

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED
JAN 28 2013
S.C. Supreme Court

GARY MICHAEL PIPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212410

APPENDIX

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
RECORD ON APPEAL	1
INDEX	2
PARTIAL TRANSCRIPT OF RECORD (NOVEMBER 26, 27, 28, 2007)	3
TRANSCRIPT OF RECORD (NOVEMBER 29, 2007)	421
NOTICE OF APPEAL	507
FINAL <u>ANDERS</u> BRIEF OF APPELLANT	509
PETITION TO BE RELIEVED AS COUNSEL	517
OPINION	520
REMITTITUR	522
APPLICATION FOR POST-CONVICTION RELIEF	523
RETURN	531
POST-CONVICTION RELIEF HEARING TRANSCRIPT	538
APPELLANT'S EXHIBIT #1(MEMORANDUM)	619
APPELLANT'S EXHIBIT #2 (INVESTIGATION REPORT)	620
APPELLANT'S EXHIBIT #3 (INTERROGATION WAIVER FORM)	621
ORDER OF DISMISSAL	623
CLERK OF COURT RECORDS	634

1 THE COURT: Miss Mendez.

2 MISS MENDEZ: And I'll be reading this statement on
3 behalf of the family.

4 THE COURT: Thank you.

5 MISS MENDEZ: Your Honor, I would like to respectfully
6 address you. My name is Max Chavez. Alberto Chavez was my
7 brother.

8 Your Honor, I would like to take this opportunity to
9 let you know how my family and I feel. Alberto was my only
10 sibling. I would like for you to know that this cold
11 blooded murder has hurt us deeply. Not only has it hurt me,
12 but also my mother, his wife, and his four kids in Mexico.
13 We loved Alberto very much. He was a good caring person who
14 worked to give his family a good life.

15 Your Honor, with all due respect, we ask for justice.
16 We ask that Mr. Piper be punished to the fullest extent that
17 the law will allow. A person like him is a danger to our
18 community. Gary Piper is also a bad influence on the kids
19 in our community.

20 He had no right to take the life of another human
21 being. I hope you can somewhat understand the way we feel.
22 I am deeply hurt with everything that has happened.

23 Thank you, Your Honor, for considering the way we feel.
24 May God bless you.

25 THE COURT: Thank you, Miss Mendez.

1 Anything further, Mr. Bulsa, from the State?

2 SOLICITOR BULSA: No, sir.

3 THE COURT: All right. All right. Mr. Schultz, I'll
4 be glad now to hear from Mr. Piper and you or anyone on his
5 behalf.

6 MR. SCHULTZ: Thank you, Your Honor.

7 Mr. Piper and I have talked several times obviously
8 about this case. I found him to be one of the most
9 courteous and respectful clients I've ever had the pleasure
10 of representing.

11 Your Honor, he does not fit the profile at all of, of
12 someone that would go in there with an intent to kill
13 anybody; Your Honor, and I believe that then, and I, I
14 believe that now.

15 Every question that he asked me has been very
16 intelligent. Has been always forthcoming with any
17 information that I asked of him.

18 Your Honor, I would respectfully request the minimum
19 sentence.

20 Thank you.

21 THE COURT: All right. Thank you.

22 Mr. Piper, I'll be glad to hear from you.

23 Anything you'd like to add?

24 DEFENDANT: Your Honor, the night that this happened,
25 the last thing on my mind, the last intention that I had was

1 to hurt anybody in any way, shape, or form. And I regret my
2 actions that night.

3 That's all, Your Honor.

4 THE COURT: All right.

5 (Pause.)

6 THE COURT: Thank you for your patience as I'm working
7 through these issues.

8 Let me say, at the outset, that I understand, to the
9 family of Mr. Chavez, that no amount of time, whatever it
10 is, life imprisonment, thirty years, or anywhere in-between,
11 does not replace their loss. It is, it is an irreplaceable
12 loss and, and there's no way that the, that the law can
13 compensate them for that loss and give them adequate redress
14 for that loss.

15 I have the actions of Mr. Piper who has a criminal
16 record in the past. I note that his record is very -- it's
17 extensive. I don't know any crimes of personal violence
18 against him and I'm uncertain as to what motivated him on
19 this night to commit the crime that he's been found guilty
20 of.

21 My choice is to decide whether to put him in jail for
22 the rest of his life.

23 And Mr. Piper, you're 31 years old. And any sentence
24 that's imposed upon you obviously is gonna require you to
25 serve a long time. In the case of murder, you have to serve

1 every day, every day. The armed robbery attempts are
2 eighty-five percent. But the murder is day for day,
3 everyday. And even the minimum sentence in that case might
4 be a life sentence. I'm not sure whether it is or not. But
5 I can not find the minimum sentence is a sentence that needs
6 to be imposed in this regard.

7 I'll begin with Indictment 2716, pointing and
8 presenting a firearm, the sentence is five years concurrent
9 to all other charges with credit for time served.

10 Indictment 2717, attempted armed robbery, the sentence
11 is thirty years concurrent to other sentences with credit
12 for time served.

13 2719, attempted armed robbery, thirty years concurrent,
14 credit for time served.

15 0544, failing to stop for a motor vehicle, failure to
16 stop for a motor vehicle, five years concurrent with credit
17 for time served.

18 Indictment 2718, murder, forty-five years concurrent
19 with credit for time served.

20 Good luck to you.

21 Thank you.

22 SOLICITOR BULSA: Your Honor, may we approach briefly?

23 THE COURT: Yes, sir.

24 SOLICITOR BULSA: Mr. Schutz.

25 (Whereupon, a bench conference was held at this time.)

1 THE COURT: All right. Madam Clerk, Madam Reporter,
2 let me modify the sentence for attempted armed robbery to
3 twenty years on each of those two, and I'll modify the
4 sentence sheet.

5 Thank you, Mr. Solicitor. I looked it up and it
6 said -- well, it didn't have it listed separately. So, I
7 should of asked.

8 SOLICITOR BULSA: Thank you, Your Honor.

9 THE COURT: Thank you for correcting me.

10

11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 29th day of November, 2007.

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

December 14th, 2007



PAMELA E. GREEN, Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2007-GS-42-2716, 2007-GS-42-2717, 2007-GS-42-2718, 2007-GS-42-2719

The State Respondent,

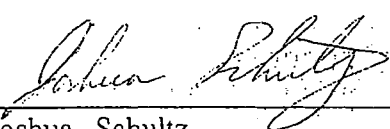
v.

Gary M Piper, ... Appellant.

NOTICE OF APPEAL

Gary M. Piper appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Thomas W. Cooper, Jr. on November 29, 2007. This appeal is taken from this conviction and sentence and the order of the Honorable Thomas W. Cooper, Jr. of November 29, 2007, which denied appellant's motion for a new trial.

December 4, 2007


Joshua Schultz
Assistant Public Defender
Spartanburg County Public Defender
258 North Church Street
Spartanburg, S.C. 29306
(864) 596-2561
Attorney for Appellant

Other Counsel of Record:

Derrick B. Bulsa, Esquire
Deputy Circuit Solicitor
Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, S.C. 29306
(864) 596-2575
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2007-GS-42-2716, 2007-GS-42-2717, 2007-GS-42-2718, 2007-GS-42-2719

The State Respondent,

v.

Gary M Piper, ... Appellant.

PROOF OF SERVICE

I certify that I served the Notice of Intent to Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on December 6, 2007 addressed to its attorney of record, Derrick B. Balsa, Esq., Deputy Circuit Solicitor, 180 Magnolia Street, Spartanburg, S.C. 29306.

December 4, 2007


Joshua Schultz
Assistant Public Defender
Spartanburg County Public Defender
258 North Church Street
Spartanburg, S.C. 29306
(864) 596-2561
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY M. PIPER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S. C. 29211-1589

(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION.....	7
PETITION TO BE RELIEVED AS COUNSEL	8
CERTIFICATE OF COUNSEL.....	9

TABLE OF AUTHORITIES**Cases**

<u>Jackson v. Denno</u> , 378 U.S. 368 (1964).....	5
<u>State v. Corns</u> , 310 S.C. 546, 426 S.E.2d 324 (1992).....	5
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990).....	5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting a statement made by appellant to the police that was coerced?

STATEMENT OF THE CASE

Appellant was convicted of murder, two (2) counts of attempted armed robbery, and pointing and presenting a firearm after a jury trial held before the Honorable Thomas W. Cooper on November 26-29, 2007, in Spartanburg County. Sentences totaling forty-five (45) years were imposed.

This appeal follows.

ARGUMENT

The trial court erred in admitting a statement made by appellant to the police that was coercive.

Appellant's father had pled to manslaughter in an unrelated case. His father did not give a statement and died in prison. Detective Bryant testified at the Jackson v. Denno, 378 U.S. 368 (1964) hearing that he was aware of what happened to appellant's father. Detective Bryant denied telling appellant not to make the same mistake his father made but remembered Investigator Lindsey telling that to appellant. (ROA p. 89, line 20 – p. 92, line 10)

Investigator Lindsey admitted he told appellant not to make the same mistake his father made. He said appellant's father did not give a statement and invoked his right to an attorney just as appellant had done so far. (ROA p. 101, line 18 – p. 103, line 23)

Appellant testified that after Investigator Lindsey made the remark about his father he felt if he cooperated he would not have to go through a trial like his father did. Appellant said his father had just passed away a couple of days earlier. He felt his father died in prison for trying to protect his family. He felt the police were telling him that by his father not giving a statement the result was dying in prison. Appellant figured if he gave a statement and cooperated the situation would go away. (ROA p. 116, line 5 – p. 117, line 21)

Defense counsel argued that appellant's statement was coerced because of what the police said. (ROA p. 133, line 4 – p. 134, line 1) The trial court denied the motion to suppress. (ROA p. 135, line 18 – p. 141, line 14) That ruling was in error.

In State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (1992) this Court wrote:

A confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises,

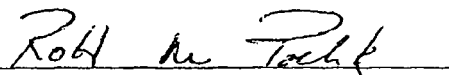
however slight, or by the exertion of improper influence. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). We find that the testimony of the officers conceding they informed Corns his wife could be arrested, that she could be "involved in the marijuana," and that their children could be taken from them amounted to an exertion of improper influence rendering Corns's statement involuntary. Accordingly, we find the trial judge erred as a matter of law in allowing Corns's oral statement into evidence.

The veiled threats against appellant in relation to his dead father were no less coercive.

CONCLUSION

The statement of appellant should have been suppressed and his convictions should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of July, 2008.

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY M. PIPER,

APPELLANT

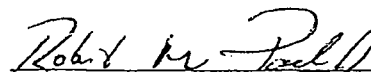
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gary M. Piper states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Thomas W. Cooper, Jr., which was held on November 29, 2007, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Gary M. Piper.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

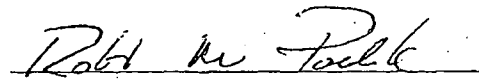
ATTORNEY FOR APPELLANT

This 30th day of July, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 30, 2008



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY M. PIPER,

APPELLANT

CERTIFICATE OF SERVICE

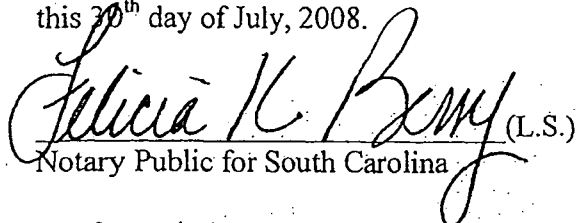
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Gary M. Piper, #201377 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010; this 30th day of July, 2008.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of July, 2008.



(L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Gary M. Piper,

Appellant.

Appeal From Spartanburg County
Thomas W. Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-013
Submitted January 4, 2010 – Filed January 21, 2010

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Harold W. Gowdy, III, of
Spartanburg, for Respondent.

PER CURIAM: Appellant, Gary M. Piper, was indicted for murder, pointing and presenting a firearm, failure to stop a motor vehicle when signaled by an officer, and two counts of attempted armed robbery. During a jury trial on the charges, Piper pled guilty to the failure to stop charge and was thereafter convicted of the remaining charges. The trial court sentenced Piper to concurrent sentences of forty-five years for murder, five years for pointing and presenting a firearm, five years for failure to stop, and twenty years on each of the armed robbery charges. Piper's counsel attached to the brief a petition to be relieved as counsel, stating that he had reviewed the record and concluded this appeal lacks merit. Piper did not file a separate pro se brief. After a thorough review of the record pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

HUFF, A.C.J., GEATHERS, J., and CURETON, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

522 269



ATTORNEY GENERAL'S OFFICE
RECEIVED 2-8-10

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN ☒ END
COPIES MADE

ROUTE TO

POST OFFICE BOX 116299
COLUMBIA, SOUTH CAROLINA 29211
PEN RECORDS CENTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

TANYA GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

February 8, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Piper, Gary M.
2007-GS-42-02716; 2007-GS-42-02717; 2007-GS-42-02718; 2007-GS-42-02719

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen, Deputy Clerk
Tanya A. Gee
Clerk of Court

TAG/lm

cc: Appellate Defender Robert M. Pachak
Gary M. Piper, #201377
Assistant Deputy Attorney General Donald J. Zelenka
Harold W. Gowdy, III, Esquire

COPY

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Spartanburg)

2010CP424481

GARY Michael Piper 201377)

Full name and prison number, if any, of applicant.)

v.)

APPLICATION FOR
POST-CONVICTION RELIEF

Spartanburg County SC)
Name of Respondent)

COPY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention PERRY CORR. INST.
2. Name and location of Court which imposed sentence GEN. Sessions Spartanburg SC.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 (a) 2007-GS-42-2716, 2717, 2718, 2719
 (b) _____
 (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 (a) Nov, 29, 07 : 5 yr (concurrent), 25 yr (concurrent)
 (b) (concurrent), 25 yr (concurrent)
 (c) _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 24 AM 9:18
HOPKINS

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

☒ (b) after a plea of not guilty YES

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. court of appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. DENIED - (ALL COUNTS)

ii. _____

iii. _____

(c) the date of each such result:

i. JAN, 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NA

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SUBJECT MATTER JURISDICTION

(b) INEFFECTIVE ASSISTANCE OF COUNSEL

(c) ABUSE OF DISCRETION

(d) PROSECUTORIAL MISCONDUCT

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 24 AM 9:13
M. HOPE BLANCHLEY

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SUBJECT MATTER OF MURDER - FAULTY INDICTMENT
DID NOT GIVE JURISDICTION - SEE ATTACHMENT (A)

(b)

SEE ATTACHMENTS CONCERNING

(c) FACTS OF OTHER ISSUES.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

YES

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

DIRECT APPEAL

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

SC. COURT OF APPEALS COLUMBIA SC.

ii.

iii.

iv.

(c) the disposition thereof:

i.

DENIED

ii.

iii.

iv.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 AUG 24 AM 9:13
 M. HOPE-B. AUKLEY

(d) the date of each such disposition:

- i. JAN - 2010
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. ABUSE OF DISCRETION
- ii. INEFFECTIVE ASSISTANCE
- iii. _____

SEE NOTE TO ATTACHMENT

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

- i. DIRECT APPEAL
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) ONLY ONE ISSUE WAS BRIEFED BY APPELLATE ATTORNEYS
- (b) MY OTHER GROUNDS ARE FOUNDED BY OTHER ISSUES
- (c) _____

2010 AUG 25 AM 9:13
 M. DEELEY
 CLERK OF COURT
 SPARTANBURG COUNTY
 SEE NOTE TO ATTACHMENT

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. E. JOSHUA SCHULTZ ESQ. (TRIAL, SENTANCING ATTORNEY)
- ii. RICHARD H. WHELCHER, ESQ. (TRIAL, SENTANCING ATTORNEY)
- iii. ROBERT M PACHAK (DIRECT APPEAL)

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

- i. Sptbg TRIAL
- ii. Sptbg TRIAL
- iii. COLUMBIA DIRECT APPEAL

18. State clearly the relief you seek in filing this application.

REVERSE + REMAND ALL CHARGES MENTIONED

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

No

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 24 AM 9:13
M. HOPE-BLECKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF SPARTANBURG)

I, Gary M. Piper 201377, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gary M. Piper

Sworn to and subscribed before me

This 9th day of August, 2010.

Henry T. Mulvaney, Jr.

Notary Public for South Carolina

My Commission Expires March 7, 2016

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Gary M. Piper 201377, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Gary M. Piper
Applicant

Sworn to and subscribed before me

This 9th day of August, 2010.

Henry T. Mulvaney, Jr.

Notary Public for South Carolina

My Commission Expires: March 7, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 24 AM 9:13
M. HOPE BLACKLEY

ATTACHMENT (A)

In regards to question - 10 - Application For P.C.R

(a) The murder indictment did not state the date, time or place of said murder

(B) + (C) The other issues in this application are so intrinsic linked, that my description, + exact wording is vital to my defence when giving an accurate account of the specific facts, + the ramifications of each detail.

I lack proficiency in this matter. I lack professional legal assistance. I need an attorney.

