

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

Appellate Case No. 2024-000461

The Honorable Paul. M. Burch, Circuit Court Judge

State of South Carolina.....Respondent,

v.

Michael Lamont Watts Appellant.

**RECORD ON APPEAL
VOLUME II OF II**

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SC Court of Appeals

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VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 22 2014

Appeal from Chesterfield County

S.C. Supreme Court

R. Ferrell Cothran, Jr., Circuit Court Judge

MICHAEL LAMONT WATTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000302

APPENDIX

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1 would prefer.

2 THE COURT: You can't do it any quicker
3 than that?

4 MS. SHURLING: Ordinarily I could, Your
5 Honor, but fortunately I have to go — I am this
6 year's president of the South Carolina Women
7 Lawyer's Association and I have two conferences; one
8 in New York City and one in San Francisco in the
9 next three weeks so I'm gonna be gone a lot.

10 THE COURT: Okay I'll, I'd normally -- but
11 as long as I got the decision in before that 90 day
12 report I have to turn in.

13 MS. SHURLING: Thank you, Your Honor.

14 THE COURT: All right. I'll make a note
15 on it and give you 30 days.

16 MS. SHURLING: Okay. And when I submit
17 mine, Your Honor, normally I send it to you
18 electronically Word format for Your Honor's
19 convenience and the convenience of your law clerk.
20 I also send you a hard copy with a copy of the order
21 on a disk in Word format as well, so I inquire, is
22 Word the preferable format for your clerk? Thank
23 you.

24 THE COURT: Okay.

25 MS. SHURLING: There's still a few out

1 there that insist on Word Perfect so I always check.
2 Thank you.

3

4

5

6

7 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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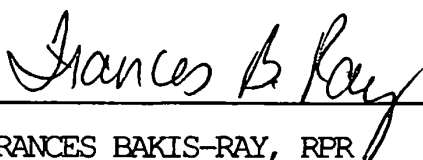
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

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

Witness my hand at Florence, South Carolina, this 19th day of May, 2014.


FRANCES BAKIS-RAY, RPR



**VOLUNTARY STATEMENT
(NOT UNDER ARREST)**

PAGE NO. 1 OF 1 PAGES

Jekesha Kaley

am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Michael D. Anderson, SLED. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 28 years of age, and I live at [REDACTED] Pageland SC 29928

I can cannot read and write and completed the 12th grade in school. DOB: [REDACTED]

On the morning of Nov. 28, 2004. ~~TR~~ T+ was about 1:15 Sunday Morning. I was at a club call the Matrix. There was a fight that broke out on the dance floor. Tyone Miller, Charles Miller, K J Miller, and Fuzz was fighting Watts. So the Bouncers came and broke u the fight, and took Watts out and the Miller boys. So every thing was back to normal when Tola, Clifton, and I was standing there when my boy friend Jody saw he had to use the bathroom. So he left and Tola, Clifton, and I was standing there waiting on him to come back. That is when Watts came on the dance floor and raises his right hand with the gun in it and started shooting. At that time ~~TR~~ to Tola, Clifton and I, running. Tola and Clifton was running but I dipped in a little ~~open~~ as you leave the dance floor on your left that is where I was. I thought Tola, & Clifton had made it out. So when Watts stop shooting I ran out and that's when I saw Clifton laying on the floor on his stomach.

On the Morning of Nov. 28, 2004 I did not know Michael Watts was. TR

2003
JUL 22 AM 10
CLERK OF COURT
SOUTH CAROLINA

I have read each page of this statement consisting of One page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 4:05 P. M. on the 28th day of Dec. 19 2004.

Jekesha Kaley

Signature of person giving voluntary statement

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 28 DAY OF Dec, 19 2004

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

WITNESS: Michael D. Anderson, SLED

WITNESS: Jekesha Kaley

I certify that I have been given a copy of this statement consisting of 1 pages.

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, RASHAUND ROBINSON am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to MIKE ANDERSON (JURY) LARRY BROWN. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 19 years of age, and I live at [REDACTED] LANCASTER, SC 29720. I can read and write and completed the 10th grade in school. DOB: [REDACTED]

ON NOVEMBER 27, 2004. MYSELF, MONT WATTS, RICKY SIMPSON AND JARMARIS MCINLAND ROBERT PAGEUM BECAUSE MONT WANTED TO GO TO MATRIX WHERE HIS GIRL FRIEND WAS AT. WE WERE RIDING WHITE CAR FOUR DOOR. WE WERE DRIVING. ON THE WAY TO PAGEUM A HANG GUN WAS PASSING ARMS FROM RICKY SIMPSON AND TO MONT IN THE BACK SEAT BUT THE GUN WAS HANDING BACK TO RICKY UPFRONT. WE GOT TO PAGEUM AND WENT TO THE CLUB TO HAVE FUN. I SAW MONT AND HIS GIRLFRIEND IN THE CLOSET AND SOME BOYS WERE HITTING ON MONT. I WENT OVER THERE TO SEE WHAT WAS GOING ON. ABOUT EIGHT GUYS JUMPED ON ME AND CHOKED ME OUT. NEXT THING I REMEMBERED I WAS BEING DRAGGED OUT OF THE CLUB BY RICKY SIMPSON TO GET SOME FRESH AIR. I WAS ON THE GRASS OUTSIDE OF THE CLUB BESIDE THE CAR. THAT IS WHEN I HEARD GUN SHOTS BUT I DIDN'T KNOW WHO WAS SHOOTING. I HEARD THE POLICE SAY GET OUT THE GRASS. THEN I WAS HANDCUFFED. WHILE I WAS HANDCUFFED SOMEBODY STOMPED BESIDE MY FACE. I WAS PLACED IN THE BACK OF THE POLICE CAR AND TAKEN TO JAIL. IN THE JAIL CELL MONT SAID HE THING HE DOES FINISHED UP. THIS IS MY STATEMENT AND I ASK LARRY BROWN TO WRITE THIS STATEMENT FOR ME.



2013 JUL 22 AM 10 55
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

I have read each page of this statement consisting of 14 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 10:50 AM on the 10th day of January, 2005.

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 10th DAY OF JANUARY, 2005.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

Rashaund Robinson
Signature of person giving voluntary statement

WITNESS: [Signature]

WITNESS: Rashaund Robinson, SLED

I certify that I have been given a copy of this statement consisting of 1 pages. Rashaund Robinson

Voluntary Statement
(Under Arrest)

I, JAMARCUS JAMINE MCILWAIN, Do hereby give freely and voluntarily this statement to RD D.C. BENNETT AND N/A who have identified themselves as officers of the Lancaster County Sheriffs Office. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a court of law. I have been advised I have the right to counsel with an attorney of my choice and that if I am financially unable to obtain an attorney court will appoint an attorney to represent me. I have not been threatened or promised any reward to make this statement and I do so voluntarily. I understand I have the right to stop answering questions at any time and I hereby waive these rights.

I am 18 years old and I reside at [REDACTED].

Q- WHAT CAN YOU TELL ME ABOUT THE GUN THAT WAS TAKEN TO PAGELAND ON SATURDAY NIGHT 11-27-04?

A-WE ALL WENT TO CAROLINA COURT WITH MONT,(MICHAEL LAMONT WATTS) TO GET MY AUNTS CAR (DIANE McILWAIN) TO GO TO PAGELAND TO A CLUB THAT MY 1ST COUSIN OWNES.(MICKE TRUESDALE). WHEN WE GOT TO CAROLINA COURT, BIG RICK (RICKY SIMPSON) WALKED TO THE OTHER SIDE OF CAROLINA COURT TO DIANE'S HOUSE TO GET THE CAR. I WENT TO MILLIE BROWN'S HOUSE TO SEE IF SHE WANTED TO GO TO THE CLUB. SHE DID NOT GO WITH US. WHEN I LEFT MILLIE'S HOUSE, I MET RICKY IN THE ROAD AND GOT IN THE CAR WITH HIM. THEN WE WENT TO RICKY'S HOUSE AND GOT THE OTHER TWO,(ROSHARD ROBINSON AND LAMONT WATTS). THEN WE WENT TO THE CLUB IN PAGELAND. ON THE WAY AND NEAR MIDWAY WE STARTED HANDLING THE PISTOL. I HAD BEEN DRINKING THAT DAY BUT I THINK THAT BIG RICKY HANDED THE GUN TO ME AND I HANDED IT TO ROSHARD. ROSHARD HANDED IT TO LAMONT WATTS AND I THANK LAMONT KEPT THE GUN IN THE BACK SEAT SOMEWHERE. I DID NOT SEE IT IN THE FRONT SEAT AFTER IT WAS PASSED TO THE BACK SEAT AND I WAS THE FIRST ONE OUT OF THE CAR AND IN THE CLUB WHEN WE GOT TO PAGELAND.

Q-WHO DO YOU THINK HAD THE GUN WHEN THE FOUR OF YOU LEFT CAROLINA COURT?

A-I THINK BIG RICKY HAD THE GUN BECAUSE HE GAVE IT TO ME FIRST.

Q-HAVE YOU BEEN TRUTHFUL IN THIS STATEMENT?

A-YES

Q-WOULD LIKE TO ADD ANYTHING TO THIS STATEMENT?

END OF STATEMENTXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

I HAVE READ EACH PAGE OF THIS STATEMENT CONSISTING OF TWO PAGES, EACH PAGE OF WHICH BEARS MY SIGNATURE, AND CORRECTIONS, IF ANY, BEAR MY INITIALS, AND I CERTIFY THAT THE FACTS CONTAINED HEREIN ARE TRUE AND CORRECT.

DATED AT THE LANCASTER COUNTY SHERIFF'S OFFICE, THIS 06th DAY OF ~~FEBRUARY~~ ^{December}, 2004

WITNESS

Danny Bennett

SIGNATURE OF PERSON GIVING VOL STATEMENT

WITNESS



VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Richy Simpson am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Michael J. Anderson, SLED. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 21 years of age, and I live at [REDACTED] Lancaster S.C.
I can cannot read and write and completed the 9th grade in school. DOB: [REDACTED]

Richy
the day after that signing Mont, Jamaricus, Reshard, and I went to the Matrix club in payeland we were in the club for about 45 min but in that 45 min I went to the bar a couple of times and back onto the dance floor then I went to the restroom. soon as I come out of the rest room I see a fight on the dance floor. So I go to see whats going on & I see Jamaricus falling so before he can hit the ground I ~~pull~~ pull him back to his feet & start to exit the club but the owner tells me another friend of mine is fighting so I look to see & its Reshard I help him up off the floor then I exit the club & soon as I get outside I was laid down on my face until I was put in a police car. we went to the club in a rental car that I was driving & after I exited the club I heard a couple shots fired & I did not see a gun in the rental car that I was driving in route to the club (K.).



I have read each page of this statement consisting of CIVIL page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 11:11 M. on the 16 day of Feb., 2013.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 20

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

Richy Simpson
Signature of person giving voluntary statement

WITNESS: Michael J. Anderson

WITNESS: [Signature]

I certify that I have been given a copy of this statement consisting of 1 pages. Richy Simpson

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD)

2010-CP-13-0255

Michael Lamont Watts,
S.C.D.C. No. 323225,

Applicant,

v.

State of South Carolina,

Respondent.)

