am neither kin, counsel nor interest to any party hereto.

4-14-11

DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 10-03-11

STATE OF SOUTH CAROLINA NOV 16 2010

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEE

JAMES I. DAVIS
FILED
LEE COUNTY, S.C.
C.C.P. & G.S.

DOCKET NO.: 2000-GS-31-10

ORDER DENYING MOTION FOR A NEW TRIAL

STATE OF SOUTH CAROLINA,

)

BASED ON AFTER-DISCOVERED EVIDENCE,

V.

:

PURSUANT TO RULE 29(b), SCRCrimP

MARCUS EVANS, 237444,

)

Defendant,

:

This matter is before the Court on a motion for a new trial based upon after-discovered evidence pursuant to Rule 29(b), SCRCrimP. The Defendant contends that the admissions made by Ron Taylor at his plea hearing on October 5, 2009 amounts to after-discovered evidence under Rule 29(b), SCRCrimP, and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). This Court disagrees.

PROCEDURAL HISTORY

The Defendant ("Evans") is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lee County. Evans was indicted at the February, 2000 term for Murder and on December 11-15, 2000, Evans and Co-Defendant Ron Taylor ("Taylor") proceeded to a jury trial. Both were found guilty of voluntary manslaughter. Evans was sentenced to confinement for eighteen (18) years. A timely Notice of Appeal was filed and the South Carolina Court of Appeals affirmed. State v. Evans Op. No 2002-UP-674.

Evans filed an Application for Post-Conviction Relief (PCR) on March 31, 2003 (Docket No. 2003-CP-31-0065). An evidentiary hearing was held and the Court denied and dismissed the application by written order dated June 3, 2005, and filed June 8, 2005. A Johnson Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court. The Court transferred the Petition to the South Carolina Court of Appeals and the Court of Appeals denied the petition.

Certified as a True Copy

James I. Davis
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

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Evans then filed a Petition under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody in the United States District Court. The Respondent's motion for summary judgment was granted and the petition was dismissed.

On April 4, 2007, Evans filed a subsequent Application for Post-Conviction Relief. After several procedural rulings the Court issued a Final Order. On August 12, 2008, Evans submitted a response. Thereafter, a motion hearing was conducted and the Court issued an Order Denying Motion to Dismiss and Granting Continuation for Evidentiary Hearing which was conducted on April 26, 2010. At this hearing, Evans, Ron Taylor, and Bryan Doby (Evan's trial counsel) testified.

On July 31, 2010, the Court issued an Order of Dismissal, which was filed on August 9, 2010. This order is currently on appeal.

On the matter *sub judice*, the Defendant is alleging after-discovered evidence that warrants a new trial and/or resentencing. To prevail on this claim the Defendant "must show that the after-discovered evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching". *State v. Spann*, 334 S. C. 618, 619, 513 S.E.2d 98, 99 (1999).

SUMMARY OF FACTS

The Defendant was tried jointly for murder with Ron Taylor ("Taylor") on December 11-15, 2000. Taylor filed a Post-Conviction Relief Application, and an evidentiary hearing was held. The Court granted the PCR and the State appealed. The South Carolina Supreme Court denied the State's Petition for Writ of Certiorari. *Taylor v. State*, Op. No. 2009-MO-021.

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Subsequently Taylor pled guilty to voluntary manslaughter and during the plea hearing Taylor admitted his guilt and explained where he was located when he shot the victim. The Court accepted the plea and negotiated sentence of time served.

On April 26, 2010, an evidentiary hearing was conducted on Evans' PCR Application (Docket No.: 2007-CP-31-75). Evans testified and acknowledged that he was tried jointly with Taylor, but that they were represented by separate attorneys who developed the case separately.

Evans identified and counsel admitted the SLED Forensic Services Laboratory Report that was introduced at trial. This report, the trial testimony of Agent Ira Parnell, and the Court decision provided the following facts regarding the ballistics evidence: (1) fifteen spent shell casings were recovered at the scene, (2) ten were from a .380 caliber and five from a .45 caliber; (3) all five of the .45 caliber casings were from the same weapon, (4) six of the .380 caliber casings were from one weapon, three of the .380 caliber casings were from a second weapon, and one of the .380 caliber casings was from a third weapon, (5) four weapons were used and none were recovered, (6) two .380 caliber bullets were found in the victim's body, (7) the two bullets found in the victim's body were from the same HI Point semi-automatic pistol.