I hereby pray for the States patience and assistance in this matter by allowing me to amend my application at a later date + granting me some help in the form of a professional attorney.

NOTE:

In regards to question - 14 - Application For P.C.R

These two issues were vaguely described in the Anders brief that my appellate attorney submitted. (i) Abuse of discretion in that the court admitted a coerced state ment.

(ii) Ineffective Assistance in that my trial attorney did not argue the fact that the defendant did assert that he was made promises + threatened by detectives before giving a statement, 7 times on direct + 7 times on cross when the court described the cross examinations answers, as being the result of an "apiphany". Nor did he argue that the cohesive statement of Lindsey would be completely out of context had the defendant been, "Waiving his right to counsel." Do not make the same

(A) and (B) The explanation for line (b) is covered in the explanation for question - 10 - Application for PCR

Lang M. Pipes

Gary M. Piper 201377
P.C.T. C-4-1
430 OAKLAWN RD.
PELZER SC. 29669

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 24 AM 9:13
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS,
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

2010-CP-42-4481.

Gary Michael Piper, #201377,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

In response to the post-conviction relief application filed on August 24, 2010, the Respondent

would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the February and June 2007 terms of General Sessions for failure to stop motor vehicle when signaled by officer (07-GS-42-0544), pointing and presenting firearms at persons (07-GS-42-2716), murder (07-GS-42-2718), and two counts of attempted armed robbery (07-GS-42-2717, -2719). E. Joshua Schultz, Esquire, and Richard H. Welchel, Esquire, represented the Applicant. On November 29, 2007, the Applicant pled guilty to failure to stop and was convicted of the remaining charges by a jury. The Honorable Thomas W. Cooper, Jr., sentenced the Applicant to confinement for forty-five years for murder, twenty years for each count of attempted armed robbery, and five years each for pointing and presenting and failure to stop, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An

Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in State v. Piper, Un. Pub. Op. No. 2010-UP-013 (filed January 21, 2010). The Remittitur was returned on February 8, 2010.

For the purpose of this Return, the Respondent incorporates the trial transcript, the Clerk of Court records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel did not argued that Applicant had been offered promises and threatened by detectives before giving a statement,
2. Subject matter jurisdiction, in that;
 - a. Murder indictment did not state the date, time, or place of said murder,
3. Prosecutorial Misconduct; and
4. Abuse of Discretion, in that;
 - a. Court admitted a coerced statement.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781

(2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The Respondent submits that Applicant’s third and fourth claims for post-conviction relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction

Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant raised the issue of the admittance of his statement at both his trial and on appeal.

In regards to Applicant's claim of prosecutorial misconduct, The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, the Court should summarily dismiss these claims for post-conviction relief.

VI.

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

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

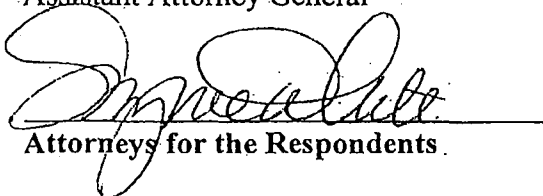
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

April 19, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Gary Michael Piper,

2010-CP-42-4481

Applicant,

v.

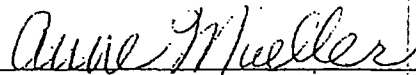
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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

Stephen C. Wofford, Esquire
Law Office of Stephen C. Wofford, LLC
P.O. Box 85
Chesnee, South Carolina 29323



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 19th day of April, 2011.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Gary Michael Piper,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2010-CP-42-4481
7 The State,)
8 Respondent.) April 2 and 3, 2012
9 Spartanburg, South Carolina
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 STEPHEN C. WOFFORD, ESQ.
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQ.
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

ORIGINAL

INDEXWITNESSESPAGE

GARY PIPER

Direct examination by Mr. Wofford

4

Cross-examination by Ms. White

61

Redirect examination by Mr. Wofford

68

E. JOSHUA SCHULTZ

Direct examination by Mr. Wofford

71

Cross-examination by Ms. White

75

Redirect examination by Mr. Wofford

78

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	P-1	Memo to Chief Billy Parris	26	26
4	P-2	Statement from Gregg Lee	55	55
5	P-3	Pre-interrogation waiver form	72	72
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 (Proceedings April 2, 2012)

2 THE COURT: Alright, this is Piper?

3 MS. WHITE: Yes, Your Honor.

4 THE COURT: We ready to proceed?

5 MR. WOFFORD: Thank Your Honor for the additional time.

6 I would like to call Gary Piper to the stand.

7 THE COURT: Alright.

8 GARY PIPER, having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. WOFFORD:

11 Q. You you ready, Gary, I mean, gettin' your stuff together?

12 A. Uh, yeah, I guess so.

13 Q. Okay, would you please state your name for the record,
14 sir.

15 THE COURT: Just a minute.

16 THE APPLICANT: Gary Piper.

17 THE COURT: He's gonna unhook a hand so he can deal ---

18 MR. WOFFORD: Alright, ---

19 THE COURT: --- with his paperwork.

20 MR. WOFFORD: --- thank thank you, Your Honor.

21 THE APPLICANT: Thank you. Thank you, ma'am.

22 BY MR. WOFFORD:

23 Q. Please state your name for the record.

24 A. Gary Piper.

25 Q. And when were you arrested for the particular charges

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 that this PCR is is for?

2 A. February 16th 2007.

3 Q. And when did you meet with your public defender? When
4 was the first meeting?

5 A. Sometime that summer of ---

6 Q. So from you'd say the first meeting from from the time
7 that you were appointed an attorney was three or four months
8 after you'd been charged with a crime ---

9 A. At least.

10 Q. --- from your understanding?

11 A. At least.

12 Q. Do you know how many times that you actually met with
13 Mr. Schultz over the the course of ---

14 A. Two or three times, ---

15 Q. Okay.

16 A. --- maybe four on the outside.

17 Q. Do you recall at those those meetings, ya know, what
18 ya'll discussed or how long those meetings were?

19 A. Yeah, we, um, we discussed, uh, I don't know, we we
20 discussed the case in general from, you know, what happened
21 that night, you know, what what my side of the story was to
22 issues of, you know, whether or not I was gonna testify,
23 strategy, you know, yeah, we we discussed different things.

24 Q. Did you feel that you discussed 'em at at great length or
25 that you really delved into the the topics of of your defenses

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 or trial strategy?

2 A. No, we didn't get in into really any depth about strategy
3 other than he didn't, he didn't want me to testify to anything
4 mur -- or plea to anything murder, that there was a strong
5 evidence, sufficient evidence to pro -- to prove a lesser
6 included offense, that anything anything murder was was not
7 acceptable and and I agreed to that, you know, 'cuz of course,
8 you know, the minimum for murder is, you know, 30 years, you
9 know, ---

10 Q. Um-hum.

11 A. I mean, I I surely don't wanna go in and plead to
12 anything, you know, like that, ---

13 Q. Right.

14 A. --- you know, especially when I felt like myself that it
15 was self-defense, you know, and as he explained, you know, the
16 the the paperwork that he received and, you know, that the
17 discovery that, you know, he had what he, what was known about
18 the case, he felt like there was a sufficient evidence of
19 self-defense. Um, ---

20 Q. So did you actually go over the -- these documents that
21 you talked about with him? Did you see them or evidence?

22 A. We we we flipped through a lotta stuff, right, a a lotta
23 papers that a a lotta me felt like was, you know, we we just
24 breezed through that were he said were just general like, you
25 know, red tape type paperwork, ---

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. Um-hum.

2 A. --- you know, that that didn't prove anything, you know,
3 it was just paperwork that's that's filled as as far as, you
4 know, goin' through the motions of litigation, you know, and
5 let's see, as far as paperwork of of ---

6 Q. Well did you ever go over any evidence or that would
7 prove to show, you know, any defenses that ya had?

8 A. Now I mentioned, I mentioned some things to him. I
9 mentioned that there were some phone calls, there's some
10 things in in conversation between me and at least one of the
11 state witnesses ---

12 Q. Um-hum.

13 A. --- that would tend to show self-defense,---

14 Q. Um-hum.

15 A. --- that would tend to impeach the the state witnesses.
16 Um, ---

17 Q. And who who was that state witness?

18 A. Um, Jennifer Gregg and potentially Amanda Colquitt but
19 she didn't testify ---

20 Q. Okay.

21 A. --- but we didn't know that till trial, you know, but
22 yeah, I mentioned the co -- the the the phone calls and I've
23 actually got letters that I got from Amanda, I've got, yeah,
24 letters where she's she's described if I -- can I -- do I
25 show -- can I show this?

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. I mean, you can if you want to. Let's go back to the
2 meetings with Mr. Schultz.

3 A. Okay, well I I described to Mr. Schultz these letters
4 that ---

5 Q. Um-hum.

6 A. --- that are describin' life out there as I'm, you know,
7 you know, these these were, these were my friends before I got
8 locked up and now this is what, this is what they're
9 doin' ---

10 Q. Um-hum.

11 A. --- day-to-day and it, you know, she she discusses
12 everything from her leavin' her child with strangers to go off
13 and get high to her tryin', Jennifer actually tryin' to
14 rob ---

15 Q. Um-hum.

16 A. --- her, you know, sent her -- sent the guy she was with
17 to distract her in the house as she went into her mother's
18 room and and dug through, Amanda, Amanda's, ---

19 Q. Right, ---

20 A. --- uh, ---

21 Q. --- so but when you told your attorney and he never
22 thought that be important to maybe have her testify or to see,
23 show these letters or bring her in, subpoena her to testify?

24 A. Well he he mentioned a a strategy that involved not
25 givin' an -- any evidence to maintain the the the last

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 argument, he felt that was very important, he was, he was
2 strong on that one. He wanted to maintain the last argument
3 in fronta the jury because' that was gonna be the last thing
4 they were gonna hear and hopefully the mo -- most considered,
5 you know, the the freshest thing in their mind when they went
6 back to deliberate so he was, he was really wantin' that so he
7 didn't want -- we didn't really, um, I didn't show him the
8 letters. He didn't wanna, he didn't really wanna see 'em
9 because that involved changin' up the strategy.

10 Q. Um-hum.

11 A. As far as evidence of self-defense, I I I offered to
12 testify, I wanted to testify. Um, ---

13 Q. Did you feel like you, you know, weren't allowed to
14 testify or is that a decision that you necessarily really
15 didn't have, that he kinda forced you not to testify or ---

16 A. Yeah, he basically forced my hand on that one, he
17 basically forced my hand and how how that came about was he
18 said, Okay, you know, if we -- if you don't testify, if we
19 don't pro -- produce any evidence and that that includes your
20 testimony then we'll we'll retain this last argument. I said,
21 Well I want to testify off the top, I wanna testify, I wanna
22 tell my story. And he said, Well I don't think you'll make a
23 good witness. I said, Well why not? Well, he said, Your
24 prior record for one thing and for two, you know, they --
25 they're gonna try to cross you up, make you sound like a liar,

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 you know, they're gonna ask you questions that that make you
2 maybe be more specific at times when you you were vague other
3 times and it seems like you're changin' up your story now, you
4 know, things things a that nature so I said, Well, I mean, if
5 they're gonna be, you know, crafty like that, you know,
6 explain it to me, you know, prepare me for that, you know, I
7 mean, let let's let's let's build on that and he said, Okay,
8 well well, I'll give you an example, he was like, Why why did
9 you have the gun that night, Mr. Piper, why why why did you
10 have it in your pocket? And, you know, I'm like, Well I live
11 with crack heads, you know, and if I, if I leave the house,
12 you know, they've been smokin' crack that day, if I leave the
13 house and leave the pistol there, they might steal it, you
14 know, I'm responsible for it, you know, so if anything happens
15 to it that it needs to be under my guidance if somethin'
16 happens to it, you know, I I can't just leave it, let somebody
17 go somewhere where I don't know where it is, you know, so he
18 says, Well that's not, that's not good, that's not good 'cuz
19 you're you're you're tellin' people that you're livin' with
20 crack heads, you're, you know, you're goin' to a crack house
21 that night, you know, it it's it's just not good, it doesn't
22 show very good character and, you know, you really don't need
23 to testify because a that and, you know, no, I don't, I don't
24 want you to testify so I said, Well, you know, you're the
25 professional here so, I mean, it doesn't seem like a got much

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 of a choice in the matter so I'm just gonna, you know, fall
2 back from that. Well there again at the, you know, that was
3 before trial, that, you know, at dur -- durin' trial, I guess
4 towards the end of trial it was, you know, brought up again,
5 you know, whether or not I was gonna testify, we had a I guess
6 a recess to to discuss it and Mr. Schultz and Mr. Whelchel
7 were adamant about, you know, not wantin' me to testify and,
8 you know, Mr. Whelchel's in this ear, Schultz is in this ear,
9 Nah, nah, we -- you know there's sufficient evidence of
10 self-defense, you don't need to go in there and say anything
11 so that's what happened, I didn't go in there and say
12 anything.

13 Q. During your meetings with Mr. Schultz, did ya'll ever
14 discuss your your mental health or anything, I guess like when
15 ya'll were talking about, you know, getting ready for trial
16 and talking about the trial did he ever inquire about your
17 childhood or or your mental, any mental health issues that you
18 may have had?

19 A. I told him I wasn't feelin' well. I told him that I had
20 been gettin' mental health, you know, throughout from juvenile
21 age, you know, on through my adulthood, you know, and gettin',
22 receivin' medication, maybe a a mental evaluation would be
23 good. He said, Well you seem coherent, you know, and, you
24 know, I can understand what you're talkin' about, you can
25 describe what's goin' on pretty well, that's really all that

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 matters, you know, so, you know, that's really just a waste a
2 time so we didn't do that. I had written, on my own behalf I
3 had written because I wasn't feelin' well, I wrote -- written
4 medical at at the jail and asked them to see somebody about
5 mental health but I never heard back from 'em.

6 Q. But did you feel that was an important, somethin' that
7 was important to you and that he should maybe given a little
8 more credence to?

9 A. I I do because there's a lotta times that I, I'm not very
10 good with people and there's a lotta times that people when
11 they, when they speak to me I don't, I don't really get what
12 they're sayin', you know, I might, I might feel like, you
13 know, they're tryin' to come at me some kinda way or
14 somethin', you know, like like maybe I'm below them or maybe
15 they're, you know, whatever, maybe they're talkin' down to me
16 or bein' aggressive with me maybe but that's that's really not
17 the the intent of what they're saying, you know, and and
18 because a that, you know, I really don't, like I say, I don't
19 get along with people, I I don't wanna, you know, interpret
20 things very efficiently sometimes so yeah, I felt like that
21 was an issue, you know, that needed to be maybe examined, you
22 know, maybe there there's somethin', you know, besides, you
23 know, I I have been diagnosed with a severe depression, manic
24 manic depression, I I've been hospitalized for it in my teens.
25 I've been taking medication for it since my since I think like

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 12 before I was a teenager and maybe, you know, I got to
2 thinkin' after sittin' in the jail, you know, for a year, you
3 know, and I'm I'm in these four walls, you know, I got to
4 thinkin' well, you know, maybe maybe they got somethin' there,
5 you know, over the years, you know, maybe that what they been
6 tellin' me is, you know, maybe I I don't see it, ---

7 Q. Right.

8 A. --- you know, so maybe somebody needs to look at it and
9 and maybe they can see it, you know, explain a little better
10 what happened that night, you know, because in in my mind and
11 and as Mr. Schultz said to me and I agreed with, you know, I
12 felt like nothin' wrong had gone down on my part, you know,
13 maybe not particularly correct but not, you know, I I I'm not
14 a murderer, you know, and, you know, I didn't wanna come off
15 as one, you know, so, um, ---

16 Q. And ---

17 A. --- how else am I try ---

18 Q. --- let's go, let's go back to what you said earlier
19 about one of the State's witnesses and maybe impeaching her.
20 Do you recall any a the testimony that Jennifer Gregg gave
21 durin' trial?

22 A. Yes.

23 Q. Was there any particular instance of her testimony that
24 you feel necessarily didn't, Mr. Schultz didn't necessarily
25 address properly with any objections or, um, ---

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 A. Yeah, there there were, there were, um, there were ---

2 Q. I'm ---

3 A. --- three ---

4 Q. --- I'm specifically lookin' in the transcript on page
5 274, okay, ---

6 A. Okay.

7 Q. --- and basically, as I understand what she was
8 testifyin' to was how you came in contact with the gun, is
9 that, is that what that ---

10 A. Yes, sir.

11 Q. Okay. And and then Mr. Schultz actually he did object to
12 that testimony as hearsay, right, I obviously see page 275
13 line 2?

14 A. Yes, sir, I believe it was overruled so so to speak, it
15 doesn't necessarily say that but it says that yeah, that that
16 wasn't hearsay.

17 Q. Now did did Ms. Gregg in your in recalling her testimony
18 did she testify that she heard some of this from other
19 individuals and then had heard some from you, can you
20 elaborate on that?