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SCA True Copy Attest
Faye L. Sellers

ORDER OF DISMISSAL

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2013 OCT 23 AM 11 27

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 2, 2010. The Respondent made its return on September 28, 2010. An evidentiary hearing into the matter was convened on July 16, 2013 at the Darlington County Courthouse. The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, James P. Rogers, Esquire. The Court had before it the trial transcript, the Chesterfield County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and the Applicant's Exhibits 1-4.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Chesterfield County Clerk of Court. The Applicant was indicted at the May 2005 term of the Chesterfield County Grand Jury for murder (2005-GS-13-0471), two

counts of assault and battery with intent to kill (ABWIK) (2005-GS-13-0473, -0474), possession of a firearm in a public building (2005-GS-13-0475), discharging a firearm into a building (2005-GS-13-0476), and escape (2005-GS-13-0477) and at the April 2006 term for possession of a weapon during commission of a violent crime (2006-GS-13-0499). He was represented by James P. Rogers, Esquire.

After the State called the case to trial, trial counsel was successful in having two charges dismissed through a directed verdict: one count of ABWIK (2005-GS-13-0474) and possession of a firearm in a public building (2005-GS-13-0475). The Applicant was found guilty of the remaining charges. On August 1, 2007, the Honorable Paul M. Burch levied concurrent sentences of life imprisonment for murder, twenty years for ABWIK, ten years for discharging a firearm into a building, and one year for escape. Judge Burch levied a five-year sentence for possession of a weapon during commission of a violent crime – to be concurrent to the murder sentence but consecutive to the ABWIK sentence.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Watts, Op. No. 2010-UP-019 (S.C. Ct. App. filed January 25, 2010).

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to object to prosecutorial misconduct when solicitor "went outside the record in closing argument."
 - b. Failed to present effective trial strategy:

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

- (1) Failed to "request mistrial after investigating officer gave unprofessional testimony."
- c. Failed to call defense witness.
- d. Failed to request a curative instruction.
- e. Failed to conduct a pre-trial investigation.

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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735

(1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had several meetings with trial counsel and that they reviewed his version of events and the State's evidence (including the witness statements). The Applicant stated trial counsel never discussed either voluntary manslaughter or self-defense. The Applicant stated trial counsel should have discussed calling his three friends as witnesses at trial (as they went to the club with him that night and did not make any damaging comments in their statements). The Applicant testified he knew there were contradictory witness statements in his case and that trial counsel would point this out at trial. The Applicant testified he also knew trial counsel would argue that no one actually saw him shoot the victim. The Applicant admitted he testified at trial and was able to explain his version of events.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they also reviewed the Applicant's version of events, the elements of the charges, and the sentence ranges for those charges. Trial counsel testified there was no forensic evidence in this case and that none of the witnesses actually saw the Applicant shoot the victim. Trial counsel testified he attempted to raise reasonable doubt by highlighting the inconsistencies regarding the various witnesses and their statements. Trial counsel testified he spoke to all of the witnesses from the club but that the Applicant never provided him the names of additional witnesses. Trial counsel testified he did not call Lakesha Raley as a witness – though she gave a statement that another group was ejected from the club with the Applicant – because he did not believe it was a big issue. Trial counsel testified he asked for a curative instruction after a witness commented the Applicant did not give a statement but stated he did not move for a mistrial because he knew the statement would be coming in. Trial counsel testified he did not consider objecting to references to the weapon as an automatic.

Trial counsel testified a self-defense charge was not appropriate because it was not appropriate because he could not argue the Applicant was without fault in bringing on the difficulty. Trial counsel testified he did not recall why he did not request a voluntary manslaughter charge.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective in failing to call Lakesha Raley as a witness at trial. As this alleged witness did not testify at the evidentiary hearing, any discussion regarding what she would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved for a mistrial. At trial, a witness stated the Applicant said he did not want to give a statement. (Trial transcript, p.195). Though trial counsel asked for a curative instruction, he did not move for a mistrial after the trial judge so instructed the jury. (Trial transcript, p.228). Trial counsel testified there was no reason to move for a mistrial because the testimony was going to be admitted. This Court agrees. Furthermore, "[i]n order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). This Court finds the Applicant has failed to demonstrate either that trial counsel erred in

not requesting a mistrial and that his case was prejudiced as a result. This finding is corroborated by the fact that the State presented overwhelming evidence of the Applicant's guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to hearsay. At trial, a witness (an off-duty law enforcement officer on the premises who initially took charge of the investigation) was asked who fired gunshots inside the club while the Applicant was handcuffed outside and he replied, "I think nobody did because I went inside the club and checked on that. It was only like five or six people in the club and they said that they didn't hear any shots." (Trial transcript, p.213, lines 13-16). Trial counsel confirmed he did not object to this statement, as it must have "slipped past" him, but that it was undisputed that people heard gunshots. This Court finds the Applicant has failed to prove error. This comment, however, was not hearsay and not offered for the truth of the matter asserted. Rather, it was a statement regarding the investigation of the crime. See Rule 801(c), SCRE; Caprood v. State, 525 S.E.2d 514, 518, 338 S.C. 103, 111 (2000); State v. Brown, 317 S.C. 55, 62, 451 S.E.2d 888, 894 (1994). This Court also finds the Applicant also failed to prove this statement prejudiced his case, as the State presented overwhelming evidence of his guilt. See Geter v. State, 305 S.C. at 367, 409 S.E.2d at 346.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to references during the trial that the weapon used was an automatic. The Applicant alleges this was harmful to his case because automatic weapons are illegal. This Court finds the references to an automatic weapon in this case were limited and not calculated to inflame the jury. This Court finds the Applicant has failed to demonstrate he was prejudiced

from the references to the weapon as being an automatic. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the State's closing argument. During closing argument, the assistant solicitor attacked the credibility of a defense witness by implying two individuals looked similar. (Trial transcript, p.372, lines 10-14; p.372, line 23 – p.373, line 2). Trial counsel stated he objected because comments about one of these individual's clothing was not in the record. This Court finds the lack of an objection on this point was not deficient and did not prejudice the Applicant's case. See State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony). This Court finds it is clear the assistant solicitor was merely summarizing the defense witness's testimony and explaining why the jury should not consider it because it was implausible. This Court finds the Applicant failed to demonstrate either error or prejudice by the lack of an objection.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested jury charges for voluntary manslaughter and self-defense. This Court finds neither charge would have been supported by the facts of this case. The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). The Applicant provided his version of events at the PCR hearing. The Applicant stated he left the club, got a weapon, and went back into the club while holding this weapon. The Applicant said he believed someone pointed a gun at him, so he fired into a crowd of people in order to protect himself. This Court notes these were largely the facts presented at

trial. This Court concludes neither a voluntary manslaughter nor self-defense charge would have been warranted under these facts. See State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000) (listing elements of voluntary manslaughter); State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) (listing elements of self-defense).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

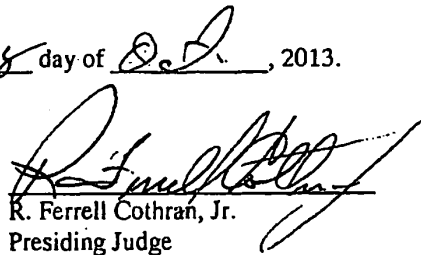
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

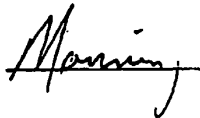
(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of Dec., 2013.


R. Ferrell Cothran, Jr.
Presiding Judge

, South Carolina.

WITNESSES Brown; Eric PFC Pageland Police Dept. <i>[Signature]</i>	
ARREST WARRANT #: I270524 Arrested on November 29, 2004	
ACTION OF GRAND JURY <i>True Bill</i>	
Foreman: <i>Mary Teal</i> Grand Jury 04-26-05	
VERDICT <i>Guilty</i>	
Foreman: <i>Sherry S. Hancock</i> Petit Jury Date: <i>8/1/07</i>	

DOCKET #: 05GS13-0471 THE STATE OF SOUTH CAROLINA County of Chesterfield
COURT OF GENERAL SESSIONS Term: May, 2005
THE STATE vs. Michael Watts
I N D I C T M E N T F O R 0116 MURDER 16-3-10 A True Copy, Attest <i>[Signature]</i> CLERK OF COURT C.P. & S.S. CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS13-0471
 County of Chesterfield)

At a Court of General Sessions, convened on May 02, 2005
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: MURDER
 16-3-10

That Michael Watts in the County of Chesterfield on or about November 28, 2004, feloniously, wilfully and with malice and aforethought, kill one Clifton Funderburk, Jr., at the Matrik Club located at 801 East McGregor Street, Pageland, S.C., by means of discharging a firearm at him and striking him in the back causing the death of Clifton Funderburk, Jr., and that the said Clifton Funderburk, Jr., did die in Chesterfield County as a proximate result thereof in violation of Section 16-3-20 of the South Carolina Code of Laws(1976), as amended.

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

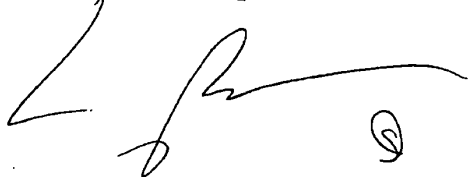
SOLICITOR: *James H. Hodge*

A True Copy, Attest:
Judge of Sessions
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC.

WITNESSES

Brown; Eric PFC

Pageland Police Dept.



ARREST WARRANT #:

I270525

Arrested on November 29, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

May Ted
Grand Jury

11-26-05

VERDICT

Guilty

Foreman:

Dennis B. Hancock
Petit Jury

Date:

8-1-07

DOCKET #: 05GS13-0473

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: May, 2005

THE STATE

vs.

Michael L. Watts

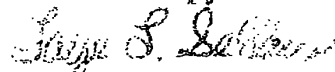
INDICTMENT FOR

0014

ASSAULT AND BATTERY WITH INTENT TO KILL

(16-3-620)

A True Copy, Attest


CLERK OF COURT
CHESTERFIELD COUNTY

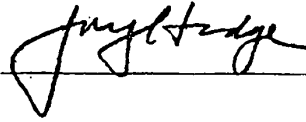
STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS13-0473
 County of Chesterfield)

At a Court of General Sessions, convened on May 02, 2005
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: ASSAULT AND BATTERY WITH INTENT TO KILL
 (16-3-620)

That Michael L. Watts in the County of Chesterfield on or about November
 28, 2004, violate Section 16-3-620 of the Code of Laws of South Carolina (1976),
 as amended, in that he, with malice aforethought, committed an assault and
 battery upon one David Eric Evans by discharging a firearm at him and striking
 him in the leg causing severe bodily injury with intent to kill the said David
 Eric Evans.

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

SOLICITOR: 

CLERK OF COURT U.P. & S.S.
 CHESTERFIELD COUNTY, SC

FILED
 MAY 11 2005
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

WITNESSES

Brown; Eric PFC

Pageland Police Dept.



ARREST WARRANT #:

39745CR

Arrested on November 28, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Mary Teal
Grand Jury

04.26.05

VERDICT

Guilty

Foreman:

Shirley S. Hancock
Petit Jury

Date:

8-1-07

DOCKET #: 05GS13-0476

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: May, 2005

THE STATE

vs.