Evans testified that no weapons were turned over to SLED, but it came out during trial that the victim's father had turned in a weapon (Testimony of Officer J.D. Dellinger, Trial Transcript, p 611 and counsel's admission in his memorandum in support of this motion). An Evidence Receipt for the .45 caliber pistol was introduced at this hearing and Evans testified that this document was part of the record from Taylor's PCR Action, and he had received it from his present PCR counsel. He further testified that he had never seen or received it prior to his current PCR Action.

Taylor testified and confirmed the joint trial but independent case preparation. Taylor identified and counsel introduced a receipt in his name for a HI Point .380 caliber handgun, which was dated

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February 25, 1999. He testified that he purchased this handgun prior to the shooting at issue and he did not provide this information or receipt to Evans prior to trial, nor did he admit to Evans prior to trial that he shot the victim.

Taylor testified that he entered a guilty plea on October 5, 2009 and acknowledged that he admitted that he was guilty of shooting and killing the victim. Taylor explained that he entered a negotiated plea and received a sentence of time served.

Bryan Doby, Esquire also testified at the evidentiary hearing. Doby agreed that the Defendant's case was prepared independently of Taylor's case. Doby further testified that he did not know about Taylor's weapon purchase prior to his testimony at this hearing. Doby felt that Taylor's testimony was material and opined that would have likely changed the outcome.

ANALYSIS

Evans is alleging after-discovered evidence due to the "confession" of Taylor at his guilty plea hearing that he shot and killed the victim. He contends that this admission is buttressed by proof of Taylor's purchase, prior to the shooting, of the caliber and type of weapon linked to the bullets found in the victim's body.

Specifically Evans contends that the after-discovered evidence not presented at trial entitling him to a new trial is: (1) the Chain of Custody Form, which showed that the victim's gun was turned over to law enforcement prior to trial, (2) the ruling in Taylor's PCR that his trial counsel was ineffective for not raising a *Brady* violation in connection with law enforcement's failure to disclose the receipt of the victim's gun, (3) the testimony of Taylor at his plea and at the evidentiary hearing that he was shooter and the party responsible for the victim's death, (4) the gun registration form for a .380 caliber HI Point

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handgun, which matched the type and caliber of bullets retrieved from the victim's body, and (5) the testimony of trial counsel that the evidence was material and outcome determinative.

The Court will address each of these assertions.

1. The Chain of Custody form which shows that the victim's gun turned over to law enforcement prior to trial. Evans admits in his brief that during the trial it came out that the victim's father surrendered a .45 caliber handgun to law enforcement sometime before trial. Officer Dellinger also testified to this fact. At that time Evans would be on notice of the existence of the weapon and appropriate steps could have been taken to learn when it was surrendered to the police. The Evidence Receipt introduced at the PCR hearing could have been discovered by due diligence. The burden is on the defendant to show that the after discovered evidence could not have been discovered by the exercise of due diligence prior to trial. *State v. Kelly*, 285 S.C. 373, 329 S.E.2d 442 (1985), *State v. Jones*, 89 S.C. 41, 71 S.E. 291, (1911). The Chain of Custody form would have come to light and the Defendant could have moved for a mistrial or dismissal based on a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Additionally, the .45 caliber pistol is apparently linked to the victim and would be relevant only to an assertion at trial of self-defense which was apparently not raised and no jury instruction requested. The issue is one for PCR consideration for ineffective assistance of counsel and does not meet the third prong of *State v. Spann, supra*, that the evidence could not in the exercise of due diligence have been discovered. Neither does it meet the first test that it probably would have changed the result nor the fourth test of materiality.