21 A. Yeah, yeah, she she definitely did say that. She -- I'd
22 like, I'd like to point out, okay, let's see, on, um, uh, uh,
23 please give me a second to refer to my notes here. Okay, on
24 on 174, on page 174 the record on appeal, she was a -- she was
25 asked on direct examination by Mr. Bulsa on line 3, "Did I

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 tell her that I took the pistol," and, uh, ---

2 Q. You mean 274, right?

3 A. Yes, sir.

4 Q. Okay, I thought you said 1 somethin', 174 or somethin'
5 so ---

6 A. Oh, okay, no, sir. Yeah, 274.

7 Q. Okay.

8 A. Did I tell her that I took the pistol and she said yes.
9 She said, when it was clarified was it by whom, by whom the
10 the Court asked, you know, of by whom was she told that that
11 the pistol was taken, I -- she she responded that I told her
12 that, Mr. Piper and then she she described the account of me
13 tellin' her that. On page 74 she she directly said that she
14 said that she she heard that from me and that's that's why it
15 was overruled, that the objection -- well I I can't say it was
16 overruled because those words aren't in the ROA but it does,
17 say that the Court said that that's not hearsay because she
18 heard it from me. Um, ---

19 Q. But did Mr. Schultz did he try to, you know, belabor the
20 point where she had had said earlier in her testimony that she
21 had heard it from other individuals but then that then said
22 well I actually I heard it from Gary? Did he ever ---

23 A. No, sir, no, sir, it wasn't on -- elaborated on. He, um,
24 I believe the first time she said that she heard somethin' was
25 about the gun and she said that I told her I took the gun and

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 then on page, that was on 274, on page 275 after that hearsay,
2 how do you say a motion or whatever an objection on, startin'
3 on page 9 Mr. Bulsa asked her when did she learn that
4 somethin' had happened that evenin' and she described on page
5 275 further on down that, specifically on, startin' on line 17
6 she said, "I know the people I hang out with and I knew
7 somethin' was, you know, being whispered about us I guess is
8 the best way to put it," okay, and that was after she had said
9 that she heard about me gettin' a pistol from me, okay, that
10 she she said she heard that some, she heard some things that
11 somethin' had been whi -- bein' whispered about, well then she
12 says that she was told she didn't want it back by me directly
13 on on page 277 lines 14, 15 and 16 she said that she didn't
14 want it back. Uh, ---

15 Q. In in Ms. Gregg's testimony ---

16 A. Well there there there were a couple more issues if I, if
17 I can finish ---

18 Q. Yeah, sure go ahead. Yeah, go ahead.

19 A. Over on 278 she said that she she heard from me. She
20 mentioned many details as far as that there was nobody that I
21 could borrow money from, I was tryin' to get money to get her
22 from jail, that there was nobody to borrow money from. She
23 specifically related in in great, I guess, imagination and
24 detail facts of of what supposedly happened in that house and
25 she said that she heard it from me while we were ridin' around

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 in the vehicle, directly from me while we were ridin' around
2 in the vehicle and then and this was on direct from the State
3 she she said that she heard everything from my possession, my
4 gainful possession of the pistol through her not bein' able to
5 get the pistol back and me tellin' her why to supposedly me
6 tellin' her facts of the case, you know, the -- of what
7 happened in the house that night and she she specifically said
8 that she heard it all from me. In the, in the mix a that
9 there was the one time that she said she heard some things
10 whispered about from other people but when she was asked about
11 the specific details that she was given, she said that they
12 were specifically given by me, she never related anything that
13 was giv -- that was whispered about by anybody else. She she,
14 like I said, she seemed to have changed her story from she
15 heard whispers to now everything she heard about was from me,
16 okay, and then on cross-examination, um, on on page 286
17 Mr. Schultz asked her specifically on line 21, Isn't it true
18 that you heard mosta what happened that night through hearsay
19 and she said some, not everything but some. Okay, well first
20 of all when when when she changed her story sayin' that she
21 she heard everything from me, you know, and she's tellin'
22 this, this is on direct, you know, as the State's witness, by
23 the State she's being questioned, you know, it wasn't objected
24 to that she had, you know, changed her story, it wasn't
25 brought up on cross, it wasn't brought up on cross-examination

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1. why she changed her story on direct, you know, it -- that it
2 wasn't pointed out to the jury, you know, that that she did
3 change her story, you know, ---

4 Q. Or like a lot of her testimony was based on hearsay. I
5 mean, that was the ---

6 A. Right, right. Now she she specifically told Mr. Schultz
7 on cross-examination that she heard heard things through
8 hearsay ---

9 Q. Right.

10 A. --- but it was never along ---

11 Q. What, ya know the the question is is whether or not he
12 threw out the fact of, ---

13 A. What was hearsay ---

14 Q. --- ya know, ---

15 A. --- and what was not.

16 Q. --- what's hearsay and what, I mean, he should've ---

17 A. No, it was left hangin'. He asked her did she go to the
18 police with -- based on hearsay, she said yes. She said
19 several times that, you know, she she heard these facts from
20 hearsay but earlier on direct when she was asked did you hear,
21 where'd you hear this, where did you hear that, she said she
22 heard it all from me but it was never, you know, that that's a
23 very strong point, you know, that, you know, prejudiced me in
24 front of the jury, you know, that, you know, the details that
25 she gave, you know, whether they were true or not, you know,

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 how she come about knowin' these details is very important,
2 you know, as to whether or not she can say what she's sayin',
3 you know, it's it's it's buildin' a case against me, you know,
4 and and and and like, you know, that -- it's it was very
5 prejudicial that that she shouldn'ta, you know, it shoulda
6 been pointed out that not only did she change her story that
7 she heard it from just me to when Mr. Schultz asked her
8 directly, no, she heard some stuff through hearsay. Well he
9 didn't ask her not one time, you know, to to clarify what what
10 was hearsay, wha'd ya hear from other people, wha'd ya hear
11 from Mr. Piper because you just told the Court, you know, that
12 she heard everything from me, you know, and, you know, it was
13 never motioned for her to, you know, be, uh, not impeached
14 well that either, you know, to, you know, what what do you
15 call that when you lie on the stand, perjury, you know,
16 perjury, you know, there was never a motion that she be
17 charged with perjury or anything, you know. I mean, and she
18 was, you know, she was lyin', it was never brought up she was
19 lyin'.

20 Q. Now you had earlier you talked about some phone
21 conversations that you have had with Ms. Gregg ---

22 A. Um, ---

23 Q. --- that while you were incarcerated or were in the
24 annex.

25 A. Yes, sir. If if if I may for a second you asked me if

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 there were any issues in her testimony on -- at trial.

2 Q. Yeah, I'm sorry. Yeah, go right on ahead with your ---

3 A. There were, there were, there were a couple, a couple
4 other issues besides just the hearsay issue.

5 Q. Okay..

6 A. There was an issue of her receivin' money.

7 Q. Yeah, I know. We were, we were gonna get to that.

8 I ---

9 A. Okay.

10 Q. So ---

11 A. Okay.

12 Q. --- and but back to the fact that there was some phone
13 conversations between you and Jennifer Gregg; ---

14 A. Yeah.

15 Q. --- were there phone conversations between you and her
16 while you were incarcerated?

17 A. Yeah.

18 Q. Okay. And do you recall did Josh ever listen to these
19 phone conversations or ---

20 A. No.

21 Q. --- think that -- do you feel like there was some
22 potential evidence in those phone conversations you coulda
23 used to maybe impeach her testimony here that ---

24 A. Yeah, there was plenty.

25 Q. Okay, for instance, what what were some of the the things

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 that, you know, that ya'll could have impeached her?

2 A. On on on the record on appeal page 284, this is on
3 cross-examination, Mr. Schultz asked her on on line 4,
4 starting on line 4 she was a an abuser of prescription pain
5 pills and she went through sayin' that she had been but not at
6 the moment, she said that, you know, the question, there was a
7 question, As of this moment, so yesterday you were, she said
8 no, sir, and asked her what type of pain pills she was an
9 abuser

10 of ---

11 Q. Um-hum.

12 A. --- and she she described Lortabs, Oxicontins and
13 Xanax's, you know, ---

14 Q. Were there some conversations on -- in the ---

15 A. Right.

16 Q. --- conversations about drugs, ---

17 A. That's that's ---

18 Q. --- those?

19 A. --- right, that's what I'm gettin' to. He he
20 specifically asked her was she a an abuser of pain bills and
21 she denied it that that she was and throughout the year that I
22 was in jail, okay, that's that's somethin' she lied about, she
23 said that she stopped talkin' to me in early February in her
24 testimony, that that coulda been used to impeach her, that
25 because we we talked part near the whole time, clear up to

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 court, you know, maybe not every day or every week but we did
2 every day and every week on through the summer months, you
3 know, way past February but in those conversations there was
4 one conversation where she told me she was goin' to meet
5 somebody to sell 'em Oxycontin and I knew the girl, you know,
6 so she's like -- so I like well, uh, I can't remember the
7 conversation completely, I I I I I haven't had a chance to see
8 the the, listen to the audio, the the tape on the that that
9 the jail has on the phone conversations, I haven't been a
10 cha -- had had a chance to see that or the transcripts. I
11 guess that this this evidence was just made available to my
12 attorney, you know, last week and we haven't had a chance to
13 get together and build on it so I'm I'm just gonna speak to
14 the besta my recollection and I, and I hope not to, you know,
15 be inaccurate about it but if there is a little bitta
16 inaccuracy, that that's what it is, I -- it's been a long
17 time, but the the conversation as I remember it that the main
18 details I re -- I do remember and she was goin' to make this
19 drug deal. She was goin' to meet a girl that I knew at a gas
20 station and I asked her if I needed to get off the phone with
21 her, she said, Nah, you're cool, you know, she's put me on
22 speakerphone instead, you know, sittin' there doin' the deal
23 or talkin' to this girl with, you know, a phone in her ear she
24 just put it on speaker and said, you know, in the car
25 somewhere, and the girl got in the car, you know, that she

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 pulled up, you could hear the door open, Hey, hey, how's it
2 goin', you know, the girl got in the car and, you know, they
3 did their, you know, little girl talk real quick, you know,
4 blasé, blasé, What, is that on, you know, the girl saw the
5 phone open, you know, and she's like yeah, it it ain't nobody,
6 it's just Gary. She like, Ain't he in jail? Yeah, you know,
7 he called, you know, he's on, he's on the phone. Oh, well can
8 he hear me? I don't know, can you hear her? I said, Yeah,
9 you know, she, you know, I guess I'm on speaker too, you know,
10 on her phone, so I say hey to the girl, you know, she's like,
11 Well, hey, how's it goin', you know, good luck, whatever, you
12 know, blasé, blasé and, you know, you know, and I felt like
13 that would have definitely helped to impeach her which
14 definitely would've I feel like changed the outcome a my trial
15 because of the testimony that she gave she was a a pretty,
16 pretty devastatin', you know, to my defense, you know, and and
17 like, you know, we didn't do anything to impeach her, you
18 know, much to impeach her. You know she was asked, you know,
19 about about the pain pills, you know, and that was a good
20 subject to bring up because she is an abuser of pain pills and
21 there were several conversations. Like I say, for about a
22 year I'd call her, she, you know, we're makin' jokes about her
23 runny nose 'cuz she been sniffin' Oxycontin or whatever she
24 (demonstrating sniffing), you know, she's a, you know, a, you
25 know, Dang, girl, you know, hey, I'm in jail, you know, I miss

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 ya and hey, you know, your nose is runnin' so things like,
2 things a that nature, you know, that maybe it didn't make me
3 look good, you know, but, the the phone records had been
4 introduced, you know, in the beginnin' a the trial.
5 Mr. Schultz coulda used the phone records without, you know,
6 producin' his own evidence, you know, it already been produced
7 by the State, you know, all he had to do is refer back to 'em,
8 I believe he'da been able to maintain his last argument, you
9 know, as far as maintainin' a strategy goes and as far as
10 Jennifer goes as such a strong witness, you know, any --
11 anything that he coulda used to impeach her and and the phone
12 records would definitely would have made her not look like
13 such a, such a angel. I mean, he lied to to -- she lied to
14 him and to the jury, you know, bluntly and there was evidence
15 that contradicted her. She was an abuser of pain pain
16 medication and yes, the day beforehand of trial, you know,
17 yeah, that I believe that shoulda been, uh, ---

18 Q. Now there was also an issue with Ms. ---

19 A. --- used.

20 Q. --- Gregg about bein' a paid witness; ---

21 A. Yeah, she, uh, there were a few issues a her bein' paid.

22 There -- she was ---

23 Q. --- do you recall how much she was paid, I believe it's
24 in the transcript?

25 A. Okay, uh, ---

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. It's on page, uh, it's in a couple places, 293 on the
2 cross and also it's on 282 direct.

3 A. And and 297 on cross.

4 Q. Yeah, 297, yeah. Now what -- in her testimony she
5 testified that she'd been paid by who?

6 A. Crime Stoppers.

7 Q. Okay. Now do you think that is correct testimony?

8 A. I know it's not.

9 Q. I'm gonna pass somethin' up here, if I may approach, Your
10 Honor, can you, can you just tell me what this (indicating)
11 is.

12 A. That's a document that was shown to me the very first day
13 a trial about five minutes before we went into trial. There
14 were, there were -- there there was an issue of discovery that
15 you know, uh, ---

16 Q. You'd gotten somethin'.

17 A. Yeah, it -- we just -- there was some things that we
18 needed and this was one of the things that had just been
19 revealed. There was a motion revealing the informant and this
20 was shown to us. Yeah, I saw that.

21 Q. And is this a true and accurate copy of what you were
22 shown that day?

23 A. Yes.

24 Q. Okay.

25 MR. WOFFORD: Your Honor, I'd like to admit this as

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Plaintiff's Exhibit 1.

2 (Whereupon, counsel for the respondent examined the
3 exhibit.)

4 THE COURT: Any objection to it?

5 MS. WHITE: No objection, Your Honor.

6 (Memo to Chief Billy Parris marked Plaintiff's Exhibit
7 No. 1 and admitted into evidence.)

8 MR. WOFFORD: Thank you.

9 BY MR. WOFFORD:

10 Q. Could could you tell us, I'm sorry, could you tell us
11 what this says.

12 A. It's a, it it's titled as a memo to Chief Billy Parris.
13 I'm not exactly sure who Chief Billy Parris is but I'm
14 assumin' he's a high rankin' official in the sheriff's
15 department 'cuz a chief sounds pretty important to me and it's
16 from Investigator Lindsey.

17 Q. Now who who is Investigator Lindsey?

18 A. He's, um, he's a detective that came and picked me up
19 from the annex and first questioned me ---

20 Q. Um-hum.

21 A. --- and actually he got a statement from me, you know,
22 when they first came and ---

23 Q. 'Cuz he's also involved with the the sheriff's
24 department.

25 A. Yes, sir, he's a detective there for the sheriff's

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 department.

2 Q. And and what does that that say?

3 A. Should I read it?

4 Q. Yeah, yeah, if you want.

5 A. Okay, "On Monday February 19th," which was three days
6 after they arrested me, ---

7 Q. Um-hum.

8 A. --- "a request for funds in reference to a homicide at
9 220 Tharon Drive Spartanburg, South Carolina 29303 for payment
10 for confidential informant for information leading to the
11 arrest of Gary Piper for the charge of murder for the
12 information provided by the informant was directly responsible
13 for the arrest of the suspect," then it's got a case number,
14 "requesting the amount of \$2,000, Investigator Reid Lindsey."

15 Q. And ultimately Jennifer Gregg she was the paid
16 informant ---

17 A. Yes.

18 Q. --- and that she testified at your trial.

19 A. Yes.

20 Q. Was this ever presented to impeach her?

21 A. No, sir. No, sir.

22 Q. And there's also a a statute that disallows a a
23 government agency to pay an individual and it's, let's see,
24 section, it's title 8 chapter 13-705(c), (c)(1), (d)(1) and
25 basically what it states is, "A person may not, directly or

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 indirectly, give, offer, or promise to give anything of value
2 to another person with intent to influence testimony under
3 oath or affirmation in a trial or proceeding before a court,"
4 and then (d) "person may not, directly or indirectly, ask,
5 demand, exact, solicit, or accept, assign, receive, or agree
6 to receive anything of value in return for influencing
7 testimony under oath or affirmation in a trial or other
8 proceeding before a a court or a committee," or whatnot. Do
9 you feel that that particular instance met the statute, that
10 she's being paid to testify in your trial?

11 A. I do and not with specific regards to that document but
12 with, but with be ---

13 Q. Regardless ---

14 A. --- bein' paid ---

15 Q. --- I mean, ---

16 A. --- with -- right, with ---

17 Q. --- paid ---

18 A. --- regards to her ---

19 Q. --- within ---

20 A. --- testimony.

21 Q. And that's the evidence that shows ---

22 A. That's ---

23 Q. --- that she ---

24 A. --- that's evidence that she was paid but there's
25 testimony that shows her intentions of receivin' the money.

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. Um-hum.