Michael L. Watts

INDICTMENT FOR

0052

WEAPONS, DISCHARGING FIREARM INTO

OCCUPIED BUILDING (16-23-440)

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

FILED
CLERK OF COURT
CHESTERFIELD COUNTY, SC

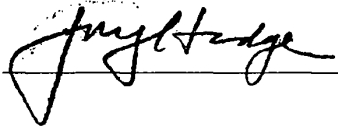
STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS13-0476
County of Chesterfield)

At a Court of General Sessions, convened on May 02, 2005
the Grand Jurors of Chesterfield County present upon their oath:

COUNT: WEAPONS, DISCHARGING FIREARM INTO
OCCUPIED BUILDING (16-23-440)

That Michael L. Watts in the County of Chesterfield on or about November
28, 2004, violate Section 16-23-440 of the Code of Laws of South Carolina
(1976), as amended, in that the said defendant did willfully and unlawfully
discharge a firearm, a pistol, inside a building regularly occupied by persons.

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

SOLICITOR: 

WITNESSES

Brown; Eric PFC

Pageland Police Dept.



ARREST WARRANT #:

39746CR

Arrested on November 28, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

May Teal

07-26-05

VERDICT

Guilty

Foreman:

Dwight B. Hancock

Date:

8-9-07

DOCKET #: 05GS13-0477

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: May, 2005

THE STATE

vs.

Michael L. Watts

INDICTMENT FOR

2570

ESCAPE

C/L 17-25-20

A True Copy Attest
 Judge D. Williams
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS13-0477
 County of Chesterfield)

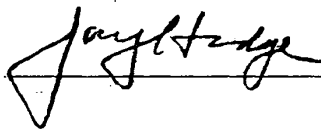
At a Court of General Sessions, convened on May 02, 2005
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: ESCAPE
 C/L 17-25-20

That Michael L. Watts in the County of Chesterfield on or about November
 28, 2004, did after having been arrested and placed in handcuffs, without the
 use of force, sought to gain his liberty, to wit: did run from the officers and
 the scene of the crime in violation of Section 17-25-30 of the South Carolina
 Code of Laws(1976), as amended.

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

SOLICITOR:



A True Copy Attest
Jane D. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

WITNESSES

Pageland Police Dept.

Eric Brown



(S)

ARREST WARRANT #:

CHE0219

Arrested on November 29, 2004

ACTION OF GRAND JURY

True Bill

Foreman:

Grand Jury

April 25, 2006

VERDICT

guilty

Foreman:

Petit Jury

Date:

8/1/07

DOCKET #: 06GS13-0499

THE STATE OF SOUTH CAROLINA

County of Chesterfield

COURT OF GENERAL SESSIONS

Term: April, 2006

THE STATE

vs.

Michael Lamont Watts

INDICTMENT FOR

0549

POSSESSION OF WEAPON DURING THE
COMMISSION OF CERTAIN CRIMES 16-23-490

A True Copy Attest

Jaye J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

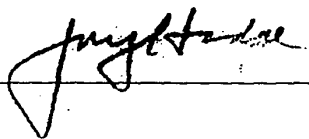
STATE OF SOUTH CAROLINA)
) INDICTMENT #06GS13-0499
 County of Chesterfield)

At a Court of General Sessions, convened on April 03, 2006
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: POSSESSION OF WEAPON DURING THE
 COMMISSION OF CERTAIN CRIMES 16-23-490

That Michael Lamont Watts in the County of Chesterfield on or about
 November 28, 2004, was in possession of and did visibly display a firearm during
 the commission of a violent crime, to wit: Murder, in violation of Section
 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

SOLICITOR: 

A True Copy Attest
Jaye J. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 4
2 COUNTY OF CHESTERFIELD) COURT C.A NO. 2005-GS-13-471
3
4 State of South Carolina,)
5 Plaintiff,)
6 Versus)
7 Michael Watts,)
8 Defendant.)
9
10 H E A R I N G
11
12 DATE: April 26, 2023
13
14 LOCATION: South Carolina Circuit Court 4
15
16 JUDGE: Paul Burch
17
18 TRANSCRIBED BY: ERIN REILLY
19
20 LEGAL EAGLE
21 Post Office Box 5682
22 Greenville, South Carolina 29606
23 864-467-1373
24 depos@legaleagleinc.com
25

1 APPEARANCES:

2 Attorney for the Plaintiff.

3 JR Joyner, Esquire

4 Kernard Edward Redmond, Esquire

5 Fourth Circuit Solicitor's Office

6 PO Box 594

7 Chesterfield, SC 29709

8
9 Attorney for Defendant.

10 Elizabeth Franklin-Best, Esquire

11 Elizabeth Franklin-Best, Attorney at

12 Law 3710 Landmark Drive, Suite 113

13 Columbia, South Carolina 29204

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Certificate of Transcriber 22

EXHIBITS

(Defendant's Exhibit Number 1))

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

MS. FRANKLIN-BEST: Morning, Your Honor.

THE COURT: Good morning.

MS. FRANKLIN-BEST: And may it please the Court. So, Your Honor, we have filed a 29B motion requesting a new trial for Mr. Michael Watts. We have alleged that he, Mr. Watts, who is serving a life without parole, sentenced for murder, discharging firearms into an occupied building, assault and battery with intent to kill, and possession of a weapon during the commission of certain crimes is entitled to a new trial based on information that has been uncovered in the course of reinvestigating this case. Mr. Watt's convictions arise out of a shooting incident that occurred at a bar called The Matrix. The facts of that altercation are recounted in our pleadings, but the long and short of it is that Investigator Larry Brown, who was the lead investigator in that case, was also working that night as an off-the-clock security person.

He was actually off duty; he was working as a bouncer when these events occurred. And all of that is clear from the transcript itself. But what was not disclosed to trial counsel and what Investigator Brian Setree discovered during his investigation of this case is that Mr. Brown was working at The Matrix and expressed violation of the directions of his boss, Chief John W. Sowell Jr, and also the policy of that department. And we know that from a letter that Mr. Setree

1 obtained during the investigation of this case dated December
2 4th, 2004. The shootings of The Matrix occurred on November
3 28th, 2004.

4 And Chief Larry Brown had a storied history with the
5 Pageland Police Department being formally reprimanded in
6 December of 2015 for some issues. He also had an arrest for
7 misconduct in office number of years ago. And so, for purposes
8 of this hearing, we plan on moving in the following exhibits
9 into evidence. We have the letter from Chief -- so the Chief
10 Sowell letter. We've got the SLED investigation that will show
11 that the Chief asked SLED to get involved in this case
12 subsequent to the events of that night, a formal reprimand from
13 2015, and the misconduct in office documents from 1990. And
14 so, these materials were all collected by Investigator Setree
15 and he is prepared to testify. And Your Honor, I could --
16 maybe if I could have him take the stand and get these into the
17 evidence and then I got a little --

18 THE COURT: All right.

19 MS. FRANKLIN-BEST: We do recall Mr. Setree to the
20 stand, please?

21 THE COURT: You come around and be sworn, please.

22 THE COURT REPORTER: Please, raise your right hand.
23 Do you solemnly swear or affirm to tell the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

1 BRIAN SETREE

2 THE COURT REPORTER: Thank you, sir. (Inaudible).

3 MS. FRANKLIN-BEST: (Inaudible) here, Your Honor.

4 THE COURT: Wherever you comfortable.

5 MS. FRANKLIN-BEST: Okay. Would you please put the
6 microphone over there when he's going to be standing, please?

7 THE COURT REPORTER: Thank you.

8 MS. FRANKLIN-BEST: I appreciate that.

9 MS. FRANKLIN-BEST: Okay. And Mr. Setree, could you
10 just state your name and -- or does he need to be sworn in?

11 THE COURT: I just did.

12 MS. FRANKLIN-BEST: Or you just did? I'm sorry. I
13 was --

14 THE COURT: Would you be more comfortable we move the
15 podium over there where you can see better?

16 MS. FRANKLIN-BEST: I think I'm okay but thank you.

17 THE COURT: Okay.

18 **DIRECT EXAMINATION OF THE WITNESS, BRIAN SETREE.**

19 BY: MS. FRANKLIN-BEST

20 Q. Okay. Mr. Setree, could you just please state your
21 name for the record and what you do?

22 A. My name's Brian Setree. I'm a private investigator
23 retired from law enforcement 2012. I work for the Lake County
24 Sheriff's Department.

25 Q. Okay. And so, do you have your own business now? I

1 mean, how are you out there investigating cases?

2 A. Yeah, I do. And I'm also a staff investigator for
3 the AGZ Law Firm, but I own my own private investigation
4 company as well.

5 Q. And are you licensed by SLED?

6 A. I am.

7 Q. And how did you get involved in this case?

8 A. I was contacted, I believe, by a relative Ms. Cato,
9 Mr. Watts and I subsequently went and met with Mr. Watts and
10 decided to take on the case.

11 Q. And in connection with your representation, what have
12 you done?

13 A. So, I follow a methodology where I try to obtain
14 every document, I can get my hands on and reverse the engineer,
15 read all the transcripts, turn that into knowledge columns,
16 unknown priorities, intelligent requirements, and then from
17 there develop leads and then follow up on the leads.

18 Q. So, did you interview some people in connection with
19 these events?

20 A. I did several, including three former Pageland
21 employees.

22 Q. Okay. And did you also collect some documents in
23 connection with this?

24 A. I did.

25 Q. And how did you collect these documents, did you use

1 FOIA or how did you get them?

2 A. I did, based off of the interviews with the
3 employees, I decided that I needed to FOIA Mr. Brown's
4 personnel file. So, I sent a FOIA to the town administrator
5 and received it that way.

6 Q. Okay. So, I think I'll start with what is marked as
7 Defendant's Exhibit Number 1. I'll hand this to you and see if
8 you can identify that document.

9 A. Yes. This is a copy of the document I received back
10 from my FOIA from Pageland Police Department.

11 Q. Okay. So, this document you obtained during the
12 course of your investigation?

13 A. Yes, ma'am.

14 Q. And it's in substantially the same condition as it
15 was when you received it?

16 A. Yes, ma'am.

17 MS. FRANKLIN-BEST: Your Honor, we would move to put
18 that into evidence at this point for purposes of this hearing.

19 MR. REDMOND: Yeah, just for the purposes of this
20 hearing, Your Honor, obviously, I would make relevant
21 objections, but for the purposes of this hearing I think it's
22 appropriate. But, of course, we'll have an argument as it
23 relates to what we perceive that the lack of relevance of this
24 information.

25 THE COURT: All right. I'm going to allow it in, of

1 course. The ultimate decision rest with me. We don't have a
2 jury, so --

3 MR. REDMOND: Yes, sir.

4 THE COURT: -- we'll allow it in this time.

5 (Defendant's Exhibit Number 1 received into evidence)

6 MS. FRANKLIN-BEST: Thank you, Your Honor. And may
7 I, again, press the witness?

8 THE COURT: Sure.

9 BY: MS. FRANKLIN-BEST

10 Q. I'm handing you what is marked as Defendant's Exhibit
11 Number 2 and ask if you recognize that exhibit?

12 A. I do.

13 Q. And what is that exhibit?

14 A. It is an affidavit for arrest warrant for misconduct.
15 Sorry.

16 Q. I'm sorry. Can you gimme a general timeframe?

17 A. This was in December of 1990.

18 Q. And did you obtain that -- those documents during the
19 course of your investigation?

20 A. I did.

21 MS. FRANKLIN-BEST: And, Your Honor, we're again
22 asking you that in evidence for purposes of this hearing?

23 THE COURT: Okay. Again.

24 MR. REDMOND: I'm sorry. I was reading,

25 MS. FRANKLIN-BEST: Sorry, I moved it early.

1 MR. REDMOND: No objection. I've seen all of the
2 documents, no objection with the stipulations that I mentioned
3 earlier.