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2. Prior Court ruling in Co-Defendant's (Taylor's) PCR case that counsel was ineffective for not raising a *Brady* violation for not questioning law enforcement's failure to disclose receipt of the victim's gun. The ruling of the Court in Taylor's PCR is neither conclusive nor precedent for a different circuit court judge in Evans' case. One circuit court judge does not have the authority to set aside the ruling or finding of another. *Enoree Baptist Church v. Fletcher*, 287 S. C. 602, 340 SE2d 546 (1986). Similarly, the conclusions or orders of one circuit court judge are not binding on another. Each circuit court judge is free to make independent findings of fact based on a number of factors, including the judge's view of the credibility and weigh of the evidence. The matter of credibility of after discovered evidence offered in support of a motion for a new trial is a matter for determination by the trial judge to whom it is offered. *State v Wright*, 269 S.C. 421, 237 S.E.2d 764 (1977). Thus this evidence is not material and is not such that would probably change the result. *Spann, supra*.
3. Taylor's testimony at his plea hearing that he was the shooter. Evans' characterizes this as a "confession" and cites the U.S. Supreme Court case *Arizona v. Fulminate*, 499 U.S. 279 (1991) and the two dissenting opinions in *Johnson v. Catoe*, 345 S. C. 389, 548 SE2d 587 (2001) for support. The majority in *Johnson* held that the evidence would not change the result. The "confession" in *Johnson* was not an admission by a Co-Defendant but an eye witness providing a new version of her previous statement. Moreover, the statement and admission of Taylor (that he was the shooter) at his guilty plea hearing eight and on-half (8 ½) years after his conviction in return for a negotiated sentence of time served was clearly motivated by his desire to be released from incarceration. Even though under oath, it can hardly be said that the statement was a free and voluntary expression unmotivated by the promise of benefit or reward. The credibility of this "confession" is for this Court to determine. *State v. Wright, supra, State v.*

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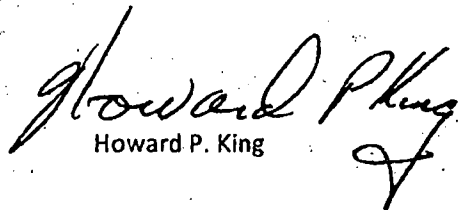
Deese, 266 S.C. 534, 225 S.E.2d 175 (1976). It has been held that recantation of testimony ordinarily is unreliable and should be subjected to close scrutiny. *State v. Mayfield*, 235 S.C. 11, 109 S.E.2d 716 (1959). Even though Taylor did not recant previous testimony he had a definite bias to make a self-serving statement at his guilty plea, i.e. a negotiated sentence of time served resulting in his immediate release, and his statements should be carefully scrutinized. The evidence, while meeting the test as having occurred after trial, is not such that likely would have changed the result.

4. Gun registration form of .380 caliber handgun matched the type and caliber of bullets found in the victim's body. Ten .380 caliber bullets were found at the scene. Two bullets were found in the victim's body (both from the same pistol). The source of all of the .380 caliber the bullets is unexplained except for Taylor's statement at his guilty plea hearing. It is clear that there were shots from three .380 caliber pistols, none of which were ever found. Evans' argument ignores the theory of accomplice liability-the hand of one is the hand of all-which was presented at trial. The registration form simply ties Taylor to one of the .380 caliber pistols. It is not such that would probably change the outcome of the trial.
5. Testimony of trial counsel that evidence was material and outcome determinative. At attorney, especially a respected one like Bryan Doby, is entitled to an expert opinion on this issue and his opinion is entitled to weight. However, the finder of fact, in this case the Court, is free to accept or reject that opinion based on its view of the facts. This Court disagrees with Doby that all of the evidence is material and would probably affect the outcome.

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Conclusion

The evidence claimed by Evans to be after discovered evidence entitling him to a new trial under Rule 26(b) SCRCrimP does not meet the test of *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999). Therefore, the motion for new trial is DENIED.


Howard P. King

Circuit Court Judge (Active/Retired)

Sumter, S.C.

November 15, 2010

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Mr. Ron Taylor
1027 Old Latta Hwy
Dillon, SC 29536

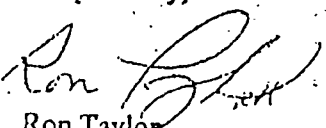
August 04, 2008

Ms. Tricia Blanchette
P.O. Box 12725
Columbia, SC 29211

Dear Ms. Blanchette,

In April 2008, I Ron Taylor gave Marcus Evans some information that he had no prior knowledge of concerning our case. The information I gave Marcus was that I had a .380 handgun registered in my name that I purchased in Sumter, SC in the beginning of 1999. This information never came out during our trial nor did I share it with anyone. The reason why I decided to share this information with Marcus was because he wrote me and explained the difficulties he was having with his case. With proper research, this information can be confirmed.

Respectfully,


Ron Taylor

Cc: Marcus Evans
File

STATE OF SOUTH CAROLINA

COUNTY OF LEE

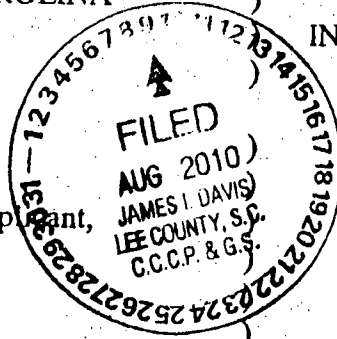
Marcus Evans,

Applicant,

v.