2 A. Now the document says that the money was for information
3 leading to the arrest, to my arrest ---

4 Q. Right.

5 A. --- of the murder but she testified in court that her
6 intentions for receivin' the money, her understood obligation
7 for receivin' the money was to tell the truth. Mr. Schultz
8 asked her on on page 297, line 9 he asked her the one one
9 further question how much money was was she paid to to tell,
10 to make up a story about me and she said she wasn't paid
11 anything to make it up, so he asked her how much was she paid.
12 She specifically said on line 13 and 14 she said, Not to make
13 it up and to tell the truth \$2,000, and that right there shows
14 her intent, her heart. Her intention was she received the
15 money. What she felt like the money was for after havin'
16 spoken with representatives of the sheriff's department this
17 was her obligation for receiving that check. Regardless a how
18 it was described in the document, this this was the State's
19 witness, this what was in her heart and, uh, the document does
20 prove that she was paid that \$2,000.

21 Q. And Mr. Schultz never objected to her testimony under the
22 statute.

23 A. No, sir, he he just asked her about it and and pretty
24 much left -- let let it hang. He didn't make any kinda
25 motions to, you know, have her removed as a witness or, you

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 know, for a mistrial because the the testimony was
2 inadmissible because she had been paid for it, not not only
3 was it what did she say that it was hearsay and it was not
4 ever clarified in court what was hearsay and what wasn't
5 hearsay which evident -- obviously, without a doubt part of
6 what she testified to was inadmissible, it was hearsay and
7 it's my understandin' hearsay is not admissible, okay, so not
8 only was it hearsay but she was paid for the hearsay, okay,
9 and it was ne -- not only was it not decided what was hearsay
10 and what wasn't hearsay but it was definitely decided her
11 intent when she gave the hearsay, you know, it -- when she
12 received the money that she, she was gonna testify with this
13 hearsay. She knew she went to the police, she admitted that
14 she went to the police based on hearsay, Mr. Schultz asked her
15 that. What what was the page that you say it was mentioned on
16 the about her receivin' money? You gave me ---

17 Q. It's on a couple. I think 292 ---

18 A. 292.

19 Q. No, that's, uh, well it's ---

20 A. Yeah, she said she received money from Crime Stoppers.

21 Q. --- 282.

22 A. He asked her, he asked her specifically if she went, if
23 it was her testimony that she went to the police based on
24 information, yeah, okay, 287 on line 1, 2 and 3 he he asked
25 her specifically, Did you go to the police with information

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 that you heard through hearsay and she said yes, sir, so she
2 knew that she gave the police hearsay information, that she
3 was gettin' a check for this hearsay information and that her
4 obligation in return for this hearsay and and whatever she
5 said she she heard from me, she heard from somebody else,
6 whatever, she knew she was gettin' paid for that and she felt,
7 like her obligation was to in her opinion, quote/unquote, tell
8 the truth, you know, what she was -- that's her story and
9 she's stickin' to it type attitude, you know, ---

10 Q. Um-hum.

11 A. --- for the \$2,000 and it was never, you know, clarified,
12 you know, and and it was never clarified, you know, there was
13 actually an objection made in closin' arguments when
14 Mr. Schultz told the jury that, you know, she had received
15 money from the police department. Uh, I I can't give you the
16 exact word right now, I need to find it in in the transcript
17 but it it's it's in the closin' argument. He he told her, you
18 know, he told the Court that, um, you know, that she she went
19 to the police, that that that she got paid by the police
20 \$2,000. There was an objection made and the Court said, Yeah,
21 I believe that there's the evidence shows that she was paid
22 through through Crime Stoppers so that made my my defense look
23 bad, you know, made my lawyer look like he didn't know what he
24 was talkin' about, you know, I mean, he knew, he knew the
25 truth evidently, you know, I mean, I guess it was in the back

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 of his mind 'cuz he'd he'd seen the document, you know, he
2 knew the truth and even though it wasn't in the record, maybe
3 it inadvertently came out of his mouth that, you know, she was
4 paid by the, by the cops because I guess he knew it wasn't in
5 the record, I mean, he didn't supply any evidence to to prove
6 it, you know, so but it did come out and, come out of his
7 mouth and it was objected to and it was, it was held that she
8 was paid through Crime Stoppers when it it wasn't.

9 Q. Right.

10 A. For her to say that she was was perjury, that was never
11 brought up, that that was, that was very prejudicial in my
12 case as the outcome a my case coulda been dramatically changed
13 if, I mean, that that went to the direct credibility of my my
14 attorney, you know, sayin' things that, you know, were
15 objected to as not bein' true that weren't on the record, you
16 know, and that looks bad, you know, that's his credibility,
17 okay, and also, you know, Crime Stoppers is known to be a, you
18 know, your your community friend, you know, not, you know,
19 un -- underhanded device of investigation, you know, tryin' to
20 railroad somebody, you know, illegal tactics, you know,
21 gettin' testimony on somebody, it it it was, it was disguised
22 as, you know, a an act of valor I guess, you know, I mean, I
23 don't know how else to to describe it but it it was anything
24 but and and had that been shown, you know, had had she been
25 impeached, I believe that that document right there woulda

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 made a big difference ---

2 A. Um-hum.

3 Q. --- in in how the the the jury looked at, you know, how,
4 you know, ---

5 Q. Her testimony.

6 A. Her testimony, right. Had had had she been questioned
7 about that, you know, why she's sayin' she got paid through
8 Crime Stoppers ---

9 MS. WHITE: Your Honor, I hate to object, I think
10 we've ---

11 MR. WOFFORD: Gone over ---

12 MS. WHITE: --- gone over this, ---

13 MR. WOFFORD: Right.

14 MS. WHITE: --- it's been ---

15 THE COURT: Sustained.

16 MS. WHITE: --- discussed.

17 THE APPLICANT: I -- yeah, I'm I'm just tryin' to make
18 sure I get this on on record that, you know, ---

19 THE COURT: I understand but that doesn't mean you can
20 repeat it. I've sustained the objection so move on.

21 THE APPLICANT: Okay, thank you.

22 BY MR. WOFFORD:

23 Q. Was there a a -- who is Amanda Colquitt?

24 A. She was a mutual friend of mine and Jennifers', my
25 girlfriend.

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. Did she ever make a statement to police about anything?

2 A. It wasn't a a direct statement as to any events or
3 evidence that happened that night but she she and here's --
4 there again there's -- I got a letter here from her statin'
5 she's the one that told me to go over there that night, right,
6 to the house, right, uh, ---

7 Q. Did did Mr. Schultz did he ever inquire as to maybe
8 speaking with her? Do you know if he ever spoke with her and
9 relayed any information?

10 A. I I asked him to and he told me that he couldn't get in
11 touch with her. I'm ---

12 Q. Do you feel like if if he had spoken to her, maybe had
13 her testify that she woulda been -- could have helped your
14 case?

15 A. Yes. Yes, uh, as I mentioned before, you know, she she
16 told me of many instances that that would've went directly to
17 Jennifer's credibility, not only the credibility of the state
18 witness and she was the girlfriend of another state witness
19 Gregg Lee. Not only could she have gone to the credibility of
20 of Jennifer but she could've also testified as to my intent
21 that night. It it was a a an issue of intent when the motion
22 was made for a lesser included offense. I believe when the
23 motion was made for a direct verdict it was a question of my
24 intent that night, it was, it was, it was basically forced
25 forced upon me that, forced upon the the situation that or

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 assuming that my whole motivation was the -- a robbery, okay,
2 and ---

3 Q. But was there real sufficient evidence to show that that
4 that's why you went there?

5 A. Of robbery?

6 Q. Yeah.

7 A. The only sufficient evidence, well I can't say it was
8 sufficient because it was in Jennifer's testimony. Jennifer's
9 testimony was was hearsay and it was paid for, you know, I ---

10 Q. But but ---

11 A. --- guess ---

12 Q. --- there was some other evidence, testimony from her
13 that would could go to show, you know, that she may have been
14 some defense or some provocation ---

15 A. From, uh, ---

16 Q. --- from that that, you know, what occurred that night.

17 A. From who?

18 Q. Jennifer.

19 A. She, um, she said that I told her there was a struggle
20 and that we struggled over the gun, the gun went off ---

21 Q. Um-hum.

22 A. --- but actually, when she said that, she was saying
23 that, you know, as bein', you know, a result of supposedly me
24 tellin' her that I was tryin' to rob the guy but, you know, I
25 mean, I I don't think that would have been towards my defense

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 but there was evidence given of that nature by the State's
2 evidence of Gregg L -- strate -- State's witness Gregg Lee.

3 Q. And what what was that? What was that testimony?

4 A. It was basically his entire testimony. Uh, ---

5 Q. Do you recall -- let's see here, what what did he
6 testify, and I believe his his examination begins on page
7 257, ---

8 A. That's right.

9 Q. --- what did he testify that you were, that, you know,
10 where -- why you were goin' where you were goin' or or why you
11 went where you were going?

12 A. If I may I'll I'll refer to some notes that I have ---

13 Q. Sure.

14 A. --- and these notes are with respect to the record on
15 appeal. Startin' at, uh, on page 259, this is on direct for
16 the State, the State's witness, Gregg was asked what was the
17 nature of him referrin' to me, him wantin' to -- what was he
18 wantin' to do; Gregg answered, I don't really understand that
19 part, he said, he said, he just kept saying he needed to get
20 her, he needed to go borrow some money and that that that
21 statement right there, Your H -- sir, was the very first time
22 that, you know, he was asked as far as our intentions for
23 goin' over there, he rode with me over to the house and
24 basically, the fir -- the first time that he was asked why did
25 we go over there I told him, he he said that I told him we

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 went over there to go borrow money, okay, and that that is
2 evidence of intent, alright, and then he was further asked on
3 on lines 21, 22, Where did you think you were goin'; he said,
4 To borrow some money, again, he reaffirmed ---

5 Q. Um-hum.

6 A. --- that we were goin' to borrow some money. Uh, ---

7 Q. He felt his testimony would go to show that, you know,
8 you went to go borrow some money and, ---

9 A. Right.

10 Q. --- you know, then ultimately chain of events happened.
11 I mean, that was probably, like I say they -- there was a
12 struggle.

13 A. Right, and as as Gregg described it, if if if I can
14 continue here, he said, he answered that we we're goin' to
15 borrow some money. On page 262 lines 5 through 13, they a --
16 the question was, okay, alright, and what happened after they
17 said come in, he had described after we pulled into the yard,
18 you know, I got out, knocked on the door and then they said,
19 Alright, what happened after they said come in. He said, My
20 window was down a little bit, it sounded like talking for just
21 a minute and then it got a little bit loud. Little bit loud
22 to me is a, is a confrontation, it's it's some kinda
23 disagreement, sumtin' wrong, evidence of heat a passion. He
24 said then it got a little bit loud, he said that drew my
25 attention to more or less look that way and then I heard a

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 shot, one shot, it sounded like somethin' fell, maybe a book,
2 somethin' heavy fell and then three more shots and Gary walked
3 out. Now in in in in light of this testimony here, I'd like
4 to refer to State's witness Charles Jackson who is ---

5 MS. WHITE: Your Honor, I hate to object again but it
6 seems like we're just goin' back over testimony of the trial
7 instead of actually talkin' about anything that counsel
8 shoulda done differently.

9 THE COURT: Yeah, Mr. ---

10 THE APPLICANT: Um, ---

11 THE COURT: --- Wofford, why don't you try to narrow some
12 issues here for the benefit of the Court ---

13 MR. WOFFORD: Yes, sir.

14 THE COURT: --- so that I can identify what issues you
15 wanna present rather than him just readin' me a transcript, I
16 can read that transcript myself, ---

17 MR. WOFFORD: Yes, Your Honor.

18 THE COURT: --- and if you'll just identify some issues
19 for us and let him provide that testimony to us, I think
20 that'll be helpful in me bein' able to make a decision in this
21 case.

22 MR. WOFFORD: Thank Your Honor.

23 BY MR. WOFFORD:

24 Q. Let's move on to the jury instructions.

25 A. Okay, may may I be able to just finish up this this

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 point ---

2 Q. Well I guess ---

3 A. --- that I, that I ---

4 Q. --- what point are we tryin' to make? I mean, ---

5 A. The point, the point is that there was, there was
6 evidence of self-defense that was brought to the Court, it --
7 after Gregg Lee testified or maybe it was before, there was
8 another State witness Charles Jackson, he also testified that
9 there -- he gave a shot through a door, okay, ---

10 THE COURT: Mr. Piper, excuse me, ---

11 THE APPLICANT: --- Gregg ---

12 THE COURT: --- just a minute, let let me explain
13 somethin' to ya. What what you need to be providin' me is
14 what what what you believe your lawyer did wrong, not what is
15 present in the transcript, not what was presented, not what
16 was available for the trier of fact but what was not.

17 THE APPLICANT: Okay.

18 THE COURT: See, I'm havin' a hard time understandin'
19 what you're complainin' about so far as your lawyer's
20 representation is concerned because you just read ---

21 THE APPLICANT: Okay.

22 THE COURT: --- things from the transcript as to what was
23 presented not perhaps what your lawyer could have presented.

24 THE APPLICANT: Well I ---

25 THE COURT: If it relates to self-defense and if you're

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 complainin' about him not presenting evidence of self-defense,
2 showin' me in the record where there is evidence is not
3 somethin' that would be deficient representation you see.

4 THE APPLICANT: Yes, sir. Um, what I -- what I'm ---

5 THE COURT: Why don't you just let your lawyer ask you
6 the questions and you just respond to 'em, that's why you have
7 a lawyer.

8 THE APPLICANT: Right, Your ---

9 THE COURT: Okay.

10 THE APPLICANT: --- Honor. Um, ---

11 THE COURT: Listen listen to your lawyer's questions ---

12 THE APPLICANT: Alright.

13 THE COURT: --- and hopefully he'll identify some issues
14 for me.

15 BY MR. WOFFORD:

16 Q. There was some issue with the ballistics in in that -- in
17 the home, correct? There were a number of guns, maybe a
18 number of shots that were fired?

19 A. Correct.

20 Q. Was there any evidence of the ballistics that was
21 presented, do you recall, or shoulda been presented for the
22 issue of of self-defense?

23 A. That that was one of the things that I still haven't
24 received in a, in a discovery. I still haven't received the
25 motion of discovery. I have -- haven't received a copy of it.

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 I don't know if the public defender's office did or not, I
2 haven't been able to b -- receive my my file from the public
3 defender's office ---

4 Q. But do you feel like there ---

5 A. --- so ---

6 Q. --- was some evidence that was ---

7 A. Yeah.

8 Q. --- presented ---

9 A. Yes, sir.

10 Q. --- that would show that there was some self-defense?

11 A. Yes, sir. I believe that there were some some some
12 pictures supplied that that showed where different bullet
13 holes were in the house and, uh, ---

14 Q. So there was a few people firin' guns not just you.

15 A. Yeah, there there were enough, there were enough bullet
16 holes, okay, that there was a, there was a witness that
17 testified that to the difference of automatic weapons and
18 semi-automatic weapons in reference to, uh, whether or not
19 they eject shell cashin -- casings and the fact that there
20 were no shell casings found at the scene, okay, this was to
21 say that all the shots in the, in the, in the house were fired
22 by me. What Mr. Schultz could have shown through the evidence
23 presented by ballistics was that, okay, there were, there were
24 three, there were, there were -- there was evidence of five
25 shots in bedroom number 1, okay, there was also a police

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 statement given by Gregg Lee, State's State's witness, that
2 after we left he saw me unload the gun and he said that some a
3 my bullets had been fired and some had not been fired.

4 Q. Did Mr. Schultz ever press him on that issue?

5 A. No.

6 Q. You feel like if he had have you maybe some additional
7 evidence or testimony that woulda been beneficial to your
8 defense?

9 A. Possibly if he could have recalled a little bit more
10 specifically of how many bullets had not been fired instead
11 just sayin' some ---

12 Q. Um-hum.

13 A. --- and leavin' it up to. There was evidence in in
14 bedroom number 1 where Chavez was shot of five shots bein'
15 fired, okay, and the State was tryin' to say through another
16 witness that testified like I say as to automatic weapons that
17 eject shell casin's and semi-automatics that don't, the State
18 was tryin' to provide that the automatic weapons, the the only
19 weapons that were found in the house were automatic weapons,
20 they were tryin' to provide those weapons could not have been
21 shot because there were no shell casin's found in the floor;
22 well at the same time the gun that I had only held five
23 bullets and as the State's witness gave a, gave a a statement
24 to the police, which was not brought up or mentioned by
25 Mr. Schultz, he stated that some of my bullets had not been

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 fired. Now if some is is at least two then that means I could
2 have only shot three bullets and there was evidence of five
3 bullets ---

4 Q. Right, ---

5 A. --- bein' shot.

6 Q. --- more more than three.

7 A. And had it, had it been shown that I could not have shot
8 all these bullets, it could've swayed the jury more in favor
9 to to believe a a a self-defense issue had that been brought
10 about in that light that, you know, Mr. Schultz referred to
11 the pattern of the shots, that that they they represented a
12 cross fire pattern and that that might imply that there was
13 another gunman but he didn't show the jury ---

14 Q. Um-hum.

15 A. --- how the State's witness testimony or statement
16 reflected with the forensic evidence that was shown that,
17 okay, the State's wit -- witnesses Charles and Artis Jackson
18 had to be lyin', those were the t -- other two people in the
19 house. They said that I was on -- that I come in there and
20 shot and ran, Charles admitted to shoo -- puttin' one through
21 the door but that makes a sixth shot, you know, the -- and
22 there's definitely no way that I could have shot, you know,
23 but I'm leavin' that one out, I've decided there's no way that
24 I coulda shot all the shell -- all the shots.