4 THE COURT: Yes. You're saying?

5 BY MS. FRANKLIN-BEST:

6 Q. Okay. Then I'm going to go ahead and insert
7 (inaudible) and ask if you recognize what is marked as Defense
8 Exhibit Number 3.

9 A. I do.

10 Q. And can you please state what that is?

11 A. That was part of the FOIA I received. It's the
12 performance expectations and formal reprimand dated September
13 4th, 2015. It was addressed to Chief Larry Brown from the in-
14 town administrator Cecil Kimery.

15 Q. So, those are documents that you obtained during the
16 course of this investigation?

17 A. Yes, ma'am.

18 Q. Your Honor. And I'm going to hand the last exhibit,
19 which is Exhibit Number 4 and I ask if you recognize that.

20 A. I do.

21 Q. Okay. And what is it?

22 A. It's documents, again, that received from the FOIA
23 and from the client, Mr. Watts itself -- from his file that he
24 had maintained, you know, variety different.

25 Q. And does this appear to be select investigation?

1 A. It does.

2 MS. FRANKLIN-BEST: And we would admit that into
3 evidence, Your Honor.

4 THE COURT: The last two.

5 MR. REDMOND: Again, without objection, of course
6 not conceding the relevance on this -- on those exhibits.

7 THE COURT: All right. They're in.

8 MS. FRANKLIN-BEST: Thank you, Your Honor. And
9 that's all the questions that I have for Mr. Setree and then
10 I'll have some argument at the appropriate time.

11 THE COURT: Okay. So, list.

12 MR. REDMOND: I have any questions, Your Honor.

13 THE COURT: You may step now. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 MS. FRANKLIN-BEST: And that is it for witnesses,
16 Your Honor, I just wanted to call Mr. Setree. I don't know if
17 Mr. Redmond is planning on calling any witnesses but that's
18 our case, Your Honor.

19 THE COURT: Thank you, Counsel.

20 MR. REDMOND: Your Honor, I do not intend on calling
21 any witnesses per se. I will say that for the purposes of
22 argument based on what is in the record, I've got JR Joyner who
23 actually prosecuted the case here with me. And we'll both be
24 jointly arguing, I guess Defense or I guess the moving party
25 would present their argument then I'll present part of it then

1 I've asked Mr. Joyner and he can address more of a factual
2 aspect of this case since I was not the trial attorney, he was.

3 THE COURT: All right.

4 MS. FRANKLIN-BEST: All right. Thank you, Your
5 Honor. So, as you've heard, we've introduced some documents
6 into the record in this case. And I just want to sort of
7 describe why this was important. The fact that Ms -- Detective
8 Brown was not supposed to be there on the night that these
9 events occurred, that he was wearing essentially two hats. He
10 was both the percipient witness and then he also ended up being
11 the lead investigator on the case. So, it's clear from the
12 transcript, Your Honor, that this was not a particularly well
13 investigative case. Mr. Brown was the bouncer. He was a
14 percipient witness. After the shooting occurred in The Matrix,
15 Your Honor, he did not call SLED, he did not take photographs
16 of where evidence was located. He did not secure the scene.
17 He did not see what happened inside the club when the victims
18 were shot. He did not search any of the other patrons at the
19 club, even though others had said that they continued to hear
20 shots that night even when Michael Watts was already in
21 custody.

22 He did not look into reports that someone else at the
23 club actually had a shotgun. He did not take night -- notes on
24 the night of that shooting, instead only taking notes on March
25 7th, 2005 about these events. So, given -- so the problems in

1 this investigation, it would've been particularly probative for
2 the jury to know that Brown was not supposed to be there that
3 night. They may have wondered if he rushed a judgment in
4 arresting Mr. Watts because he would've been in even more
5 trouble or maybe trying to mitigate the trouble that he was
6 already in by arresting somebody immediately that night and
7 before a full and proper investigation happened. In other
8 words, I mean, this information would've additionally impacted
9 the jury's perception of the investigation that occurred here.
10 What the jury didn't know but should have been allowed to
11 consider is that Larry Brown had a vested interest in having
12 this case closed as quickly as possible.

13 The information was in the possession of law
14 enforcement at the time of Michael Watt's trial and is
15 therefore imputed to the solicitor's office under Kyles v.
16 Whitley, the United States Supreme Court case. But
17 importantly, Your Honor, I mean, we're not accusing anyone of
18 bad faith here. Okay? We're not saying that the Solicitor's
19 office is intentionally keeping this from trial counsel. It
20 may very well have been an oversight. The Solicitor's office
21 very well may not have known about this, but under established
22 United States Supreme Court law, it is imputed to that office.
23 It was information that was material, it was significantly
24 impeaching and it needed to be disclosed pursuant to Brady v.
25 Maryland. We filed this motion within one year of finding out

1 this information. So, it is timely and respectfully, Your
2 Honor, we're asking this court to grant Mr. Watts a new trial.

3 THE COURT: Thank you, Counsel.

4 MR. REDMOND: May I please the Court, Your Honor.
5 I'll go first and then I'm not going to get too much into the
6 facts. I'll let Mr. Joyner do that. I would -- I did file
7 back in June of last year upon getting a motion, I did file a
8 response indicated that after reading the Defense motion and
9 the documents attached that I think this is when -- and let me
10 just back up for a minute. There's a reason why I didn't ask
11 Mr. I think it's Setree if I'm -- I'm sorry. I didn't ask him
12 any questions because it's not so much what he did testify to,
13 it's what he didn't testify to. When we're talking about
14 disturbing a jury verdict, it's one thing and it appears that
15 Mr. Watts has placed all of his emphasis on Larry Brown. But I
16 heard anything regarding the witnesses has laid out in the
17 transcript, the excerpts from the transcript that were
18 mentioned.

19 And of course, Mr. Joyner could address this way more
20 eloquently than I could, but just from what I reviewed there
21 wasn't anything in here that there was an issue with any
22 witnesses or anything else. This case did not rise and set
23 with Larry Brown. Let me be clear on that. Based on my
24 review, there were a host of witnesses that were -- there was a
25 whole host of other evidence that resulted in this Defendant

1 being convicted as it relates to the relevance of that letter
2 itself. I would argue that in looking at the letter and
3 putting it in its proper context, the way I take that letter is
4 there was a misunderstanding between Chief Swell (phonetic) and
5 I think at that time, Sergeant Brown, as it relates to whether
6 or not he was going to be working there. It acknowledges --
7 the letter acknowledges that the chief -- he didn't remember
8 Sergeant Brown telling him about the time he was going to be
9 working but it also acknowledges that there was a discussion
10 where you can infer from that, that Sergeant Brown said, no, I
11 told you that I was going to be working such and such a time.

12 Chief didn't recall that, but they said, okay -- but
13 the chief said, be that as it may in the last paragraph, let's
14 put this matter to bed from now on, you are not to be working
15 out there. Now, that's important in my view because one, it,
16 again, when you look at the context of it, whether or not he
17 should have been there from the law enforcement standpoint,
18 that question is still in flux because Sergeant Brown, I
19 clearly is not acknowledging that he should not have been
20 there. He said, Chief, I told you that Chief said he doesn't
21 recall that. But from this point forward, let's make it clear
22 to you not to do it. But here's the thing. I would submit to
23 you. It doesn't matter because the fact that he was there
24 whether or not he shouldn't have been there or not, how does
25 that affect whether or not, you know, what he witnessed. It

1 does -- can you -- are you arguing that because he was not
2 supposed to be there oh, discount what he testified that he
3 actually saw. I just don't see the -- I don't see the sense in
4 that argument, Your Honor.

5 I think quite frankly, that we are dealing with what
6 I would refer to as the Hail Mary, given the hopes that this
7 one letter can reverse and do away with a whole host of other
8 evidence that was presented in that trial. I don't think this
9 letter rises to that as it relates to the issue of whether or
10 not it is a discovery violation on the part of the state. I
11 was not there during that time, and I don't know whether or not
12 there were any motions made under Giglio. I can't address that
13 as it relates to those types of issues. I know what the
14 protocol is now, if we get a Giglio motion is that we would get
15 that information. So, I'm not in a position to say whether or
16 not that was actually done at that time, and if it was in
17 possession of the state, I would submit, I know Mr. Joyner was
18 not aware of it, but be that as it may, when it comes to the
19 relevance on the issue of disturbing the jury verdict, I don't
20 think that these items are relevant to disturbing the jury
21 verdict. I haven't even addressed the other, you know, a 1990
22 misconduct charge that --

23 THE COURT: Oh, I can address that.

24 MR. REDMOND: Yes, sir.

25 THE COURT: I remember vividly that. That was the

1 disgruntled officer that was with the department up that way
2 souped up something about, I believe, Sergeant Brown at that
3 time, and I either -- I think, I judicially dismissed that
4 after all that blew up as to what actually went on there or
5 either it was a directed verdict, but he was never adjudicated
6 as far as any guilt. I remember that vividly because of the
7 blow up between the two officers.

8 MR. REDMOND: And --

9 THE COURT: Sorry to interrupt you.

10 MR. REDMOND: Oh, no, Your Honor.

11 THE COURT: But I do remember.

12 MR. REDMOND: But that goes to what I was leading to,
13 is the fact that it -- again, when I talk about Hail Mary and
14 desperation, it seems like, again, they're trying to hopefully
15 disparity Sergeant Brown in the hopes that that would result
16 and cause this court to disregard everything else that had
17 occurred at that time. And even though I did not prosecute the
18 case at the time, once I read it, I can firmly stand with Mr.
19 Joyner and with Sergeant Brown in the fact that I absolutely,
20 positively, do not believe that that verdict should be -- that
21 that verdict should be disturbed and in fact, that that guilty
22 verdict should remain and he should serve the rest of his
23 sentence. With that I'll yield with Mr. Joyner.

24 THE COURT: Mr. Joyner?

25 MR. JOYNER: Thank you, Your Honor. Judge, of

1 course, I would echo everything Solicitor (inaudible) said. I
2 think in this case, Judge, the record is very important to look
3 at. It's very strong. Judge, there were numerous eye
4 witnesses that witnessed Mr. Watts shooting. In addition, Judge,
5 he testified that he shot numerous times. In fact, at
6 one point and to the best I can't put up what he said, I'm not
7 denying that I had no intention to shoot. So, from the record,
8 Judge, he left what could potentially be a dangerous place the
9 inside of the building. And he went outside to the safety of
10 his car where he could retrieve and go wherever he wanted to.
11 That's where he retrieved the gun, reckless line to
12 intentionally look and then intentionally shoot back into the
13 building, not only from the outside, but also entering into the
14 shooting.

15 You know, one person was killed as a result and two
16 other people were injured from, you know, from this shooting.
17 So, I think considering his testimony, the intent behind is
18 kind of under the circumstances is very important to consider.
19 Judge, one of the things the defense mentioned almost in a
20 negative light was the -- that Officer Brown made an immediate
21 arrest of Mr. Watts. I would say that that should be applauded
22 as good police work when you have numerous witnesses seeing a
23 person shooting intentionally and indiscriminately into a
24 building full of people where ultimately three people are shot
25 and one person dies as a result of that conduct, I think an

1 officer who exhibits bravery and immediately arrest that
2 subject should be at fault and it shouldn't be looked at in a
3 negative light. And finally, Judge, as it relates to the
4 letter, I would agree, it seems from my reading that there was
5 a misunderstanding at the time.