State of South Carolina,

Respondent.



IN THE COURT OF COMMON PLEAS

2007-CP-31-0075

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 4, 2007. An evidentiary hearing into the matter was convened on April 26, 2010, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf and presented testimony from co-defendant Ron Taylor ("Taylor"). Also testifying was Bryan Doby, Esquire ("Counsel"). This Court had before it the records of the Lee County Clerk of Court, the trial transcript, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the prior PCR records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lee County. Petitioner was indicted at the February 2000 term of the Lee County Grand Jury for Murder (2000-GS-31-0010). He was represented by

Bryan Doby, Esquire. On December 11 – 15, 2000, Applicant and co-defendant Ron Taylor ("Taylor") proceeded to a jury trial.¹ Applicant and Taylor were found guilty of Voluntary Manslaughter. Applicant was sentenced by the Honorable Thomas W. Cooper, Jr. to confinement for eighteen (18) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented in the appeal by Robert M. Dudek of the South Carolina Office of Appellate Defense. In the Final Brief of Appellant, he raised the following claims:

1. Whether the judge abused his discretion by allowing Stephen Johnson to testify appellant told the decedent at the Huddle House " a few months before the incident at the nightclub" that "I'm going to be the one to put you in your grave." since the unduly prejudicial effect of this testimony outweighed its probative value under Rule 403, SCRE given the facts of the case.

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. State v. Evans, Op. No. 2002-UP-674 (S.C. Ct. App. filed November 5, 2002).

The Remittitur was sent on November 21, 2002.

Applicant subsequently filed an application for post-conviction relief (PCR) on March 31, 2003 (C.A. No. 2003-CP-31-0065). In his application, Applicant raised the following issues:

1. "Trial counsel was ineffective for Failure to assert Due Process Violations of Unnecessary Delay of initial appearance."
2. Subject matter jurisdiction – Improper indictment.

The State made its Return on or about September 22, 2003. A "Motion and Memorandum of Law in Support of Amending Previously Submitted PCR Application" was filed in December 2003, alleging the following grounds for relief:

1. "Trial counsel was ineffective in failing to object to the highly suggestive photo identification procedure, out of court identification, held at the police station, and the

¹ Co-defendants Travis Singleton and Lamont Witherspoon were also tried for related offenses.

court identification, when the out of court identification was so tainted as to require suppression of the in court identification.”

2. “The appellant’s trial counsel was ineffective for failing to move to squash the amended indictment, when there was no evidence on the grand jury report that the court convened to ‘true bill’ or ‘no bill’ this indictment. Additionally the trial court didn’t have subject matter jurisdiction to proceed with trial because there was no evidence to show the action was taken to the grand jury.”
3. “Trial counsel was ineffective for failing to make the timely objection to the prejudicial testimony of Steven Johnson, and the court erred in allowing this prior bad act and/or threatening testimony Johnson attested to, stand when it was obvious that the prejudice exceeded the probative value.”

Applicant also filed a “Supplemental Amendment and Memorandum of Law in Support of Application for Post-Conviction Relief” on June 3, 2004, alleging the following additional grounds for relief:

1. Ineffective Assistance of Counsel.

- a. “...Counsel’s trial decision to not pursue self defense as an affirmative defense to the crime charged was an unreasonable trial strategy.”
- b. “Applicant’s trial attorney was ineffective in failing to request a jury instruction of self-defense at trial.”
- c. “Applicant’s trial attorney was ineffective in failing to conduct reasonable pretrial investigations and preparations.”
 - i. “...Counsel’s failure to obtain ballistic reports from the weapon delivered to law enforcement by the victim’s father constitutes ineffective assistance.”
 - ii. “...Counsel further failed to request a chemical swab of the victim’s hands for gunpowder residue.”
- d. “Applicant’s trial attorney was ineffective in failing to object to the discovery violation of the solicitor.”
 - i. “...The prosecution failed to disclose any tests, examinations, or information concerning the weapon delivered to law enforcement by the victim’s father.”
 - ii. “...The prosecution’s failure to disclose the weapon prevented the defense from conducting independent examinations and tests.”