25 Q. Right, and he never really belabored that issue with ---

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 A. Right, if he coulda, if he could've showed that that it,
2 you know, that how the State was tryin' to show that there
3 were no shell casin's so that means they didn't fire, no
4 there's too many bullet holes, that that proves they fired,
5 you know, it wasn't brought out directly to the jury in that
6 light, ---

7 Q. So ---

8 A. --- that that could've, you know, ---

9 Q. Let's let's ---

10 A. --- changed the ---

11 Q. --- move on to the the jury charge. Now the jury was
12 charged that they could infer malice from the use of a deadly
13 weapon, is that, is that your recollection?

14 A. Yes, sir.

15 Q. Okay. And obviously Mr. Schultz he made an objection to
16 that fact, correct?

17 A. No, sir. I've not, like I say, I've not been in
18 possession of the file. I mean, I know that there were
19 requests to charges made ---

20 Q. Um-hum.

21 A. --- to the judge 1:04:44.0(1) and and I don't know, I
22 haven't seen any documents as to what he requested
23 specifically, you know, as far as charges go but, you know, I
24 I never heard him argue against that ---

25 Q. Okay.

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 A. --- that charge.

2 Q. So ultimately you you were convicted for was a charge of
3 murder, right, is that what you were convicted of?

4 A. Yes, sir.

5 Q. Okay. And you filed your notice of appeal and everything
6 then was was sent off to the Court of Appeals ---

7 A. Yes.

8 Q. --- and your, do you remember when your appeal was was
9 filed? Do you recall if it was -- was in '08 possibly? That
10 sound about right?

11 A. No, it was immediately after my trial ---

12 Q. Well ---

13 A. --- within a 10-day period or so.

14 Q. Okay, notice of appeal. I'd like to bring the the
15 Court's attention to a case a here, may approach, Your
16 Honor, ---

17 THE COURT: (No audible response.)

18 MR. WOFFORD: --- it's *State v. Belcher*. Basically, what
19 what happened here is that the Supreme Court reversed the the
20 long held belief that juries could infer malice from the use
21 of a deadly weapon here and we feel like in particular, and
22 I'll direct everybody's attention to section E where the rule
23 basically, you know, Malice may be inferred from the use of a
24 deadly weapon is con -- is confusing, prejudicial where
25 evidence is presented that would reduce, mitigate or excuse,

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 or justify the homicide and also, I would bring the Court's
2 attention and counsel's attention to the new rule, which is
3 one of the last paragraphs before it says "Reverse and
4 Remanded," is only applicable to cases in the pipeline or
5 cases which are pending on direct review or not yet final.
6 This particular case was decided in October of 12, 2009 and it
7 appears that Mr. Piper's appeal was at least filed and had
8 been dismissed in January of 2010 so I do feel given this this
9 case coming down that and not necessarily to Mr. Schultz but
10 do feel that Mr. Piper has an argument that his appellate
11 defense counsel was prejudicial in not, you see in this case,
12 in not, you know, updating the appeal being diligent and in in
13 doing so given this case.

14 THE APPLICANT: I also feel that, um, ---

15 THE COURT: Just a minute, he hadn't asked you a
16 question.

17 THE APPLICANT: Oh, ex -- excuse me.

18 BY MR. WOFFORD:

19 Q. Would you agree with that?

20 A. Yes, sir, I I agree with that, I I'd also add that
21 Mr. Schultz was ineffective for not objecting to that appeal,
22 to that, to that that charge, excuse me. It's a burden
23 shifted charge and it's it's unconstitutional, it it, you
24 know, it it puts the burden on the, you know, the judges
25 acceptin' 'em, you know, or the Court, I I, you know it shifts

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 the burden off of a jury, you know, to make that decision as
2 to malice.

3 Q. Are there any other issues that you feel Mr. Schultz did
4 or didn't do or things that he did or should've done that
5 prejudiced you and it may have affected the outcome of your or
6 a trial in a more positive manner than it, than it did?

7 A. Could you ask me that question one more time, please.

8 Q. What are some things that Mr. Schultz could've done or
9 should've done that having done so it would have made a
10 positive impact on your case or things that he did that
11 prejudiced you in your case? Are there any other issues
12 that ---

13 A. Yeah, I feel like ---

14 Q. --- we haven't addressed?

15 A. --- I feel like there's several. Um, ---

16 Q. You recall what that -- what those were?

17 A. Yeah, I'm I'm referrin' to my notes if I, if I may. It's
18 it's, you know, there again that's, uh, this is, this is why
19 I, you know, requested a time time to go over the paperwork
20 and and confer with you about about the issues here so I could
21 properly properly address the Court and and bring forth my
22 issue.

23 THE COURT: Do do you have any other issues you wanna
24 tell me about or you just ---

25 THE APPLICANT: Yes.

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 THE COURT: --- gonna tell me what ya don't know about
2 it?

3 THE APPLICANT: Yes. Well number one, I didn't get
4 the -- my discovery or or or a copy of my file to, you know,
5 to prepare to have to take full full take place in my defense,
6 you know, a a a a proper active place in my defense. He
7 didn't review the phone records that that would've showed to
8 impeach State's witnesses and the State to to impeach a
9 State's witness, you know, would have swayed, maybe possibly
10 swayed the jury as to the, you know, the impact of their
11 testimony, the credibility of their testimony and had, you
12 know, had the jury not been been swayed, been so swayed by
13 their testimony they may have, you know, the outcome a my
14 trial coulda been different.

15 There was, there was an issue of of a State's witness
16 Artis Jackson who had contradicted, if if he didn't contradict
17 everything that that he testified to, there was some evidence
18 given that contradicted everything he said.

19 BY MR. WOFFORD:

20 Q. And did Mr. Schultz ever belabor that or address it?

21 Um, ---

22 A. In closin' he said he felt bad about cross-examinin' the
23 witness and, you know, he was taught to respect his elders and
24 whatnot and I feel like if if he hadn't a, you know, felt so
25 bad for the witness and, you know, been more focused on my

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 defense he could have, should have brought to light the facts
2 that, uh, ---

3 Q. Maybe grilled him a little more aggressively you feel
4 like?

5 A. Well specifically brought out why, you know, there there
6 there's specific points where the witness said that he saw
7 everything and then he turned around and he said said he saw
8 nothin'.

9 Q. Um-hum.

10 A. Now if if Mr. Schultz would've specifically asked him at
11 at that instant, you know, you just said that you saw
12 everything, are you lying to the Court because now you're
13 telling us that you sat over here and you saw everything that
14 happened but here a minute ago you said you were outside ---

15 Q. And Mr. Schultz never addressed that or ---

16 A. No, not specifically. No, he did not, not at all. He
17 was, he -- the the witness was basically allowed to, you know,
18 to say whatever he wanted to say and and like I say,
19 everything was contradicted through, you know, and had it been
20 brought forward, you know, specifically at each instant when
21 that witness contradicted himself or the evidence that had
22 been presented, his testimony which along with Jennifer's I I
23 feel was, uh, one of the the most considered witness
24 testimonies given. I feel like that testimony would have been
25 lookin' -- looked at in an entirely different light, ---

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. Um-hum.

2 A. --- in a, in a light so as to not be believed at all and
3 I believe the outcome of my my trial definitely woulda been
4 different as he was supposed to be an eyewitness ---

5 Q. Um-hum.

6 A. --- of, uh, what happened that night. And basically, I
7 have an issue with his whole testimony. There was no
8 masion -- motion to be Mr. S -- after seeing that that the the
9 witness was con -- contradicting physical evidence, witness
10 evidence, several witness evidence, there was no motion made
11 to, you know, have him removed as a witness, there was no
12 motion to be made to see as to his competency as a, you know,
13 as a, as a, as a citizen to to, you know, I mean, anybody
14 could've walked up and said, Oh, yeah, well I was sittin' on
15 the couch that night, I can tell ya everything that happened,
16 you know, and when they sit there and they tell you all kindsa
17 contradicted -- dicting things and you don't make any kinda
18 move to say, Well, wait a minute, were you even there, you
19 know, you know, no move like that was made, there was no
20 question as to, you know, why are you changing your story, you
21 know, and I don't believe there was any reasonable answer for
22 that ---

23 A. Um-hum.

24 Q. --- and as I say the, you know, the weight given to his
25 testimony woulda been different had that been brought up. I

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 feel like he shoulda made a motion to remove him and Jennifer
2 as as witnesses due to the discrepancies in their, um, ---

3 Q. Testimony.

4 A. --- testimony and and and how they come about to be there
5 that day.

6 On on charges on the -- during the charges for a a
7 request for a lesser included offense, Mr. Schultz asked for a
8 lesser included offense of self-defense and manslaughter. The
9 the judge, the judge when Mr. Schultz made the motion, the
10 judge or or or when he, when he made the motion,
11 Mr. Mr. Schultz, he referred to Gregg Lee's testimony and, uh,
12 uh, uh, Christian Hudson's testimony and the Court denied the
13 motion in light of Charles' testimony who said he was an
14 eyewitness in the house that night. Had had it been brought
15 more clearly, had it been argued more clearly that his
16 testimony proved nothin', you know, that then that his
17 testimony shouldn't even been considered ---

18 Q. And that just Mr. Schultz never really effectively argued
19 that.

20 A. Right, not for a motion of of of a lesser included
21 offense either. Now he did make a motion for lesser included
22 offense but had he'd argued it more effective or, you know, in
23 in lieu of Mr. Charles' testimony which the the judge referred
24 to, he may have given it more consideration, ---

25 Q. Right.

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 A. --- uh, ---

2 Q. --- potentially a a -- some different outcome.

3 A. Right, because I would have potentially received a lesser
4 included offense which he could have then argued in closing
5 and, you know, got me a a a a different verdict.

6 MR. WOFFORD: I have no further questions, Your Honor.

7 THE APPLICANT: Um, ---

8 THE COURT: Well I think we'll just conclude this
9 tomorrow, we've got plenty time.

10 MS. WHITE: Okay.

11 THE COURT: During the overnight recess, where will he be
12 housed?

13 POLICE OFFICER: County detention center.

14 THE COURT: I mean, in California Avenue?

15 POLICE OFFICER: Yes.

16 THE COURT: Okay. Alright, Mr. Wofford, they'll make
17 arrangements. If you need to talk to your client during the
18 overnight recess to see if ya'll can develop any other claims
19 he wants to make so he'll have a chance to look at everything
20 ya'll have now, you can do that during the overnight recess
21 and I'll let you present anything else you wanna present in
22 the mornin' but I wanna get it all done in one time. I don't
23 wanna have to hear anymore about him not havin' time to talk
24 to you about whatever it is you were supposed to have gotten
25 that we didn't have so ---

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 MR. WOFFORD: Thank you, Your Honor.

2 THE COURT: We're in overnight recess. Ya'll take all
3 the time you need and then we'll be ready to go in the mornin'
4 with the conclusion. Alright, court's in recess until 9:30.

5 MS. WHITE: Thank Your Honor.

6 (Proceedings April 3, 2012)

7 THE COURT: Mr. Wofford, did you and Mr. Piper have a
8 chance to identify any additional issues that you'd like to
9 present?

10 MR. WOFFORD: Yes, sir, I met with Mr. Piper for a few
11 hours last evenin' in the detention center and there are a few
12 additional things Mr. Piper would would like to discuss.

13 THE COURT: Well are they things that you believe to be
14 meritorious?

15 MR. WOFFORD: One or two things, Your Honor, yes, sir, I
16 do.

17 THE COURT: Well you you're you're welcome to present any
18 merit -- meritorious claims ---

19 MR. WOFFORD: Alright, thank you, Your Honor.

20 THE COURT: --- or ones that you believe to be
21 meritorious.

22 MR. WOFFORD: Alright, thank you.

23 THE COURT: Okay.

24 MR. WOFFORD: I would like to to call Mr. ---

25 THE COURT: Alright, come back around, Mr. Piper, you're

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 still under oath.

2 (Whereupon, the applicant took the stand.)

3 BY MR. WOFFORD:

4 Q. Now yesterday we discussed your self-defense issue, you
5 know, with the self-defense you wanted to claim as a defense,
6 self-defense, ---

7 A. Yes.

8 Q. --- you recall that? Do you recall some statements that
9 were given, voluntary statements, of some witnesses of par --
10 particularly Mr. Hudson, Christian Hudson and let's see here,
11 I believe Artis Jackson, you recall those?

12 A. Yes, sir.

13 MR. WOFFORD: May I approach, Your Honor?

14 THE COURT: Yes.

15 (Whereupon, counsel approached the witness.)

16 BY MR. WOFFORD:

17 Q. Can can you tell me what this is here (indicating).

18 A. Um-hum, it's a police statement from Gregg Lee. Uh, ---

19 Q. And how do you know that's a police statement from Gregg
20 Lee?

21 A. Well it's signed, it's it's typed by Investigator
22 Lindsey, it's signed and it's sayin' that he he spoke with
23 Gregg Lee at the sheriff's office.

24 Q. Do you feel this is a true and accurate copy of that that
25 police statement?

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 A. I I would assume so.

2 Q. Okay. And do you recall at his, uh, well, Your Honor,
3 I'd like to admit this as Plaintiff's Exhibit 2.

4 THE COURT: You shown it to ---

5 MR. WOFFORD: Oh, sorry.

6 THE COURT: --- Ms. White?

7 MS. WHITE: No objection, Your Honor.

8 (Statement from Gregg Lee marked Plaintiff's Exhibit
9 No. 2 and admitted into evidence.)

10 BY MR. WOFFORD:

11 Q. Can you read us that line here (indicating), it's got
12 another line there, or, you know, kinda tell us what that is.

13 A. In this, in this statement, Gregg was talkin' about he
14 and I goin' over to Tharon Drive that night, you know,
15 December 21st. Gregg Gregg stated that that that when, uh,
16 after after we left the house that when I opened the cylinder
17 on the .38 that that I had, that I pulled out the shells and
18 that there were a couple that hadn't hadn't been fired and
19 that the rest had been fired and I I think this is, uh,
20 important as far as to show a a a self-defense in this issue,
21 in this case that that and and it wasn't brought, it wasn't
22 brought to light in respect, in in that respect where ---

23 Q. Did -- in Gregg Lee's cross-examination, do you recall
24 then him talking about, you know, why you went over there and
25 and the statement kinda is a little different than than what

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 he said in his cross-examination?

2 A. Yeah, that that that part wasn't in in his testimony, the
3 the the part that there were bullets left in my gun ---

4 Q. So do you feel like that ---

5 A. --- that had not been fired.

6 Q. --- that statement, voluntary statement, coulda been
7 brought in to maybe flush out Gregg Lee's testimony ---

8 A. Yeah.

9 Q. --- and maybe maybe even impeach him on some things
10 potentially?

11 A. Yeah, well I I don't think it would necessarily impeach
12 him but I I I do believe that that that's a significant issue
13 the -- that there were bullets left in my gun that weren't
14 fired that wasn't brought out in testimony on the stand when
15 he he testified and should should I speak about the
16 significance a that?