6 But again, Judge, the incident occurred on November
7 28th. This letter was written after the fact. This letter was
8 written almost a week later. And then the trial, of course,
9 was in 2007. I learned about this letter on March 3rd of this
10 year, whatever solicitor when forwarded to me of the
11 Defendant's motion in the case. And so, Judge, again, I have
12 no knowledge of this letter, but I still think that even if I
13 did have the letter that the letter was turned over, I just --
14 I think we're -- you are seeking for, I don't want to say
15 illegitimate ways, but it is a Hail Mary, and it is a Hail Mary
16 that attacks good and brave policing by immediately arresting a
17 very dangerous person on the spot when they're witness
18 committing these violent crimes and I would rest with that,
19 Your Honor.

20 THE COURT: Thank you, Counsel.

21 MS. FRANKLIN-BEST: Just quickly in response, Your
22 Honor. I mean, you know, this -- the key question in this case
23 was who killed the victim and who shot the other victim. There
24 was evidence in the record it's present from the record. Some
25 of it was presented at trial that there were other people at

1 this club on that night who had guns. I mean, that was the
2 defense in the case. So, this was not a case of overwhelming
3 guilt. I mean, it was a case of who actually committed the
4 crimes here. And Mr. Brown, I mean, so, you know, the
5 prosecution says here that the case didn't rise and fall with
6 Mr. Brown. That in large measure, Your Honor, it did. He was
7 the lead investigator on this case. He decided who would be
8 interviewed. He decided which pictures would be taken. He
9 decided which evidence would be collected.

10 No one else was there. And so, anything that would -
11 - could have been used to be impeaching as to his conduct in
12 this case was something that needed to be disclosed. I mean,
13 the fact that there are other witnesses who say they may or may
14 not have seen Mr. Watt shoot, that's going to be present in any
15 case, but that doesn't mean that the jury is not entitled to
16 consider all of the evidence that would've impacted their
17 assessment of the investigation in this case, Your Honor. And
18 that is why that information was material and should have been
19 disclosed. And I mean, that's our argument, Your Honor. We
20 think that that information which was uncovered within one year
21 of our filing this motion was impeaching, it was material, it
22 should have been disclosed and that it entitles Mr. Watts to a
23 new trial.

24 THE COURT: Thank you.

25 MS. FRANKLIN-BEST: Thank you, Your Honor.

1 THE COURT: Okay. I'm going to have to go through
2 and read, digest what's been admitted and I don't want to put a
3 timeline on you, but can you -- if you are willing to do so, if
4 you want to provide proposed orders would 20 days be too quick?

5 MR. REDMOND: No, sir.

6 MS. FRANKLIN-BEST: We'll make it work.

7 THE COURT: Okay.

8 MS. FRANKLIN-BEST: Thank you.

9 THE COURT: And I can clarify a little bit because I
10 do remember that incident about the misconduct, if I'm not
11 mistaken, that officer that caused that charge to be entered
12 immediate, well, I won't say immediately, but he left the
13 department after that because it was -- that was discussed
14 right here in the -- this courtroom, even though it's been
15 renovated since then at length and was the talk of the town for
16 quite some time, which the end result in that was the other
17 officer had to leave and Mr. Brown was found at no fault in
18 that. Just so everybody will be clear about what I remembered
19 about that incident. Okay. If y'all will do that, we'll take
20 a look at it.

21 MR. JOYNER: Thank you, Your Honor.

22 MS. FRANKLIN-BEST: Thank you, Your Honor.

23 [End of hearing]
24
25

1 CERTIFICATE OF TRANSCRIBER

2 I, ERIN REILY, a court-approved transcriber, do hereby certify
3 that the foregoing is a true, accurate and complete Transcript
4 of Record of the proceedings had and evidence introduced in the
5 trial of the captioned case, relative to appeal, in the South
6 Carolina Circuit Court 4, Chesterfield County, South Carolina,
7 on the 26th day of April, 2023.

8
9 I do further certify that I am neither of kin, counsel, nor
10 interest to any party hereto.

11 May 12th, 2024

12 ERIN REILLY

13 TRANSCRIBER
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1 2023 APR 27 P 2: 06

Christy E. Gaddy
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

December 04, 2004

Sgt. Larry Brown
Pageland PD

Dear Sgt. Brown:

This correspondence shall confirm a conversation that we had on **December 02**, regarding the Matrix Club on E. McGregor Street.

I had addressed an issue of you working private security at that location without my authorization or knowledge which was in violation of department policy. You in turn advised me that you had informed me of such which I disagreed. At that point you ask me didn't I remember you telling me a couple of weeks back that the week after second and third shift worked the club until it closed on a Saturday night that you were going to help them out at the Matrix this weekend. This is when I responded that I did remember that but I thought that you meant that you were going to help second and third shift again as you had several weeks ago.

With the above being clarified, we will close with the topic of the rest of our conversation. You will do no security work at the Matrix in the future. There are liability issues on your part and the Town's part in which both parties could be potential losers and the business not lose a thing.

Be reminded that department policy with regard to off duty employment will be followed.

Respectfully,

John W. Sowell, Jr.
Chief



State of South Carolina	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTH JUDICIAL CIRCUIT
County of Chesterfield	)	
	)	Indictment Nos. 05-GS-13-477, 05-GS-13-0476,
	)	05-GS-13-0473, 05-GS-13-0471,
	)	05-GS-13-499
State of South Carolina	)	
vs.	)	PROPOSED ORDER DENYING
	)	MOTION FOR NEW TRIAL
Michael Lamont Watts,	)	
Defendant.	)	

The Defendant, Michel Lamont Watts, by and through his counsel, **Elizabeth Franklin-Best, of Elizabeth Franklin-Best, P.C.**, moved this Court for relief of a new trial based on after-discovered evidence on June 3, 2022. The State, by and through counsel, **Deputy Solicitor Kernard E. Redmond of the Fourth Circuit Solicitor's Office**, responded to the above motion on June 15, 2022. A hearing was held on the matter by **The Honorable Paul M. Burch** on April 26, 2023. The Defendant along with his above referenced counsel and counsel for the State were present at the hearing.

Findings of Fact

In the issue of a new trial based on after-discovered evidence, this Court makes the following findings of fact. On August 1st, 2007, the Defendant was convicted of escape (05-GS-13-0477), discharging firearms into an occupied building (05-GS-13-0476), assault and battery with the intent to kill ("ABWIK") of David Evans (05-GS-13-0473), murder of Clifton Funderburk, Jr. (05-GS-13-0471), and possession of a weapon during the commission of certain crimes (05-GS-13-0499) after a jury trial in front of the Honorable Paul M. Burch in Chesterfield County, South Carolina. At the conclusion of the three day trial, the Defendant was sentenced to

PMB

life without parole for the murder conviction, with additional concurrent terms for the remaining charges.

The indictments and conviction stemmed from a shooting that occurred on November 28, 2004, at Matrix, a club located in Pageland, South Carolina. The State, represented by Assistant Solicitors Franklin Joyner and Kevin Hales, presented to the jury that after an argument involving the Defendant and Victims at Matrix, the Defendant exited the club, retrieved a firearm from his vehicle, and then discharged the weapon inside the club, fatally shooting Clifton Funderburk, Jr., and injuring David Evans and another man.

The State called various witnesses to prove its version of events including Detective Larry Brown, who served as both an eyewitness and lead investigator in the case. Detective Brown, who was working off duty as a security officer at Matrix at the time of the shooting, identified the Defendant as the shooter and further described the Defendant as leaving the club to get a firearm and then returning and shooting the victims inside of the club. Detective Brown further collected, transported, and delivered into evidence both a firearm from the Defendant's vehicle and expended shell casings from the club the South Carolina Law Enforcement Division (SLED). Detective Brown also testified that he completed an incident report based on his recollection of the night's events and personally photographed some aspects of the scene to include the floor of Matrix where the murder victim had collapsed following the shooting. The Defendant made a statement to another investigator admitting he retrieved a firearm but that he did not remember shooting anyone and believed he shot the firearm into the air. Additionally, the record reflects that several other witnesses testified from different vantage points to seeing the Defendant being involved in an altercation, going to his car and get his firearm, cocking it, and going back inside the club, and discharging his weapon inside and then outside the club.

2011 MAR 11 A 9:20
Christy F. Gaddy
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

pmb

These witnesses included David Evans, Latoya Miller, Tyrone Miller, Charles Miller, Kevin Johnson, Dewayne Miller, Angelo Mason, Tameka Austin, and Michael Tresdale.

The Defendant hired a private investigator, Brian Setree, to review evidence related to his conviction. On October 13, 2021, Setree made a Freedom of Information Act Request (FOIA) which was received on November 6, 2021. On that date, the Defendant became aware of a letter sent to Detective Larry Brown from Chief of Police John W. Sowell, Jr., which indicated he was not allowed to work at the Matrix off duty on the date of the shooting. Chief Sowell further indicated that for Detective Brown to work at Matrix, would be a violation of police department policies.

The Defendant posits that had this information been disclosed, trial counsel would have been able to use this information to challenge the credibility of Detective Brown as a witness and the credibility of the investigation as a whole. The Defendant contends that he should be granted a new trial. The State contends that this after-discovered evidence was not material to the outcome of the case and other evidence, particularly the numerous witnesses who testified, nullifies the materiality of the letter. Therefore, the State requests the motion for a new trial be denied.

Conclusion

Based on the arguments of counsel at the hearing, information submitted to the Court by counsel, and the prior record in this case, this Courts finds that under SCRP Rule 29(b) and S.C. Code Ann. § 17-27-20(A)(4) (2014), that a new trial is not warranted based on after-discovered evidence.

Therefore, the Defendant's request for relief of a new trial is hereby DENIED
AND IT IS ORDERED.

2024 MAR 11 A 9:20
Christy E. Gaddy
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

pmB

March 11th, 2024
Chesterfield County, SC


The Honorable Paul M. Burch
Presiding Judge Fourth Judicial Circuit

2024 MAR 11 A 9:20
Christy F. Gaddy
CLERK OF COURT
CHESTERFIELD COUNTY, SC

pmB

Lancaster County Sheriff's Office

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE NUMBER 04-18189

DATE 11-30-2003

I, MICHAEL LAMONT WATTS DO HEREBY GIVE, FREELY AND VOLUNTARILY, THIS STATEMENT TO RD D.C. BENNETT AND N/A, WHO HAVE IDENTIFIED THEMSELVES AS OFFICERS OF THE LANCASTER COUNTY SHERIFF'S OFFICE, LANCASTER, SOUTH CAROLINA. I HAVE BEEN ADVISED THAT I DO NOT HAVE TO MAKE THIS OR ANY OTHER STATEMENT, AND THAT WHAT I SAY CAN BE USED AGAINST ME IN A COURT OF LAW. I HAVE BEEN ADVISED THAT I HAVE A RIGHT TO COUNSEL WITH AN ATTORNEY OF MY CHOICE, AND THAT IF I AM FINANCIALLY UNABLE TO OBTAIN AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT ME. I HAVE NOT BEEN THREATENED OR PROMISED ANY REWARD TO MAKE THIS STATEMENT AND I DO SO VOLUNTARILY. I UNDERSTAND I HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME AND I HEREBY WAIVE THESE RIGHTS.