2. Ineffective Assistance of Appellate Counsel.

3. Denial of Due Process.

An evidentiary hearing was convened on December 16, 2004. Applicant was represented by Richard Blackmon, Esquire. Testimony was received from Marcus Evans and trial counsel Bryan Doby,

Esquire. The Honorable B. Hicks Harwell denied and dismissed the application by written order dated June 3, 2005, and filed June 8, 2005. In his order he addressed the following claims:

1. Ineffective assistance of counsel in:
 - a. failing to meet with Applicant and for failing to go over discovery.
 - b. failing to argue self defense to the jury and to investigate the gun that was turned into the police by the victim's father.
 - c. requesting a lesser included charge of voluntary manslaughter and for not having a self-defense charge.
 - d. failing to talk to and call witnesses.
2. The Circuit Court lacked subject matter jurisdiction.

A Johnson Petition for Writ of Certiorari was submitted to the South Carolina Supreme Court on November 28, 2005 by Assistant Appellate Defender Robert Pachak. In the petition, he alleged as the sole arguable ground:

1. "Whether there was any evidence to support the PCR judge's findings that defense counsel was not ineffective in failing to pursue a defense of self-defense?"

Petitioner submitted a *pro se* Petition for Writ of Certiorari asserting the following additional issue:

1. "Whether there was evidence to support the PCR judge's findings that defense counsel was not ineffective in failing to request a mistrial on the basis of a Brady violation?"
 - a. "...Petitioner contends that the prosecutor's concealment that a firearm linked directly to the decedent, which had been turned in by the decedent's father, constitutes a Brady violation."

On February 15, 2006, the South Carolina Supreme Court transferred the Petition to the South Carolina Court of Appeals. On September 27, 2006, the South Carolina Court of Appeals entered its order denying the petition and granting counsel's request to be relieved after review of the record pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The remittitur was sent on October 30, 2006.

Applicant filed a Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in

State Custody dated September 20, 2007, in the United States District Court (C.A. No. 4:07-3217-PMD-TER). In his petition, Applicant raised the following grounds for relief:

1. "Actual and Constructive (Constitutional) Ineffective assistance of trial counsel.
 - a. "Counsel failed to fully investigate the facts."
2. "Prosecutorial Misconduct."
 - a. "It was later revealed that the weapon (pistol) that the 'victim' allegedly possessed the night of the incident in question was later turned in to police. However this information was not revealed to the defense until the day of the trial."

The Respondent's motion for summary judgment was granted and the petition was dismissed as barred by the statute of limitations by order of the Honorable Patrick Michael Duffy dated July 14, 2008.

In his current application, Applicant alleges that he is being held unlawfully for the following reasons:

1. "Prosecutorial Misconduct 'Brady Violation.'"
 - a. "Failure to turn over exculpatory evidence / firearm belonging to 'victim.'"
2. "Actual and constructive Denial of 'Due Process & Equal Protection' of law."
 - a. "It would be harmful error for the court to consider after discovered Material evidence."
3. "Ineffective assistance of appellate counsel."
 - a. "Failure to argue 'Brady violation' on direct appeal."

In his Response to Conditional Order of Dismissal dated August 12, 2008, Applicant raises the following additional grounds for relief:

1. "Newly Discovered Evidence: Inconsistent Ruling."
 - a. Co-defendant's PCR application was granted on a claim of ineffective assistance of counsel for failure to adequately cross-examine State's witness, Inv. Dillenger, concerning the circumstances under which the deceased's father turned over a gun attributed to his son. The order in that case is newly discovered evidence.
2. "Newly Discovered Evidence: Exculpatory Statement"
 - a. Statement from co-defendant Taylor.

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.

Summary of Facts Adduced at Trial

Applicant, Taylor, Lamont Witherspoon ("Witherspoon") and Travis Singleton ("Singleton") arrived at the Davis Country Club in the early morning hours of November 14, 1999, in a burgundy Cadillac. There was testimony that Applicant and Taylor had previously argued with Henry Scott ("Victim") in September 1999 at a Huddle House, with Applicant telling Victim, "I'll be the one to put you in your grave."

Applicant and Taylor proceeded toward the club. Multiple witnesses testified that Applicant and Henry Scott ("Victim") began arguing outside the club. Gunfire began, and several witnesses testified that they had seen Applicant shooting. One witness, Derrick Albert ("Albert") reported that Applicant said to Victim, "I'll kill you," and had continued advancing when Victim backed away. Some had seen Taylor firing as well. Six (6) witnesses identified Applicant and Taylor from photo lineups. Only one witness stated that Victim had a gun when he was shot; others said Victim had been going to his car to retrieve a gun when he was shot. However, all agreed that Victim never fired a weapon. Applicant and Taylor fled the club, ultimately getting back into the burgundy Cadillac with Singleton and Witherspoon.