17 Q. Well, I mean, if you feel -- what what is significant
18 about that?

19 A. Okay, I I feel that it's it's significant because first
20 of all, our defense was self-defense and the State provided a
21 witness that that testified to the difference of automatic
22 weapons and semi-automatic weapons in regards to the fact that
23 they didn't find any shells, shell, empty shell casin's layin'
24 in the house and there were two 9 millimeters which are
25 automatic weapons and they eject shell, shell casings and a

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 .25, they did find one shell casin' that came from the .25 but
2 in bedroom number 1 where the the the shooting occurred there
3 were no shell, empty shell casings found, it was introduced
4 and as such that the 9 millimeter that was found in that room
5 wasn't fired because there weren't any shell casin's ejected,
6 there were no empty shell casin's layin' around. When that
7 room ---

8 Q. Now how do you feel that that ---

9 A. Okay, when -- I I got that. There was also testimony by
10 forensic officers where they took, they they saw and they took
11 pictures of e -- of bedroom number 1 where they found a a
12 bullet hole in the wall above the bed, they found a bullet
13 just a, just a bullet layin' in the carpet, they found a
14 bullet hole goin' through a mirror on the wall opposite the
15 the livin' room and it corresponded with a a a piece a led
16 that was found that evidently hit the chimney and fell and
17 there was another bullet hole that went through above the door
18 jam and then into the livin' room ceilin' and they didn't
19 recover that that slug and none of these holes correspond with
20 the victims bein' hit ---

21 Q. Um-hum.

22 A. --- and and that there's evidence of five bullets bein'
23 shot in that room. Now the gun that I had only held five
24 shots and this evidence right here that that says that there
25 were a couple bullets left in my gun along with the State's

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 witness testimony that they didn't find any em -- empty shell
2 casin's. I couldn't have fired all my weapon, all all my
3 bullets and and dumped out and reloaded and came back out and
4 now Gregg sees that I've got a couple bullets left in my gun
5 else there would've been shell casin's. Okay, so I didn't
6 reload, these was -- this this this is the original armor that
7 was in, you know, in in the weapon, ammunition that was in the
8 weapon and it wasn't completely fired. There's no way that I
9 coulda shot all these shots. Had it been presented, had this
10 statement been presented in the light that I couldn't have
11 shot th -- all those shots myself and that somebody else had
12 to have shot those shots, some other shots in there then there
13 woulda been a a self-defense shown. Uh, ---

14 Q. More additional evidence to ---

15 A. Right, ---

16 Q. --- to show ---

17 A. --- and it, it ---

18 Q. --- potential self-defense.

19 A. --- it prejudiced my case this wasn't submitted. Now
20 there was that, there was brought out that there -- the bullet
21 holes in the room, the number of bullet holes in the room
22 showed a cross fire pattern, ---

23 Q. Um-hum.

24 A. --- okay, and that was submitted as an evidence of
25 self-defense because, you know, maybe one guy was shootin'

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 this (indicating) way and somebody else had to be shootin'
2 that (indicating) way but then again if, you know, you know,
3 there's all kindsa ifs involved ---

4 Q. Um-hum.

5 A. --- where that, you know, one person possibly could have
6 if he's chasin' somebody around the room that's runnin', you
7 know, and that there coulda been bullets everywhere, okay,
8 nevertheless, it it was submitted as as as evidence of of
9 self-defense and that was, that was okay but further evidence
10 of self-defense is backed up by the forensic evidence that it
11 was impossible, it wasn't only a mere chance that you could
12 gather that perhaps there was a cross fire, that perhaps
13 somebody else had another weapon, the forensic evidence proves
14 it's it's a mathematical impossibility that I could've shot
15 all those shots in that room and the State's witnesses, the
16 State's witness said that I I shot three times, pop, pop, pop
17 and I ran out. Okay, well that that's obvious that that
18 didn't happen. This evidence as well, this statement as well
19 could have been used to impeach the State's witness as to the
20 number of bullets bein' shot, this is, this is mathematics,
21 this is, this is physical evidence.

22 Q. And and you feel like that maybe not using that statement
23 may have prejudiced you.

24 A. Not not usin' that statement in regards to these issues
25 that it it wasn't used to impeach state witnesses that

GARY PIPER - DIRECT EXAMINATION BY MR. WOFFORD

1 prejudiced me because it could have been used to impeach the
2 State's witness. It prejudiced me that it didn't build on a
3 preponderance of evidence in light of self-defense, you know,
4 that there again that it wasn't only maybe a question as to
5 whether another gun was pointed at me or another gun was fired
6 but it was of a certainty, a a it has to be a fact that
7 another gun was fired and I'm not talkin' about the .25 that
8 was fired in the other room, that that would have added to a
9 sixth shot but I'm leavin' that one out, I'm just specifically
10 speakin' about the five that were shot in bedroom number 1,
11 that that one statement would have opened up a a question of
12 doubt that, you know, would've weighed heavily I feel on the
13 jury's mind and coulda persuaded them to to to have doubt and
14 and come to a a completely different verdict, that that
15 evidence as well could have been used to argue a a a lesser
16 included offense where the judge said that there was a a a
17 preponderance of evidence against, you know, he said that the
18 majority of the evidence was that I went to that house to rob
19 somebody, well had this statement been submitted ---

20 MS. WHITE: Your Honor, I think we've gone over this. I
21 hate to object but I think we're just repeating the same
22 evidence.

23 THE COURT: Mr. Wofford, let's -- let me direct you to
24 ask questions of your client rather than lettin' him repeat a
25 narrative ---

GARY PIPER - CROSS-EXAMINATION BY MS. WHITE

1 MR. WOFFORD: Right, well I have no further questions,
2 Your Honor.

3 THE COURT: Alright, Ms. White.

4 CROSS-EXAMINATION BY MS. WHITE:

5 Q. Mr. Piper, I'm just gonna ask ya a few questions. You
6 said that you met with Mr. Schultz and discussed your case and
7 your strategy and you did talk about the fact that your
8 strategy was gonna be arguing for self-defense?

9 A. Yes, ma'am.

10 Q. Okay. And he did try to get your statement out 'cuz you
11 gave a statement to police in which you acknowledged going
12 there with a gun, is that right?

13 A. Yes, ma'am.

14 Q. Okay. And and Mr. Schultz filed a a motion or had a
15 hearing, a *Jackson v. Denno* hearing, in which he tried to
16 prevent that statement from coming in, is that right?

17 A. Yes, ma'am, I feel like there was some, uh, a a an
18 iss -- an issue with that *Jackson Denno* hearin' where he he
19 didn't object to a statement or or try to help clarify the
20 Court as to a statement that that the judge made in regards to
21 me supposedly havin' a an epiphany on on cross-examination.

22 Q. Okay. And he he called, he cross-examined several of the
23 the officers that were there and had you testify at that
24 hearing, didn't he?

25 A. Yes, ma'am.

GARY PIPER - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay. Now ultimately the judge -- judge ruled against you
2 and allowed that statement to come in as evidence, right?

3 A. Yes, ma'am.

4 Q. Alright. You -- he actually cross-examined pretty much
5 almost every witness, is that true, every State witness?

6 A. Almost, although I can't say effectively.

7 Q. Right. And in regards to Ms. Gregg, you argued that
8 he didn't effectively cross-examine her about her drug use or
9 hearsay, that he actually did ask her about that, you just
10 don't think he did it effectively, right?

11 A. He didn't ask her about the hearsay, he just asked her if
12 she was testifying -- if the information that she had was hearsay.
13 She -- he didn't ask her about the hearsay what that he
14 didn't -- he did nothin' to clarify what was hearsay and what
15 was not after she had specifically told the State in regards
16 to her testimony from every aspect that she supposedly heard
17 from me, from my obtaining the gun all the way to the end of
18 the murder when she testified to all aspects of of what what,
19 um-hum, between either from the start to the end end of her
20 testimony or the start to the end of the incident she, you
21 know, when when she was prompted or asked by the State did she
22 hear it from me, she said specifically yes. There was nothin'
23 else that she could've went to the police with, there was no
24 other evidence that was presented that, you know, could have
25 not could okay coulda ---

GARY PIPER - CROSS-EXAMINATION BY MS. WHITE

1 Q. Mr. Pi ---

2 A. --- fallen, coulda fallen outside of what she said.

3 Q. Okay.

4 A. Okay, ---

5 Q. Let me ---

6 A. --- but that ---

7 Q. --- just answer ---

8 A. --- she ---

9 Q. --- my question ---

10 A. --- that she ---

11 Q. --- for me. Did he ask her about whether or not the fact
12 that she said she had gotten this information from you but yet
13 had told the police that she had gotten most the information
14 from other people, didn't he ask her that in fronta the
15 jury?

16 A. Yes, ma'am, but it ---

17 Q. Okay.

18 A. --- but but what I'm saying is when she, when she did say
19 that she heard evidence from other people, when she heard
20 things from other people, he didn't ask her what she
21 heard, ---

22 Q. Okay.

23 A. --- he didn't separate from from ---

24 Q. And I understand you're saying he didn't divide things
25 out but I'm saying he presented to the jury the fact that she

GARY PIPER -- CROSS-EXAMINATION BY MS. WHITE

1 was telling a different story. She was saying at one point
2 that she heard things from you but then she had told the
3 police that most the information she got was third, thirdhand
4 from other people, right?

5 A. I'm I'm sorry, I ju -- I just got confused. Will you ask
6 me that one more time, please.

7 Q. Wh -- your attorney during his cross-examination asked
8 her about the fact that although she was testifying that day
9 that she heard all these things directly from you, when she
10 gave her statement to police and when she told other people
11 she said she got it mostly from other people, from third
12 parties, from ---

13 A. No, ma'am, he didn't compare 'em, he didn't compare 'em.
14 He just, ---

15 Q. He didn't compare, okay.

16 A. --- he just asked ---

17 Q. Um, ---

18 A. --- her if if she heard some a the evidence from other
19 people and she said yes but he didn't ---

20 Q. Okay.

21 A. --- he did not compare what she said to the, to the State
22 on direct and what she said to him on cross.

23 Q. Okay. Now he also talked about the fact that she had
24 tried to maintain a relationship with you while you were in
25 prison, is that right?

GARY PIPER - CROSS-EXAMINATION BY MS. WHITE

1 A. He did what? I'm sorry.

2 Q. About the fact that she had tried to maintain a
3 relationship with you while you were in prison.

4 A. What what about that fact?

5 Q. He asked her about that ---

6 A. Right, yes.

7 Q. --- on cross-examination ---

8 A. Yes.

9 Q. --- and about the fact that she had communicated with you
10 and ya'll had had a relationship. In fact, he asked her if
11 she had said these things to try to get back at you for
12 cheating at her -- cheating ---

13 A. Right, ---

14 Q. --- on her, ---

15 A. --- she ---

16 Q. --- right?

17 A. --- right, she she had said that she stopped
18 communication early February which was a lie.

19 Q. Okay. He also asked her about whether or not she abused
20 pain pills so he he brought up these issues, didn't he?

21 A. When she, when she gave answers, he didn't supply any
22 evidence to rebut her answers. She didn't -- he -- she was
23 lying, there was evidence to prove she was lying and it wasn't
24 submitted.

25 Q. Okay.

GARY PIPER - CROSS-EXAMINATION BY MS. WHITE

1 A. There's there's ---

2 Q. But he asked her ---

3 A. --- statements ---

4 Q. --- questions and she answered on the stand, right, in
5 fronta the jury?

6 A. She lied on the stand in fronta the jury and he knew that
7 what she was sayin' could be proven wrong. He saw the
8 evidence, ---

9 Q. Okay.

10 A. --- he he knew there were phone calls. I told him about
11 the phone calls. Uh, ---

12 Q. He asked her about being paid for her testimony or being
13 paid for the the evidence that she gave you up, the \$2,000,
14 right?

15 A. Yes, ma'am.

16 Q. Okay. He talked about at closing, didn't he, about the
17 fact that he pointed out that somebody else had shot, that
18 there were other gunshots in the, in the room, didn't he try
19 to point that out?

20 A. All he, um, pointed out in that regard as far as evidence
21 goes all he pointed out that was, that was brought out on the
22 record was that Charles had shot a .25 in a, in a, in another
23 parta the house which could be heard but it -- he didn't
24 produce, he didn't speak on any evidence other than bullets
25 were in walls on one side of the room and then there were

GARY PIPER - CROSS-EXAMINATION BY MS. WHITE

1 bullets on the other side of the room, the -- that was the
2 only evidence that he provided to suggest, not to prove, that
3 there was another shooter but that is yeah, that that's what
4 he he provided ---

5 Q. Okay.

6 A. --- but there, but there was much stronger fact factual
7 evidence of that ---

8 Q. Okay.

9 A. --- but that he did not present.

10 Q. You testified that you were forced essentially not to
11 testify by your attorney; the Court went over with you your
12 rights to testify, didn't they?

13 A. Yes, ma'am.

14 Q. Okay. And they went over with you those rights and came
15 back and after you had consulted with your attorneys you did
16 y -- stand before the Court and say that you had chosen not to
17 testify, isn't that right?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. I I had been, uh, there again not necessarily threatened
21 but, uh, told that if, you know, he he re -- he did not want
22 to question me on the stand, that, you know, he didn't even
23 wanna be involved in that, if if that's what, you know, if I
24 wanted to put my foot down and say that's what I I had to do,
25 he he didn't wanna have any part parta that and he made that

GARY PIPER - REDIRECT EXAMINATION BY MR. WOFFORD

1 clear to me.

2 Q. And you testified that was partially because of your
3 prior record that you would be asked about on the stand.

4 A. Um, yes.

5 Q. Okay. Now your attorney requested these jury charges of
6 self-defense and voluntary manslaughter, didn't he? Didn't he
7 ask the judge to charge the jury with the lesser included
8 offense of voluntary manslaughter and of self-defense?

9 A. Yes, ma'am, and they -- it was denied because there was
10 not enough sufficient evidence in that light as the Court
11 mentioned but and there again there was evidence that could've
12 been provided that that would, could have in my opinion swayed
13 the jury in another direction as far as their their their
14 decision as far as a guilty or not guilty ---

15 Q. Okay.

16 A. --- on the charge a murder.

17 Q. Alright.

18 MS. WHITE: Your Honor, that's all the questions I think
19 I have for this witness.

20 THE COURT: Anything else?

21 MR. WOFFORD: I have one, one or two questions.

22 REDIRECT EXAMINATION BY MR. WOFFORD:

23 Q. Did Mr. Schultz ever think to use the tapes to impeach
24 Jennifer Gregg? Those tapes of you speaking on the phone, did
25 he ever discuss maybe wanting to use those to impeach her?

GARY PIPER - REDIRECT EXAMINATION BY MR. WOFFORD

1 A. I just, I I brought it up and I I told him about times
2 that, you know, she she had been, she had done a drug deal
3 over the phone. She ---

4 Q. But he never, he never thought to to use those and, you
5 know, he never thought that they would be important?

6 A. No, we di -- we ne ---

7 Q. You didn't try that?

8 A. --- we never looked, we never listened to 'em, we never
9 saw any transcripts, we never did anything with 'em. To this
10 day I still haven't even heard 'em, I haven't been provided
11 with any equipment to hear 'em.

12 Q. Did did you, did you feel like he ever tried to make a
13 correlation between the Crime Stoppers and the Spartanburg
14 County Sheriff's Office that they may have been one and the
15 same in the ---

16 A. No.

17 Q. --- in payment?

18 A. When when when Jennifer testified that she was paid
19 through Crime Stoppers, when there was an objection made that
20 the record provided that she was paid through Crime Stoppers,
21 he never once made any, gave any indication that she was not
22 paid through Crime Stoppers, that she was paid by the the
23 sheriff's office or the the city, the state well, you know,
24 who ever cut the check, but it wasn't for Crime Stoppers, it
25 was, you know, the sheriffs, the detectives, they -- they're

GARY PIPER - REDIRECT EXAMINATION BY MR. WOFFORD

1 the ones that -- he, no, he never alluded to that.

2 Q. And and did you feel the importance of of your testimony
3 had you been given the opportunity to testify would the the
4 value of it would have outweighed any any negative effects
5 that your criminal history might have added to your, uh, ---

6 A. Yes, sir. In my criminal history, there is a a leavin'
7 the scene of an accident involvin' personal injury or death
8 and it was a similar situation where it was a drug deal gone
9 bad, quote/unquote, where somebody tried to rob me, I tried to
10 get away, in that attempt I ran 'em over and as a result they
11 were killed and that he felt was was would be terribly
12 devastatin' to, you know, my defense, you know, to my
13 credibility; however, in that instance I was tryin' to get
14 away, okay. I don't believe that the prejudice that that
15 would have applied to me the -- as far as my credibility would
16 have outweighed my testimony as far as what happened in that
17 house that night, my side of the story. My -- me providing
18 evidence of self-defense, my my telling what exactly what
19 happened, not Artis Jackson sayin' one minute he was on the
20 couch, the next minute he was outside, he didn't see anything,
21 not not that, not Charles Jackson that was in the back bedroom
22 who said noise must had been where somethin' woke him up, he
23 don't know what he touched in that room, he don't know if he
24 moved anything, he he had a question as to whether or not he
25 was even walkin' with a gun at first, he he said he was in a

E. JOSHUA SCHULTZ - DIRECT EXAMINATION BY MR. WOFFORD

1 haze, no that's not what I'm talkin' about, I'm talkin' about
2 clear and direct testimony as as to the facts, the direct
3 facts of what happened, that the thoughts that were in my
4 head, my intentions that night and the the intentions of the
5 people in that house when they when came at me when when this
6 thing went down, ---

7 A. Um.

8 A. --- yes, that was -- that woulda been very important, I
9 believe it woulda swayed the jury dramatically in in in, you
10 know, in a different direction from, um, a a a a verdict of
11 guilty.

12 Q. Right.

13 MR. WOFFORD: I have no further questions, Your Honor.

14 MS. WHITE: Nothing further, Your Honor.

15 THE COURT: You may step down.

16 (Whereupon, the applicant left the stand.)

17 MR. WOFFORD: Plaintiff would like to call attorney Josh
18 Schultz to the stand.

19 THE COURT: Okay.

20 E. JOSHUA SCHULTZ, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. WOFFORD:

23 Q. Could you please state your name for the record, sir.

24 A. E. Joshua Schultz.

25 Q. And how long have you been practicing law when you had

E. JOSHUA SCHULTZ - DIRECT EXAMINATION BY MR. WOFFORD

1 taken Mr. Piper's case?