I AM 22 YEARS OLD AND I RESIDE AT [REDACTED]

Q-WHAT CAN YOU TELL ME ABOUT WHAT HAPPENED SATURDAY NIGHT IN RELATION TO THE PISTOL USED IN THE INCIDENT THAT HAPPENED IN PAGELAND S.C.?

A-THE FOUR OF US WERE TOGETHER IN MY GIRL-FRIEND'S SISTERS CAR AND STARTED OUT ON 10-TH ST AND I WANTED TO COME TO PAGELAND TO THE CLUB THAT JAMAR MCILWAIN'S COUSIN OWNS. MY GIRL FRIEND WAS GOING TO BE AT THE CLUB. I DID NOT WANT TO DRIVE TO PAGELAND AND RICKY SIMPSON SAID THAT WE COULD GO TO CAROLINA COURT AND GET ANOTHER CAR. WE WENT TO HIS AND HIS SISTER'S HOUSE AT CAROLINA COURT AND HE WALKED AROUND CAROLINA COURT AND CAME BACK WITH THE WHITE CAR. HE DROVE TO PAGELAND AND AS WE WERE GOING THROUGH MIDWAY, RICKY HANDED ME THE GUN AND I LOOKED AT IT AND PUT IT UNDER THE BACK OF THE FRONT SEAT. AFTER WE GOT TO THE CLUB AND A FIGHT TOOK PLACE, I WENT TO THE CAR AND GOT THE GUN TO GET MY FRIENDS OUT OF THE CLUB.

Q-WHEN WAS THE FIRST TIME THAT YOU SAW THE PISTOL USED IN THIS INCIDENT?

A-IN THE CAR WHEN RICKY SIMPSON HANDED IT TO ME.

END OF STATEMENTXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

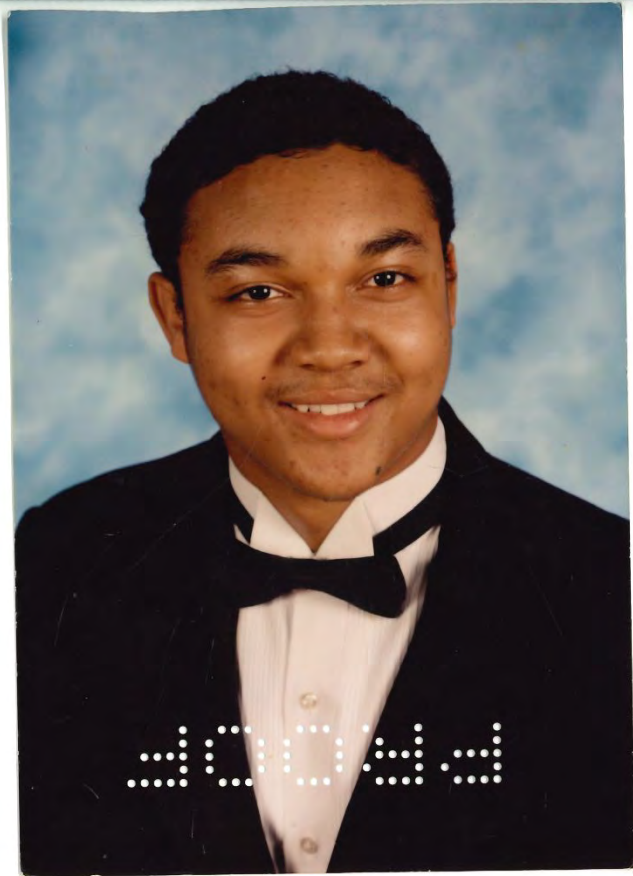


I HAVE READ OR HAD READ TO ME THE ABOVE STATEMENT CONSISTING OF 1 PAGE (S) AND IT IS TRUE AND CORRECT AS BEST I RECALL, AND I HAVE RECEIVED A COPY OF THIS STATEMENT.

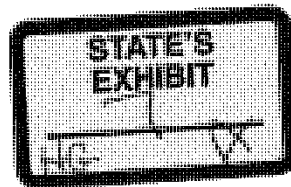
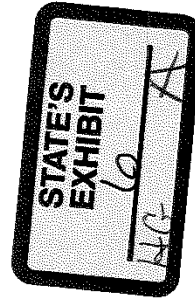
WITNESSES

[Signature]

[Signature]











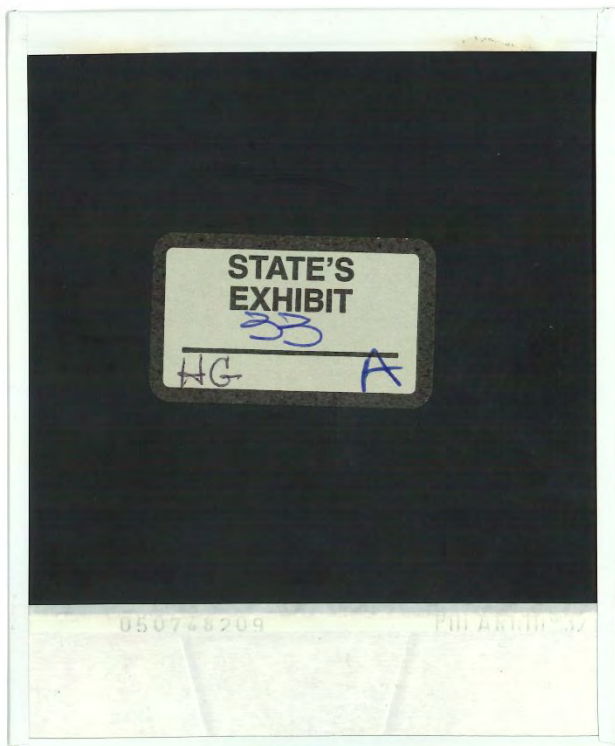




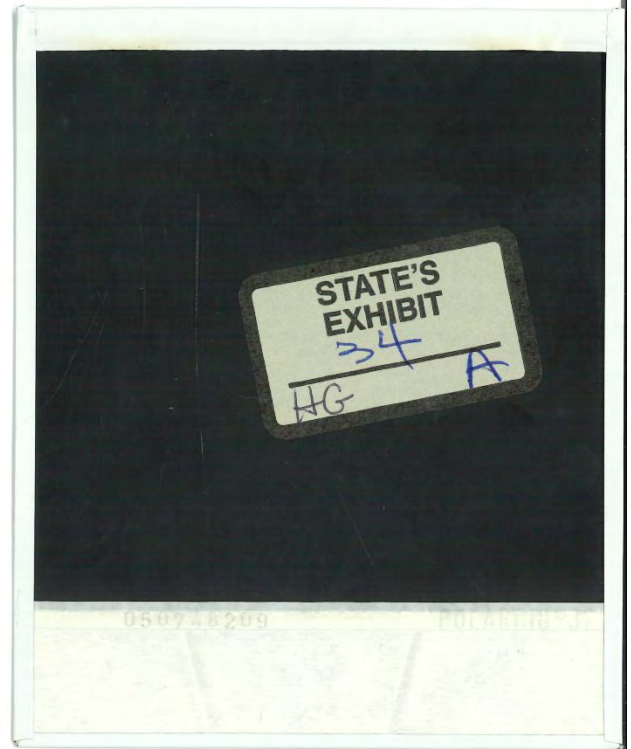




















David Evans-Statement

412 S. Hickory Street
Pageland, SC 29728
(843) 672-7593

December 6, 2004

Pageland Police Department

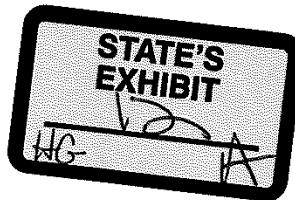
On November 28, 2004, approximately 01:15am, I was at Club Matrix when an altercation broke out on the dance floor. I went to help assist in resolving, however when I got there, one of the men wearing an OD army green jacket was being helped by two women. Detective Larry Brown was talking to the other man wearing a white T-shirt. I helped Detective Brown walk the man from the dance floor toward the bar and VIP room. Detective Brown asked me to keep the man there at the bar with me. As Detective Brown walked to the front door, the man wearing the OD green army jacket came in the side door with a gun in his hand and was looking around. He walked to the back of the club, stopped and looked to his right. In his sight in the right hand corner was a man standing with two women. The man wearing the OD army green jacket pointed his gun towards the man and the two women standing in the corner and fired a single shot hitting the man. The man wearing the OD army green jacket then turned and ran toward the front door. I went out the side door and came face to face with the shooter. He looked at me and asked me, "Did you swing on me?" I said "no." He then stated to me "Yes you did!" and started to fire at me. He fired four or five shots and hit me in the right leg. I ran back inside the club and looked back outside. I noticed that Detective Brown and Officer Brown had two men and the shooter on the ground at gun point. At this time I was asked to help hand cuff the men. After hand cuffing the men the shooter tried to flee. I ran and tackled him to the ground. Afterwards all three suspects were secured.

Nothing Else Follows

David Eric Evans

David E. Evans

Michael L. Ansellman, SLED
12/09/04



VOLUNTARY STATEMENT (NOT UNDER ARREST)

I, Labeja Miller

am not under arrest for, nor am I being detained for

any criminal offenses concerning the events I am about to make known to S/A Michael L. Anderson / Tony Brown.
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 21 years of age, and I live at [REDACTED]

I can read and write and completed the 12th grade in school. DOB [REDACTED]

On November 28, 2014, me myself Labeja Miller and a cousin Teresha Riley went to a club in Bogalusa, SC called the Matrix. When arriving we ~~waited~~ waited for Jody and Clinton Farberback to arrive. After they arrived we all stood in the back for a few minutes. Then we separated. After a few, two guys started to argue over a large bell bottle. Those two guys started to fight towards the back of the club and two guys were fighting up by the speaker. After separated the guys were told to leave the club. One of the guys that were fighting which was wearing a green jacket came back into the club and had a gun in his hand. He stood and looked around ~~looking around~~ like he was looking for someone. Then he started making a loud noise with the gun like a clicking noise. That's when all the shooting started. Everyone started to run. At that time me Labeja Miller, and Clinton Farberback started trying to get out the side door. When doing that we had a grip on my belt loop. When I Labeja Miller felt a hard jerk on my pants like something fell. After leaving out of the Matrix he was nowhere in sight. So, I entered back into the club to see if I can find him Clinton Farberback and my cousin Teresha Riley. Yes

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 9:15 A.M. on the 13 day of Jan, 19 2015.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 13 DAY OF JAN, 19 2015

Signature of person giving voluntary statement

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

WITNESS: Michael L. Anderson, SLED

WITNESS: [Signature]

I certify that I have been given a copy of this statement consisting of 1 pages. [Signature]



**VOLUNTARY STATEMENT
(NOT UNDER ARREST)**

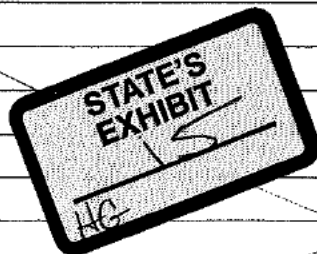
I, Derwayne Miller am not under arrest for, nor am I being detained

any criminal offenses concerning the events I am about to make known to Michael D. Anderson
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 25 years of age, and I live at [REDACTED]