Victim suffered five (5) gunshot wounds, one (1) in each knee and three (3) to his back.

Fifteen (15) casings were found at the scene. Firearms expert Ira Parnell ("Parnell") opined that at least four (4) guns had been fired. Casings from three (3) different .380 caliber weapons were found. Five (5) casings from a .45 caliber weapon were also found. Only two (2) of the bullets which struck Victim were retrieved; they were both from a single Highpoint semi-automatic .380 weapon.

Summary of PCR Testimony

Taylor also filed a PCR application, and that application was granted in an order of the Honorable Howard P. King dated and filed April 10, 2006.² Respondent's Petition for Writ of Certiorari to the South Carolina Supreme Court was denied on May 4, 2009. Taylor pled guilty to voluntary manslaughter on October 5, 2009 in exchange for a time served sentence.

Taylor wrote a letter to Applicant's PCR attorney on August 4, 2008, while the grant of his PCR was on appeal, which states:

In April 2008, I Ron Taylor gave Marcus Evans some information that he had no prior knowledge of concerning our case. The information I gave Marcus was that I had a .380 handgun registered in my name that I purchased in Sumter, SC in the beginning of 1999. This information never came out during our trial nor did I share it with anyone. The reason why I decided to share this information with Marcus was because he wrote me and explained the difficulties he was having with his case. With proper research this can be confirmed.

At PCR hearing, Taylor expounded upon the letter, now testifying that he had fired the weapon at Victim. Since writing the letter, the Petition for Writ of Certiorari from the grant of PCR was dismissed. Taylor accepted a plea offer wherein he would plead guilty to voluntary manslaughter in exchange for a time served sentence. At his plea, Taylor stated that he had shot Victim. Taylor testified at PCR hearing that he lied to his trial attorney throughout the course of the representation

² As noted at hearing, the records and transcript from Ron Taylor's PCR are not admissible as substantive evidence in this case.

when he denied firing a weapon at all on the evening in question. Taylor stated that he lied to his trial attorney because he did not want to go to jail. Taylor testified that his August 2008 letter was incorrect in stating that he and Applicant had direct contact. Taylor conceded that he hoped Applicant would be released as a result of his testimony at the PCR hearing. Taylor also conceded that he had not disclosed his current admission of being the triggerman until now and had only initially disclosed that he owned a .380 at the time of the shooting. Taylor claimed to have no knowledge of where the gun is now.

Applicant, too, testified that he had also been lying to his trial attorney throughout the course of representation. Counsel confirmed that Applicant had denied firing a weapon throughout his representation.³ Applicant testified at his first PCR hearing and this PCR hearing that he fired a .357 revolver which would not leave casings at the scene. Applicant testified that he arrived at the club with Taylor and left the club with Taylor. Applicant stated that, in contrast to the August 2008 letter, he had not contacted Taylor directly; rather, word had spread through mutual family members. Applicant denied that he had been in contact with Taylor after the first two (2) years they were incarcerated.

Newly-Discovered Evidence

To obtain a new trial based on after-discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). The court may consider both the credibility and materiality of the evidence in arriving at its

³ It may be noted that Counsel explained that he did not pursue the defense of self-defense as a result of Applicant's



determination.

Where a witness lacks credibility, the applicant will fail to establish that new evidence would probably yield a different result at a new trial. See for example Johnson v. Catoe, 345 S.C. 389, 548 S.E.2d 587 (2001); State v. Morrison, 246 S.C. 575, 145 S.E.2d 15 (1965) (Affirming denial of motion for new trial based on the affidavit of another individual with whom movant had been incarcerated upheld where the affiant confessed to the crime and denied that movant was present; affidavit contained no information which could not have been obtained in discussions in jail and affiant had "nothing to lose" by confessing in light of confessions to other crimes); Jones v. U.S., 279 F.2d 433 (4th Cir. 1960) (Judge hearing motion for new trial based on after-discovered evidence is "vested with a broad discretion in considering matters of credibility as well as of materiality"; purpose of relief from manifest injustice would not be served where judge would have to "assume that a jury would believe testimonial evidence however improbable and unworthy of belief he finds it to be."); U.S. v. White, 482 F.2d 485 (4th Cir. 1973) (Confessions of co-defendants which were given to assist defendant and were inconsistent with known facts were not believable and denial of motion for new trial was within court's discretion).