2 A. I was licensed to practice law in November of 2005 so
3 approximately two years.

4 Q. Okay. And there was some earlier testimony about a
5 individual named Theo English, do you remember or recall who
6 that was?

7 A. I I don't, Your Honor or I I'm sorry, I I do not.

8 MR. WOFFORD: Beg the Court's indulgence, Your Honor.

9 BY MR. WOFFORD:

10 Q. I wanna pass up it's a pre-interrogat --
11 interrogation [sic] waiver form here and see if that might
12 flush -- refresh your memory.

13 (Whereupon, counsel handed the document to the witness.)

14 That look like your handwriting on the back there?

15 A. That that is.

16 Q. Okay, so this is your handwriting.

17 MR. WOFFORD: I'd like to offer this as Plaintiff's
18 Exhibit 3, Your Honor.

19 MS. WHITE: No objection.

20 (Pre-interrogation waiver form marked Plaintiff's Exhibit
21 No. 3 and admitted into evidence.)

22 BY MR. WOFFORD:

23 Q. And it looks like some notes of Mr. English's statement,
24 is that fair to say, notes that you made?

25 A. Could I read this?

E. JOSHUA SCHULTZ - DIRECT EXAMINATION BY MR. WOFFORD

1 Q. Yeah, sure, go ahead, sorry.

2 (Whereupon, the witness read the document.)

3 A. I I'm sorry, what was your question again?

4 Q. Does it, does it appear to look like notes that you had
5 made about Mr. English's statement?

6 A. Yes.

7 Q. Okay. Do you -- can you read us that last note that you
8 got underlined?

9 A. Sure, He's a pretty aggressive guy.

10 Q. Now do you recall why you may have not asked this
11 gentleman to testify about maybe Mr. Chavez's personality
12 traits of bein' aggressive so ---

13 A. I do not recall specifically and and this I believe was
14 given, I have a note there that says December 22nd 2006.

15 Q. Do ya feel like maybe having Mr. English testify to the
16 fact that he knew Mr. Chavez was aggressive, you think that
17 woulda may have helped Mr. Piper's case for a self-defense
18 charge possibly?

19 A. Yes.

20 Q. Okay. Do do you feel like you may have shoulda called
21 that gentleman to testify then?

22 A. Yes.

23 Q. Now there was another individual that didn't testify, her
24 name was Amanda Colquitt, I'll go ahead and take that from ya;
25 do you recall any statements or police statements regarding

E. JOSHUA SCHULTZ - DIRECT EXAMINATION BY MR. WOFFORD

1 her involvement or any statements that she had about the the
2 incident that happened?

3 A. No.

4 Q. Did you ever discuss with Mr. Piper the tapes of him and
5 Ms. Gregg speaking at the detention center?

6 A. Yes.

7 Q. Do you recall what those conversations were about? I
8 mean, what did ya'll talk about?

9 A. We talked about admitting them into evidence. I decided
10 that to not admit those into evidence, to either impeach her
11 testimony or to present them in my case in chief.

12 Q. And why was that?

13 A. The main reason why that was I I believe that well;
14 number one, if I woulda presented them in my case in chief, I
15 would have lost the right to argue last so that was the reason
16 that I did not present them in my case in chief; however, I
17 coulda presented them to impeach her credibility or
18 believability when she was on the stand, I did not. I believe
19 Gary said some things in those phone recordings that would
20 probly be more prejudicial than advantageous to him during the
21 course of my defense of him so that's why I chose using my
22 discretion to not present those into evidence.

23 Q. And you recall the the payment of Jennifer Gregg?

24 A. Absolutely.

25 Q. Was there ever any investigation or maybe delvin' into

E. JOSHUA SCHULTZ - CROSS-EXAMINATION BY MS. WHITE

1 really who paid her? Was it the Crime Stoppers or was it the
2 Spartanburg County Sheriff's Department?

3 A. As I remember I believe it was -- well she reported it to
4 Crime Stoppers but I believe the funds were disbursed from the
5 sheriff's office.

6 Q. Did you, did you think that that was important maybe to
7 bring out the fact that she'd been paid by a arm of the
8 State?

9 A. Yes and I I believe I did cross-examine her on that.

10 Q. If you'll give me one second here. Did did you, did you
11 ask her where -- who she was paid by 'cuz I know in direct
12 they asked her and and she said Crime Stoppers so if she said
13 it in her direct it may have been advantageous to
14 cross-examine her and ask her that do you feel it woulda been
15 more prudent to ask her who paid her maybe through her idea of
16 of of where she got the money from?

17 A. Yes.

18 Q. Did you, did you do that?

19 A. I can't remember specifically.

20 Q. Well I don't think you did.

21 MR. WOFFORD: I don't have any additional questions, Your
22 Honor.

23 CROSS-EXAMINATION BY MS. WHITE:

24 Q. Mr. Schultz, in regards to the statement from Mr. English
25 that regards -- talks about Mr. Chavez bein' a pretty

E. JOSHUA SCHULTZ - CROSS-EXAMINATION BY MS. WHITE

1 aggressive guy, you said you don't necessarily recall that; do
2 you recall if you didn't call him because he had a record?

3 A. It it could have been very well that he had a bad record
4 and also because if he would've testified, again, his
5 testimony coulda been very prejudicial to Mr. Piper's
6 defense.

7 Q. Okay. In regards to cross-examina -- cross-examination,
8 I guess you attempted to attack the credibility of Jennifer,
9 didn't you?

10 A. Yes, I did.

11 Q. Okay, and you talked to her about her drug use and her
12 motivation behind tryin' to turn Mr. Piper in?

13 A. Absolutely.

14 Q. Okay. And you also attempted to attack the credibility
15 of of the witnesses the Mr. Artis and and Charles Jackson,
16 didn't you?

17 A. Yes.

18 Q. And Mr. Artis Jackson was the one who opened the door to
19 let Mr. Piper in that night?

20 A. As I remember, yes.

21 Q. And he was an older gentleman, right?

22 A. He was.

23 Q. And had some issues with his memory and; in fact, gave,
24 you know, one time said he was in the house, one time said he
25 was out; you brought all that out before the jury, didn't

E. JOSHUA SCHULTZ - CROSS-EXAMINATION BY MS. WHITE

1 you?

2 A. As I remember, yes.

3 Q. Okay. Did you feel like you sufficiently gave the
4 applicant the chance to decide whether or not or discuss with
5 him whether or not he was gonna testify at his trial?

6 A. Yes, I did.

7 Q. And do you feel like he made that decision based on
8 information you and Mr. Whelchel were able to provide to
9 him?

10 A. Yes.

11 Q. And do you feel like that was a voluntary decision on his
12 part not ---

13 A. Ye ---

14 Q. to testify?

15 A. --- ye -- yes, but but I I advised him not to but he knew
16 that it was his choice ---

17 Q. Okay.

18 A. --- because of his past record.

19 Q. Alright, and was that that the felony, the hit and run,
20 leaving the scene of an accident involving great bodily injury
21 or death was that the only thing on the record or was that the
22 only thing you were concerned about?

23 A. I was concerned about a lotta things with him. I don't
24 think he would make a very believable witness. I I don't
25 think he would relate well in his testimony to to a jury ---

E. JOSHUA SCHULTZ - REDIRECT EXAMINATION BY MR. WOFFORD

1 Q. Okay.

2 A. --- so that obviously I advised him not to do that but as
3 the record states, that was his decision.

4 Q. Okay. And you -- did you have a chance to review with
5 him most of, if all, the discovery?

6 A. Yes.

7 Q. Okay. And did you feel like you had a chance to talk
8 with him enough about the strategy for the case?

9 A. Yes.

10 Q. Did you feel like you had shared with him, he mentioned
11 on the stand yesterday about the fact that you wanted to have
12 last argument so obviously he he was aware of that, did you
13 feel like you had had a chance to fully explain to him why
14 that was important?

15 A. Yes.

16 Q. Okay.

17 MS. WHITE: Your Honor, I think that's all I have for
18 this witness.

19 REDIRECT EXAMINATION BY MR. WOFFORD:

20 Q. Just have a few additional questions. Now you don't
21 recall though why you didn't call Mr. English?

22 A. No, not ---

23 Q. So it it it may a not have been prejudicial, I mean, he
24 may not had a bad record.

25 A. That's correct.

E. JOSHUA SCHULTZ - REDIRECT EXAMINATION BY MR. WOFFORD

1 Q. Okay. And do you recall making a statement to Mr. Piper
2 about when you had examined Mr. Jackson, Artis Jackson, that
3 you, that did you feel like you held back at all because of
4 his age?

5 A. Yes, I do. Part of the difficulty in cross-examining
6 witnesses is is that you -- a attorney does not want to seem
7 vindictive or angry, especially to an elderly gentleman who
8 may be a little more sympathetic to the jury than maybe some
9 other people so I cross-examined him. I think I got out the
10 best points available to us during my cross-examination so I
11 was very cautious in cross-examining him because I think he
12 did make sort of a sympathetic witness to the jury and I did
13 not want the jury to be swayed or did not want the jury to
14 hold it against Mr. Piper that I was aggressively, maybe
15 perhaps too aggressively cross-examining this elderly
16 gentleman.

17 Q. So you probably did hold back then in what you would say.

18 A. Yes.

19 Q. Okay. And when talked about Mr. Piper's criminal
20 history, did he have any violent crimes that were in his, in
21 his criminal history? Was this like the first violent crime
22 that he had been charged with?

23 A. I don't remember specifically looking at his NCIC but
24 classified as violent crime I do not believe so.

25 Q. And after the case I guess had had been finished or

E. JOSHUA SCHULTZ - REDIRECT EXAMINATION BY MR. WOFFORD

1 anything, did Mr. Piper ever write and want a copy of his
2 file?

3 A. I don't remember.

4 MR. WOFFORD: I have no further questions, Your Honor.

5 MS. WHITE: Nothing further from the State.

6 THE COURT: Step down.

7 (Whereupon, the witness left the stand.)

8 THE COURT: Anything else?

9 MR. WOFFORD: No, Your Honor.

10 MS. WHITE: The State has no witnesses, Your Honor.

11 THE COURT: Alright, I'll review the record in the case
12 and issue an order.

13 MR. WOFFORD: Thank you, Your Honor.

14 MS. WHITE: Thank Your Honor.

15

16

17

18

19

20

21

22

23

24

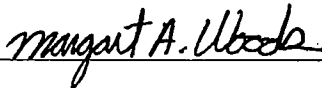
25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 2 and 3, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 80, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

August 21, 2012



Margaret A. Woods, Court Reporter

in and for the State of South Carolina at Large.

Memo

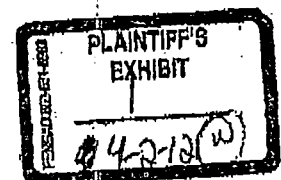
To: Chief Billy Parris
From: Inv. Reid Lindsey
Date: Monday, February 19, 2007

Request for funds in reference to homicide at 220 Tharon Drive, Spartanburg, SC 29303. For payment to confidential informant for information leading to the arrest of Gary Piper for the charge of murder. The information provided by the informant was directly responsible for the arrest of the suspect. Case # 2006121204, requesting the amount of \$2,000.00. Inv. Reid Lindsey

Thank you,
Inv. Reid Lindsey

*OK
Lindsey P3*

*CAV-
This just
supplied all
the information on
this case to allow
us to make all
the funds
FEB 13*



INVESTIGATION REPORT

Page 1 OF 1

SC0420000

TYPE: ☐ PRELIMINARY ☐
CONTINUINGCASE NUMBER
2006121204

INCIDENT TYPE

Murder

VICTIM

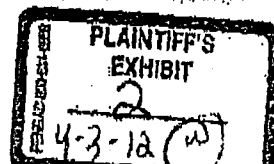
Alberto Chavez

LOCATION 220 Tharon Dr.

On 02/19/07 I spoke with Gregg Lee at the sheriff's office. We picked him up at 411 Gentry St. where he stays with Amanda. He told us that he was with Gary Piper when he went to Charles's house on Tharon Dr. He did not know the date but knew it was around Christmas. He told us that they drove in the white SUV that Gary had stolen from some woman. He stated that he was riding and Gary was driving. Gregg told me Gary went into the house and was in there a few minutes. He stated that he heard Gary say "come on man" Gregg was sitting in the car and said Gary was very loud. He stated that he heard a lone shot and then a pause. He heard 3 more quick shots and then some rattling. He stated that Gary came walking out of the house with a revolver with a wooden handle in his hand. Gregg stated that Gary got in the car and started driving crazy. They got back to Amanda's house and they went inside. Gregg stated that Gary told him that "the Mexican came out, I had to kill him." Gary stated that he repeated that he had to kill him 3 or 4 times. Gregg said that he asked where he got the gun from and he told him from Jennifer's car. Gregg said that Gary opened the cylinder on the gun and pulled out the shells. Gregg said that there were a couple that wasn't fired and the rest had been shot. Gary put them back in the gun. Gregg knows Gary by name and face. Gregg gave a written statement.

REFER TO R0A 24/5 (Should have made request to use state witness ~~to~~ to police & could have used him as a witness)

INVESTIGATOR W. Lindsey	REPORT DATE: 02/19/07
UNIFORM OFFICER WORKING CASE	INCIDENT DATE:
APPROVING OFFICER	DATE RECORDED:



000043

2007 APR 18 A 11:29

SPARTANBURG COUNTY SHERIFFS DEPARTMENT
Spartanburg, South Carolina

CASE NUMBER

200612

PRE-INTERROGATION WAIVER FORMName Theo English Address 360 OAKTREE Road Spartanburg,Age 37 Date 12-22-06 Time 0650 amLocation SCSD

1. I have the right to remain silent.
2. Anything I say can and will be used against me in a court of law.
3. I have the right to talk to a lawyer and to have him present with me while I am being questioned.
4. If I cannot afford to hire a lawyer, one will be appointed to represent me before any questioning, if I so wish.
5. I have the right to stop answering questions at any point in the questioning.

The above rights have been read to me by Tray Demetrius Glenn.

I have read same and I understand my rights fully.

Witness Demetrius Glenn Signed X Theo EnglishI waive (give up) my rights as explained above and agree to talk to officer GLENNin reference to Shooting (BASED ON CHARGE), and any statement that I may make is of my own free will, without fear, threat or promise or favor or reward of any kind.I am able to read and write the English Language and finished 11 years in school.Witnessed Demetrius Glenn Signed X Theo English

Notarized _____

Expiration Date _____



THGO ENGLISH

1:20

12/22/06

I WENT TO CHAVEZ'S HOUSE AT ONE OR ONE THIRTY IN THE MORNING AND LEFT AT 5:30 p.m. WHILE I WAS THERE ME AND CHAVEZ WATCHED 3 EPISODES OF FRIDAY WHILE CHARLES AND ARTIS WAS IN THEIR ROOMS. CHAVEZ'S BROTHER CALLED WHILE I WAS THERE AND I LEFT BECAUSE MY MOTHER CALLED ME AND I TOLD HER TO BRING ME SOMETHING FROM QUIZNO'S AFTER SHE ASKED ME IF I WANTED SOMETHING IT DIDN'T SEEM TO BE NOTHING WAS WRONG WHEN I LEFT AND CHAVEZ DIDN'T TALK ABOUT HAVING PROBLEMS WITH ANYONE. I DON'T KNOW WHO WOULD COME ~~TO~~ OUT THERE AND DO SOMETHING TO HIM LIKE THAT. I WOULDN'T DO NOTHING TO HIM. HE WAS MY BOY. HE IS A PRETTY AGGRESSIVE GUY.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
Gary Michael Piper, #201377,) 2010-CP-42-4481
Applicant,)
v.) ORDER OF DISMISSAL
State of South Carolina,)
Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 24, 2010. The Respondent made its Return on or about April 20, 2011. An evidentiary hearing into the matter was convened on April 2 and April 3, 2012, at the Spartanburg County Courthouse. The Applicant was present and represented by Stephen C. Wofford, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. E. Joshua Schultz, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the trial transcript, Applicant's appellate records, and exhibits placed into evidence by Applicant.