I can cannot read and write and completed the 10th grade at Central grade in school. DOB: [REDACTED]

On Nov. 28 I saw Lament enter the club with a hand gun
as he enter he walked up to my cousin Tyrone and put the hand
gun to his head and asked him where that nigga at that hit
me. I then leaped over the counter and took cover, then I heard
the first gun shoot, then about 10 to 15 sec. later another shoot went
off I then ^{did} get up and fled to the back of the club
in the kitchen area where I stayed about 15 to 20 min. I then
came out and thats when I saw Funderbark on the
floor receiving help where he had got shoot. On



I have read each page of this statement consisting of ONE page(s), each page of which bear my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 9:10 A.M. on the 20th day of Jan, 19 2005.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 19

Derwayne Miller
Signature of person giving voluntary statement

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

WITNESS: Michael D. Anderson

WITNESS: [Signature]

I certify that I have been given a copy of this statement consisting of 1 pages. Derwayne Miller

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

ROBERT M. STEWART
Chief

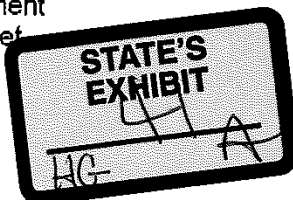
TO: LINDA HALL @ SOLICITOR'S OFFICE
FAX # 843-537-0562
FROM: DAN DeFreese @ SLED
PAGE 1 OF 2



FIREARMS DEPARTMENT

Detective Larry Brown
Pageland Police Department
316 West McGregor Street
Pageland, S.C. 29728

August 19, 2005
SLED Lab No: L04-13167
Your Case No: 04-11-543
Incident Date: 11/28/04
(S) Watts, Michael Lamont
(V) Funderburk Jr., Clifton



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

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 7: One Springfield Armory Model 1911-A1, 45 Auto caliber pistol serial number NM118243, with magazine.

Item 8: One unfired 45 Auto caliber cartridge, headstamped "CCI NR 45 AUTO", received in container marked "...FRONT OF MATRIX CLUB MIDDLE DOOR..."

Item 9: One fired 45 Auto caliber cartridge case, headstamped "CCI NR 45 AUTO", received in container marked "...MATRIX NIGHT CLUB..."

Item 10: Same as Item 9.

Item 11: Same as Item 9.

Item 12: Same as Item 9.

Item 13: One fired 45 Auto caliber cartridge case, headstamped "R-P 45 AUTO", received in container marked "...MATRIX NIGHT CLUB..."



L04-13167
Page 2 of 2

Item 14: One fired, copper-alloy, totally metal jacketed bullet received in container marked "...ON DANCE FLOOR OF MATRIX NIGHT CLUB..."

RESULTS:

The Item 7 pistol was examined, test fired, and found to be in working order. Item 7's serial number was incorrectly listed on the SLED Laboratory Evidence Inventory Sheet as NM1182434.

The Item 8 unfired cartridge was the correct caliber for use in the Item 7 pistol or in other 45 Auto caliber firearms. The cartridge case portion of Item 8 was consistent in its construction and markings with the Item 9, 10, 11, and 12 fired cartridge cases. The bullet loaded into Item 8 was consistent in its construction with the Item 14 bullet.

Test cartridge cases and bullets fired by Item 7 were microscopically compared with Items 9 through 14. Matching individual characteristics were found and it was concluded that the Item 9 through 13 cartridge cases and the Item 14 bullet were all fired by the Item 7 pistol.

Test bullets and cartridge cases fired by Item 7 were submitted for entry into the Integrated Ballistics Identification System (IBIS). Should any "hits" be developed against these entries, you will be notified. Please retain Item 7 for a minimum of two years in order to maintain its availability for any future comparisons related to IBIS activity.



F. Dan DeFreese, Senior Agent

FDD



NEWBERRY PATHOLOGY ASSOCIATES, P.A.
185 Executive Drive, P. O. Box 839
Newberry, S. C. 29108
Phone: (803) 276-0201
1-888-446-9898
Fax: (803) 276-0208

NECROPSY REPORT: FA04-753
NAME: **CLIFFTON FUNDERBURK, JR**
TYPE OF AUTOPSY: Complete

AGE: 27 RACE: **BLACK** SEX: **MALE** SS#: [REDACTED] D.O.B. [REDACTED]

PROSECTOR: **JOEL S. SEXTON, M.D.** AND **JANICE E. ROSS, M.D.**

COUNTY: **CHESTERFIELD**

INJURED on 11-28-04 at 1:22 AM DIED on 11-28-04 at 2:30 AM

AUTOPSIED on 11-29-04 at 2:30 PM



=====

FINAL NECROPSY DIAGNOSIS:

**FATAL, PERFORATING, LARGE CALIBER GUNSHOT WOUND OF THE
LEFT CHEST WITH PERFORATION OF THE HEART, LEFT KIDNEY
AND FUNDUS OF THE STOMACH CAUSING A LEFT HEMOTHORAX
OF 1100 CC's**

MANNER OF DEATH: **HOMICIDE**

PROBABLE CAUSE AND MECHANISM OF DEATH INTERVAL

EXSANGUINATION MINUTES

DUE TO: LACERATION OF THE HEART AND LEFT KIDNEY MINUTES

DUE TO: GUNSHOT WOUND OF THE CHEST MINUTES

Cliffon Funderburk, Jr.

Report by: J.S. Sexton, M.D. *JS*
J.E. Ross, M.D. *JR*

CASE HISTORY

This 27-year old black male was allegedly shot by another individual after an argument at a night club in Pageland, South Carolina. The decedent was transported to the nearest hospital and pronounced dead on arrival.

The body was brought to these prosectors for autopsy.

EXTERNAL EXAMINATION: The body is that of a 5' 11 ½", approximately 210 pound black male who arrives wearing a pair of blue jeans that have been cut up the front and a brown belt. He is also wearing a pair of blue, white and green plaid boxer undershorts and one white sock. With the body are tan high-top shoes. No other personal effects are found with the body.

Examination of the head reveals black curly hair that measures approximately 1 inch in length and brown eyes are that are free of petechiae. He has a mustache and a goatee with an endotracheal tube and neck brace in place. Natural teeth are present with no acute injuries noted. There is no blood coming from the nose, mouth or ears.

Examination of the chest and abdomen reveals four EKG leads and four defibrillator pacers. There is also a gunshot wound that will be described later. There is a diagonal well healed scar in the right lower quadrant of the abdomen. The decedent is circumcised.

Examination of the legs reveals a rash with some scarring on the feet and a well healed diagonal scar on the lateral aspect of the left thigh.

Examination of the arms reveals identification arm bands on each wrist and an intravenous line in the left wrist.

Examination of the back reveals no acute injuries or scars.

GUNSHOT WOUND: There is a gunshot wound in the left chest just to the left of the nipple that is slightly oval measuring 0.45 inches x 0.46 inches. The thickest portion of the abrasion is from 11 o'clock to 2 o'clock. The bullet passes downward, slightly to the right and to the rear. It passes through the apex of the heart, the diaphragm, the stomach and the pole of the left kidney. It produces a 1100 cc left hemothorax and a 100 cc hemoperitoneum. The entrance wound exhibits not powder tattooing, charring or soot. The overlying shirt was not brought with the body.

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DISSECTION: The body is opened with a Y-shaped incision to reveal organs in their normal anatomical position with no blood in the right chest or the pericardial sac. As mentioned above, there is a left hemothorax and a hemoperitoneum.

Dissection of the neck reveals there to be no hemorrhage within the strap muscles of the neck or surrounding the hyoid bone which is intact. Dissection of the panniculus of the chest and abdomen reveals hemorrhage only around the entrance wound in the left upper chest.

DESCRIPTION OF INTERNAL ORGANS

THYROID: The thyroid weighs 20 grams and has a reddish-brown cut surface.

HEART: The heart weighs 392 grams and has a thickened left ventricular wall that measures 1.7 cm at the anterior papillary muscle. Multiple sections through the myocardium reveal no areas of discoloration or fibrosis. The coronary vessels are free of atherosclerosis. There is hemorrhage and contusion along the missile tract in the apex of the left and right ventricle.

LUNGS: The right lung weighs 528 grams. The left lung weighs 349 grams. Both lungs are congested and show pulmonary edema. The left lung is contused.

SPLEEN: The spleen weighs 165 grams and has a maroon colored cut surface.

PANCREAS: The pancreas weighs 200 grams and has a tan lobular cut surface with no areas of fat necrosis, hemorrhage or fibrosis.

LIVER: The liver weighs 1948 grams and has a brown cut surface without nodularity. The gallbladder contains thick yellowish-brown bile without stones.

ADRENALS: The adrenals are normal appearing.

KIDNEYS: The right kidney weighs 155 grams. The left kidney weighs 159 grams. Sectioning the kidneys reveals pale cut surfaces with normal cortices, calyces, ureters, medullae and vessels. The upper pole of the left kidney exhibits a contused missile tract. The bladder is empty. The bladder, prostate, penis and testes are unremarkable.

GI TRACT: Unremarkable. The stomach is empty.

LYMPHATICS: Not remarkable.

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DESCRIPTION OF INTERNAL ORGANS

MUSCULOSKELETAL SYSTEM: Not remarkable.

CENTRAL NERVOUS SYSTEM: The scalp is reflected and the calvarium is removed without sign of contusion or fracture. The brain weighs 1520 grams and has a normal external configuration and vasculature. Multiple sections through the cerebral hemispheres, brainstem and cerebellum reveal no lesions.

CASE SUMMARY

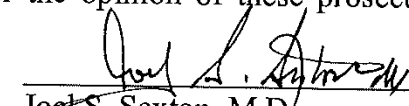
This autopsy was done upon the request of and after due authorization of the Chesterfield County Coroner in the Newberry County Hospital Autopsy Room on 11-29-04 at approximately 2:30 PM.

Postmortem examination and autopsy of the body of Cliffon Funderburk, Jr., 27-year old black male revealed that he had moderate cardiomeglia. He also had a fatal, perforating, large caliber gunshot wound of the left chest with perforation of the heart and the left kidney.

Multiple microscopic sections of the heart, liver, lungs, kidneys, brain and other tissues confirmed the above mentioned diagnoses and failed to reveal any other illness or disease.

This report is rendered in the absence of a toxicological analysis. If a positive analysis is submitted to these prosecutors, an amended opinion may be issued.