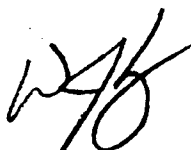
This Court had the opportunity to observe Taylor and pass upon his credibility. In addition to consideration of the witness' demeanor, this court has considered the content of Taylor's testimony in determining credibility. Taylor's current rendition of facts emerged over time as he became assured that he would not face further criminal prosecution in this matter. Taylor conceded a desire to help Applicant, who is his relative and childhood acquaintance, evade further detention for the crime. He maintained that he had been mistaken in his April 2008 letter regarding how he came in

own insistence that he had not fired a weapon at all.

contact with Applicant and instead claimed that he communicated with Applicant through family members once he and Applicant no longer had permission to write. Moreover, and perhaps most disturbing, Taylor claimed he lied to his own trial attorney throughout the representation in an effort to avoid punishment for his actions. Taylor maintained the story he now maintains is a lie until his PCR application was granted.

Even assuming that Taylor's testimony should be given credence, Applicant has failed to demonstrate that Taylor's testimony would yield a different result at a new trial. Applicant and Taylor were tried under the theory of the "hand of one, hand of all." "Under 'the hand of one is the hand of all' theory, 'one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.'" State v. Ward, 374 S.C. 606, 614, 649 S.E.2d 145, 149 (Ct.App. 2007) (citing State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999)). Both Applicant and Taylor admit to firing weapons on the evening in question. Trial testimony revealed that Applicant engaged in a verbal altercation with Victim. Applicant had also verbally threatened Victim on a prior occasion. Trial witnesses testified that both Taylor and Applicant fired at Victim and fled the scene together. These witnesses identified both shooters from a photo lineup. Taylor's "new evidence" confirms that the two arrived together, engaged in a confrontation with Victim together, fired upon Victim together, and fled the scene together. Therefore, even if Applicant's weapon was not one that hit its mark, both Taylor and Applicant would be joined in liability under the "hand of one, hand of all."

Finally, Taylor's admission that he fired a weapon at the scene would be merely cumulative to testimony presented at trial. Witnesses at the scene testified that both Applicant and Taylor had fired upon Victim. Taylor's confirmation that he did fire a weapon would therefore be cumulative to



the testimony given at trial.

For all these reasons, I find that Applicant is not entitled to relief on the basis of newly-discovered evidence.

Sentencing

Applicant further argues that he is entitled to resentencing pursuant to S.C. Code §17-27-20(a)(1). Even assuming that Applicant's interpretation of the statute is correct, I do not find that the subsequent proceedings in Taylor's case warrant reconsideration of Applicant's sentence.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

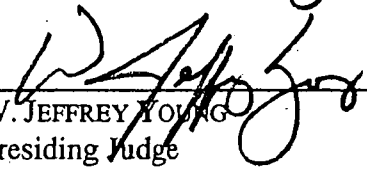
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

[Signature on next page.]



AND IT IS SO ORDERED this 31 day of July, 2010.



W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2007-CP-31-0075

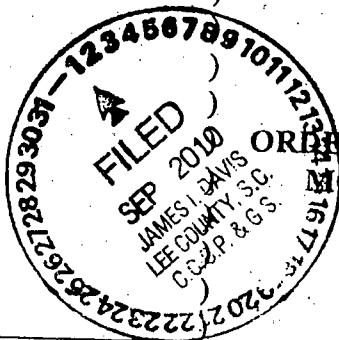
Marcus Evans, #237444,

Applicant,

v.

State of South Carolina,

Respondent.



ORDER DENYING APPLICANT'S MOTION
MOTION TO ALTER OR AMEND

This post-conviction relief matter came before the Court for an evidentiary hearing at the Sumter County Courthouse on April 26, 2010. The Applicant was present in court and represented by Tricia A. Blanchette, Esquire, and the State was represented by Mary S. Williams, Assistant Attorney General. After taking the matter under advisement, this Court issued an Order of Dismissal dated July 31, 2010, and filed August 9, 2010. The Applicant submitted a timely Motion to Alter or Amend the Judgment dated August 17, 2010.

Applicant asserts that an amendment should be made to the procedural history. The Order of Dismissal is amended to reflect the hearing on Respondent's Motion to Dismiss convened on April 2, 2009. The Honorable George C. James, Jr., entered an Order dated May 4, 2009, and filed May 8, 2009, denying the motion with leave to renew and continuing the case for an evidentiary hearing to be held.