Applicant raised a pro se Motion for Continuance, which was denied by this Court, and then raised a Motion to Reconsider the denial of the Motion for Continuance, which was also denied by this Court. This Court took brief testimony from the Applicant and then allowed additional time for Applicant and PCR Counsel to meet and discuss the application before proceeding with a hearing the following day.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUL 15 AM 11:43
ME HOPE BACKLEY

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the February and June 2007 terms of General Sessions for failure to stop motor vehicle when signaled by officer (07-GS-42-0544), pointing and presenting firearms at persons (07-GS-42-2716), murder (07-GS-42-2718), and two counts of attempted armed robbery (07-GS-42-2717, -2719). E. Joshua Schultz, Esquire, and Richard H. Whelchel, Esquire, represented the Applicant. On November 29, 2007, the Applicant pled guilty to failure to stop and was convicted of the remaining charges by a jury. The Honorable Thomas W. Cooper, Jr., sentenced the Applicant to confinement for forty-five years for murder, twenty years for each count of attempted armed robbery, and five years each for pointing and presenting and failure to stop, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in State v. Piper, Op. No. 2010-UP-013 (filed January 21, 2010). The Remittitur was returned on February 8, 2010.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel did not argue that Applicant had been offered promises and threatened by detectives before giving a statement,
2. Subject matter jurisdiction, in that;
 - a. Murder indictment did not state the date, time, or place of said murder,
3. Prosecutorial Misconduct; and

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 JUN 15 AM 11:43
 M. HOE BLACKLEY

4. Abuse of Discretion, in that;
 - a. Court admitted a coerced statement.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 15 PM 11:43
M. HOPE BLACKLEY

Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant testified that he was arrested in February 2007 and then met with Counsel during the summer for between two and four meetings. Applicant testified that Counsel discussed the case with him, talked about the Applicant's side of the story, trial strategy, and whether or not the Applicant would testify, but he did not feel that they went into much depth regarding the case. Applicant testified that he and Counsel discussed the possibility of a self-defense strategy and the possibility of seeking a lesser-included offense from murder. However, Applicant later testified that he never got a copy of discovery materials or file to assist with his own defense. Applicant also testified that he was never able to review phone records to help Counsel impeach witnesses. Counsel testified that he reviewed all discovery materials with the Applicant and discussed their trial strategy fully. Counsel also testified that he did not recall Applicant ever requesting a copy of his file.

Applicant testified that he shared things with Counsel that he thought should be presented at trial, including phone calls and conversations between Applicant and two state witnesses which he believed indicated self-defense. Applicant also testified that he had letters from several friends that he believed would help his case. However, Applicant testified that Counsel discussed the strategy of not presenting any evidence in order to retain last argument at trial. Counsel testified that he and Applicant discussed the tapes, but Counsel strategically chose to not

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 15 AM 11:43
M. HOBE BLANCHET

present the tapes because not only would it have given up the opportunity to have last argument, but the conversations were more prejudicial to the defense than helpful. Counsel was asked why he did not call Theo English as a witness, when English had made a statement that indicated the victim was an aggressive person. Applicant introduced English's statement as Applicant's Exhibit #3. Counsel testified that he did not recall why he chose to not call English as a defense witness, but acknowledged it could have been based upon Mr. English's past record, but he could not remember.

Applicant testified that he believed Counsel should have objected more to the testimony of Jennifer Gregg, a witness for the State, as hearsay and impeached her credibility with the issue of how she was paid by the police and not Crimestoppers for the information regarding Applicant, past drug use, and her continued relationship with Applicant. Applicant introduced as Applicant's Exhibit #1 a copy of a memorandum from the Sheriff's office regarding their payment of a confidential informant for information leading to Applicant's arrest, three days following Applicant's arrest. Additionally, Applicant testified that Counsel should have used jailhouse conversation tapes to impeach Ms. Gregg. Counsel testified that he did believe that he effectively attacked Ms. Gregg's credibility and brought up the fact that although she claimed she was paid for the tip by Crimestoppers, the reward was actually paid by the Spartanburg Sheriff's office.

Applicant testified that he wanted to testify in support of his self-defense claims, but was told not to by Counsel, who indicated that Applicant would not be a good witness because of his prior record and potential for a damaging cross-examination. Applicant acknowledged that he had previously been incarcerated for leaving the scene of an accident involving great bodily injury or death, when he claims he killed someone after a drug deal gone bad. However,

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 15
APR 11 AM
M. HOPE BLAKES

Applicant testified that he believed his testimony could have outweighed the prejudice from his past record. Counsel testified that he did discuss with Applicant his right to testify, but advised the Applicant that he put himself at risk of being impeached by his prior record and having his credibility attacked. However, Counsel testified that the Applicant always knew that it was solely his choice whether or not to testify.

Applicant also testified that he asked Counsel to obtain a mental evaluation of Applicant because he did not get along with people well and had previously been diagnosed with severe manic depression and taken medication for this since he was a teenager. Applicant also testified that he felt that Counsel should have filed a motion regarding the competency of Artis Jackson, a State witness, who was elderly and in a wheelchair. Counsel testified that he did not believe that a competency evaluation was needed of Applicant or Mr. Jackson, but acknowledged that it is possible he did not attack Mr. Jackson as much because he was elderly and in the wheelchair and did not want to alienate the jury.

The Applicant further testified that he never received information from Counsel regarding ballistic reports that Applicant felt would help prove his self-defense argument. Applicant testified that evidence showed there were five shots in one of the bedrooms and Applicant claimed that he did not shoot that many times. As Applicant's Exhibit 2, Applicant introduced the statement of Gregg Lee, which stated that when Applicant returned the car that evening, Applicant had bullets left in the chamber of his gun. Again, Counsel testified that he reviewed all discovery materials with the Applicant, including the ballistics reports and accident reports.

The Applicant also alleged that Counsel was ineffective for not objecting to the trial court's jury charge regarding the inference of malice with the use of a deadly weapon because of

FILED
CLERK OF COURT
JAN 13 AM 11:43
H. HOPE BLACKLEY

State v. Belcher. Applicant, although he acknowledged that Counsel requested charges for self-defense and voluntary manslaughter, argued that Counsel did not effectively present arguments in favor of the charges. Counsel testified that he attempted to argue for a self-defense and voluntary manslaughter jury charge after preparing and researching the issue and trying to find supporting testimony throughout the trial for each charge.

This Court finds Counsel's testimony to be more credible than the Applicant's. This Court finds that Counsel met with Applicant and thoroughly reviewed the discovery materials and potential trial strategy. The evidence and testimony offered by the Applicant that he alleges Counsel should have presented to the court was often cumulative and more prejudicial to his own defense than helpful. Additionally, the Applicant failed to offer any additional witnesses that Counsel could have called to testify in support of his case. The record reflects that Counsel aggressively cross-examined many of the State's witnesses, including Ms. Gregg. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Moreover, this Court finds that the information presented by the Applicant was not sufficient to have altered the outcome of Applicant's trial had it been presented, including the information regarding jailhouse conversations, ballistics, other communications with State's witnesses, and the information regarding the Crimestoppers' tip.

FILED
CLERK OF COURT
SARASOTA COUNTY
2022 JUN 15 PM 11:43
MORRIS BLAKEY

In regards to the jury charges, the record reflects that Counsel did research, ask for and argue for a self-defense and voluntary manslaughter charge, but the trial judge denied his request. This Court finds that there was no deficient performance by Counsel in regards to his jury charge requests or arguments. The facts must support a jury instruction for it to be proper. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (S.C. 2003). The Belcher case in particular found the inference of malice charge to be prejudicial, when there was evidence that provided mitigation. State v. Belcher, 385 S.C. 597, S.E.2d 802 (2009). In this case, the court did not find any evidence that would offer mitigation or support for self-defense; therefore, the jury charge was proper based upon the facts presented at trial.

As to Applicant's allegation that Counsel should have requested a competency hearing, an Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong." The Court finds that the Applicant failed to produce any evidence or testimony in support of this claim, other than his unsupported statement that he was diagnosed as severe manic depressive. In addition, there is no support for Counsel to request a competency exam of the witness and this Court finds that Counsel was not deficient in his handling of said witness.

Applicant also raised the allegation in his application that Counsel should have presented more evidence regarding the involuntariness of his statement. This Court finds that Counsel sufficiently argued for suppression of the statement and Applicant failed to produce any

FILED
CLERK OF COURT
JAN 15 AM 11:43
J. HOPE BLACKLEY

testimony or evidence to indicate that Counsel could have done anything else to affect the outcome of that hearing.

This Court finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his trial. This Court finds that the Applicant has failed to meet his burden of proof as to all claims of ineffective assistance of counsel; therefore, this claim is denied and dismissed.

Abuse of Discretion

The Applicant alleged that the trial court abused its discretion when it allowed into evidence Applicant's coerced statement. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). In fact, the Court notes that admission of the Applicant's statement and its voluntariness were the sole issues in Anders brief submitted on the Applicant's behalf on direct appeal. The South Carolina Court of Appeals reviewed the issue and record as a whole, and dismissed the appeal pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991). Therefore, this Court finds that this claim should be denied and dismissed.

Prosecutorial Misconduct

The Applicant alleged prosecutorial misconduct in his application; however, he failed to offer any testimony or evidence to support his claim. Therefore, this Court finds that he has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Lack of Subject Matter Jurisdiction

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to his indictment lacking the time, date, and place of the murder. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). Furthermore, this Applicant presented no testimony or evidence to support his claims in this regard. Therefore, this claim is denied and dismissed.

Summary

This Court finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

FILED
 CLERK OF COURT
 SPANISHBORO COUNTY
 2012 JUN 13 AM 11:13
 M. ROPEBLACKLEY

CONCLUSION

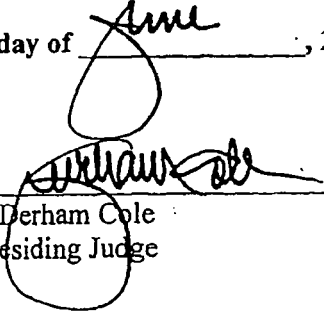
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.

AND IT IS SO ORDERED this 15 day of June, 2012.


J. Derham Cole
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 15 AM 11:43
M. HOPE BLACKLEY

ITENCE MADE

WITNESSES

PORT ENDED

Computer

RED FILLED

tanburg County Sheriff's Office

DEXED

REVIEWED

CHECKED SIGNATURE

ASSESSMENT AND

ONE CARD MADE

TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

19875

ACTION OF GRAND JURY

True Bill

person of Grand Jury

date: 6/7/07

VERDICT

person of Petit Jury

date:

DOCKET NO.

07-GS-42-2718

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 11 2007 TERM

THE STATE

VS.

Gary Michael Piper

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 JUN 14 PM 5:29
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 07 2007

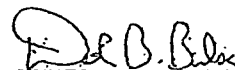
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Gary Michael Piper, did in Spartanburg County on or about December 21, 2006, feloniously, willfully, and with malice aforethought, kill one Alberto Domingo Chavez, by shooting the victim with a pistol and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

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



Assistant Solicitor

SENTENCE MAILED **WITNESSES**
 REPORT ENDED **Computer**
 3. CARD PULLED
 Spartanburg County Sheriff Dept.
 4. INDEXED ☒
 5. CHECKED SIGNATURE ☒
 6. ASSESSMENT AND
 CASE CARD READY **Computer**
 8. TRAFFIC VIOLATIONS COPY ☒

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

[Signature]
 Foreperson of Grand Jury
 Date: 6/17/07

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO.

07-GS-42-2117

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 11 2007

TERM

THE STATE
 vs.

Gary Michael Piper

Indictment for
 ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
 CDR Code: 26
 Class FEL/C

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2007 JUN 14 PM 5:29
 MARC KITCHENS

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 07 2007 the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Gary Michael Piper did in Spartanburg County on or about December 21, 2006 attempt to rob Artis Jackson while armed with a pistol, in that he attempted to take money from the victim, in violation of §16-11-330 (B), CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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

DeBBie
ASSISTANT SOLICITOR

Computer

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
STATE Gary Michael PiperINDICTMENT/CASE#: 07-GS-42-2717AW#: Direct IndictmentAKA: Gary Michael PiperDate of Offense: 12/21/06Race: W Sex: M Age: 31S.C. Code §: 16-11-32(B)DOB: [REDACTED]CDR Code #: 0026City, State, Zip: [REDACTED]

SENTENCE SHEET

DL# [REDACTED] SID# [REDACTED]In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Attempted Armed Robberyin violation of § 16-11-32(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor D. B. BalaDefendant Man RinaAttorney for Defendant E. J. [Signature]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$, plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 11/29/07☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCBPPPS

Recipient:

*Fine: \$ \$14-1-206 (Assessments 107.5%) \$ \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \$56-5-2995 (DUI Assessment) \$12 \$ \$35.13 (Public Def/Prob) \$500 \$ \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \$50-21-114(BUI Breath Test Fee) \$50 \$ \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 188.75

PTUP

days/hours Public Service/Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ beginning\$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

K. G. McKinney, JCC

Clerk of Court/Deputy Clerk

Court Reporter: Maggie Woods/Pam Green

PRESIDING JUDGE

Judge Code: Sentence Date: 11/29/07

SENTENCE MADE ☒ **Computer**
1. REPORT ENDED ☒
2. CARD FILLED ☒
Spartanburg County Sheriff Dept.
3. CHECKED WARRANTS ☒
4. CHECKED SIGNATURE ☒
5. ASSESSMENT AND FINE CARD MADE ☒
6. TRAFFIC VIOLATIONS COPY ☒

ARREST WARRANT NUMBER

K199876

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 6/17/07

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

07-GS-42-2719

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 11 2007

TERM

THE STATE
vs.

Gary Michael Piper

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 JUN 14 PM 5:29
MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

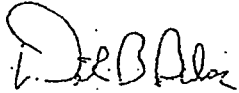
At a Court of General Sessions, convened on JUN 8 7 2007 the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Gary Michael Piper did in Spartanburg County on or about December 21, 2006 attempt to rob Alberto Domingo Chavez while armed with a pistol in that he attempted to take money and/or jewelry from the victim, in violation of §16-11-330 (B), *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

Computer

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
 STATE: Gary Michael Piper
 AKA: _____
 Race: W Sex: M Age: 31
 DOB: _____
 Address: 1116 Gary St
 City, State, Zip: _____
 DL# _____ SID# _____

INDICTMENT/CASE#: 07-GS-42-2719
 A/W#: K199876
 Date of Offense: 12/21/06
 S.C. Code §: 16-11-330(B)
 CDR Code #: 0026

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Attempted Armed Robbery

in violation of § 16-11-330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor

[Signature]
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 11/29/07
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS

Recipient: _____
 *Fine: \$ _____
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §35.13 (Public Def/Prob) \$500 \$ _____
 §73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00
 §33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 §50-21-114(BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ \$3.75
 TOTAL \$ \$128.75

PTUP

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

[Signature]
 Clerk of Court/ Deputy Clerk
 Court Reporter: Maggie Woods / Pam Green

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 11/29/07

WITNESSES

1. SENTENCE MADE

2. REPORT MADE

3. CARD INDEXED

4. INDEXED
Spartanburg County Sheriff's Department

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

8. TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 6/17/07

VERDICT

Foreperson of Petit Jury

Date:

07-GS-42-2716
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 11 2007

TERM

THE STATE

vs.

Gary Michael Piper

Indictment for

WEAPONS/POINTING AND/OR PRESENTING
FIREARMS AT PERSONS

SC Code: 16-23-410

CDR Code: 122

Class FEL-F

MARC KITCHENS

2007 JUN 14 PM 5:29

FILED
CLERK OF COURT
SPARTANBURG COUNTY

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

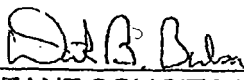
JUN 07 2007

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

WEAPONS/POINTING AND/OR PRESENTING FIREARMS AT PERSON

That Gary Michael Piper did in Spartanburg County on or about December 21,
2006 point or present a firearm, a pistol, at Artis Jackson, in violation of §16-23-410,
THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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



ASSISTANT SOLICITOR

Computer

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
 STATE VS.
Gary Michael Piper
 AKA:
 Race: W Sex: M Age: 31
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 07-GS-42-2716
 AAW#: Direct Indictment
 Date of Offense: 12/2/06
 S.C. Code §: 16-23-410
 CDR Code #: 0122

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Pleading not guilty to a Finein violation of § 16-23-410 of the S.C. Code of Laws, bearing CDR Code # 0122

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 11/29/07☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.31 TP (Law Enforce. Funding)

\$33.71 TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$75.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$3.75
\$	\$128.75

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling.

Random Drug/Alcohol Testing

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

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

SEARCHES MADE

REPORT MADE

WITNESSES

AND FILED

INDEXED

CHECKED WARRANTS

Spartanburg Public Safety Department

CHECKED SIGNATURE

RECEIVED

COPIES MADE

TRAFFIC VIOLATIONS COPY

Computer

Computer

DOCKET NO

07-GS-42-0544

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2007

TERM

ARREST WARRANT NUMBER

262DQ

THE STATE

VS.

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 2/22/07

VERDICT

GARY MICHAEL PIPER

Indictment for

FAILURE TO STOP MOTOR VEHICLE
WHEN SIGNALLED BY OFFICER

SC Code: 56-5-750 (B)(1)

CDR Code: 0065

Class MIS/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2007 FEB 27 PM 3:25

MARC KITCHENS

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 27 2007 the
Grand Jurors of Spartanburg County, present upon their oath:

FAILURE TO STOP MOTOR VEHICLE WHEN
SIGNALLED BY A LAW ENFORCEMENT VEHICLE

That Gary Michael Piper, did in Spartanburg County on or about
December 27, 2006, fail to stop the motor vehicle which he was driving on
a road, street, or highway of the State of South Carolina when he was
signaled by a law enforcement vehicle by means of a siren or flashing light,
in violation of §56-5-750 (b)(1), *THE CODE OF LAWS OF SOUTH*
CAROLINA, (1976), as amended.

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


Assistant Solicitor