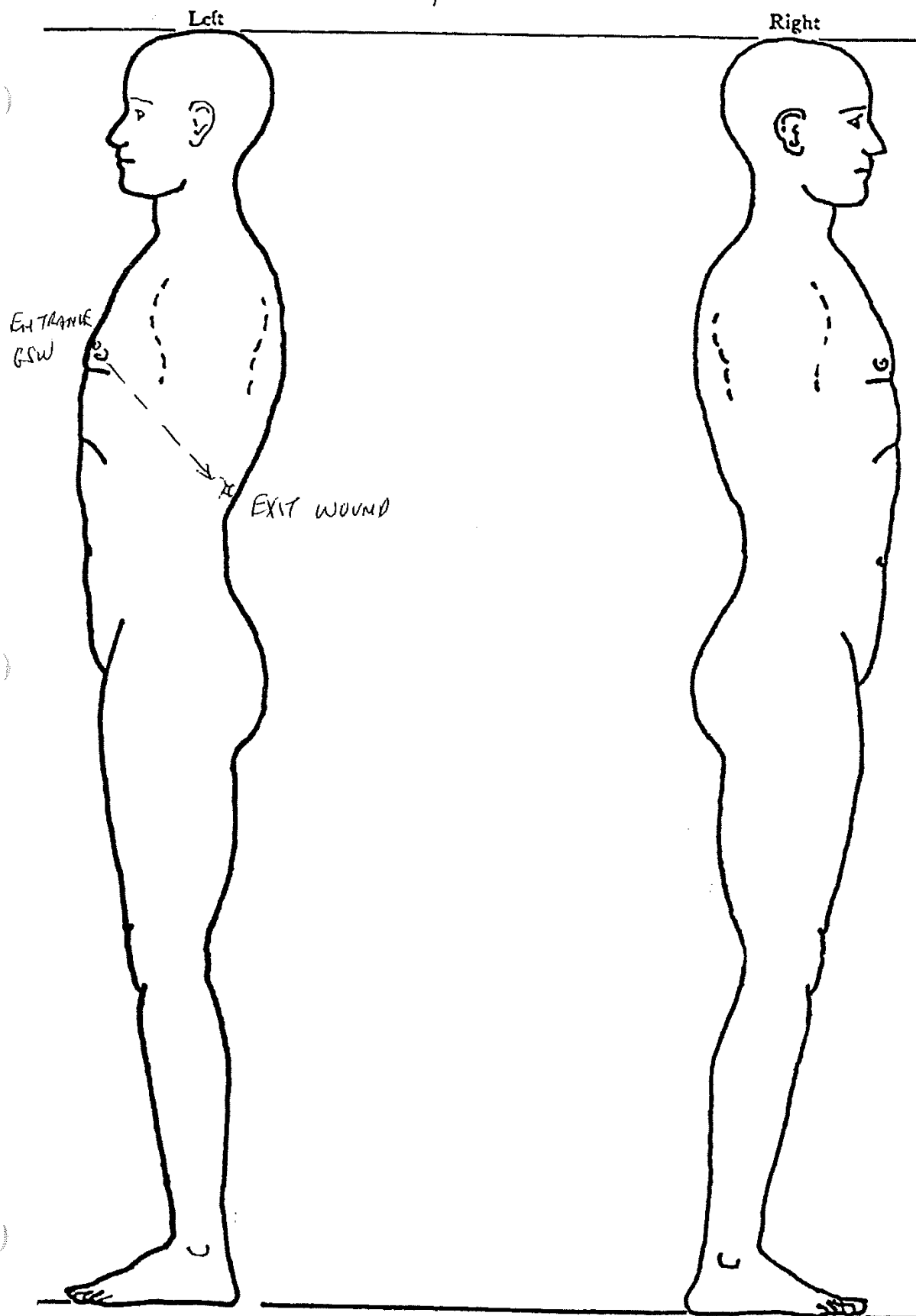
It is therefore the opinion of these prosecutors, in light of the history as stated in this protocol and the postmortem and autopsy findings, that the cause of death is exsanguination, due to gunshot wound of the chest. It is further the opinion of these prosecutors that the manner of death is homicide.

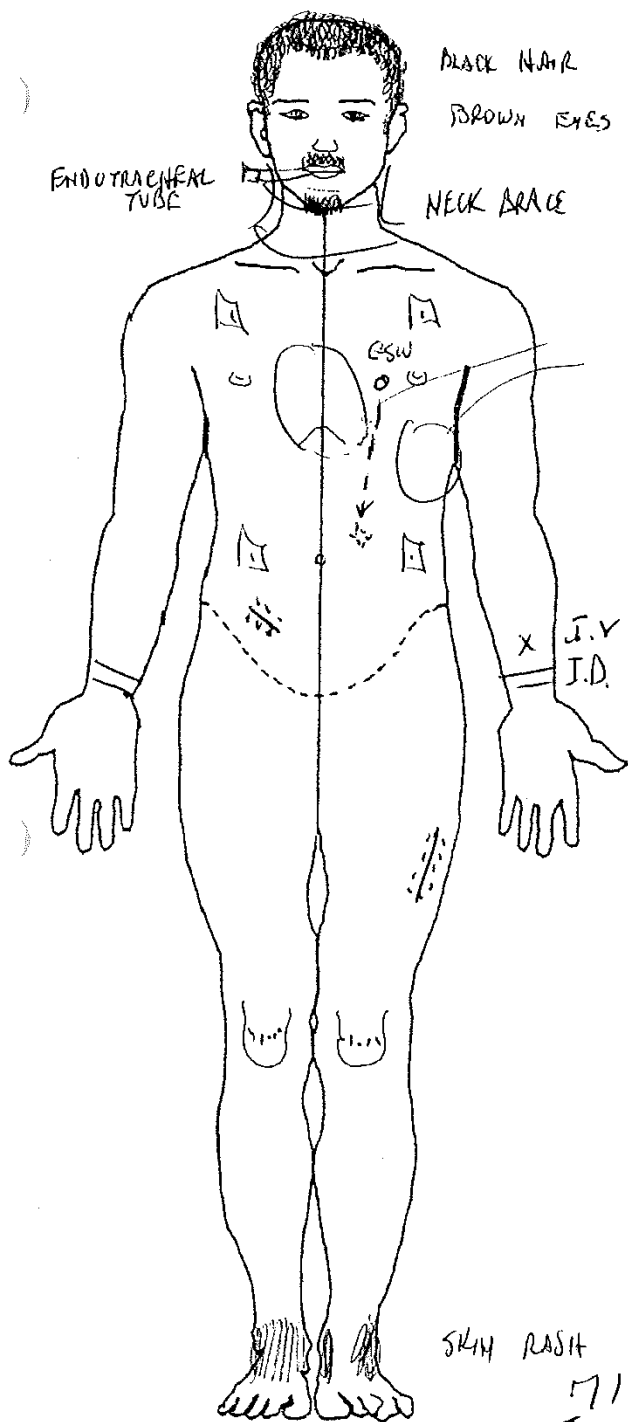

Joel S. Sexton, M.D.
Forensic Pathologist


Janice E. Ross, M.D.
Forensic Pathologist

JSS/JER:ajg
12-01-04

Name: CLIFFTON FINDERBURY Jr. Nec ID: FA 04-753





BLACK HAIR

BROWN EYES WITHOUT PERCEPABLE

ENDOTRACHEAL
TUBE

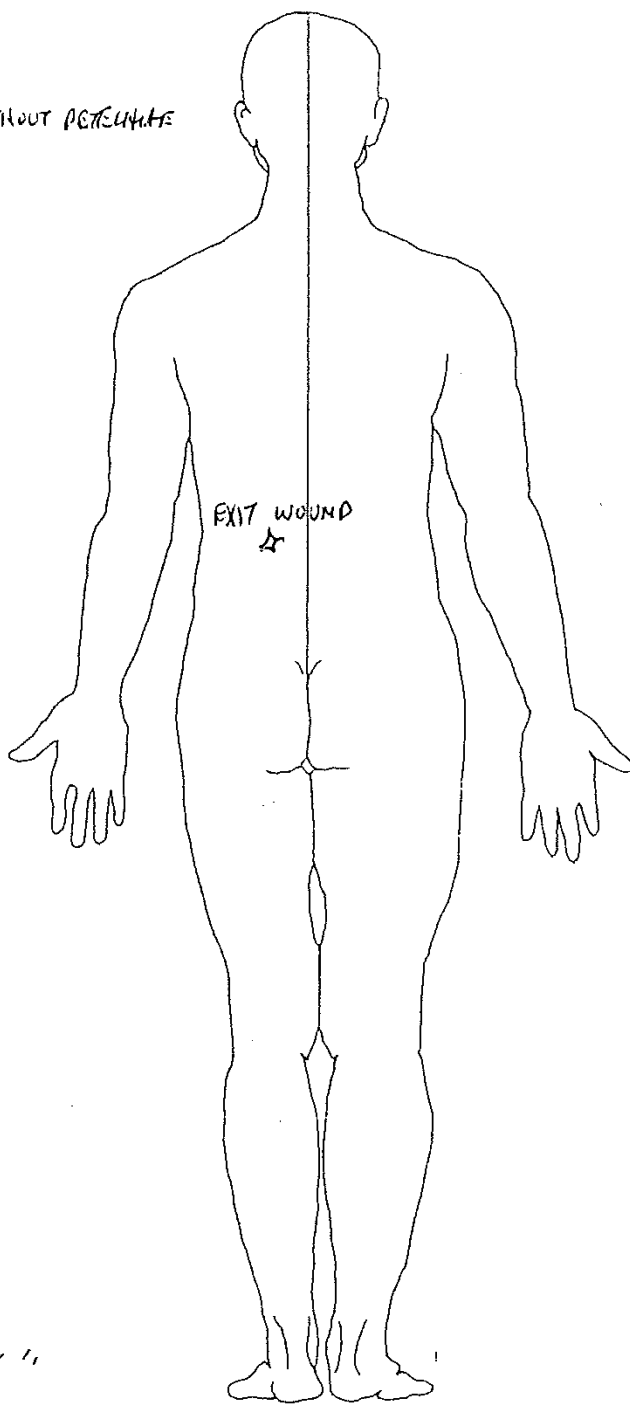
NECK BRACE

CSW

X I.V.
I.D.

SKIN RASH

71.5"
#210



EXIT WOUND
★

Name: C. J. / for Funderburk Jr.

Necropsy ID: FA04. 753

Date: 11-29-04

GUNSHOT WOUND CHART

Name: CLIFFTON FUNDEI Autopsy No FA04-753

County CHESTERFIELD

		Wound Number											
		1		2		3		4		5		6	
		Ent.	Ex.	Ent.	Ex.	Ent.	Ex.	Ent.	Ex.	Ent.	Ex.	Ent.	Ex.
1. Location of Wound	Head												
	Neck												
	Chest	X											
	Abdomen												
	Back		X										
	Right Arm												
	Left Arm												
	Right Leg												
	Left Leg												
2. Size of Wound	Diameter												
	Width	0.45	0.4										
	Length	0.46	0.65										
3. Inches from wound to	Top of Head	16	24										
	Rt of Midline												
	Lt of Midline	2.5	1.5										
4. Powder Burns	On Skin												
	Clothing												
	Absent												
5. Direction of Bullet Through Body	Backward												
	Forward												
	Downward												
	Upward												
	To Right												
6. Bullet found	To Left												
	Calibre												
	Shotgun												

Photographs made: YES

X-Rays made: YES

Remarks: "U" SHAPED EXIT

WATTS, MICHEAL LAMONT

Address Line 1

Address Line 2

City

State

Zip

LANCASTER

SC

29720-



Race
Black

Sex
Male

Date Of Birth
[REDACTED]

Height
6'00"

Weight
160

Eyes
Brown

Hair
Black

SSN
[REDACTED]

Statute:

16-23-460

ChargeDescription:

Carrying a Concealed Weapon

ESCAPE

DISCHARGING FIREARM

1. On indictment Murder
05G513-0471 states
Michael Watts is charged
at shooting a firearm at
Clifton Dunderbunk in the
back

Autopsy states shot in
the chest.

2. Do we have to stick to the
charges against Michael Watts
or can they be lesser
charges?

3. where is the rest of the
evidence? ie video tape,
etc.
Can we see these?