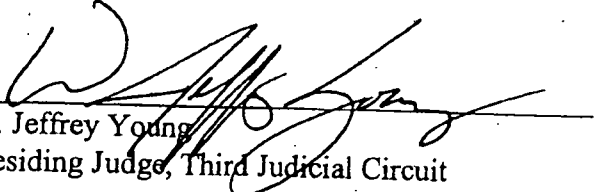
Having carefully reviewed the entire record in this matter, this Court finds no additional basis for altering or amending its prior ruling.¹ Therefore, this Court hereby amends the procedural history as stated

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRPC.

above, denies the Applicant's Rule 59 Motion with regard to the additional claims raised, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 26 day of Aug, 2010.


W. Jeffrey Young
Presiding Judge, Third Judicial Circuit

Santa, South Carolina

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) COURT OF GENERAL SESSIONS
3) 2007-CP-31-00075
4)
4 Marcus Evans) TRANSCRIPT OF RECORD
5 vs)
6 State of South Carolina)
7 -----)

8 April 26, 2010
Sumter, South Carolina

9 B E F O R E:

10 THE HONORABLE WILLIAM J. YOUNG, Judge

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

12 MARY WILLIAMS, Esquire
13 Assistant Attorney General
Attorney for the State

14 MARY BLANCHETTE, Esquire
15 Attorney for the Applicant

16
17 Caroline Hiskell
Circuit Court Reporter

18
19 (This hearing was not taken but transcribed by reporter
20 listed above.)
21
22
23
24
25

Marcus Evans - Cross-examination

1 Q. And you concede that you had a gun on the night
2 of this shooting?

3 A. Yes, ma'am.

4 Q. And you had fired it?

5 A. Yes, ma'am, once.

6 Q. And that you arrived with Ron Taylor?

7 A. Yes.

8 Q. And you left with Ron Taylor?

9 A. Yes.

10 Q. And how did you find out about Mr. Taylor's PCR?

11 A. Through family members.

12 Q. Now, you did leave the scene with Ron and the
13 other gentleman who I believe his name is Singleton or
14 Witherspoon or --

15 A. Yes, ma'am.

16 Q. And do you recall the preliminary hearing?

17 A. Yes, ma'am.

18 Q. And do you recall Investigator Delinore(ph)
19 testifying there?

20 A. Yes, ma'am.

21 MS. WILLIAMS: I believe that that is all the
22 questions I have.

23 MS. BLANCHETTE: Your Honor, just one
24 question.

25 THE COURT: Go ahead.

COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT # 96-GS-43-337The State -vs- Marcus EvansCERTIFIED TRUE COPY
D.O. OF ORIGINAL FILEDCourt Reporter: Margaret SullivanAttorney: Michael JordanKimberly C. Hodeling
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAGUILTY PLEA

The defendant is put to the bar and arraigned and, upon his arraignment, pleads guilty as charged to Possession With Intent to Distribute Crack Cocaine

s. c. statute: 44-53-375 (B)(1) Classification: FEL-D offense code: 0112

Attest: O.V. Player Jr.

Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of 3 months/years and/or to pay a fine of \$ —; provided upon the service of 1 months/years and/or payment of \$ — (plus non-waivable 62% assessment fee) the balance is suspended, with probation for 3 months/years.

RESTITUTION: YES/NO

FOR PHYSICAL INJURY \$ —

PAYABLE TO CLERK FOR:

PROPERTY DAMAGE \$ —(VICTIM) —

(Pay to Victim's Comp. Fund, If Subrogated)

Other conditions Direct Shock IncarcerationDrug Counseling TreatmentDATE: OCT 22 1996

Thomas W. Cooper, Jr.
THOMAS W. COOPER, JR.
PRESIDING JUDGE, THIRD JUDICIAL CIRCUIT

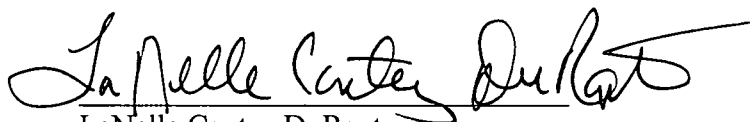
Jail as of 10.22.96FINE: —62% FEE: —ADSAP: —RESTITUTION: —P. D. FUND: —TOTAL DUE: —

O.V. Player Jr.
O. V. PLAYER, JR.
CLERK OF COURT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 19th, 2012



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT